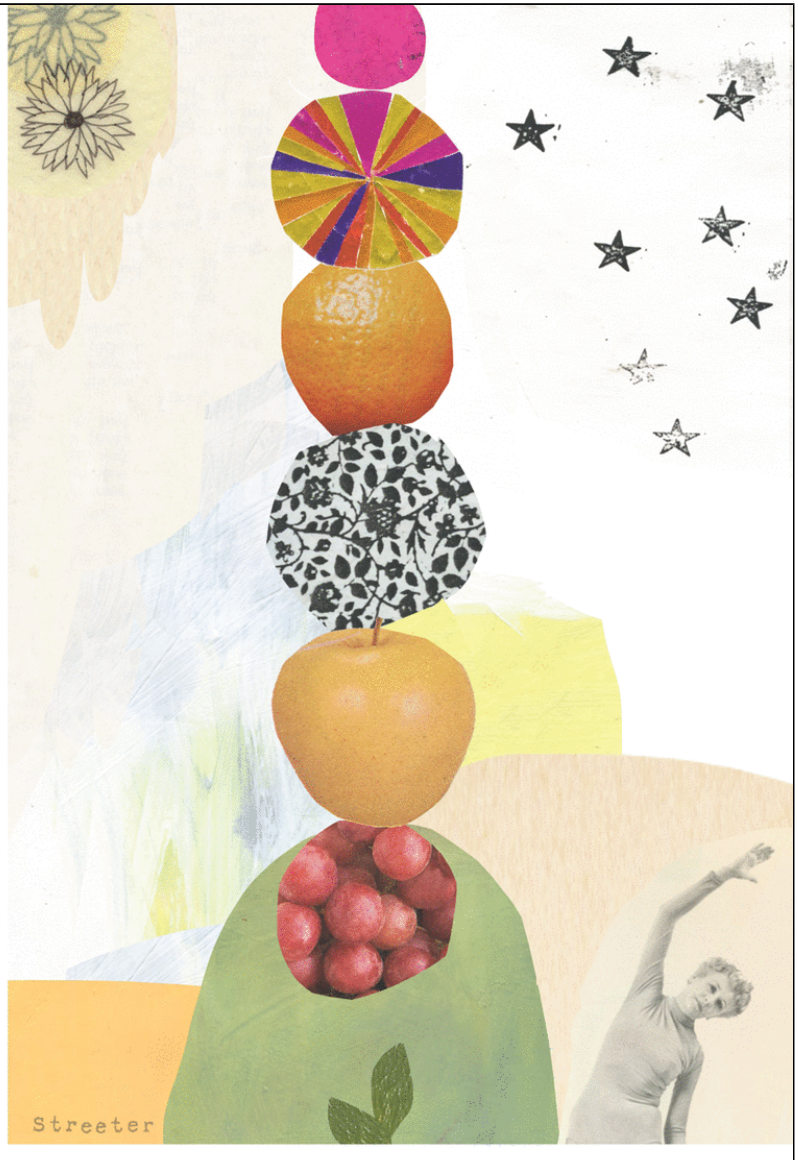
"Well" Wishes

PPACA and wellness programs



FOLLOWING passage of the Patient Protection and Affordable Care Act (PPACA), employers have a renewed interest in encouraging healthy behaviors and decreasing health-care costs through wellness programs.

This is partly because PPACA increased the amount of incentives employers may offer, which gives employers more flexibility in how to structure their programs. This month, we look at the impact PPACA has had on these program designs.

Did PPACA expand how employer health plans may offer incentives under wellness programs?

