

J.W.TERRILL

a Marsh & McLennan Agency LLC company

Guidance for Health Contingent Outcome-Based Wellness Incentive Programs

June 27, 2018

Diane Andrea
Health Promotion Program Consultant

Facts

- Health care costs have risen 3% per year for the past several years
- 2016 average annual premium for employer-sponsored health insurance
 - \$6,435 for single coverage
 - \$18,142 for family coverage



Modifiable Health Risks

- Healthy weight
- Physical activity
- Good nutrition
- Zero tobacco

Employee Wellbeing



J.W.TERRILL

a Marsh & McLennan Agency LLC company

Disclaimer

Health Care Premium Discounts/Surcharges

	2013	2014	2015	2016	2017
Smoking surcharge for health care plans	--	--	--	20%	19%
Health care premium discount for getting an annual health risk assessment	21%	21%	25%	18%	17%
Health care premium discount for participating in wellness program	17%	14%	20%	17%	15%
Health care premium discount for not using tobacco products	19%	19%	19%	15%	15%
Health care premium discount for participating in a smoking cessation program	--	--	--	11%	11%
Health care premium discount for participating in a weight loss program	9%	9%	9%	7%	6%

HIPAA Wellness Rules



Health Insurance Portability and Accountability Act

- health status
- medical condition, including both physical and mental illnesses
- claims experience
- receipt of health care
- medical history
- genetic information
- evidence of insurability
- disability

Before Implementing

- Careful review of potential risks
- Careful review of potential benefits
- Thorough evaluation from legal counsel

Wellness Programs

Participatory

Health-
Contingent

Activity-
Only

Outcome-
based

Reward

- A reward
 - Discount or rebate of premium or contribution
 - Waiver of all or part of a cost-sharing mechanism
 - An additional benefit
 - Any financial or other incentive
- A penalty
 - Surcharge
 - Financial or nonfinancial disincentive
- Recommended to communicate rewards, not penalties

Participatory

Participatory Wellness Programs

- “...programs that are made to all similarly situated individuals and that either do not provide a reward or do not include any conditions for obtaining a reward that are based on an individual satisfying a standard that is related to a health factor.”

