

Agencies Issue COVID-19 Vaccine Incentive Guidance

Alert

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On October 4, 2021, the U.S. Department of Health and Human Services, U.S. Department of Labor and U.S. Department of the Treasury jointly issued [FAQs relating to COVID-19 vaccine incentives and surcharges](#). Under the guidance, employers may provide incentives such as premium discounts or surcharges through group health plans to incentivize COVID-19 vaccines, provided the incentive complies with the activity-only wellness program regulations. An activity-only wellness program must meet the following requirements:

1. The program must give individuals eligible for the program the opportunity to qualify for the reward at least once per year.
2. The reward, along with all other wellness incentives for health-contingent programs under the plan, must not exceed 30% of the total cost of employee-only coverage.
3. The program must be reasonably designed to promote health or prevent disease.
4. The full reward must be available to all similarly-situated individuals, including providing a reasonable alternative standard.
5. The plan must disclose the availability of a reasonable alternative standard in all plan materials describing the wellness program.

The guidance provides examples of ways for employers to meet the five requirements above. For example, to meet the reasonable alternative standard requirement, the wellness program may offer a waiver or a right to attest to following other COVID-19 guidelines (e.g., masking requirements), to individuals for whom it is unreasonably difficult due to a medical condition or is medically inadvisable to receive the COVID-19 vaccine.

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The guidance also clarifies how rewards are treated in determining affordability with respect to employer-shared responsibility payments under the Affordable Care Act (ACA). Premium discounts are treated as “not earned” for purposes of determining an employee’s required contribution. Therefore, if a program provides premium discounts for receiving a vaccination, those discounts are disregarded in determining affordability. On the other hand, if a program provides for surcharges to those who do not receive a vaccine, the employer must assume that the surcharge applies. As a result, employers will need to carefully consider how any such program is implemented to appropriately manage potential ACA liability.

Finally, employers should note that the FAQs do not address other wellness program requirements like the Americans with Disabilities Act and Genetic Information Nondiscrimination Act.

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