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§15–509.

(a) (1) In this section the following words have the meanings indicated.

(2) “Activity–only wellness program” means a type of health–contingent wellness program in which an individual is required to perform or complete an activity related to a health factor in order to obtain a reward, but which does not require the individual to attain or maintain a specific health outcome.

(3) “Carrier” means:

- (i) an insurer;
- (ii) a nonprofit health service plan; or
- (iii) a health maintenance organization.

(4) “Grandfathered health benefit plan” has the meaning stated in § 1251 of the Affordable Care Act.

(5) “Health benefit plan” has the meaning stated in § 15–1301 of this title.

(6) (i) “Health–contingent wellness program” means a program that requires an individual to satisfy a standard related to a health factor to obtain a reward.

(ii) “Health–contingent wellness program” includes:

- 1. an activity–only wellness program; and
- 2. an outcome–based wellness program.

(7) “Health factor” means, in relation to an individual, any of the following health status–related factors:

- (i) health status;
- (ii) medical condition;
- (iii) claims experience;
- (iv) receipt of health care;
- (v) medical history;
- (vi) genetic information;

(vii) evidence of insurability;

(viii) disability; or

(ix) any other health status–related factor determined appropriate by the U.S. Secretary of Health and Human Services.

(8) “Incentive” means:

(i) a discount of a premium or contribution;

(ii) a waiver of all or part of a cost–sharing mechanism, such as deductibles, copayments, or coinsurance;

(iii) the absence of a surcharge;

(iv) the value of a benefit that otherwise would not be provided under the policy or contract; or

(v) a rebate as permitted under § 27–210 of this article.

(9) “Outcome–based wellness program” means a type of health–contingent wellness program in which an individual must attain or maintain a specific health outcome in order to obtain a reward.

(10) “Participatory wellness program” means a program that does not:

(i) provide a reward; or

(ii) include any conditions for obtaining a reward that are based on an individual satisfying a standard that is related to a health factor.

(11) “Reward” means:

(i) obtaining an incentive; or

(ii) avoiding a penalty.

(b) This section applies to grandfathered and nongrandfathered individual and group health benefit plans.

(c) (1) A carrier may include a participatory wellness program as part of an individual or group health benefit plan.

(2) A participatory wellness program shall be made available to all similarly situated individuals regardless of health status.

(d) A carrier may condition a reward for an activity–only wellness program in a group health benefit plan if:

(1) the activity-only wellness program provides individuals with an opportunity to qualify for the reward at least once a year;

(2) the reward for the activity-only wellness program, together with the reward for other health-contingent wellness programs with respect to the health benefit plan, does not exceed:

(i) 30% of the total cost of employee-only coverage under the health benefit plan, except that the applicable percentage is increased by an additional 20 percentage points to the extent that the additional percentage is in connection with a program designed to prevent or reduce tobacco use; or

(ii) when the plan provides coverage for family members, and when family members are permitted to participate in the activity-only wellness program, 30% of the cost of the coverage in which the family members are enrolled, except that the applicable percentage is increased by an additional 20 percentage points to the extent that the additional percentage is in connection with a program designed to prevent or reduce tobacco use;

(3) the activity-only wellness program is reasonably designed to promote health or prevent disease;

(4) the full reward under the activity-only wellness program is available to all similarly situated individuals; and

(5) the carrier discloses the availability of a reasonable alternative standard to qualify for the reward in all plan materials describing the terms of an activity-only wellness program.

(e) An activity-only wellness program shall be construed to be reasonably designed to promote health or prevent disease if the activity-only wellness program:

(1) has a reasonable chance of improving the health of or preventing disease in participating individuals;

(2) is not overly burdensome;

(3) is not a subterfuge for discriminating based on a health factor;

(4) is not highly suspect in the method chosen to promote health or prevent disease; and

(5) provides a reasonable alternative standard to qualify for the reward for all individuals who do not meet the initial standard that is related to a health factor.

(f) (1) For an activity-only wellness program, a carrier shall provide a reasonable alternative standard for obtaining the reward for any individual who requests an alternative standard and for whom it is:

(i) unreasonably difficult due to a medical condition to satisfy the otherwise applicable standard; or

(ii) medically inadvisable to attempt to satisfy the otherwise applicable standard.

(2) A carrier may seek verification, such as a statement from an individual's health care provider, that a health factor makes it unreasonably difficult or medically inadvisable for the individual to satisfy or attempt to satisfy the otherwise applicable standard, if reasonable under the circumstances.

(g) (1) A carrier may condition the reward for an outcome-based wellness program in a group health benefit plan if:

(i) the outcome-based wellness program meets the requirements under subsections (d) and (e) of this section;

(ii) the full reward is available to all similarly situated individuals; and

(iii) an individual, on request, is provided with a reasonable alternative standard, provided that the individual does not meet the initial standard because of a medical condition or other health factor.

(2) If the reasonable alternative standard is an educational program, the carrier:

(i) shall make the educational program available or assist the individual in finding a program; and

(ii) may not require an individual to pay for the cost of the educational program.

(3) The time commitment required for the alternative standard shall be reasonable.

(4) If the reasonable alternative is a diet program, the carrier is not required to pay for the cost of food, but is required to pay any membership or participation fee.

(5) If the reasonable alternative standard is an activity-only wellness program, the reasonable alternative standard must comply with the requirements for activity-only wellness programs as if it were an initial program standard.

(6) If the reasonable alternative standard is an outcome-based wellness program, the reasonable alternative standard must comply with the requirements for outcome-based wellness programs.

(7) The reasonable alternative may not be a requirement to meet a different level of the same standard without additional time to comply that takes into account the individual's circumstances.

(8) An individual shall be given the opportunity to comply with the recommendations of the individual's personal physician as a second reasonable alternative standard to meeting the reasonable alternative standard defined by the carrier, but only if the physician joins in the request.

(h) A reward under an outcome-based wellness program is not available to all similarly situated individuals as required by subsection (g)(1)(ii) of this section unless the outcome-based wellness program allows a reasonable alternative standard, or waiver of the otherwise applicable standard, for obtaining the reward for any individual who does not meet the initial standard based on the measurement, test, or screening required by the outcome-based wellness program.

(i) (1) In determining if a carrier's health-contingent wellness program meets the requirements of this section, the Commissioner may request a review of the health-contingent wellness program by an independent review organization selected from the list compiled under § 15-10A-05(b) of this title.

(2) The expense of the review of the health-contingent wellness program by an independent review organization shall be paid by the carrier in the manner provided under § 15-10A-05(h) of this title.

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