



## DOL Issues New Guidance on Wellness Programs

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On August 26, 2026, the Departments of Labor, Health and Human Services, and Treasury (Departments) released FAQs about [Affordable Care Act and Health Insurance Portability and Accountability Act Implementation Part 74](#), providing important clarification regarding health-contingent wellness programs, tobacco cessation programs, and required participant disclosures.

The guidance primarily addresses questions about whether employers must provide wellness rewards retroactively when an employee completes a reasonable alternative standard (RAS) during the plan year and clarifies when wellness program notices must include information about alternative ways to earn rewards.

### ■ Background

Many employer-sponsored health plans use wellness incentives to encourage healthy behaviors. These incentives often take the form of:

- Premium discounts
- Tobacco surcharges
- Reduced deductibles or copays
- Other plan rewards tied to health-related activities or outcomes

Under HIPAA and ACA nondiscrimination rules, health-contingent wellness programs must provide a RAS for individuals who cannot meet the program's initial health-related requirement. Examples include allowing an employee who uses tobacco to complete a tobacco cessation program instead of meeting a tobacco-free standard, or providing an alternative method for earning a biometric screening reward.

## ■ Enforcement Relief on Retroactive Reward

One of the most significant clarifications involves how plans apply wellness rewards when an individual completes a RAS midyear.

The preamble to the 2013 wellness regulations stated that employees who satisfied a reasonable alternative standard during the year should receive the same “full reward” available to employees who met the original standard at the beginning of the plan year. This suggested that rewards should be applied retroactively.

The Departments acknowledged that the regulatory text itself does not clearly require retroactive application of rewards. As a result, until additional guidance is issued, the Departments will not take enforcement action against plans that apply rewards prospectively after the reasonable alternative standard has been satisfied, provided all other health-contingent wellness program requirements are met.

## ■ Impact on Tobacco Surcharge Programs

The new FAQs are particularly relevant for plans that impose tobacco surcharges.

The Departments reaffirm prior guidance stating that a plan may allow employees to avoid a tobacco surcharge by agreeing to participate in a tobacco cessation program at enrollment and completing that program during the plan year. The plan generally is not required to offer additional opportunities to earn the reward midyear.

## ■ Disclosure Requirements Remain Important

The FAQs also clarify when plans must disclose the availability of a reasonable alternative standard. A notice is required in:

- Materials describing the terms of a health-contingent wellness program.
- Outcome-based wellness program communications informing an individual that they failed to meet the initial standard.

These notices must include:

- Information about the availability of a reasonable alternative standard.
- Contact information for obtaining that alternative.
- A statement that recommendations from the individual's personal physician will be accommodated.

A notice generally is not required when materials merely mention that a wellness program exists without describing its specific terms. For example, a Summary of Benefits and Coverage (SBC) that simply notes cost-sharing may vary based on wellness program participation would not trigger the disclosure requirement.

## ■ Employer Action

- Determine whether your tobacco surcharge or tobacco-free incentive program includes a compliant reasonable alternative standard and whether participants have adequate time to complete it.
- Confirm how wellness rewards are currently administered and document whether rewards are applied prospectively or retroactively when alternative standards are satisfied.
- Review enrollment materials, wellness program descriptions, vendor communications, and participant notices to ensure required alternative standard disclosures are included where necessary.
- Employers using third-party wellness vendors should verify that program materials, participant notices, and reward structures align with HIPAA wellness program requirements.
- Employers that currently apply wellness rewards retroactively and wish to rely on this non-enforcement policy should discuss changes with legal counsel.