

The Baldwin Professional Education Connection

HIPAA 106: An Introduction to Worksite Wellness and Wellbeing Programs



Disclaimer

The Baldwin Regulatory Compliance Collaborative is not a law firm and cannot provide legal advice. We are providing this information to you solely in our capacity as consultants with knowledge and experience in the industry and not as legal advice.

This document is intended to provide a basic understanding of the substantive requirements of HIPAA, GINA and the ADA as they relate to nondiscrimination in worksite wellness programs and to assist plan sponsors in their performance of these compliance-related activities. For more information on HIPAA, GINA, or the ADA, or to review related agency guidance issued by the Department of Labor & the US Health and Human Services Department, please visit the following:

<https://www.federalregister.gov/documents/2013/06/03/2013-12916/incentives-for-nondiscriminatory-wellness-programs-in-group-health-plans> (general information)

<https://www.federalregister.gov/documents/2016/05/17/2016-11557/genetic-information-nondiscrimination-act> (GINA)

<https://www.eeoc.gov/newsroom/eeoc-provides-proposed-wellness-rules-review> (2021 statement of proposed rulemaking)

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THE BALDWIN REGULATORY
COMPLIANCE COLLABORATIVE

AGENDA

Part I:	An Introduction to HIPAA Nondiscrimination for Worksite Wellness Programs
Part II:	The HIPAA/ACA Framework for Employer-sponsored Wellness Programs
Part III:	Impacts of the ADA Upon Worksite Wellness Programming
Part IV:	Impacts of GINA Upon Worksite Wellness Programming
Part V:	Understanding Enforcement Discretion for HIPAA Nondiscrimination for Worksite Wellness Programs
Part VI:	Compliance Analysis Flow Charts for Employer Sponsored Wellness Programming
Part VII:	Participant Question & Answer Session



This educational program is designed to provide participants with knowledge and understanding related to the following learning objectives:

- 1) Learn to identify the nine (9) health factors identified in the Health Insurance Portability and Accountability Act (HIPAA) Nondiscrimination regulations for worksite wellness programming.
- 2) Understand and apply the concept of similarly situated individuals to rating, underwriting, and incentivization in worksite wellness programming.
- 3) Identify and define the two main types of workplace wellness programs detailed in the HIPAA nondiscrimination regulations for worksite wellness programming.
- 4) Understand and apply the five nondiscrimination requirements for outcome-based worksite wellness programming.
- 5) Define and apply the requirements of the Genetic Information Nondiscrimination Act (GINA) and the Americans With Disabilities Act (ADA) in the context of worksite wellness programming.

Part I:

An Introduction to HIPAA Nondiscrimination for Wellness Programs

What are Worksite Wellness Programs?



A wellness program is any formal or informal program that educates employees about health-related issues, promotes following healthy lifestyles, or encourages employees to make healthier choices.



Wellness programs vary greatly and are not always called worksite wellness programs; they may be called wellbeing programs, or just wellness programming, generally.



Some are purely educational and have no financial incentives whatsoever, depending upon the plan sponsor's preferences and the plan's enrolling population.



Some have financial incentives that may take the form of premium reductions, reduced deductibles or copays, gift cards, cash or other prizes (such as T-shirts, mugs, tickets, etc.).

Health Factor-based Discrimination

➤ Health Factor-based Discrimination is Prohibited:

- When based upon a health factor, the Affordable Care Act and HIPAA generally prohibit group health plans from:
 - 1) Charging similarly situated individuals different premiums or contributions; or,
 - 2) Imposing different deductibles, copayments or other cost sharing requirements.
- However, there is an exception that allows plans to offer wellness programs.

Identifying the HIPAA Health Factors

- Includes both physical and mental illness and/or impairment that an individual is experiencing or has experienced.

Health Status



- For example, an individual with a history of strokes is denied enrollment.

Medical Condition



- Present and/or historical costs associated with coverage under a health insurance plan.

Claims Experience



- The fact of an individual accessing healthcare treatments or services from a healthcare provider.

Receipt of Healthcare



- The historical medical treatments and services an individual has received.

Medical History



- Any information relative to an individual's genetic profile, including predisposition for illness or disability.

Genetic Information



- Conditions arising from domestic violence or an activity such as motorcycling, snowmobiling, skiing, etc.

Evidence of Insurability



- An individual's past, present, or future disability status.

Disability



Note: there are nine types of health factors detailed in the HIPAA NDT rules (health status is bifurcated by medical health and mental health statuses).

Nondiscrimination Rules of the Road – Part I

Can a group health plan require an individual to pass a physical examination to be eligible to enroll in the plan?

No. A group health plan may not require an individual to pass a physical exam for enrollment, even if the individual is a late enrollee.

Can a plan require an individual to complete a health care questionnaire to enroll?

Yes, provided that the questionnaire does not ask for genetic information (including family medical history) and the health information is not used to deny, restrict, or delay eligibility or benefits, or to determine individual premiums.

Can plans exclude or limit benefits for certain conditions or treatments?

Group health plans may exclude coverage for a specific disease, limit or exclude benefits for certain types of treatments or drugs, or limit or exclude benefits based on a determination that the benefits are experimental or medically unnecessary.

Any benefit restriction must apply uniformly to all similarly situated individuals and is not directed at individual participants or beneficiaries based on a health factor they may have.

Nondiscrimination Rules of the Road – Part II

Can a plan deny benefits otherwise provided for the treatment of an injury based on the source of that injury?

If the injury results from a medical condition or an act of domestic violence, a plan may not deny benefits for the injury – if it is an injury the plan would otherwise cover.

Can a plan charge individuals with histories of high claims more than similarly situated individuals based on their claims experience?

No. Group health plans cannot charge an individual more for coverage than other similarly situated individuals based on any health factor.

Can a health insurance issuer charge an employer different premiums for each individual within a group of similarly situated individuals based on the individual's health status?

No. Issuers may not charge or quote an employer or group health plan separate rates that vary for individuals (commonly referred to as "list billing") based on any of the health factors.

HIPAA does not prevent issuers from taking the current health status of individuals into account when establishing a blended, aggregate rate for providing coverage to the employment-based a group.

Nondiscrimination Rules of the Road – Part III

Can a group health plan impose a nonconfinement clause?

No. A group health plan may not deny or delay an individual's eligibility, benefits, or the effective date of coverage because that individual is confined to a hospital or other health care facility.

In addition, a health plan may not set an individual's premium rate based on that individual's confinement.

Can a group health plan impose an “actively-at-work” provision?

No. Generally a group health plan may not refuse to provide benefits because an individual is not actively at work on the day that individual would otherwise become eligible for benefits.

Plans may have actively-at-work clauses if the plan treats individuals who are absent from work due to a health factor as if they are actively at work for purposes of health coverage.

Plans may require individuals to report for the first day of work before coverage may become effective.

Plans may also distinguish among groups of similarly situated individuals in eligibility provisions.

Nondiscrimination Rules of the Road – Part IV

How are similarly situated individuals determined?

Distinctions among groups of similarly situated participants in a health plan must be based on bona fide employment-based classifications consistent with the employer's usual business practice.

Distinctions cannot be based on any of the health factors.

Part-time and full-time employees, employees working in different geographic locations, and employees with different dates of hire or lengths of service can be treated as distinct groups of similarly situated individuals.

This may equate to different eligibility provisions, different benefit restrictions, or different costs, provided the distinction is consistent with the employer's usual business practice.

A plan may treat participants and beneficiaries as two separate groups of similarly situated individuals. The plan also may distinguish between beneficiaries based on their relationship to the plan participant or based on the age/student status of dependent children.

***Exception for Benign Discrimination:** The nondiscrimination rules do not prohibit a plan from establishing more favorable rules for eligibility or premium rates for individuals with an adverse health factor, such as a disability (ex., diabetes).

