Cigna Incentive Regulatory Guidance

Overview

This document provides regulatory compliance guidelines for employers offering incentives to improve engagement in health programs. It is provided for informational purposes and is not a substitute for legal advice.

Health Insurance Portability and Accountability Act of 1996 (HIPAA) and PPACA Incentives Implications:

HIPAA prohibits discrimination in eligibility, benefits, or premiums based on a health factor (such as diabetes).

PPACA was passed to increase access to private and government-funded health insurance coverage, and requires the creation of health insurance exchanges to provide individuals and small employers with coverage. It contains provisions around using incentives to promote health and wellness.

HIPAA and PPACA permit health and wellness incentives in two scenarios:

1. **Incentives unrelated to a health factor:** programs that require a customer to complete an activity unrelated to a health factor to obtain an incentive are allowed. Examples include:
   - Completing a biometric screening or health assessment
   - Rewards for preventive care visits
   - Completing online health education

There is no limit on the size of rewards or penalties for these types of programs, but Cigna recommends that the total reward or penalty should not exceed 50% of the total value of the benefit (including employer & employee contribution).

2. **Incentives related to a health factor:** Programs requiring an individual to achieve a health outcome (such as being a non-smoker, achieving a blood pressure below 140/90, or exercising a certain amount) are only allowed when:

Likely Incentive Limits for 2014	
Incentive Type	**% of Total Plan Value**
Related to Health Factor (e.g. BMI < 30)	30%
Smoking Cessation	50%
Unrelated to Health Factor (e.g. Health Assessment)	50%

a) The total incentive for the wellness programs is limited to 20% of the total cost (employer and employee contribution) of employee and dependent (if eligible) coverage under the plan.

There is a proposal to increase the limit from 20% to 30%, and increase the limit to prevent or reduce tobacco use to 50%, starting in 2014. The new limits are very likely to be enacted.

b) The program must be reasonably designed to promote health or prevent disease.

c) The program must give eligible individuals an opportunity to qualify for the incentive at least once per year.

d) A reasonable alternative (or waiver) must be given to individuals for whom it is difficult to earn the incentive due to a medical condition such as pregnancy or cancer. Plan materials must describe the alternative.

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Example 1: Incentive Limits
An employer's health plan premium for employee-only coverage is $6,000 per year (employer pays $4,500, employee pays $1,500). The plan provides a premium surcharge of $600 if employees don't achieve exercise goals, and a blood pressure goal of 140/90. The program also imposes a $2,000 tobacco premium surcharge for employees who have used tobacco in last 12 months and don't enroll in a cessation program.
This program is in compliance The surcharge based on a health factor ($600) does not exceed 30% of the cost of coverage ($1800) And The combined total of the tobacco surcharge ($2,000)+ the surcharge based on a health factor ($600) = ($2,600) does not exceed 50% of the total cost of coverage of ($3,000)

Example 2: Incentive Limit
An employer's health plan premium for employee-only coverage is $5,000 per year (employer pays $4500, employee pays $500). The plan provides a $500 premium surcharge for not completing a health assessment. The plan also has a penalty of $2,000 if customers do not achieve a BMI goal of <30.
This program is NOT in compliance The health assessment surcharge ($500) is <u>not</u> limited because its not based on achieving a health factor **But** The BMI goal ($2,000) which is based on a health factor, exceeds 30% of the cost of coverage ($1,500)

PPACA Employer Mandate

The employer mandate imposes a penalty on an employer if employees obtain a health insurance subsidy (a premium tax credit) for obtaining coverage on a public health insurance exchange. The mandate applies to businesses providing coverage with 50 or more full-time employees working 120 or more hours each per month.

Employee Requirements for Exchange Subsidy (and Employer Penalty)
1) Income less than 400% of FPL 2) Premium more than 9.5% of income, OR 3) Plan pays less than 60% of costs for entire population *Incentives impact calculation of 2) and 3)*

For an employee to be eligible for a subsidy (and the employer subject to a penalty) the employee's household income must be less than 400% of the Federal Poverty Level (400% of FPL for a four-person family is $92,200), and either of the conditions below must apply:

1. The employee's premium in the employer's plan exceeds 9.5% of the employee's income - including wage and investment income of the entire family. Incentive premium adjustments impact this calculation. **OR**
2. The healthcare cost paid for by the employer's health plan is less than 60% of the total costs incurred by the entire population participating in the plan. A portion of employer incentive contributions to an HSA would be taken into account in determining the 60%.

