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# **Initial Thoughts: Regulatory Considerations for Health Insurance Plans' Encouraging Responsibility for Health and Wellness**

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# Can Health Insurance Plans Encourage Personal Responsibility for Health and Wellness?

- Need to look federal Health Insurance Portability and Availability Act (HIPAA), which addresses discrimination against individuals based on health status, and to NC law including but not limited to NC codification of HIPAA.
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# Health Status

## NCGS 58-68-35 and HIPAA:

- *A group health insurance plan shall not require any individual to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health status-related factor in relation to the individual or to an individual enrolled under the plan as a dependent of individual.*
  - Health Status-Related Factor defined as: health status, medical condition (physical and mental), claims experience, receipt of health care, medical history, genetic information, evidence of insurability, or disability.
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# Health Status (cont'd)

- Group plans:
    - Per HIPAA and NC law, not permitted to charge any individual a greater premium or contribution than applies to similarly situated individuals on the basis of a health status-related factor.
    - BUT health status-related factors (other than genetic) can be used in determining whether to issue coverage to a group as a whole (large groups only) and in determining premiums at the group level for any group (NC small group laws limit how much can affect group-level premiums).
  
  - Individual plans – Able to underwrite upon initial application- to decide whether to insure and exclude coverage or impose waiting period for a condition.
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# Wellness Programs/Health Promotion, Disease Prevention

- HIPAA - *Exception for bona fide wellness programs. Notwithstanding paragraphs (c)(1) and (2) of this section [which prohibits discrimination on the basis of health status], a plan may establish a premium or contribution differential based on whether an individual has complied with the requirements of a bona fide wellness program. 45 CFR 146.121(c)(3)*
  - NC Law - *Nothing in subdivision (1) of this subsection shall be construed...to prevent a group health insurer from establishing premium discounts or modifying otherwise applicable co-payments or deductibles in return for adherence to programs of health promotion and disease prevention. NCGS 58-68-35*
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# Wellness Programs/Health Promotion, Disease Prevention (cont'd)

## Summary of HIPAA Rules re: Participation in a Wellness Program that Offers a Reward (vs. a Penalty):

- If reward is contingent upon meeting a standard related to a health factor, must be bona fide, which means:
  - reward limited to 10/15/20% of the cost of employee-only coverage (employee and employer share);
  - reasonably designed to promote good health, with opportunity to earn reward at least annually; and
  - available to all similarly situated individuals, unless the program offers reasonable alternative standard to those for whom the “regular” standard is unreasonably difficult to satisfy due to medical condition or is medically inadvisable. Alternatives must be disclosed in program materials.

[26 CFR 54.9802-1T]

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# **Wellness Programs/Health Promotion, Disease Prevention (cont'd)**

- NC lacks definitions or rules to help interpret State law allowing discounts, etc. for wellness programs.
  - NC laws on small group rating, unfair trade practices (anti-rebating), nondiscrimination, and others must also be consulted.
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# Premium Discounts to the Individual Insured for Participation in or Adherence to Wellness Programs

- Individual - Accomplished through initial underwriting and product pricing. Insurers can re-rate to decrease premiums for improved health or participation in wellness programs, but not to increase for worse health on non-participation.
  - Small Group - Not permitted at individual employee level due to NC small group rating laws, but can reflect in premiums at the group level. (Presumably, employers can decide whether/how to pass “rewards” back to individual employees.) Need to comply with HIPAA rules on bona fide wellness plans.
  - Large Group - Plan documents must describe when discount applies, and be available to all covered under the policy. Need to comply with HIPAA rules on bona fide wellness plans.
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# Premium Rebates to the Individual Insured for Participation in or Adherence to Wellness Programs

- Individual - Policy documents must disclose availability of rebates and must be available to all in order to satisfy NC laws re: rebates and unfair discrimination.
  - Small Group - Not permitted at individual employee level, but may be permissible to rebate at the group level; needs further study by NCDOTI. (Presumably, employers can decide whether/how to pass “rewards” back to individual employees.) Need to comply with HIPAA rules on bona fide wellness plans.
  - Large Group - Plan documents must describe when rebate applies, and must be available to all persons covered under the policy. Need to comply with HIPAA rules on bona fide wellness plans.
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# **Benefit Cost-Sharing (i.e., reduce or waive deductibles, copays & coinsurance) for Participation in or Adherence to Wellness Programs**

- Individual - Plan documents must describe when reduced cost-sharing applies, and must be available to all persons covered under the policy.
  - Small Group - Plan documents must describe when reduced cost-sharing applies, and must be available to all persons covered under the policy. Need to comply with HIPAA rules on bona fide wellness plans.
  - Large Group - Plan documents must describe when reduced cost-sharing applies, and must be available to all persons covered under the policy. Need to comply with HIPAA rules on bona Fide wellness plans.
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# Important Notes/Caveats

- This presentation represents some of the department's initial thinking on the subject of incentives to reward health improvement and wellness activities, but is work in progress that may be modified.
  - In addition each product filing that would include incentives to reward health improvement and wellness activities must be reviewed in detail and analyzed on a case-by-case basis.
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