

INSIGHTS FROM VITALITY

The ACA Final Regulations and Vitality

Now that the Affordable Care Act final regulation on Incentives for Non-discriminatory Wellness Programs has been released, it's time to start understanding how existing or future health benefits will be affected. The Vitality Group has created this brief to help you understand the basics of the new law and how Vitality program enhancements help you stay in compliance.

The wellness provisions define three types of wellness program, and each one has a unique set of requirements.

For health-contingent programs, a reasonable alternative standard is required to ensure that the program does not discriminate.

Vitality naturally facilitates compliance.

TABLE 1: WELLNESS PROGRAM CATEGORIES DEFINED BY THE ACA		
Participatory Non Health-Contingent	Activity-Only Health-Contingent	Outcome-Based Health-Contingent
DEFINITION		
No reward; or rewards not related to a health factor	Activity related to a health factor	Rewards linked to a specific health outcome
EXAMPLES		
1. Reimbursement of fitness center membership fees 2. Health screening program 3. Attending free monthly seminar	1. Walking, diet or exercise program 2. Pedometer step count challenge	1. Rewards dependent on health status 2. Requires coaching participation for at-risk employees
REQUIREMENTS		
There is just one requirement here – the program must be available uniformly to all similarly situated individuals.	<p>1. Frequency of Opportunity to Qualify: Individuals eligible for the program must be given the opportunity to qualify for the reward at least once per year.</p> <p>2. Size of Reward: For each employee, the total reward offered to an employee (and their dependents, if applicable) must not exceed a percentage of the total cost of coverage (including both the employee-paid and employer-paid portions) under the plan for the employee (and their dependents, if applicable).</p> <ul style="list-style-type: none"> This percentage is 50% if the program is designed to prevent or reduce tobacco use and 30% otherwise. <p>3. Reasonable Design: Programs must be reasonably designed to promote health and/or prevent disease.</p> <p>4. Uniform Availability and Reasonable Alternative Standard: As with participatory programs, the program must be available uniformly to all similarly situated individuals. Also, a reasonable alternative standard (see Table 2) required to earn the reward must be available.</p> <p>5. Notice of Availability of Reasonable Alternative Standard: All plan materials describing program terms must disclose the availability of the reasonable alternative standard.</p>	

TABLE 2: REASONABLE ALTERNATIVE STANDARD REQUIREMENTS	
Activity-Only Health-Contingent	Outcome-Based Health-Contingent
<ul style="list-style-type: none"> Verification (i.e., physician's note) may be requested by employer. 	<ul style="list-style-type: none"> Any individual (regardless of physician's note) who doesn't meet the original standard must have the option of an alternative standard. If the alternative standard is outcome-based, the standard cannot be a different level of the same measurement without allowing for additional time.
<ul style="list-style-type: none"> The reward for meeting the alternative standard must be equal to the reward for meeting the original standard. <ul style="list-style-type: none"> For example, if it takes a few extra months for a member to complete the alternative standard and the incentive is offered monthly, the reward must be pro-rated back to the date the member failed to meet the original standard. The reward must be provided during the same benefit year. In lieu of providing the alternative standard, the employer has the option to waive the original standard and provide the reward. The alternative standard <ul style="list-style-type: none"> Is not required to be available prior to an individual requesting it. May be provided to the entire class of similar individuals, or may be determined on a case-by-case basis. Must not require the individual to sustain additional cost, and must be made readily available. Must include a reasonable time commitment. Must meet standards provided by the individual's personal physician, if applicable (or be waived). Must fulfill the requirements as if the standard were an original standard. 	

Safe harbor language example:

"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."

TABLE 3: VITALITY PROGRAM ELEMENTS		
Participatory Non Health-Contingent	Activity-Only Health-Contingent	Outcome-Based Health-Contingent
EXAMPLE ELEMENTS INCLUDED IN CATEGORY		
<ul style="list-style-type: none"> HealthyFood Standard wellness rebates Health assessments (VHR) Attending a biometric screening Online courses 	<ul style="list-style-type: none"> Athletic Event (such as a 5K) Group Fitness Event Verified Workout (via health club, device, etc.) 	<ul style="list-style-type: none"> Points for biometric in healthy range Points for improving health outcome Vitality Status Vitality Squares Partner Health Club (Status-based)
HOW VITALITY IS COMPLIANT		
Program is available to all similarly situated individuals.	Disability adjustment for fitness points with the option of a medical waiver where advised by a doctor, or fitness-based alternatives for all fitness levels.	Reasonable alternative standard options including health improvement goal or Vitality Status (and the option of a medical waiver where advised by a doctor).

The total amount of the rewards must not exceed **30%** of the total cost of healthcare coverage including both the employee- and employer-paid portions. An additional **20%** is allowed for incentives that specifically encourage tobacco cessation.

When considering this limit, add up the maximum value of all rewards available, which may include Vitality Mall, Vitality Squares, premium/contribution adjustments, etc., and make sure that the total reward is below the limit.

Example:

Typical cost of annual health coverage ¹ :	\$12,000
Reward limit for general health-contingent programs	= \$3,600
Additional reward limit for programs with tobacco cessation component	= \$2,400

This document provides context and references to assist administrators and legal teams in reviewing the legal implications of The Vitality Program. We strongly recommend that you consult your own legal advisor with any concerns you may have.

- These guidelines are meant as a high-level overview of the Affordable Care Act wellness provisions. Further details on the provisions and Vitality's compliance are available upon request.
- Vitality's program structure is not defined by any single category or definition but rather incorporates elements of all three program types and therefore is compliant with the most stringent requirements in all cases.
- Employers must ensure that totals of activity-based or outcome-based rewards fall within the allowed 30 to 50 percent range of total healthcare coverage cost. A Vitality implementation manager will work closely with you to examine the use of rewards such as the Vitality Mall, hotel vouchers and health club subsidies when shaping your program.
- All program structures must meet full compliance with the ACA regulations and all applicable privacy, security and discrimination laws.

¹Towers Watson/National Business Group on Health 2013 Employer Survey on Purchasing Value in Health Care