RECAP: Defining Similarly Situated Individuals

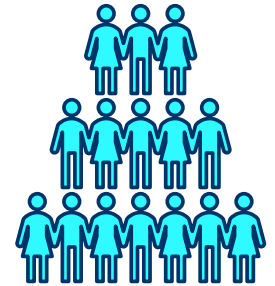
Distinctions prohibited if based on certain factors:

- Health factor-based
- Inconsistent with employer's usual business practices
- Wage or income based



Distinctions must be based on bona-fide employment-based classifications:

- Part-time versus full-time employees
- Employees working in different geographic locations
- Employees with different dates of hire
- Employees with different lengths of service
- Employees versus beneficiaries
- Collective bargaining status
- Participants versus beneficiaries



Allowable distinctions include:

- Different eligibility provisions
- Different benefit restrictions
- Different costs



Part II:

The HIPAA/ACA Framework for Employer-sponsored Wellness Programs

Differentiating Types of Wellness Programs

Wellness Programs



Participatory

- Available without regard to health status
- Must be available to all similarly situated individuals
- No reward or reward is not based on a health factor



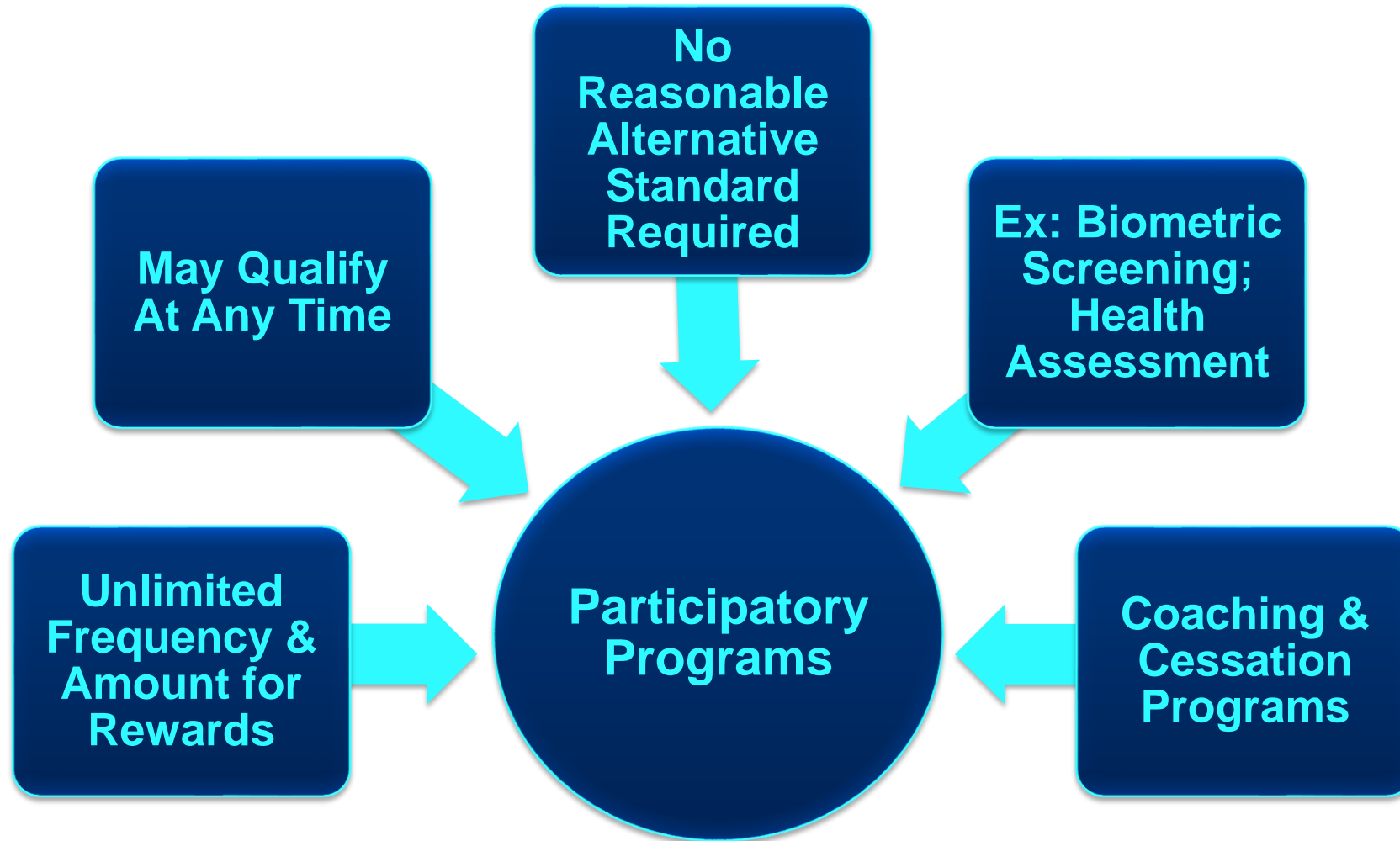
Health Contingent

- Types include both activity-only & outcome-based programs
- Outcome-contingent subject to 5 requirements
- Reward based on health factor

- The wellness exceptions to the HIPAA nondiscrimination rules provide the methods by which discrimination based upon any health factor is permitted.
- Without the wellness program exceptions, most (if not all) wellness programs would violate HIPAA by their design (reward requirements, etc.).



Distinguishing Health Outcomes & Participatory Programs



Defining Participatory Wellness Programs

➤ Participatory Wellness Program Basics:

- There are two types of wellness programs provided in connection with a group health plan.
- Participatory wellness programs are generally available without regard to an individual's health status.
- Either no reward is offered, or none of the conditions for obtaining a reward are based on an individual satisfying a standard related to a health factor.
- These programs comply with the nondiscrimination requirements so long as the program is made available to all similarly situated individuals.



Examples of Participatory Wellness Programs

➤ Participatory Wellness Programs:

- A program that reimburses all or part of the cost for memberships in a fitness center.
- A diagnostic testing program that provides a reward for participation and does not base any part of the reward on outcomes.
- A program that reimburses employees for the costs of participating, or that otherwise provides a reward for participating, in a smoking cessation program without regard to whether the employee quits smoking.
- A program that provides a reward to employees for attending a monthly, no-cost health education seminar.



