

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 1071

(Senator Colburn)

Finance

Health Insurance - Definition of Bona Fide Wellness Program

This bill clarifies the definition of bona fide wellness program to include a program that requires membership and routine exercise at a health club or fitness center.

Fiscal Summary

State Effect: The bill does not affect governmental finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: A “bona fide wellness program” is a program designed to promote health or prevent or detect disease or illness, reduce or avoid poor clinical outcomes, prevent complications from medical conditions, promote healthy behaviors, or prevent and control injury.

Chapters 682 and 683 of 2009 authorized carriers to provide reasonable incentives to an insured, subscriber, or member for participation in a bona fide wellness program under specified circumstances and clarified that it is not discrimination or a rebate for a carrier to provide such incentives if the incentives are provided as specified.

A carrier may not make participation in a bona fide wellness program a condition of coverage. Participation must be voluntary, and a penalty may not be imposed on an insured, subscriber, or member for nonparticipation. A carrier may not market the bona

bona fide wellness program solely as an incentive or inducement to purchase coverage from the carrier. A bona fide wellness program may not condition an incentive on an individual satisfying a standard related to a health factor except as specified.

Incentives may be based on an individual satisfying a standard related to a health factor if (1) all incentives for participation do not exceed 20% of the cost of specified coverage under the plan; (2) the program is reasonably designed to promote health or prevent disease; (3) the program gives individuals the opportunity to qualify for the incentive at least annually; (4) the program is available to all similarly situated individuals; and (5) individuals are provided a reasonable alternative standard or a waiver of the standard.

A bona fide wellness program must be construed to be reasonably designed to promote health or prevent disease if the 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; and (4) is not highly suspect in the method chosen to promote health or prevent disease.

A carrier must provide a reasonable alternative standard or a waiver of the standard for any individual for whom it is unreasonably difficult due to a medical condition or medically inadvisable to attempt to satisfy the otherwise applicable standard. A carrier may seek verification that a health factor makes it unreasonably difficult or medically inadvisable to satisfy or attempt to satisfy the otherwise applicable standard. A carrier must disclose the availability of a reasonable alternative standard or waiver. A denial by a carrier of a request for an alternative standard or waiver of a standard constitutes an adverse decision.

The federal Health Insurance Portability and Accountability Act (HIPAA) includes nondiscrimination provisions that generally prohibit differential deductibles, copayments, or other cost-sharing for similar individuals in group health plans. However, plans generally may offer wellness programs provided that the program is offered to all similarly situated individuals and no reward is given or none of the conditions for obtaining a reward is based on satisfying a standard related to a specific health factor (*i.e.*, quitting smoking).

HIPAA regulations allow a wellness program reward to be based on an individual satisfying a standard related to a health factor if the reward meets the following requirements:

- the total reward for all the plan's wellness programs that require satisfaction of a standard related to a health factor generally must be limited to 20% of the cost of employee-only coverage under the plan (or 20% of the cost of coverage if any dependents are enrolled);

- the program must be reasonably designed to promote health and prevent disease;
- the program must give individuals eligible to participate the opportunity to qualify for the reward at least once per year;
- the reward must be available to all similarly situated individuals; and
- the plan must disclose in all materials describing the terms of the program the availability of a reasonable alternative standard (or the possibility of a waiver of the initial standard).

Background: In an effort to stem increasing health insurance and medical costs, many employers offer health insurance premium discounts to enrollees who participate in wellness programs. In 1998, the U.S. Department of Labor estimated that premium discounts associated with wellness programs ranged from \$60 to \$500 and averaged \$240 per participant. Wellness programs include such things as smoking cessation, weight management, stress management, nutrition education, and prenatal education.

Additional Information

Prior Introductions: None.

Cross File: HB 416 (Delegate Haddaway, *et al.*) - Health and Government Operations.

Information Source(s): CareFirst Blue Cross/Blue Shield, Maryland Health Insurance Plan, Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

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