Example 3: 9.5% of Income
An employer with 4,000 employees has a single coverage employee premium of $3,000, and a tobacco use premium surcharge of $500. An employee with household income of $40,000 (below 400% of FPL), and who was a smoker, participated in the plan in year 1, but opted out of the plan in year 2 and obtained coverage on a public exchange.
The employer would <u>not</u> be subject to a penalty: The total cost of the premium ($3,000 + $500) is less than 9.5% of the employee's income of $40,000 and is therefore, "affordable." ***Note*** that if the premium surcharge was $1,200, the employer would be subject to a penalty. The total cost of the premium ($3,000 + 1,200) is greater than 9.5% of the employee's income of $40,000.

Employer Penalties

If the business provides health insurance, its annual penalties equal THE LESSER OF

A. The number of subsidized employees x $3,000

OR

B. The number of employees in the firm (subsidized and unsubsidized) minus 30 x $2,000

Example 4: Client Penalty Cost Compare
In 2013 an employer with 100 employees offers a plan with a value of $10,000 per employee (employer pays $6,000, and employee pays $4,000). In 2014 the employer introduces a $1,000 premium penalty for those that don't achieve a 140/90 blood pressure. Also in 2014, among the 100 employees: • 15 don't earn the incentive and pay the employer a $1,000 premium penalty • 20 employees earn less than $50,000, and 5 of them obtain a coverage subsidy on a public exchange
The 2014 plan would lower costs by 5% **2013 cost:** $600,000 (100 employees X $6,000 value of plan) **2014 cost:** $570,000 (95 employees X $6,000 value of plan) -$15,000 (15 employees X $1,000 premium penalty for not achieving blood pressure goal) +$15,000 (5 employees X $3,000 employer mandate penalty)* $570,000 *$4,000 premium + $1,000 penalty is greater than 9.5% of employee's $50,000 income

Other Regulatory Guidance:

Americans with Disabilities Act of 1992 and ADA Amendments Act of 2008 – The Act prohibits employers from discriminating against qualified individuals with disabilities. Relative to incentives, it establishes the following:

- Reasonable alternatives to earn an incentive must be available to individuals for whom it is unreasonably difficult due to a disability to earn it
- Health assessments and screenings are allowed to be incented as long as they are part of a group health plan. If not part of a group health plan, incentives must have a small financial burden on employees.
- Information cannot be utilized to discriminate against the employee

Tax Rules and Regulations

- Cash incentives are always taxable
- Low cost items (i.e. water bottles, T-Shirts, coffee mugs) are generally not taxable
- Reduced premiums, employer contributions to HRA/HSA/FSA, and waived copayment are not taxed

Other guidance:

- Genetic Information Nondiscrimination Act of 2008 makes it unlawful for employers to collect genetic information including any family medical history. Cigna's health risk assessment is in compliance with GINA.
- Pregnancy Discrimination Act of 1978 mandates that employers provide a reasonable alternative for women to earn their incentive when pregnancy makes it medically inadvisable for them to earn it via the normal program.
- Federal Civil Rights Laws (Civil Rights Act of 1964, Equal Pay Act of 1963 and Age Discrimination in Employment Act of 1967) require employers to provide the same incentives to all employees.
- You can't subject participants to pay for their own programs to earn rewards (i.e. weight watchers or Cessation Programs)

Sources:
– Cigna Legal
– United States Department of Labor, "FAQs About Affordable Health Care Act Implementation Part V and Mental Health Parity Implementation" www.dol.gov
– 2011 National Business Group on Health, "Legal Considerations for Rules and Regulations," 1:9
– The U.S. Equal Employment Opportunity Commission, "Facts about the Americans with Disabilities Act, September 9th 2008; http://www.eeoc.gov/facts/fs-ada.html
– National Business Group on Health, " Wellness Programs: New Rules for 2014 and Beyond", January 16, 2013, Debbie Harrison – Senior Manager, Public Policy
– National Federation of Independent Business

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