

May 10, 2013

The President
The White House
Washington, DC 20500

Dear Mr. President:

As organizations representing employers who sponsor or administer wellness programs for employees and their families, we are writing to encourage the adoption of a final rule on *Incentives for Nondiscriminatory Wellness Programs in Group Health Plans* that is consistent with the original wording and intent of *Public Health Service Act* Section 2705, as added to by the *Affordable Care Act* (ACA).

As you know, one of the major goals of the ACA was to foster a culture of health and well-being for all Americans, with a particular focus on wellness, health promotion, and prevention. Keeping people healthy, identifying health risks early, reducing risk factors, and helping people live healthier lifestyles are major goals of employer-sponsored wellness programs. These programs are helping to create a healthier workforce, generate a more vibrant economy, and lower our nation's health care costs.

Consistent with the provisions of the ACA, the proposed wellness program rules issued on November 26, 2012 would permit wellness incentives to increase from the current 20 percent level allowed by regulations to implement *Health Insurance Portability and Accountability Act of 1996* (HIPAA) to 30 percent of the total cost of coverage and to 50 percent for tobacco cessation programs. We applaud and support this expansion. However, we are seriously concerned that other provisions in the proposed rule would unnecessarily increase the costs and complexity of these programs and significantly undermine the ability of wellness programs to improve employee health.

In particular, the proposed rules would add a new requirement that wellness programs would have to meet in order to be considered "reasonably designed." Specifically, the proposed rule states that where a wellness program's reward is based on a measurement, test or screening, the program will not be considered "reasonably designed" unless all individuals who fail to meet the measured goal are allowed a "different" means to qualify for the same reward.

This requirement would apply even when the reason that an individual did not meet the particular goal was not medical in nature. We are very concerned that this new standard could lead to these programs being required to develop numerous, individualized means for participants to obtain the program's reward if they fall short of meeting the program's goal. As a result, this requirement would unnecessarily and excessively restrict the ability of wellness programs to actually encourage, much less engender, healthier behavior by some participants.

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It is important to recognize that under both the existing HIPAA wellness regulations in place since 2006 and the November 2012 proposed rules participants in wellness programs are already afforded meaningful and appropriate safeguards to benefit from a program's reward. These rules require that where it is "medically inadvisable" or "unreasonably difficult" for a participant to achieve health-related goals the program must provide these individuals a "reasonable alternative" means to secure the same reward as all other participants. This approach has worked well because it balances the needs of employees and employers and enables wellness programs to effectively promote health.

In addition, both the 2006 HIPAA regulations and the November 2012 proposed rules include workable and sufficiently rigorous standards that a wellness program must meet to be considered "reasonably designed," including that it:

- Is reasonably designed to promote health or prevent disease;
 - Has a reasonable chance of improving the health of, or preventing disease in, participating individuals;
- Is not overly burdensome;
- Is not a subterfuge for discriminating based on a health factor; and
- Is not highly suspect in the method chosen to promote health or prevent disease.

This five prong standard which currently defines the reasonable design requirements for procuring a wellness reward is an appropriately demanding standard. There is no need to raise, nor has there been identified any pattern of discrimination to warrant, an additional hurdle for wellness programs.

We believe that the proposed rule goes against the original intent of this provision of the ACA and urge you to support these employer wellness programs.

Sincerely,

American Benefits Council
Business Roundtable
The ERISA Industry Committee
HR Policy Association
National Business Group on Health
U.S. Chamber of Commerce

C: The Honorable Kathleen Sebelius, Secretary of Health and Human Services
The Honorable Seth D. Harris, Acting Secretary of Labor
The Honorable Jacob J. Lew, Secretary of Treasury