CLIENT ALERT

EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

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New Guidance Regarding Health-Contingent Wellness Programs

On August 26, 2026 the Departments of Labor, Health and Human Services, and Treasury (the "Departments") jointly released FAQs addressing longstanding questions regarding health-contingent wellness programs. The guidance deals with incentives earned mid-year but not granted retroactively. The guidance offers welcome relief to employers that have struggled with the operational complexity of retroactive wellness rewards.

Reward Requirements Under the ACA and Prior Guidance

The Affordable Care Act ("ACA") specifies that the "full reward" of a health-contingent wellness program must be available to all similarly situated individuals. However, the statute did not specify whether the "full reward" must be applied retroactively to the beginning of the plan year or only going forward from the date an individual satisfies a reasonable alternative standard.

In FAQ Q-1, the Departments announced that they will ***not*** take enforcement action against a plan that fails to provide a health-contingent wellness program reward retroactively to the beginning of the plan year, provided that:

- The plan provides the reward corresponding to the period after the individual satisfies the reasonable alternative standard; and
- The plan otherwise satisfies the applicable wellness program requirements under applicable regulations.

Importantly, the Departments emphasize that this enforcement discretion does not relieve plans of their other wellness program obligations:

- Wellness programs still must be reasonably designed to promote health or prevent disease.
- Programs must not be a subterfuge for discriminating based on a health factor.
- Programs must provide sufficient time for individuals to complete a reasonable alternative standard and receive a reward.

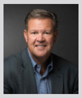
Disclosure Requirements for Reasonable Alternative Standards

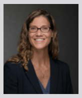
In FAQ Q-2, the Departments reiterate the disclosure requirements applicable to health-contingent wellness programs. Employers must disclose the availability of a reasonable alternative standard in all plan materials that describe the terms of a health-contingent wellness program. For outcome-based wellness programs, this disclosure also must be included in any communication informing an individual that he or she did not satisfy an initial outcome-based standard.

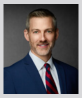
The required notice must include:

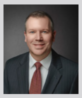
- Contact information for obtaining a reasonable alternative standard; and
- A statement that recommendations of the individual's personal physician will be accommodated.

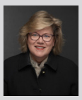
Contacts

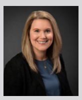

John E. Schembari
Omaha
402.231.8886
john.schembari@kutakrock.com

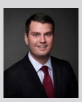

Michelle M. Ueding
Omaha
402.661.8613
michelle.ueding@kutakrock.com

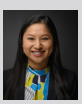

William C. McCartney
Omaha
949.852.5052
william.mccartney@kutakrock.com

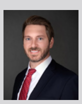

P. Brian Bartels
Omaha
402.231.8897
p.brian.bartels@kutakrock.com

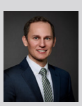

Ruth S. Marcott
Minneapolis
612.334.5044
ruth.marcott@kutakrock.com

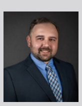

Sevawn Foster Holt
Little Rock
501.975.3120
sevawn.holt@kutakrock.com

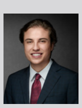

Marcus P. Zelzer
Minneapolis
612.334.5037
marcus.zelzer@kutakrock.com


Emma L. Franklin
Omaha
402.231.8842
emma.franklin@kutakrock.com


Aaron D. Schuster
Kansas City
816.960.0090
aaron.schuster@kutakrock.com


Jacob S. Gray
Minneapolis
612.334.5053
jacob.gray@kutakrock.com


Jason Kotlyarov
Kansas City
816.502.4622
jason.kotlyarov@kutakrock.com


Will Jennings
Omaha
402.661.8683
will.jennings@kutakrock.com

Action Steps

- **Evaluate Retroactivity Practices.** Employers that currently provide wellness program rewards retroactively to the beginning of the plan year may consider whether to continue that practice or to instead amend their programs to provide rewards only from the date an individual satisfies the applicable standard (or reasonable alternative standard).

- **Review Disclosure Practices.** Confirm that all plan materials describing the terms of a health-contingent wellness program include the required disclosure regarding the availability of a reasonable alternative standard, including appropriate contact information and the physician accommodation statement. Review participant communications sent when an individual does not satisfy an initial outcome-based wellness standard to ensure the disclosure is included.

- **Coordinate with Vendors.** Plan sponsors that use third-party vendors to administer wellness programs should coordinate with those vendors to ensure that any changes to retroactivity practices are properly implemented and that all required disclosures are included in participant-facing materials.

- **Monitor for Future Guidance.** The Departments' enforcement discretion applies "until further guidance or regulations are issued." Employers should continue to monitor regulatory developments, as the Departments may ultimately adopt a formal position on the retroactivity question through future rulemaking.

- **Ensure Ongoing Compliance with All Other Requirements.** This guidance does not relieve employers of their obligation to ensure that wellness programs are reasonably designed, offer a reasonable alternative standard, provide adequate time to qualify, and are not a subterfuge for discrimination based on a health factor. It also does not affect the wellness program requirements under other laws, such as the Americans with Disabilities Act or the Genetic Information Nondiscrimination Act.

If you have questions or need assistance with wellness program compliance, please contact a member of our Employee Benefits and Executive Compensation Group.