

# HEALTH CARE REFORM UPDATE



## Keeping you up to date on health care reform

### Wellness Compliance Reminder: Tobacco Incentive Alternatives and Disclosures

Under the Affordable Care Act (ACA), Americans with Disabilities Act (ADA) and Genetic Information Nondiscrimination Act (GINA), employers need to comply with several rules regarding wellness programs and incentives. These rules focus on the value of incentives, reasonable alternatives, required notices, and frequency of incentive opportunities. The Department of Labor (DOL) has increased enforcement and regulatory scrutiny around these rules, particularly related to tobacco cessation programs.

This email is a reminder that a wellness program that includes incentives related to tobacco cessation must:

- Make available a “reasonable alternative” for earning the incentive to any participant who does not satisfy the program goal based on the initial measurement, test or screening.
  - A reasonable alternative must be available to participants who don’t reach the quit smoking goal, whether a participant’s tobacco status is self-reported or tested (e.g., nicotine testing). Quitting or reducing tobacco use cannot be the exclusive way to earn the incentive; therefore, reasonable alternatives must include options that do not require quitting or reducing tobacco use (e.g., an option of completing three coaching calls for the same full reward). In addition to reasonable alternatives, a physician-recommended alternative or waiver must also be accepted (but it cannot be required).
- Provide a Notice of Reasonable Alternatives informing all participants of available alternatives on **each and every** communication tied to the wellness program, even if the communication is not specific to the tobacco cessation incentive (e.g., brochures, enrollment materials, plan comparison or rate differential sheets).
  - The Notice must advise participants how to request the reasonable alternative and include corresponding contact information. Sample notice language for reasonable alternatives is included in the Equal Employment Opportunity Commission (EEOC) [Sample Notice for Employer-Sponsored Wellness Programs](#).

Participants cannot be limited to completing Cigna’s telephonic “Quit Today” or online tobacco cessation programs as the only methods to earn the same full reward of the tobacco cessation incentive requirements. Our clients must offer an additional reasonable

alternative that allows participants who do not quit or reduce their tobacco use to earn the reward through a progress or engagement goal (e.g., completing three coaching calls).

Clients that use Cigna's tobacco cessation coaching program as part of their MotivateMe incentive design are compliant with the reasonable alternatives established with this platform – processes are already in place to offer and manage reasonable alternatives for participants, including physician alternatives and waiver forms that may be offered (but cannot be required).

**Important note for our clients who self-administer any/all portions of a wellness program**

If a client self-administers any portion of a wellness program or its incentives, it is important that they ensure the reasonable alternative notifications are included on any employee materials.

In addition to the compliance requirements outlined above, employer-sponsored wellness programs may also be affected by other ACA wellness regulations as well as federal regulations under the ADA and GINA. Compliance with one set of rules does not necessarily ensure compliance with all the others. For details on the requirements under the ACA, ADA and GINA, and how they work together and where they differ, visit our [Wellness and Incentives](#) page or read our [Wellness Fact Sheet](#).



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