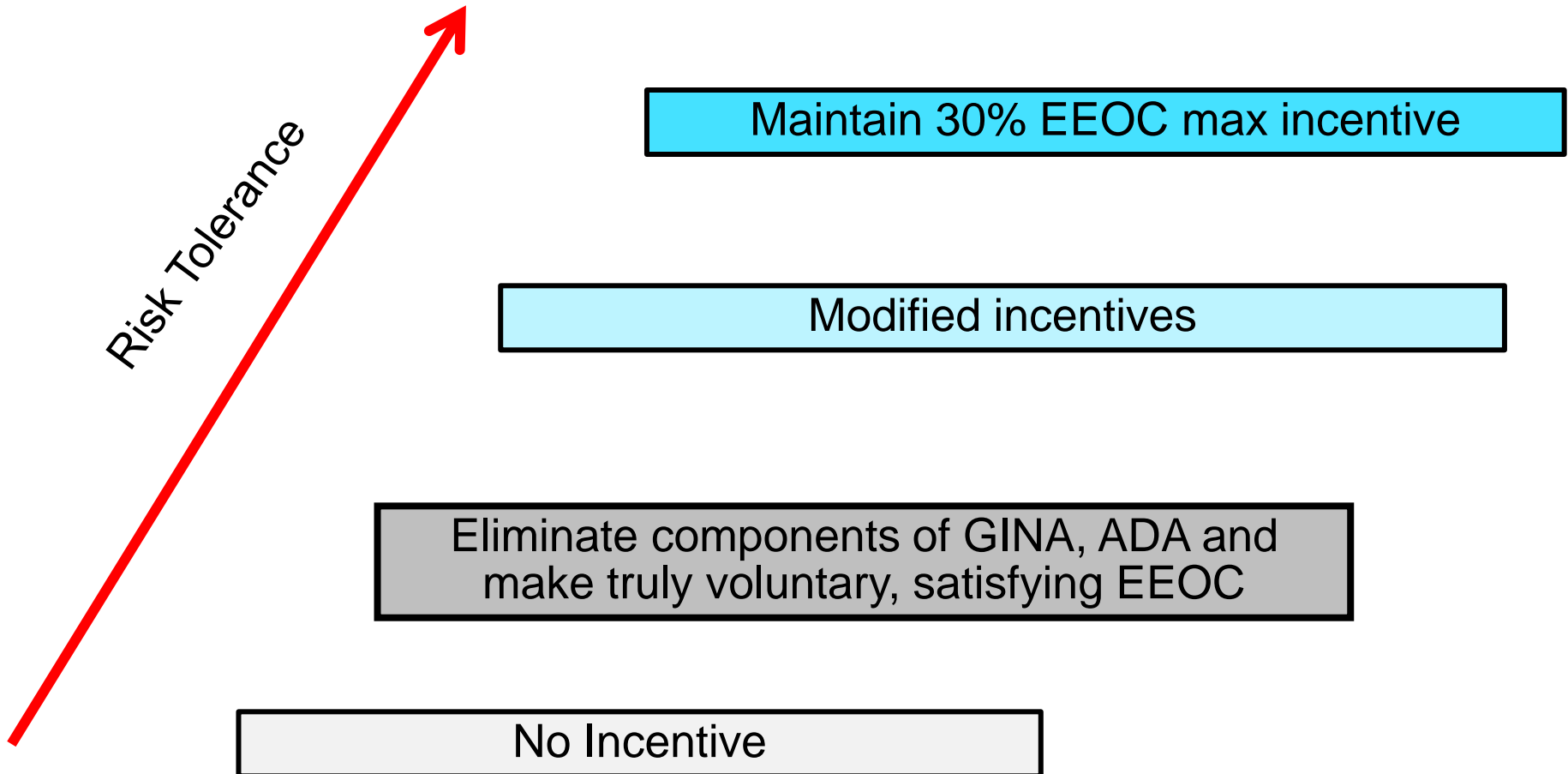
Participatory Wellness Programs

- Fitness center membership reimbursement
- Reward for attending a no-cost health seminar
- A health risk assessment that provides a reward for participation and does not base any part of the reward on outcomes.
- Permissible under the HIPAA nondiscrimination rules.
- Not required to meet the five requirements applicable to health-contingent programs under HIPAA nondiscrimination rules. May be governed by EEOC.

Participatory Wellness Programs and the EEOC

- EEOC requires that there is a limit on incentives to any wellness program that requires employees **to answer disability-related questions or undergo medical examinations** – until AARP law suit
- Past limits
 - 30%
- Future limits
 - 30% limit will be vacated as of 1/1/2019

Risk Tolerance



Further Resources

2018 Employee Benefits Compliance Webinar Series Third Thursday of Each Month | 2 p.m – 3 p.m. EST

July 19, 2018

WELLNESS PROGRAM COMPLIANCE: A discussion of the legal aspects of wellness programs and how to implement them in compliance with DOL and EEOC rules.

- Employers must provide a notice that clearly explains what medical information will be obtained and how it will be used, who will receive it and the restrictions on disclosure. Example can be found here: <https://www.eeoc.gov/laws/regulations/ada-wellness-notice.cfm>
- MMA Compliance Update 4/17/18 <https://www.mma-midatlantic.com/2018/04/17/eeocs-status-report-aarp-v-eeoc-creates-uncertainty-wellness-programs/>

Health-Contingent

```
graph TD; A[Health-Contingent] --> B[Activity-Only]; A --> C[Outcome-based]
```

Activity-
Only

Outcome-
based

Health–Contingent Wellness Programs

- “...programs that **require individuals to satisfy a standard** related to a health factor in order to obtain a reward.
 - Activity-only wellness programs
 - Outcome-based wellness programs

Health –Contingent Wellness Programs

- Activity-only wellness programs
 - Individual is required to perform or complete an activity related to a health factor in order to obtain a reward. Do not have to attain or maintain a specific health outcome
 - Walking, diet, exercise program

Health – Contingent Wellness Programs

- Outcome-based wellness programs
 - Individual must attain or maintain a specific health outcome (such as not smoking or attaining certain results on biometric screenings) in order to obtain a reward.