Wellness Exception for Participatory Programs

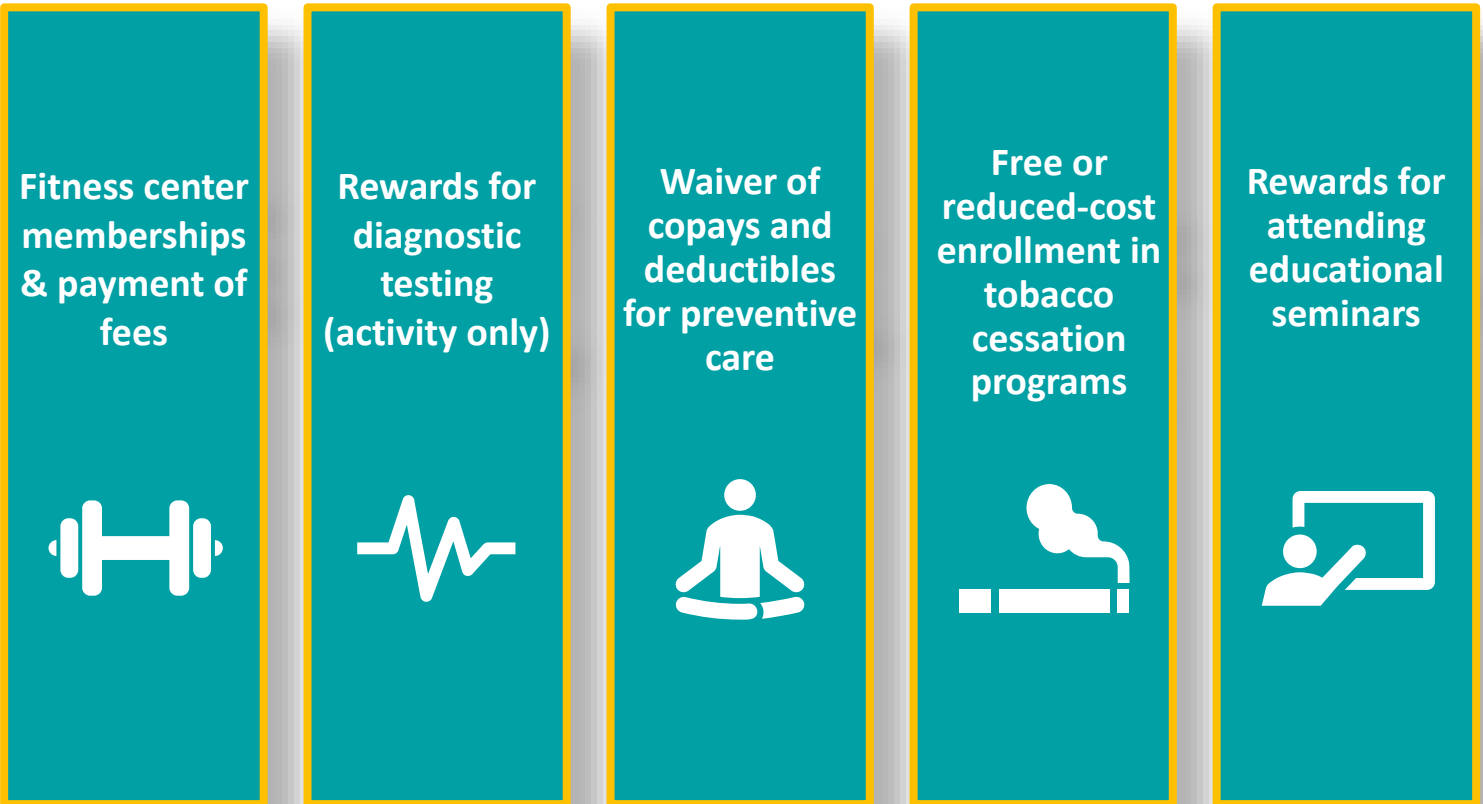
General Rule:

- Group health plans generally prohibited from charging similarly situated individuals different premiums or contributions or imposing different deductible, copayment or other cost sharing requirements based on a health factor.

Wellness Exception:

- If none of the conditions for obtaining a reward under a wellness program are based on an individual satisfying a standard related to a health factor, or if no reward is offered, the program complies with the nondiscrimination requirements.

Permissive Wellness Rule Exceptions:



Two Types of Health-contingent Wellness Programs

There are two types of health contingent wellness programs: activity-only and outcome-based:

Health-contingent Type #1

ACTIVITY-ONLY

- Activity-only programs require an individual to perform or complete an activity related to a health factor to obtain a reward.
- Examples of participatory programs include a walking, diet or exercise programs.

OUTCOME-BASED

- Outcome-based programs require an individual to attain or maintain a specific health outcome (such as not smoking or attaining certain results on biometric screenings) in order to obtain a reward.
- To comply with the nondiscrimination rules, health-contingent wellness programs must meet five specific requirements described in the final rules.

Health-contingent Type #2

Note: Health-contingent wellness programs require participants to satisfy a standard related to a health factor in order to obtain a reward.

Distinguishing Health Outcomes & Participatory Programs



Distinguishing Health Outcomes & Participatory Programs



Blueprint for Health Outcomes: Five Requirements for Health-contingent Wellness Programs



The program must give individuals eligible to participate the opportunity to qualify for the reward at least once per year.

30/50
Rule

The total reward for all the plan's wellness programs that require satisfaction of a standard related to a health factor is limited – it must not exceed 30% (or 50% for programs designed to prevent or reduce tobacco use) of the cost of employee-only coverage under the plan. If dependents (spouses and/or dependent children) may participate in the wellness program, the reward must not exceed 30% (or 50%) of the cost of the coverage in which an employee and any dependents are enrolled.



The program must be reasonably designed to promote health and prevent disease.*



The full reward must be available to all similarly situated individuals. This means the program must allow a reasonable alternative standard (or waiver of the otherwise applicable standard).*



The plan must disclose in all materials describing the terms of the program the availability of a reasonable alternative standard (or the possibility of a waiver of the otherwise applicable standard).*

**Note: different requirements apply for activity-only and outcome-based programs.*

Promotion of Health and Disease Prevention

***Note:** To ensure that an outcome-based wellness program is reasonably designed to improve health, a reasonable alternative standard (RAS) to qualify for the reward must be provided to any individual who does not meet the initial standard based on a test or screening that is related to a health factor.

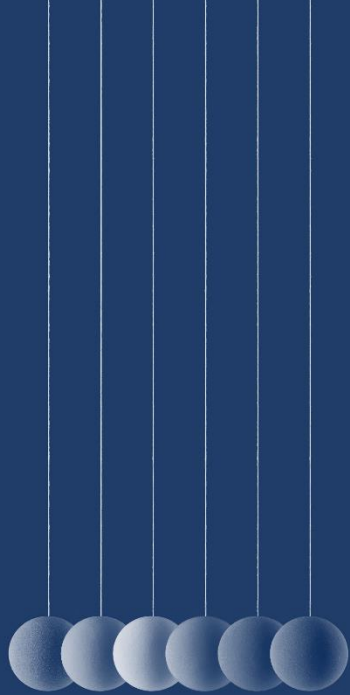


- An activity-only or outcome-based program is considered reasonably designed to promote health or prevent disease, if:
 - The program has a reasonable chance of improving the health of, or preventing disease in, participating individuals;
 - Is not overly burdensome; is not a subterfuge for discrimination based on a health factor; and
 - Is not highly suspect in the method chosen to promote health or prevent disease.
- The determination is based on all relevant facts and circumstances.

Activity-only Reasonable Alternative Standards

- For activity-only programs, a reasonable alternative standard (“RAS”) (or waiver of the otherwise applicable standard) must be offered to any individual:
 - 1) For whom it is unreasonably difficult due to a medical condition to satisfy the otherwise applicable standard, or
 - 2) For whom it is medically inadvisable to attempt to satisfy the otherwise applicable standard.
- Note that plans can seek physician verification with respect to a request for a reasonable alternative standard, if the request is reasonable under the circumstances.

