



WHAT YOU NEED TO KNOW

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Flow Chart of Key Wellness Program Regulations

A wellness program is any formal or informal program that educates employees about health-related issues, promotes following healthy lifestyles, or encourages employees to make healthier choices. Wellness programs vary greatly and are not always called wellness programs. Some are purely educational and have no financial incentives. Others have financial incentives that may take the form of reductions in the employee's contribution for medical coverage, reduced deductibles or copays, gift cards, cash or prizes (such as T-shirts, mugs, tickets, etc.).

Increased Regulatory Requirements

Wellness programs are regulated by more federal agencies and regulations than can be practically listed. However, in recent years, the Health Insurance Portability and Accountability Act (HIPAA), the Patient Protection and Affordable Care Act (ACA), the Genetic Information Nondiscrimination Act (GINA), and the Americans with Disabilities Act (ADA) have become the frontrunners in wellness program regulation. As a result, it can often be very difficult for an employer with an existing wellness program, or one considering a wellness program, to understand which regulations apply to them. The answer is typically based on a wellness program's plan design.

Flow Chart of Wellness Regulations

UBA has created a flow chart with decision trees to help employers ascertain which rules apply to their wellness program as a result of its design. The flow chart is not intended to be all-encompassing, and due to their highly regulated nature, employers should have their attorneys review and approve any wellness program.

The flow chart is not intended to explain the definitions behind commonly used terms in wellness programs, but instead to pinpoint a program's applicable regulatory rules.

Employers should work numerically from question one to question five. For each question, there is a decision tree to work through. At the end of the flow chart, an employer should have a basic understanding of which regulations apply to their wellness program design.

Conflicting Rules

If a wellness program is governed by multiple regulations (such as HIPAA, the ADA, and GINA), the employer should always follow the more stringent set of rules whenever the regulations conflict in their guidance. Where they do not conflict, the employer should meet the requirements of both.

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Question 1

Is the wellness program part of a group health plan (GHP) or stand-alone?

Group

Stand-alone

Does the wellness program impact the deductible, coinsurance, or copays?

Yes

Wellness program's ERISA obligations should be met by including it in GHP plan documents, SBC, etc.

No

Wellness program does not have SBC requirements, but other ERISA requirements may apply.

Yes

Wellness program needs its own SBC

No

Does the wellness program provide significant medical care?

Yes

ERISA will require:

- Plan document
- SPD
- Form 5500
- Annual notices
- Appeal rights

No

Wellness program needs documentation, but is less likely to have ERISA obligations.

Question 2

Is the employer an ALE?

Yes

For calculating affordability of the lowest cost employee-only plan:

- Assume all participants are tobacco free, or meet requirements to obtain a tobacco-free incentive and avoid penalty
- Assume all participants do not achieve any other wellness goal or do not participate

Question 3

Under HIPAA, is the wellness program participatory?

Yes

- Must be available to all similarly-situated individuals
- No reasonable alternative standard (RAS) required
- No incentive limits

No

To Question 4 on next page

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Question 4

Under HIPAA, is the wellness program outcome-based or activity only?

Yes

HIPAA applies

Must meet following requirements:

1. Ability to qualify once a year
2. Must be available to all similarly-situated individuals with an RAS
3. Designed to promote health
4. Provide wellness program information in plan documents, including information about RAS
 - For outcome-based program, RAS offered to everyone who cannot meet outcome at the beginning
 - For activity, RAS offered to anyone who has a medical condition preventing participation
5. Operate within incentive limits:
 - Regular limit: 30% of coverage **elected** by participant
 - Tobacco limit: 50% of coverage **elected** by participant

Question 5

Does the wellness program include a medical exam, HRA, or biometric screening

No

ADA and GINA do NOT apply

However, the EEOC states that wellness programs with no medical screening must be made available to **ALL** employees and provide RAS to disabled employees

Yes

ADA Applies

GINA Applies

RAS for anyone who can't complete HRA, medical exam, or biometric screening.
Wellness program cannot be a gatekeeper to benefit eligibility for base plan OR richer plans

- Available to all similarly-situated employees
- Reasonably designed
- Must provide annual notice regarding confidentiality and restrictions (see model notice)
- Must meet ADA definition of voluntary (no requirement to participate, no adverse outcome for not participating, wellness program can't be gatekeeper to any health plans)
- ADA "safe harbor" for insurance does NOT apply
- Cannot require employees to waive confidentiality
- Beginning 2017, information from screenings only provided to employer in aggregate form or as needed to administer health plan

- Beginning 2017, children may NOT participate in program with HRA or biometric screening, regardless of their age or whether they are biological or adopted children
- Reasonably designed
- Must establish policies for information safety
- Spouses who can participate must give prior, knowing, written consent

- Beginning in 2019, a wellness program cannot allow an incentive for spousal medical history.
- Beginning in 2019, the EEOC's prior 30% incentive limits under the ADA and GINA no longer apply.
- An employer should consult with its attorney if its wellness program requires a medical exam, biometric screening, or health risk assessment for participants to receive an incentive.

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This information is general and is provided for educational purposes only. It is not intended to provide legal advice. You should not act on this information without consulting legal counsel or other knowledgeable advisors.



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