Health –Contingent Wellness Programs

- Outcome-based wellness program
 - A program that imposes a premium surcharge/discount based on tobacco use.
 - A program that provides rewards to employees identified as within a normal or healthy range for biometrics.
- Activity-only and outcome-based need to meet five requirements

Requirements for Health-Contingent Wellness Programs

1. Individuals must be offered an opportunity to qualify for the reward under the program at least once per year.
2. Reward for activity-only wellness program together with reward from other health-contingent programs must not exceed 30% (50% if the program is designed to prevent or reduce tobacco use) of the total cost of coverage under the plan.
3. Reasonably designed
4. Uniform availability and reasonable alternative standards
5. Notice of availability of reasonable alternative standard

Requirements for Activity-Only Wellness Programs

Individuals must be offered an opportunity to qualify for the reward under the program at least once per year.

Requirements for Health-Contingent Wellness Programs

Total amount of all rewards contingent on satisfying a health standard must not exceed 30% of the total cost of coverage with an increase of an additional 20% (to 50%) for health-contingent programs designed to prevent or reduce tobacco use.

Reminder that the EEOC guidelines will be vacating the 30% rule.

Requirements for Health-Contingent Wellness Programs

- Employer portion = \$4,500 and employee portion = \$1,500
 $\$4,500 + \$1,500 = \$6,000$
- Tobacco wellness upper limit 50% of \$6,000 = \$3,000
- Non tobacco wellness upper limit 30% of \$6,000 = \$1,800

Requirements for Health-Contingent Wellness Programs

- Example 1: annual incentive of \$600
 $\$6,000 \times 30\% = \1800
- Example 2: \$80/month premium discount (\$960/year)
 $\$6,000 \times 50\% = \3000
- Example 3: \$40/month premium discount (\$480/year)
 $\$6,000 \times 50\% = \$3,000$

Requirements for Health-Contingent Wellness Programs

- 30% reward for cholesterol level + 20% for tobacco cessation
 - **compliant under ACA HIPAA guidelines**
- 10% reward for cholesterol level + 40% for tobacco cessation
 - **compliant under ACA HIPAA guidelines**
- 10% reward for cholesterol level + 50% for tobacco cessation
 - **not compliant under ACA HIPAA guidelines**
- 35% reward for cholesterol level + 15% for tobacco cessation
 - **not compliant under ACA HIPAA guidelines**

Requirements for Health-Contingent Wellness Programs

Reasonably designed

- Not overly burdensome
- Reasonably designed to promote health or prevent disease

Requirements for Health-Contingent Wellness Programs

Uniform availability and reasonable alternative standards

- Reasonable alternative furnished upon request
- Activity-Only programs only
 - May seek verification from a physician

Requirements for Health-Contingent Wellness Programs

- Reasonable alternative standards
 - Completion of an educational program
 - Employer finds the program
 - Employer pays for program
 - Reasonable time commitment
 - Full reward provided even if the standard is completed mid-year
 - Personal physician recommendation

Requirements for Health-Contingent Wellness Programs

Notice of availability of reasonable alternative standard

- Sample:

“Your health plan wants to help you take charge of your health. Rewards are available to all employees who participate in our Cholesterol Awareness Wellness Program. If your total cholesterol count is under 200, you will receive the reward. If not, you will still have an opportunity to qualify for the reward. We will work with you and your doctor to find a Health Smart program that is right for you.”

“Your plan offers a Health Smart program under which we will work with you and your doctor to try to lower your cholesterol. If you complete this program, you will qualify for a reward. Please contact us at [contact information] to get started.”

“Your health plan is committed to helping you achieve your best health. Rewards for participating in a wellness program are available to all employees. If you think you might be unable to meet a standard for a reward under this wellness program, you might qualify for an opportunity to earn the same reward by different means. Contact us at [insert contact information] and we will work with you (and, if you wish, with your doctor) to find a wellness program with the same reward that is right for you in light of your health status.”

Sixth Guideline (EEOC)

- The wellness program must be voluntary

Tobacco



J.W.TERRILL

a Marsh & McLennan Agency LLC company

Journal of Occupational and Environmental Medicine

Volume 54, Number 7, July 2012

“to help employers to implement programs that engage their workforce, improve employee health, and potentially reduce health care and other related costs over time while also protecting employees from discrimination and unaffordable coverage.”