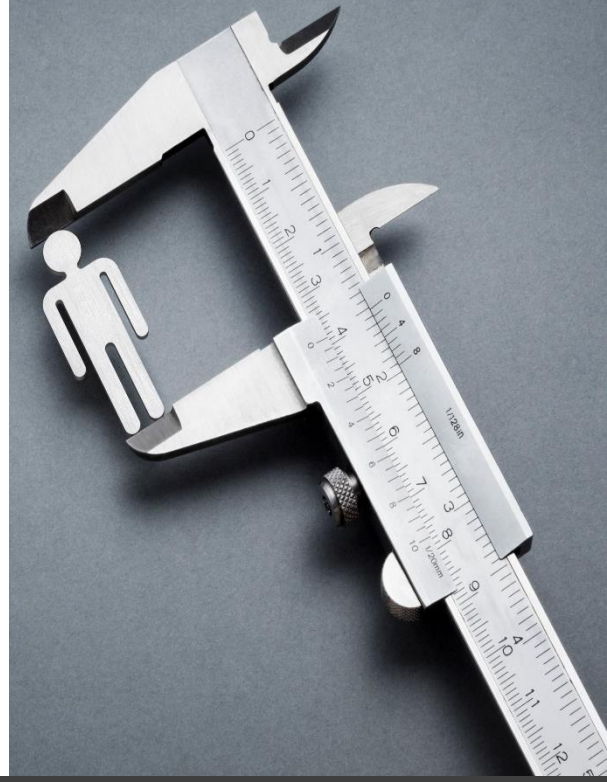
Outcome-based Reasonable Alternative Standards



- **For outcome-based programs**, the RAS (or waiver of the otherwise applicable standard) must be offered to any individual who does not meet the initial standard based on the measurement, test or screening.
 - **Substantially Similar RAS**. If the RAS is, itself, another outcome-based wellness standard, the RAS cannot be a requirement to meet a different level of the same standard without additional time to comply.
 - **Physician Recommendations**. The RAS must consider the individual's circumstances and an individual must be given the opportunity to comply with the recommendations of their personal physician as a second RAS (if the physician joins in the request).
 - **Reasonableness**. It is unreasonable for plans to seek physician verification that a health factor makes it unreasonably difficult for an individual to satisfy, or medically inadvisable for the individual to attempt to satisfy, a standard.

Additional Reasonable Alternative Standard Considerations

- For all health-contingent wellness programs (whether activity-only or outcome-based), all facts and circumstances are considered when determining whether a plan has provided an RAS, including:
- **Educational Programs**. If the RAS is completion of an educational program, the plan or issuer must make the educational program available or assist the employee in finding such a program and may not require an individual to pay for the cost of the program.
 - **Time Commitment**. The time commitment required must be reasonable (for example, requiring attendance nightly at a one-hour class would be unreasonable).
 - **Diet Programs**. If the RAS is a diet program, the plan or issuer is not required to pay for the cost of food but must pay any membership or participation fee.
 - **Medical Appropriateness**. If an individual's personal physician states that an RAS is not medically appropriate for an individual, the plan or issuer must provide an RAS that accommodates the recommendations of the individual's personal physician.
 - **Cost Sharing**. Plans and issuers may impose standard cost sharing under the plan or coverage for medical items and services furnished pursuant to the physician's recommendations.



RAS Plan-level Disclosure Requirements



- **Disclosure Required.** Plans and issuers must disclose the availability of an RAS to qualify for the reward (and, if applicable, the possibility of waiver of the otherwise applicable RAS) in all plan materials describing the terms of a health-contingent wellness program (for both activity-only and outcome-based wellness programs).
- **Physician's Statement.** This disclosure must include contact information for obtaining the alternative and a statement that recommendations of an individual's personal physician will be accommodated.
- **Mere Mention of a Program.** If plan materials merely mention that such a program is available, without describing terms, disclosure is not required.
- **Failure to Satisfy Standard.** For outcome based-wellness programs, this notice must also be included in any disclosure that an individual did not satisfy an initial outcome-based standard, for example, a notice that an individual did not meet the BMI target range to qualify for the reward.

Voluntary Detection of Health Issues

➤ Voluntary Health Detection Inquiries and Exams:

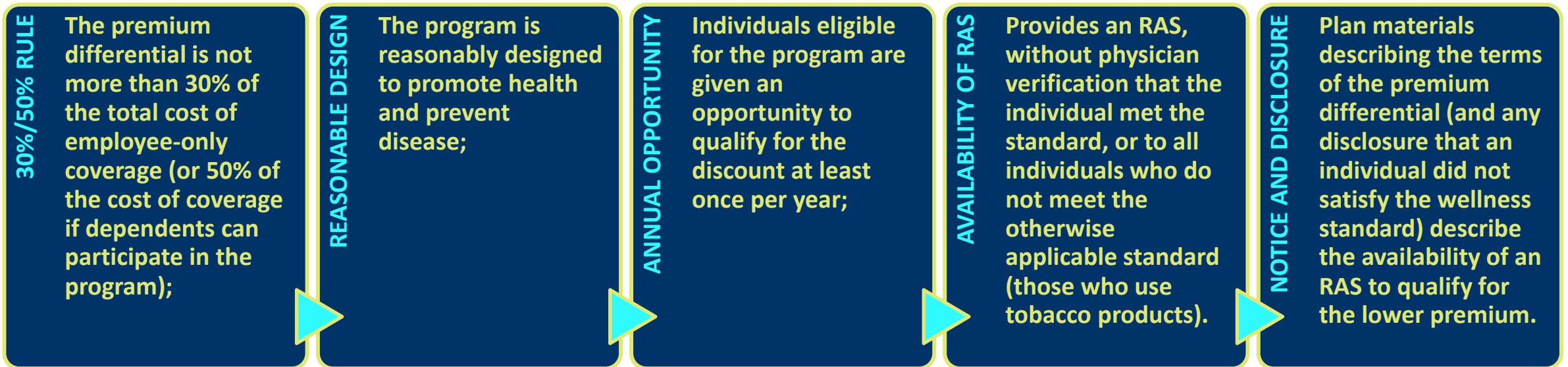
- If a plan offers a reward to individuals who participate in voluntary testing for early detection of health problems, the plan may not use the test results to determine whether an **individual receives a reward or the amount of an individual's reward.**
- These types of programs are considered **participatory wellness programs** because they do not base any reward on the outcome of the testing.
- Consequently, these types of plans are permitted under the HIPAA nondiscrimination provisions, **so long as the program is made available to all similarly situated individuals,** without being subject to the five requirements that apply to health-contingent wellness programs.



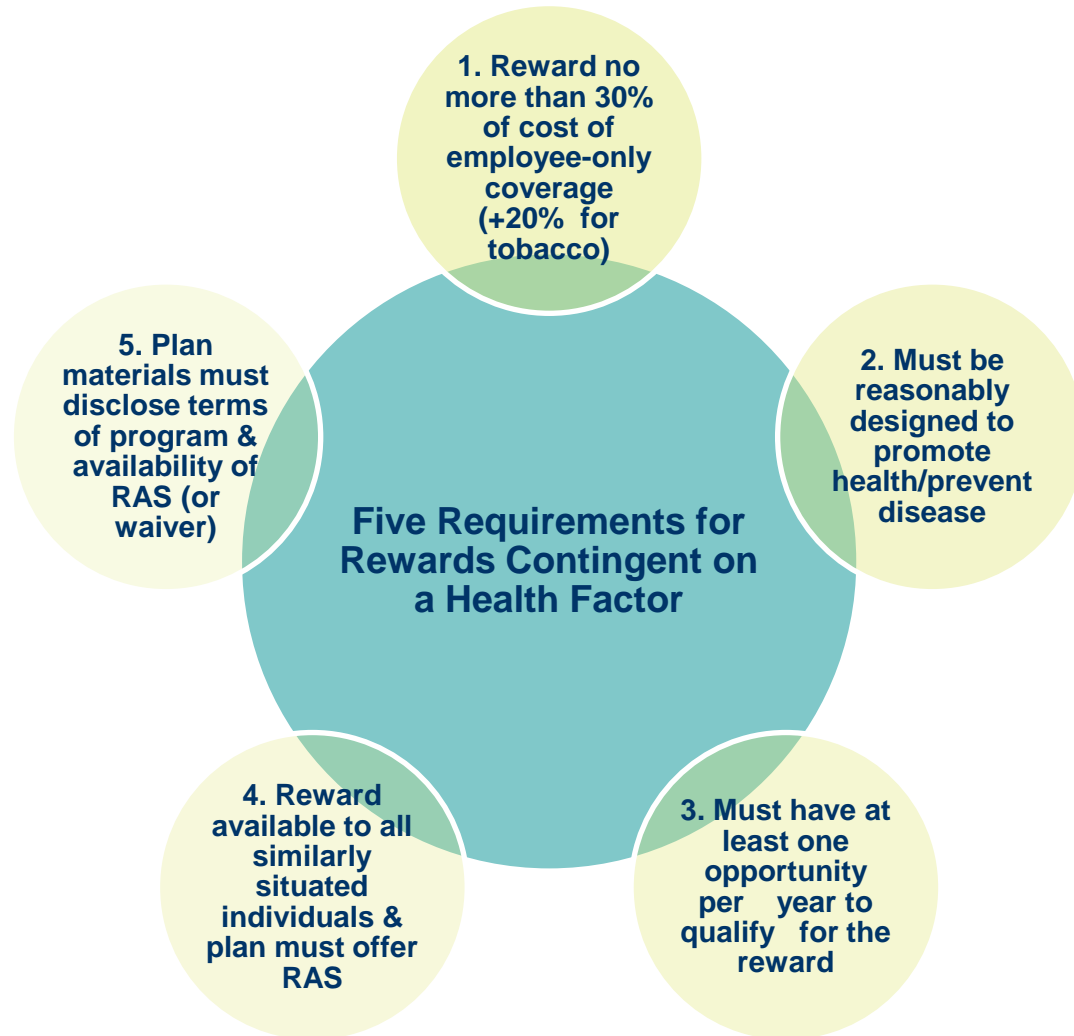
Understanding Premium Differentials for Smokers

