



# WORKSITE WELLNESS AND HIPAA NONDISCRIMINATION

THESE REGULATIONS CREATE A LEGAL WAY FOR EMPLOYERS TO OFFER INCENTIVES TO EMPLOYEES FOR MEETING A HEALTH OR WELLNESS GOAL

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**M**INNESOTA EMPLOYERS who establish worksite wellness programs must comply with certain legal requirements. Important legal issues to consider are the HIPAA nondiscrimination regulations, the HIPAA Privacy Rule, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), the Minnesota Consumable Products Act, federal and state nursing mothers laws and federal income tax law. Please refer to the corresponding fact sheet for a description of each legal requirement. This fact sheet provides an overview of the HIPAA nondiscrimination regulations as they apply to worksite wellness programs. When setting up a worksite wellness program, it is important to consult with an attorney to make sure that the program meets all legal requirements.

## Q What is HIPAA?

**A** HIPAA is the Health Insurance Portability and Accountability Act of 1996.<sup>1</sup> It provides a wide variety of rights and protections for participants and beneficiaries in group health plans. The two aspects of HIPAA that apply to worksite wellness programs are the nondiscrimination provision<sup>2</sup> and the privacy rule. The privacy rule is described in a different fact sheet, *Worksite Wellness and HIPAA Privacy*.

*“The program must provide a reasonable alternative for those unable to satisfy the standard for medical reasons.”*

## Q What is the purpose of the HIPAA nondiscrimination regulations?

**A** The regulations prohibit a health plan from denying an individual eligibility for health care benefits or charging more for coverage in group health plan because of a health factor.

## Q What is a health factor?

**A** A health factor is almost anything contained in an employee's medical and insurance records. It is a health status, medical condition (physical or mental), claims experience, receipt of health care, medical history, genetic information, evidence of insurability, or disability.

## Q How do HIPAA nondiscrimination regulations apply to worksite wellness programs?

A An employer who offers an incentive to employees to meet a health or wellness goal may be discriminating against an employee who is unable to earn the incentive because of a health factor. The HIPAA nondiscrimination regulations create a way for employers to offer incentives for meeting a health or wellness goal without violating the nondiscrimination requirement.

## Q How does it do that?

A It identifies two types of wellness programs and creates specific requirements for the programs that offer incentives for meeting a goal.

- » Participation-Based Programs: employees receive a reward just for participating in the program. There are no special requirements for participation-based programs.

**Example:** A program that offers a nutrition class at which all attendees receive a free recipe book.

- » Standards-Based Programs: employees must meet a goal to earn a reward or avoid a penalty. An employer must comply with certain requirements for standards-based programs.

**Example:** A program requires participants to lower their body mass index to within a healthy range in order to receive a reduction in health care premiums.

- » A wellness program may contain both participation-based and standards-based activities.

## Q What are the requirements for a standards-based program?

A There are five requirements for a standards-based program:

- » The value of the reward or penalty must not exceed 20% of the cost of coverage.<sup>3</sup>

**Example:** The cost of single coverage (both the employee's and employer's share) for an individual employee is \$5,000 per year. The employer may offer the employee an incentive to reach a health-related goal. The value of the incentive may be no more than \$1,000 (20% of the total cost of coverage).

- » The program must promote health or prevent disease.

**Examples:** weight loss, exercise, smoking cessation.

- » Individuals must be allowed to qualify for the reward at least once a year.

**Example:** All employees who have met a specific health goal in the previous year are given a premium reduction in the coming year.

- » The program must provide a "reasonable alternative" for those unable to satisfy the standard for medical reasons.

**Example:** An employer offers a reward to all employees who achieve an exercise goal that includes climbing stairs. It is medically inadvisable for an employee who is obese to climb stairs more than necessary. The employer must offer the employee an alternative exercise that will allow him or her an opportunity to earn the reward.

- » Plan materials must state that alternatives are available.

**Examples:** This information could be available in print brochures or on a website.

## Q What questions should I discuss with my attorney?

- A
- » Is any part of my wellness program standards-based?
  - » If so, does it satisfy the requirements for a standards-based program?



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<sup>1</sup> Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936.

<sup>2</sup> 29 U.S.C. § 1182; 26 C.F.R. § 9802-1.

<sup>3</sup> This amount will increase to 30 percent in 2014 under the federal health care reform act. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, § 2705 (to be codified at 42 U.S.C. § 300gg-4).