Cultural Support Components

- Leadership support
- Wellness champions
- Healthy work environment
- Organizational policies that support a healthy workplace
- Health benefit design

Recommendations

- Screenings
- Health standards to measure
- Reasonably designed program
- Reporting
- Reasonable alternative standards
- Incentives
- Communications

Screening Programs

- Used to identify opportunities for improvement and interventions
- Relevant to risk factors for chronic disease

Screening Programs

- Guidelines
 - Consistent for all employees
 - Adhere to clinical guidelines
 - Referrals for individuals whose results are out of the normal range
 - Communication process to physician

Health Standards to Measure

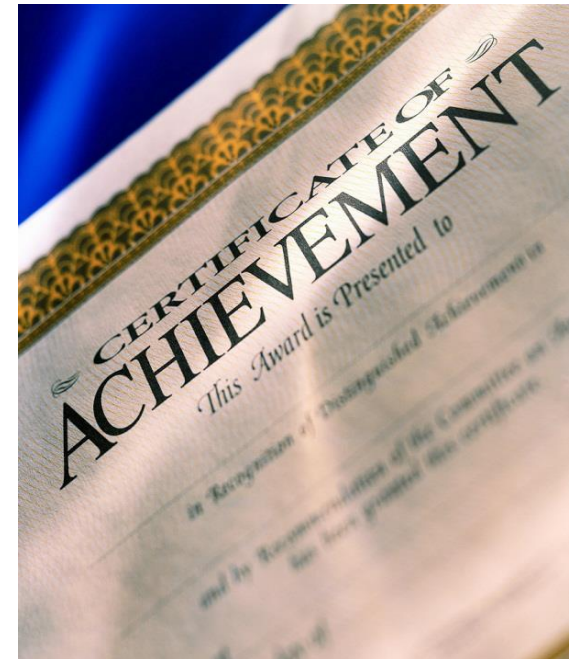
- Weight
 - Cholesterol
 - Blood pressure
 - Tobacco use
-
- Modifiable through changes in health behavior

Reporting

- Third party
- Engagement
- Participation satisfaction
- Improvement

Incentives

- Consider nonmonetary incentive approaches first



Incentive Size

- Suggested amounts
 - \$40 to \$60 per month



Incentive Size

- Affordable Care Act 9.86% Rule
 - Unaffordable health coverage has been defined as coverage for which the contribution for employee only coverage is equal to or more than **9.86% of the employee's combined household income.**
 - Wages should be compared to the lowest cost of self-only coverage premium for the non-smoker.

Applying the Incentive

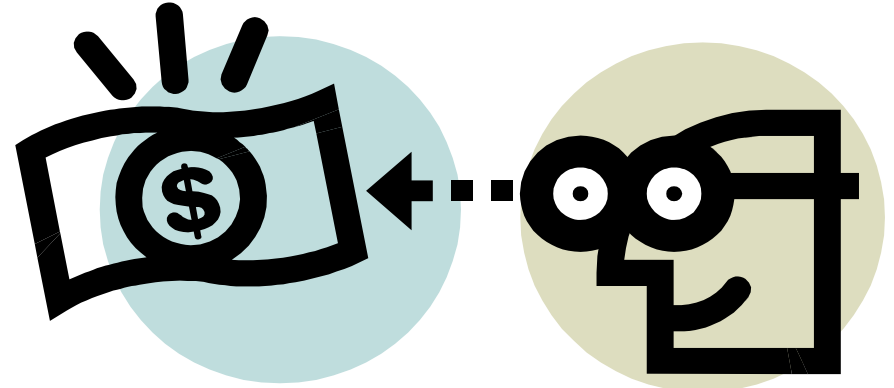
- Use several health goals
- Use flexible goals

Pros

- Participation increases
- Provides the mechanism to fund programs at no net cost to employers or employees
- Reinforces healthy lifestyle

Cons

- Incentive may be the only reason for change
- May not fit in your culture



Communication Strategy Components

- What is the program?
- Why are we doing it?
- What are the goals?
- What is expected of the employee?
- What are the benefits of participation?
- What is the financial impact associated with the program?
- How will the information gathered be used and by whom?
- How will the information gathered not be used?

Questions to Ask

- What did it change?
- Who did it change?
- Did it change your wellness programming?
- How is it supported in the culture?
- Is this the most effective way to influence health behaviors?

Beware of unintended consequences!

Copyright 2005 by Randy Glasbergen.
www.glasbergen.com



**“I decided to start smoking because my employer
is giving a bonus to everyone who can quit!”**

Key to a Successful Program

- Culture
- Environment





**Diane Andrea
J.W. Terrill**

dandrea@jwterill.com

Q&A

Copyright / Legal Disclaimer

J.W.TERRILL
a Marsh & McLennan Agency LLC company



Legal/regional regulatory statement to be added here if required.