➤ A plan may provide a premium differential between smokers and nonsmokers:

- The plan is offering a reward based on an individual's ability to stop smoking, so this is considered an outcome-based wellness program.
- The plan's nonsmoking program would need to meet the five requirements for wellness programs that require satisfaction of a standard related to a health factor; accordingly, this wellness program is permitted if:



RECAP: Five Requirements for Reward-based Health Outcomes Programs



Employer Notes & Additional Considerations:

- Incentives must be awarded in the year in which they are earned;
- Avoid subterfuges from compliance by designing wellness programs that operate meaningfully to improve health or reduce the effects of disease;
- Spouses may be held to different standards and/or restrictions than primary participants;
- The plan's SPD should disclose the terms of the program, particularly the availability of an RAS for outcome-based programs;
- The plan's SBC generally contains only high-level summarization of a plans wellness program features specific to premium rate setting.

Hypothetical Considerations, Number 1



➤ Availability of a Reasonable Alternative Standard:

- Plan A provides that individuals obtaining a three-point reduction of their body mass index are eligible for a \$25.00 per month premium reduction. Individuals that cannot obtain a three-point reduction have access to an RAS requiring monthly attendance at an educational program designed to encourage nutrition and healthy eating.
- The RAS (or a waiver) of the health-outcome results in a monthly educational programming requirement. Whether, and to what extent, a monthly education class represents an undue hardship is based on all relevant facts and circumstances.
- The full reward under a health-contingent wellness program must be available to all similarly situated individuals. To meet this requirement, all health-contingent wellness programs must provide an RAS (or waiver of the otherwise applicable standard).

Hypothetical Considerations, Number 2

➤ Disclosure of the Reasonable Alternative Standard:

- Must disclose the availability of a reasonable alternative standard to qualify for the reward (and, if applicable, the possibility of waiver of the otherwise applicable standard) in all plan materials describing the terms of a health-contingent wellness program.
- For outcome-based wellness programs, this notice must also be included in any disclosure that an individual did not satisfy an initial outcome-based standard.



Part IV:

Impacts of the ADA Upon Worksite Wellness Programming

ADA & Wellness Programs

- The ADA prohibits employers with 15 or more employees from discriminating against individuals with disabilities:
 - As a general rule, to comply with the ADA, covered employers should structure their wellness plans to ensure that qualified individuals with disabilities:
 - 1) Have equal access to the program's benefits; and
 - 2) Are not required to complete additional requirements to obtain equal benefits under the wellness program.



ADA & Reasonable Accommodation

- According to the EEOC, complying with HIPAA's RAS for a health-contingent program would generally fulfill an employer's obligation to provide an RAS under the ADA.
- However, under the ADA, an employer would have to provide a reasonable accommodation for a participatory program even though HIPAA does not require these programs to offer an RAS, and an RAS is not required at all under HIPAA if the program is not part of a group health plan.



Employers must provide reasonable accommodations that enable employees with disabilities to fully participate in employee health programs and to earn any rewards or avoid any penalties offered as part of those programs.

ADA and Confidentiality

Medical information obtained as part of a wellness program must be kept confidential.

Generally, employers may only receive medical information in aggregate form that does not disclose, and is not reasonably likely to disclose, the identity of specific employees.

Also, employers cannot require employees to agree to the sale, exchange, transfer or other disclosure of their health information to participate in a wellness program or to receive an incentive.

The ADA's Wellness Safe Harbor

The ADA also has a “safe harbor” that exempts insurers and bona fide benefit plans from the ADA’s restrictions if the safe harbor is not used to evade the purposes of the ADA.

- How the safe harbor applies to employer-sponsored wellness programs has been uncertain.
- In the final rule on voluntary wellness programs, the EEOC rejects the application of the safe harbor to wellness programs; thus, according to the EEOC, the exception for voluntary wellness programs is the only way to comply with the ADA for wellness programs that make disability-related inquiries or that require medical examinations.
- Conversely, some district courts have held that the ADA “safe harbor” does in fact exempt insurers and bona fide benefit plans from the ADA’s restrictions.

Hypothetical Considerations, Number 3



➤ Wellness Programming & the ADA:

- An employer that offers an incentive for employees to attend a nutrition class must, absent undue hardship, provide a sign language interpreter for a deaf employee who needs one to participate in the class.
- An employer also may need to provide materials related to a wellness program in alternate format, such as large print or on a computer disk, for someone with vision impairment.
- An employer may need to provide an alternative to a blood test if an employee's disability would make drawing blood dangerous.

EEOC Final Rules for ADA Compliance – Notice Requirement

- **And because no agency rulemaking would be complete without imposing yet another notice requirement upon employers . . .**
 - **If the wellness program is part of a group health plan, the employer must provide employees with a notice that describes:**
 - a) **What information will be collected;**
 - b) **With whom the information will be shared; and,**
 - c) **How the information will be kept confidential**



Part IV:

Impacts of GINA Upon Worksite Wellness Programming

GINA Requirements for Wellness Programming

- GINA prohibits discrimination based on genetic information in health plan coverage (Title I) and employment (Title II). “Genetic information” means information about:
 - An individual's genetic tests;
 - The genetic tests of the individual's family member; and,
 - The manifestation of a disease or disorder in the individual's family member (that is, family medical history).



Defining GINA's Protections

Genetic Information:

Genetic information also includes an individual's request for, or receipt of, genetic services (including genetic research, counseling regarding the genetic condition and genetic education).

Family Health History:

GINA's restrictions apply to a wellness program when it requests genetic information—for example, medical or health related history of any family member of the participant.



GINA's Requirements for Worksite Wellness Programs

➤ Wellness Programs under Group Health Plans:

- GINA, Title I, prohibits use of genetic information to discriminate in group health plan coverage.
- GINA prohibits a group health plan from collecting genetic information prior to, or in connection with enrollment, or at any time for underwriting purposes.
- “Underwriting purposes” is broadly defined to include rules for eligibility for benefits and for the computation of premium or contribution amounts.



Understanding GINA's Impact Upon Wellness Incentives

Reward Irrelevant to Compliance:

- Wellness programs offered under group health plans that provide rewards for completing health risk assessments (HRAs) that request genetic information, including family medical history, violate the prohibition against collecting genetic information for underwriting purposes.



- This is the case even if rewards are not based on the outcome of the assessment.

