

On Tuesday, March 23, President Obama signed into law the “Patient Protection and Affordable Care Act” (“PPACA”). A reconciliation bill making changes to the Act was signed by the President on March 30. The PPACA as amended by the reconciliation bill is collectively referred to as the Act in this summary. This summary provides an overview of the individual mandate provisions of the Act.

Summary: Employers may offer health promotion or disease prevention programs (“wellness programs”) so long as such programs abide by certain requirements established under the Act. (PPACA §1201 creating a new §2705 of the Public Health Service Act (PHSA))

Scope: Applies to all wellness programs offered by an employer for the purpose of promoting health or preventing diseases. The requirements articulated below do not apply to wellness programs that were established prior to March 23, 2010.

Program Requirements: The requirements for wellness programs vary depending on whether a plan conditions a premium discount/rebate or other reward for participation in a wellness program based on an individual satisfying a standard that is related to a health status factor.

Requirements for wellness program where rewards are NOT based on health status standards (or rewards for participation in the program are not offered):

- Wellness program must be made available to all similarly situated individuals.
- The following programs are NOT subject to additional requirements: (i) reimbursement for memberships in a fitness center; (ii) diagnostic testing program that does not incent for outcomes; (iii) waivers of copayments or deductibles for certain items or services related to a health condition (e.g. prenatal care); (iv) reimbursement for smoking cessation programs without regard to whether the individual quits smoking; or (v) rewards given to individuals for attending periodic health education seminars.

Requirements for wellness programs where rewards ARE based on health status standards:

- The reward for the wellness program may not exceed 30% of the cost of employee-only coverage under the plan (where dependants can participate in the wellness program, reward may not exceed 30% of total cost of plan). The cost of coverage under the plan is based on the total amount of employer plus employee contributions for the benefit package.
- The wellness program must be reasonably calculated to promote health or prevent disease (and may not be a means for discrimination based on a health status factor).
- The plan must give participants the chance to qualify for the reward at least once per year.
- The reward must be made available to all similarly situated individuals. In order to satisfy this requirement, the plan must allow for a reasonable alternative standard (or waiver) to apply to those individuals for whom it would be unreasonably difficult to satisfy the standard based on a medical condition or the fact that it is medically inadvisable to attempt to satisfy the standard.
- The plan or issuer must disclose the availability of the reasonable alternative standard in all materials that discuss the wellness program.

Rewards:	Rewards for purposes of the wellness program requirements include: a discount or rebate of a premium; waiver of all or part of a cost-sharing mechanism (e.g. deductibles or copayments); the absence of a surcharge; or the value of a benefit that would not otherwise be provided under the plan.
Obligations of Departments of HHS, Treasury and Labor:	<p>The Departments of HHS, Treasury, and Labor have joint oversight of the wellness provisions.</p> <ul style="list-style-type: none"> • By July 1, 2014, the Secretaries of HHS, Treasury and Labor must establish a 10-state project in which participating States apply the above-listed provisions to programs of health promotion offered by a health insurance issuer in the individual market. • The Secretaries of HHS, Treasury and Labor shall evaluate and submit to the relevant Congressional committees a report exploring issues relating to wellness programs. The report will explore the efficacy of the wellness programs, their impact on access to care and affordability of coverage, the impact of premium-based and cost-sharing incentives on a participant's behavior, and the effectiveness of different types of rewards. • The Secretaries of HHS, Treasury and Labor may also promulgate regulations related to wellness programs.
Open Issues:	It appears that insurers may not offer wellness programs that reward based on health status in the individual market or to groups that are not employer-sponsored <u>unless</u> such programs were in effect as of March 23, 2010. The requirement under PPACA §1201 of that the Secretaries of HHS, Treasury and Labor develop a 10-state pilot program to apply the wellness program standards to the individual market suggests, however, that this prohibition against new wellness programs for the individual market may eventually disappear.
Effective Date:	January 1, 2014
References:	PPACA: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=fh3590enr.txt.pdf Reconciliation: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=fh4872pcs.txt.pdf

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