

New York appreciates the opportunity to comment on the regulations proposed by The Department of Treasury, the Department of Labor and the Department of Health and Human Services; Incentives for Nondiscriminatory Wellness Programs in Group Health Plans; Proposed Rule [REG-122707-12/CMS 9979-p].

New York would like to offer the following comments:

Preamble, B. Requirement for Health-Contingent Wellness Programs; (2) Size of Reward

- New York recommends that when dependents are permitted to participate in wellness programs, rewards based on premiums surcharges, rebates or refunds should be based on the portion of premium attributable to the insured or dependent.

Preamble, B. Requirement for Health-Contingent Wellness Programs; (3) Uniform Availability and Reasonable Alternative Standards

- New York supports the development of additional examples to demonstrate compliance with the limitation on the size of the reward when the amount of the reward is variable. Specifically, all of the examples provided in the proposed rule are specific to employee-only coverage. It would be helpful to provide examples of how to comply with the limitation on the size of the reward in cases of employee and spouse and/or dependent coverage.
- With regard to the process for determining a reasonable alternative standard, New York recommends that alternatives should not be more costly to the employee. As an example, if the weight loss program offered by the employer required employees to go to classes and weigh in, and if this program presents a hardship to the employee, the insurer/employer may consider an alternative such as having foods delivered to the employee's home. The cost of the food, however, is borne by the employee. New York would not consider this to be a reasonable alternative standard.

In developing an alternative standard, the insurer/employer should also be required to consider the past results of a program such as weight loss or smoking cessation and the rate of recidivism for participants of such programs.

- With regard to physician verification, additional examples may be useful for demonstrating when physician verification is needed for conditions such as diabetes, hypertension, and weight loss. Also, verification should not be limited to physicians but should also include other health care professionals when acting within their scope of practice.

Preamble, B. Requirement for Health-Contingent Wellness Programs; (4) Reasonable Design

- New York recommends that “reasonably designed” standards be developed to ensure that wellness programs are selected not only due to cost, but also due to efficacy.
- To the extent that the U.S. Department of Health and Human Services or other relevant federal agencies have information regarding evidence based strategies that result in wellness program success, such information should be made available to insurers/employers to prioritize the use of evidence-based wellness strategies.
- New York believes that the approach to determining if a health-contingent wellness program is reasonably designed is appropriate.
- With regard to the need for consumer protections to ensure that wellness programs are designed to promote health or prevent disease, in all instances, the employee should be encouraged to work with the primary care provider and the wellness program offered by the insurer/employer to assure that the program is the one best suited to the needs of the employee. As proposed, the only role of the primary care provider is to review an alternative standard. This is contrary to health promotion. The approach to selecting wellness programs should be done in consultation with an employee’s primary care provider.

Preamble, B. Requirement for Health-Contingent Wellness Programs; (5) Notice of Other Means of Qualifying for the Reward

- New York recommends that the sample language to inform employees of reasonably alternatives be revised to meet the needs of individuals with lower reading levels.