Hypothetical Considerations, Number 4

➤ Health Risk Assessments & GINA:

- Plan D provides a premium reduction of \$500 per year to enrollees who complete an HRA.
- The HRA, which includes questions about an individual's family medical history, is requested after enrollment.
- Even though the completion of the HRA has no effect on an individual's enrollment status, or on the enrollment status of members of the individual's family, this request violates GINA.
- This is because the assessment includes a request for genetic information (that is, the individual's family medical history) and its completion results in a premium reduction, which means that the request for genetic information is for underwriting purposes.



Part V:

Understanding Enforcement Discretion for HIPAA Nondiscrimination for Wellness Programs

History of Wellness Enforcement Authorities

- The IRS, DOL & HHS have varied enforcement authorities with respect to health outcomes programs
- The Patient Protection & Affordable Care Act (PPACA) specifically increased the financial incentives available for health outcomes
- 11th Circuit Court of Appeals has ruled the ADA safe harbor for “bone fide benefit plans” extends to compliant wellness plans
- A “compliant” wellness plan adheres to the HIPAA non-discrimination requirements

EEOC Seeks to Enforce ADA Compliance



In 2014, the EEOC took to the national stage, seeking to enforce requirements of the ADA against employers administering non-compliant health outcomes programs.



In some instances, the EEOC identified and fined employers that denied enrollment to individuals that failed to complete health outcomes assessments (physical exams).



Heading to pressure from Congress, in May of 2016, EEOC final rules were published, which assessed the voluntariness of wellness programs.



To be “voluntary,” programs that included disability-related inquiries/medical examinations could not:

- a) **Require** employees to participate;
- b) **Deny coverage** under any of its group health plans or for a particular benefits package within a group health plan for non-participation, or limit the extent of benefits for employees who do not participate; or
- c) **Take any adverse employment action** or retaliate against, interfere with, coerce, intimidate, or threaten employees.

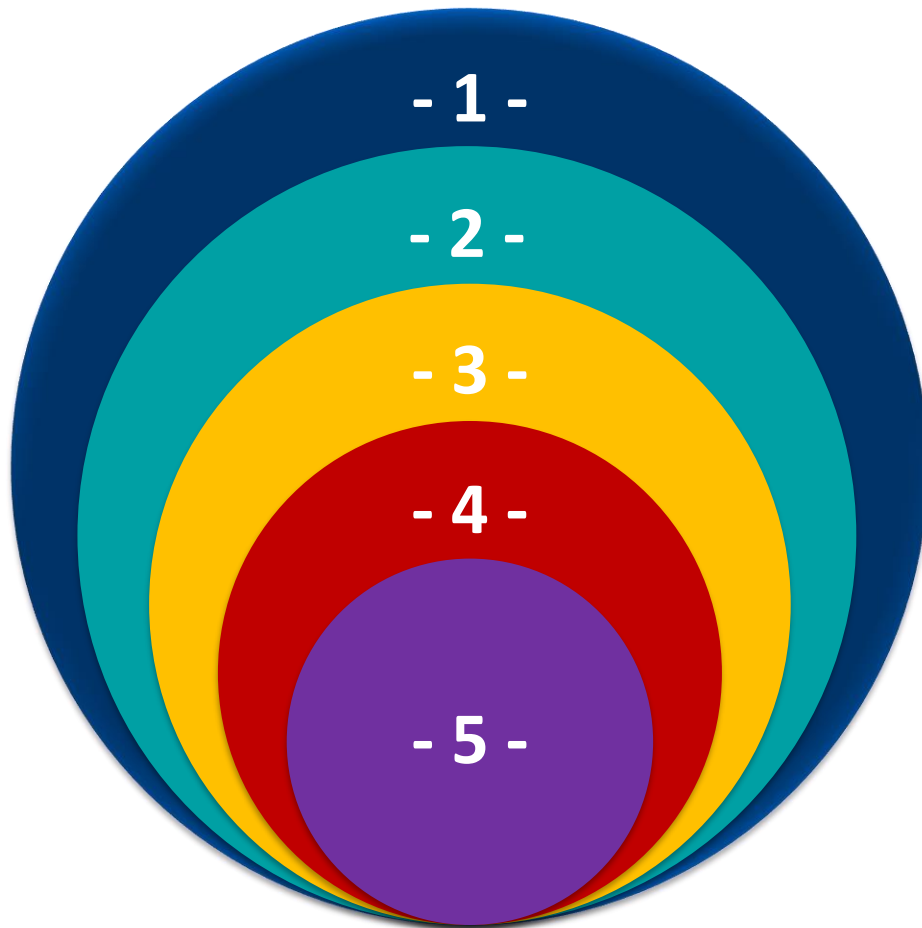


Ultimately, the federal courts determined the EEOC acted beyond its discretion with the rulemaking and the EEOC voluntarily withdrew the wellness program regulations.



To date, no new wellness program regulations have been issued by the EEOC.

RECAP: Wellness Related Rulemaking



1. 2006 – HIPAA Rulemaking

Prohibits health status discrimination; incentives allowable to 20%

2. 2009 – ACA Rulemaking

Increased incentive limits from 20% to 30%/50%; amended types of program to activity only and outcomes based; advent of the RAS

3. 2016 – ADA Rulemaking (withdrawn)

Limits disability-related exams; limits incentives to 30% if there is a disability exam

4. 2016 – GINA Rulemaking (withdrawn)

Rules related to spousal and dependent participation and medical history inquiries; limits incentives to 30%

5. 2021 – Proposed Rulemaking under GINA & ADA

Proposed rules related to incentive limits under voluntary wellness programs (in committee).

Considerations for Employer Compliance Assuredness

Voluntariness:

Worksite wellness programs should always be offered on a voluntary basis.

Confidentiality:

Do not require individual to waive confidentiality as a condition of participation

Disclosure:

Always disclose health-contingent programs in applicable plan documents

Children:

Children generally should be excluded from wellness program incentives and rewards

Reasonableness:

Programs must be reasonably designed to promote health or prevent disease

GINA/ADA:

Do not forget the GINA and ADA restrictions and look for new rules to be released soon

Counsel:

If the program includes an HRA, medical exam, or biometric screening, consult with counsel

Gatekeeping:

A wellness program should not be offered as a gatekeeper for richer plans

RAS:

The RAS should be memorialized in all ERISA documents, including the SBC and the SBC

Similarly Situated:

Differences in rates and rewards may be realized by non-similarly-situated individuals

Notice:

All programs should have written disclosures detailing terms of the underlying plan

