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## Healthcare Reform: A Look at Employer-Based Wellness Programs

By **CHERI GREEN AND  
LANE STAINES**

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act (PPACA), otherwise recognized as the healthcare reform law and subsequently amended by the Health Care and Education Reconciliation Act of 2010. A reflection of President Obama's belief that preventive medicine is "one of the best ways to keep our people healthy and our costs under control," wellness program initiatives can be found throughout PPACA with some of these initiatives taking effect as early as next year.

So what do these initiatives mean for employers? According to information provided by the Bureau of Labor Statistics, 54 percent of full-time public sector workers and 28 percent of full-time private sector workers had access to wellness programs in 2008. PPACA aims to increase these numbers through grants, education, and other efforts. The Centers for Disease Control (CDC) is charged with studying and evaluating employer-based wellness programs to determine how the programs can be expanded to encourage increased participation and to improve health outcomes and effectiveness. The CDC will also educate employers on the benefits of employer-based wellness programs, web portals, call centers, and other related resources and will conduct a national survey to assess employer-based health policies and programs in 2012.

Additionally, employers that have not previously provided a workplace wellness program and have less than 100 employees who work 25 hours or more per week are eligible for grants to establish com-

prehensive workplace wellness programs. Between 2011 and 2015, the Secretary of the Department of Health and Human Services (HHS) shall allocate \$200 million for the establishment of wellness programs that include health awareness initiatives, efforts to maximize employee involvement and participation, initiatives to change unhealthy behaviors and lifestyles choices, and workplace policies to encourage healthy lifestyles, healthy eating, increased physical activity, and improved mental health. To apply for a grant, an eligible employer should submit an application to HHS.

Wellness programs are often designed to assist employees in smoking cessation or maintain blood pressure, cholesterol, or weight at a healthy range. As an incentive for reaching these goals, the Health Insurance Portability and Accountability Act (HIPAA) currently allows for employers to offer to participating employees a premium discount, rebate, or other reward of up to 20 percent of the cost of coverage provided the program does not violate nondiscrimination rules. These rules prohibit a group health plan or health insurance issuer offering group health insurance from discriminating against participants and beneficiaries on the basis of health status as to enrollment eligibility, waiting periods, or contribution levels. Consequently, these nondiscrimination rules also apply to wellness programs. However, an employer-based wellness program will not violate nondiscrimination rules provided participation is made available to all similarly situated individuals and the requirements for obtaining a discount, rebate, or reward for participation are not based on an individual meeting a stan-

dard pertaining to a health status factor. A health status-related factor is a health factor that can be related to health status, medical condition, claims experience, receipt of healthcare, medical history, genetic information, evidence of insurability, disability, or any other factor determined appropriate by the Secretary of HHS. Wellness programs under PPACA that do not violate the nondiscrimination rules, assuming participation is available to all similarly situated individuals and no rewards are based on standards related to a health status factor, are smoking cessation, weight management, stress management, physical fitness, nutrition, heart disease prevention, healthy lifestyle support, and diabetes prevention. It is interesting to note that PPACA expressly provides that disclosure of gun ownership cannot be required under a wellness program.

If a wellness program does, however, condition the receipt of a premium discount, rebate, or reward for participation in a wellness program on satisfaction of a standard related to a health status factor, then the program will not violate nondiscrimination rules as long as a number of conditions are met. First, the incentive or reward for the wellness program, together with the reward for any other wellness programs under the plan also requiring satisfaction of a standard related to a health status factor, must not exceed 30 percent of the cost of employee-only coverage under the plan beginning January 1, 2014. If dependents are also participating in the wellness program, the reward must not exceed 30 percent of the cost of the coverage in which an employee or individual and dependents are enrolled. This increase to a 30 percent incentive

is a PPACA initiative, and the Secretaries of Labor, HHS, and the Treasury are authorized to increase the reward to up to 50 percent of the cost of coverage if deemed appropriate. Additionally, the wellness program must be reasonably designed to promote health or prevent disease and must allow eligible individuals the opportunity to qualify for any rewards at least once per year. Rewards must be available to all similarly situated individuals, and reasonable alternative standards for achieving a reward must be provided under the program for those individuals for whom it is either unreasonably difficult or medically inadvisable to attempt the primary standard. Reasonable alternative standards must be described by the group health plan or health insurance issuer in all plan materials that describe the wellness program's terms.

Clearly, the time is ripe for employers to consider implementing wellness programs, especially given the grants available to small employers. PPACA ensures that the CDC and HHS will provide education and support along the way to employers and providers involved in wellness initiatives. As with most provisions in PPACA, regulations and additional guidance on wellness initiatives are also expected in the coming months.



Cheri Green and Lane Staines are attorneys in the Jackson office of Brunini, Grantham, Grower & Hewes. Cheri is a partner in the firm's litigation department, and Lane is an associate in the regulatory department. Cheri can be contacted by email at [cgreen@brunini.com](mailto:cgreen@brunini.com), and Lane may be reached at [lstaines@brunini.com](mailto:lstaines@brunini.com).