Yes—PPACA codified the existing HIPAA wellness rules, which set parameters on the types of wellness programs a health plan may offer. Previously, these rules were part of HIPAA nondiscrimination and wellness regulations, so they could be changed by regulation of one of the agencies with enforcement authority over HIPAA—HHS, DoL, or Treasury. The previous HIPAA rules allowed an employer health plan to establish a wellness program that offered rewards for health-based standards, such as having a low BMI or cholesterol level, as long as the rewards were limited to 20% of the cost of employer coverage (the employee plus employer shares). In addition, the plan was required to allow a reasonable alternative way for those who were medically incapable of meeting the health standard to earn the same reward, the program was required to be reasonably designed to promote health or prevent disease, and the plan had to allow qualification for the reward at least once per year.

Congress adopted the existing HIPAA wellness rules as part of the PPACA statute (for the most part, "as is"), but increased the incentive limit for health-based rewards to 30% of the cost of coverage beginning in 2014. Notably, Congress also gave the Secretary of HHS discretion to increase the limit to 50% of the cost of coverage.

Does the 20% limit on rewards apply to all wellness programs?

No—the 20% limit (which will increase to 30% in 2014) only applies to programs that provide a reward based on a health standard. For example, if a program pays a reward for having a low cholesterol level or for not smoking, these would be incentives based on a health standard. On the other hand, if a program offers a reward merely for participating in a program, such as undergoing a screening or attending a coaching program, the

 Illustration by Katherine Streeter

reward does not have to be counted in the 20% limit. The agencies issued an FAQ in December 2010 as part of the PPACA FAQs that made this distinction.

Does the PPACA wellness rule allow a plan to charge higher premiums for smokers?

The HIPAA (and now the PPACA) wellness rules would allow a plan to structure an incentive either as a reward or penalty, as long as the incentive amounts for all health-based standards are limited to 20% of the cost of coverage (30% in 2014). In addition, the program must offer an alternative way to earn the same reward for those who are medically incapable of meeting the health standard. For example, if a plan charges a 20% higher premium for smokers and an individual's doctor certifies that the individual is addicted to nicotine so is medically incapable of not smoking, the plan may offer a reasonable alternative, such as attending a smoking cessation class, to allow the smoker to avoid the penalty.

Note that other laws may come into play as well, such as the ADA, HIPAA privacy rules, ERISA, and tax rules, so plans must consider these programs carefully.

Employer Requirements under PPACA: Automatic Enrollment Issues

PPACA requires employers with more than 200 full-time employees that offer one or more health benefit plan options to automatically enroll new full-time employees in one of these plans (subject to any legally permissible waiting periods). The provision also requires employers to continue the enrollment of current employees. The employer must give "adequate notice" to employees of their automatic enrollment and the opportunity to opt out of coverage.

When does the automatic enrollment requirement apply?

The statute says that employers must offer automatic enrollment "in accordance with regulations promulgated by the Secretary [of Labor]." The Department of Labor has issued a Q&A that clarifies that the automatic enrollment provision is not effective until the Secretary has issued regulations and that the Secretary has delegated this responsibility to the Employee Benefits Security Administration (EBSA) within the Department of Labor.

The Q&A goes on to say that, "until such regulations are issued, employers are not required to comply with [automatic enrollment]." The Q&A says that the Department "expects to work with stakeholders to ensure that it has the necessary information and data it needs to develop regulations in this area that take into account the practices employers currently use for auto-enrollment and to solicit the views and practices of a broad range of stakeholders, including employers, workers, and their families." The Department does not estimate a date for regulations, other than to say it intends to issue rules by 2014.

Who will be considered a full-time employee?

The PPACA statute does not answer that question, so we also are waiting for regulations to define "full-time employee." The Department of Labor's Q&As did say that it would coordinate with the Department of Treasury, since the definition of "full-time employee" also is important to the employer "pay or play" requirements that are governed by Treasury. Treasury has issued a Notice and request for comment on the definition of "full-time employee." —*PS*

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Got a health reform question? You can ask your health-care reform legislation question online at www.surveymonkey.com/s/second_opinions. These Q&As first appeared on PLANSPONSOR.com in May 2011. As health-care law is rapidly evolving, there may have been changes since publication.