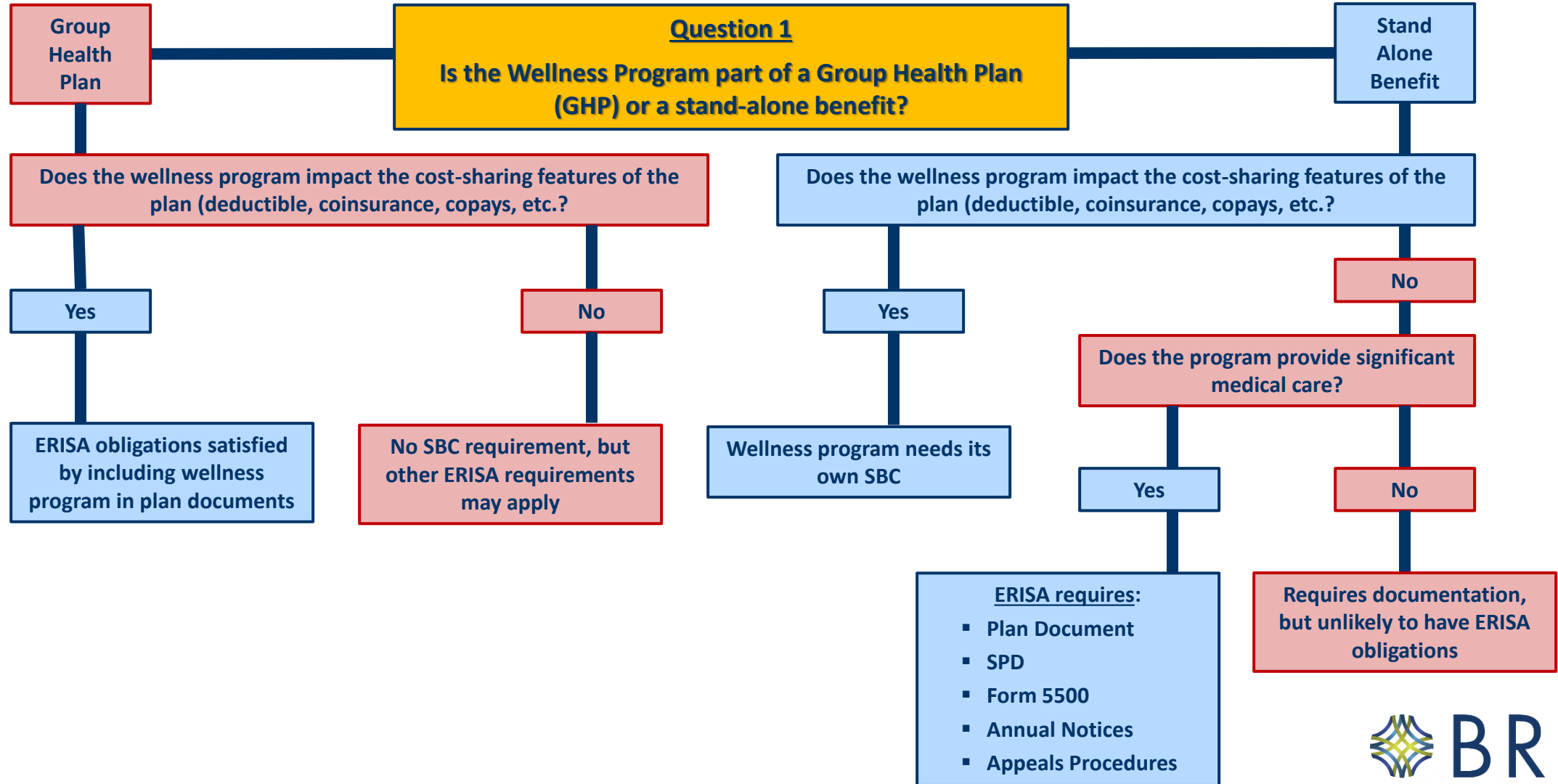
Incentives:

Remember the 30%/50% incentive value rule for health-contingent programs

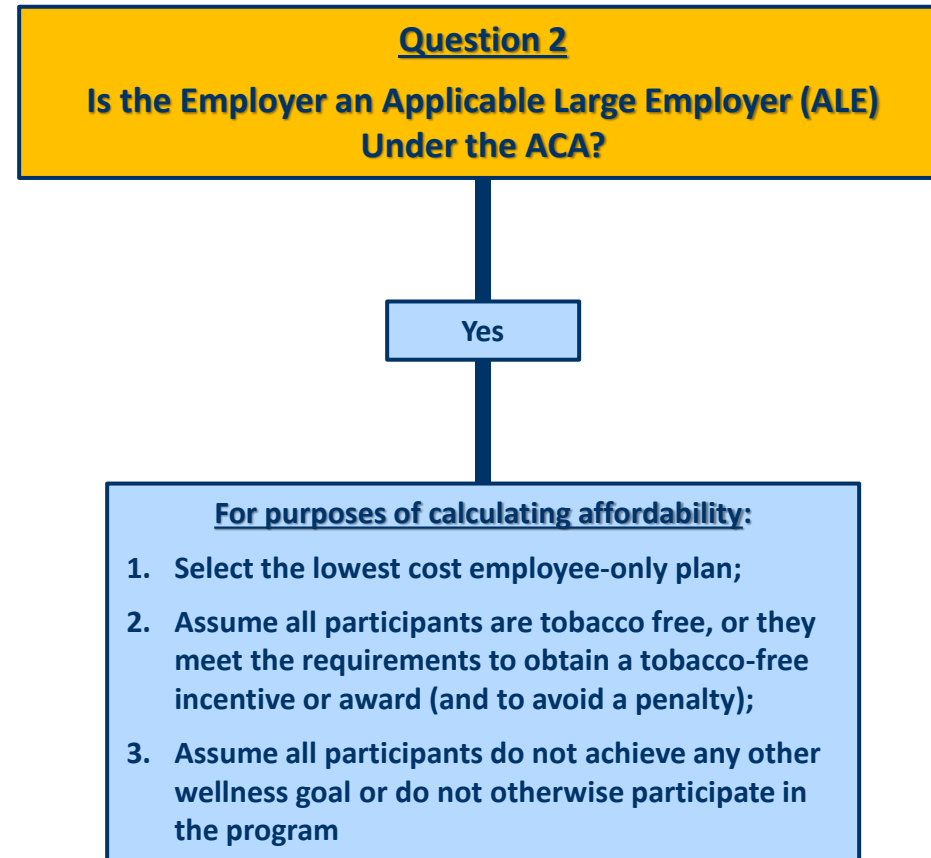
Part VI:

Compliance Analysis Flowcharts for Employer Sponsored Wellness Programming

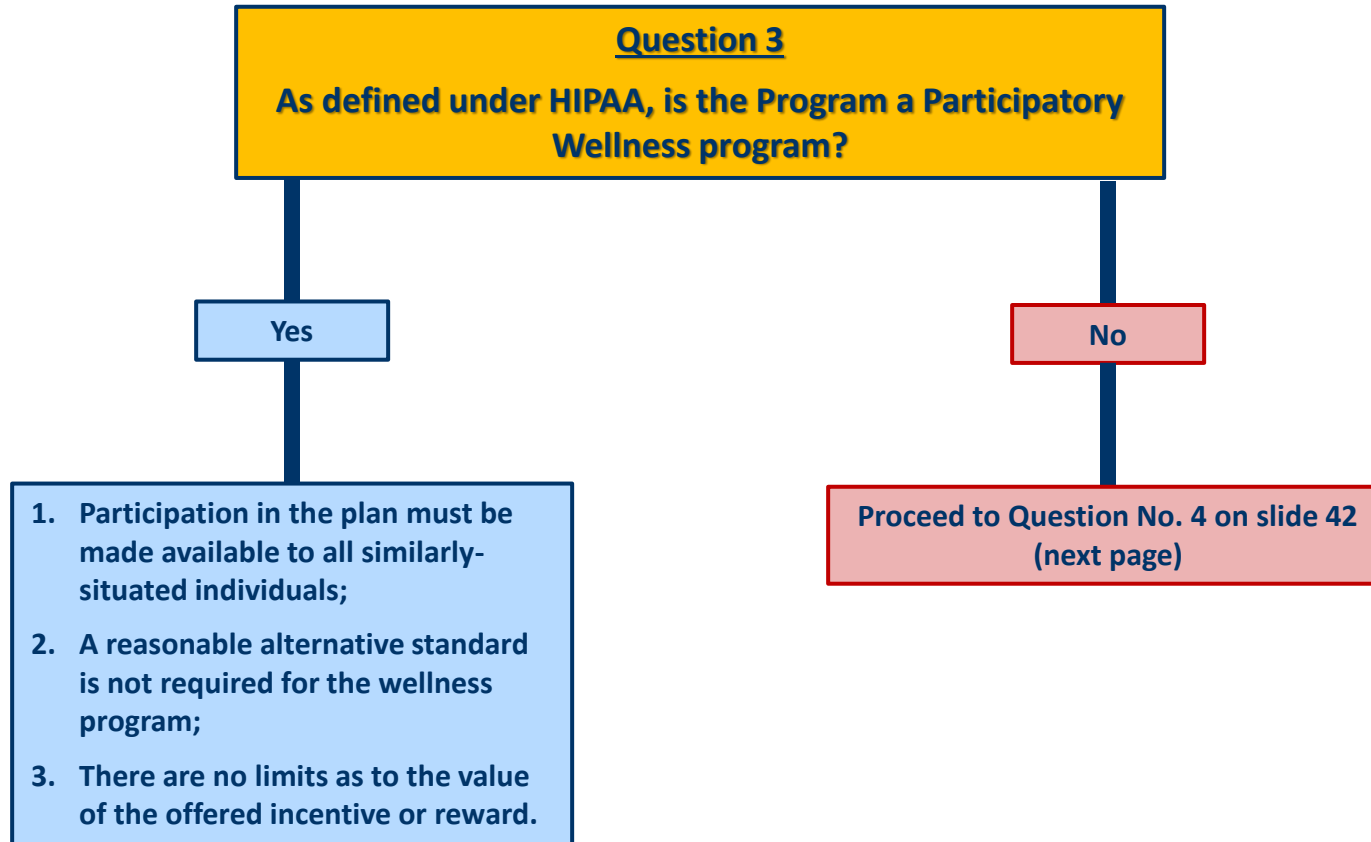
Is the Wellness Program Part of a Group Health Plan?



Is the Employer an Applicable Large Employer (ALE)



Is the Program a HIPAA Participatory Wellness Program?



Is the Plan an Outcome-based or an Activity-only Program?

Question 4

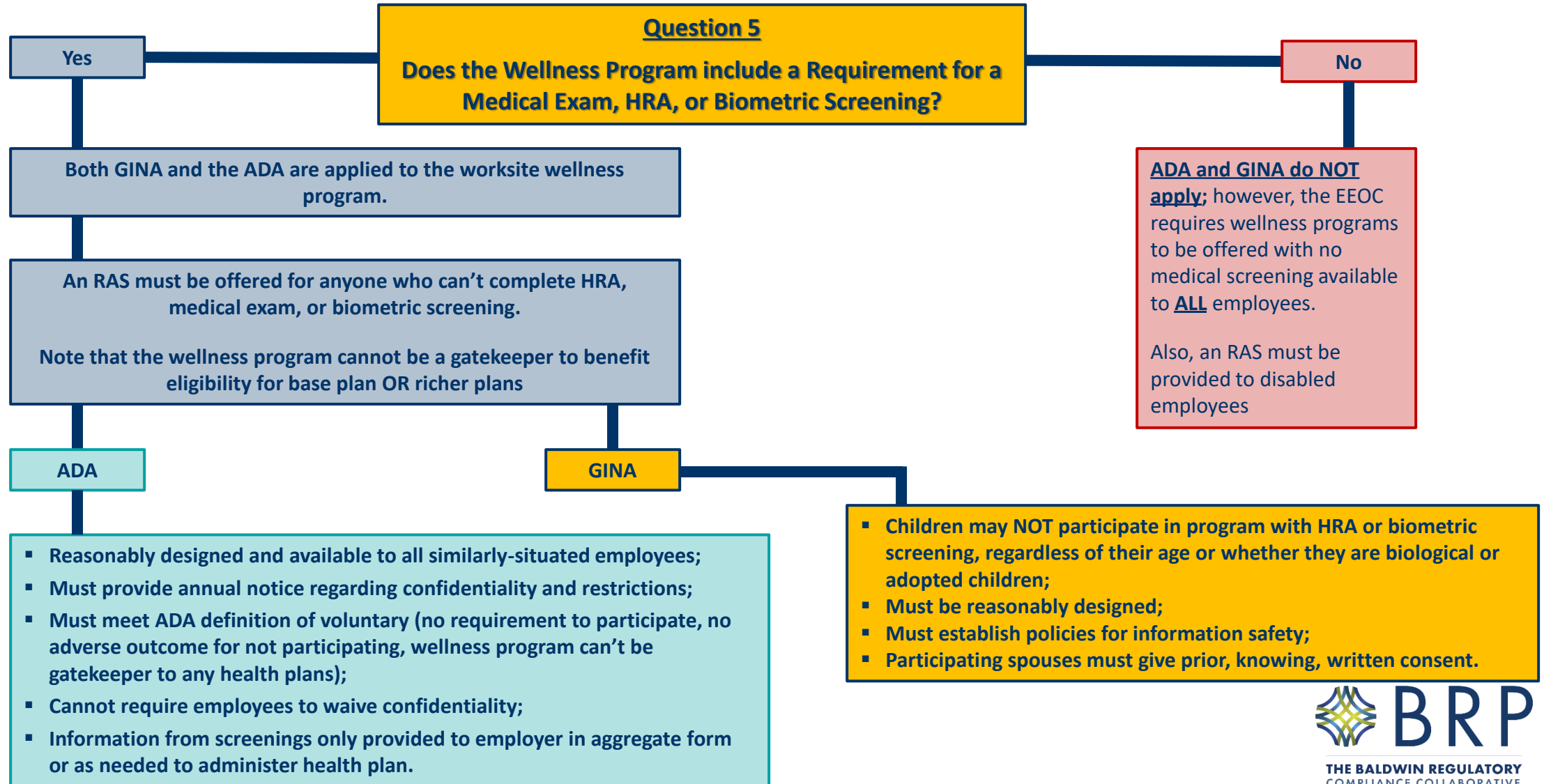
As defined under HIPAA, is the Program an Outcome-based or an Activity-only Wellness program?

Yes

The program must meet the following minimum guidelines:

1. All similarly-situated individuals must have an opportunity to qualify for the incentive or reward offer at least once per year;
2. The program must be offered with a reasonable alternative standard (RAS) to all similarly-situated individuals;
3. The program must be reasonably designed to promote health or to reduce the effects of disease;
4. The plan sponsor must provide notice of the program in plan documents and any denial of a reward or incentive, including information regarding the availability of an RAS or waiver program:
 - a) For an outcome-based program, the RAS must be offered to individuals who cannot meet the initial standard required;
 - b) For an activity-only program, the RAS must be offered to anyone who has a medical condition preventing participation.
5. Incentives and/or rewards must be offer in accordance with the HIPAA prescribed limits:
 - a) Standard limit of 30% of the premium for the coverage elected by the individual;
 - b) Standard + tobacco limit of 50% of the premium for the coverage elected by the individual.

Analysis of GINA and the ADA



Part VII:

Participant Question & Answer Session

HRCI and SHRM Professional Education Recertification Credit

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Course Completion Certificate

The Baldwin Professional Education Connection
Baldwin Risk Partners

Course Title: HIPAA 106: An Introduction to Worksite Wellness Programs
Program Length: One Hour (1 hr.)
Broadcast Date: March 27th, 2024
Course ID: *See below
Participant Name: _____



The use of this official seal confirms that this Activity has met HR Certification Institute's® (HRCI®) criteria for recertification credit pre-approval. This Program, **HRCI Activity ID No. 656754** has been approved for 1.00 (General) recertification credit hours toward aPHR™, aPHRi™, PHR®, PHRca®, SPHR®, GPHR®, PHRi™ and SPHRi™ recertification through HR Certification Institute® (HRCI®).



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- MEET THE NATIONAL REGULATORY COMPLIANCE TEAM -



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- QUESTIONS, COMMENTS & ADDITIONAL INFORMATION -



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Our vision and purpose currently reach 3,300+ colleagues and 1.2+ million clients throughout the nation. Our growth path includes geographic representation across the U.S., expanded value propositions, and new lines of insurance to meet the needs of evolving lifestyles and business risks.

