



Worksite Wellness Programs: The “Do’s” and “Don’ts” of Wellness Incentives

Presented by:

Juli Dennis, MS, CHES - Director, Wellness & Population Health Mgmt.

Ali Esfahani, JD - Regional Director of Compliance & ERISA Attorney

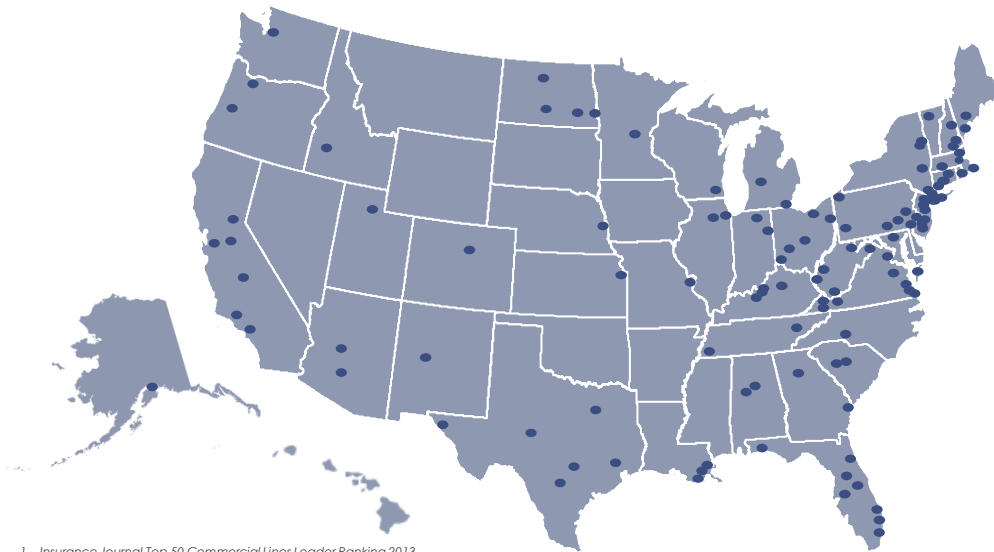
Today's Agenda

- About USI and Our Technical Expertise
- The Current Wellness and Incentive Landscape
- Common Incentive Design Pitfalls
- Recent (and Not-So-Recent) Compliance Changes Affecting Wellness Incentive Design
- Putting Incentives Into Action
 - Does Your Incentive Strategy Make Sense?

About USI Insurance Services – National Leader in Insurance Brokerage & Consulting

National

- 3rd largest privately held insurance brokerage in the US⁶
- More than 4,200 professionals in over 140 offices nationwide



1. Insurance Journal Top 50 Commercial Lines Leader Ranking 2013.

2. USI management estimates based on competitive analysis.

3. Insurance Journal Top 50 Personal Lines (excludes non standard auto brokers-aggregators) Leader Ranking 2013.

4. USI management estimates based on competitive analysis. Ranking of only Retirement Consulting firms, excluding Investment Management Firms, Insurance companies, and Banks with Retirement arms.

5. USI 12/31/13 Acquisition Adjusted Revenue including Wells Fargo Insurance Acquisition.

6. Business Insurance Largest Privately Owned Brokers, July 21, 2014.

Major Lines of Business

Commercial P&C

4th largest privately owned commercial lines broker in the U.S.¹
Includes leading program business.

Employee Benefits

Top 3 privately held employee benefits broker and #1 employee benefit communication and enrollment services provider in the U.S.²

Personal Lines

#2 privately owned personal lines broker in the U.S.³

Retirement Consulting

Top 10 retirement consulting firm⁴

**Total⁵ USI
Revenue
~\$1 billion**

**Leading market position
in all core businesses**

Current Worksite Wellness Landscape

- **Wellness remains a top focus area for employers' health care strategy**
 - 37% plan to develop or enhance workplace culture, where employees are responsible for their health and understand its importance
 - 36% are looking to develop/expand healthy lifestyle programs and activities
 - 29% said they would adopt/expand use of financial incentives to encourage healthy activities, use of higher-quality providers and other behavior changes



2014 19th Annual Towers Watson/ National Business Group on Health Employer Survey on Purchasing Value in Health Care, *The New Health Care Imperative: Driving Performance, Connecting to Value.*

Current Worksite Wellness Landscape

- **A majority of employers are offering some type of wellness program**
 - 79% currently offer wellness resources and information
 - 62% have a “wellness program”
 - 47% provide health screening programs and coaching
 - 42% offer smoking cessation programs



2014 Employee Benefits: An Overview of Employee Benefits Offerings in the U.S., a Research Report by the Society for Human Resource Management (SHRM)

Wellness Offerings Vary By Size

- **74% of employers offer at least one wellness program**
- **Employers with 200+ employees are more likely than smaller employers to offer wellness programs**
- **36% of large employers' wellness programs offer financial incentives, vs. 18% of small employers'**

Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 2014.

Incentive Programs Tied to Wellness

- In 2014, **42%** of employers were rewarding or penalizing employees based on **smoker/tobacco-use status**, while **22%** were rewarding or penalizing based on **other biometric outcomes**
 - 58% *plan* to incent tobacco use status and 46% *plan* to incent other biometric outcomes in 2015



2014 19th Annual Towers Watson/ National Business Group on Health Employer Survey on Purchasing Value in Health Care, *The New Health Care Imperative: Driving Performance, Connecting to Value.*

Don't Become a National News Headline

CVS Pharmacy Wants Workers' Health Information, or They'll Pay a Fine

-ABC News, March 20, 2013



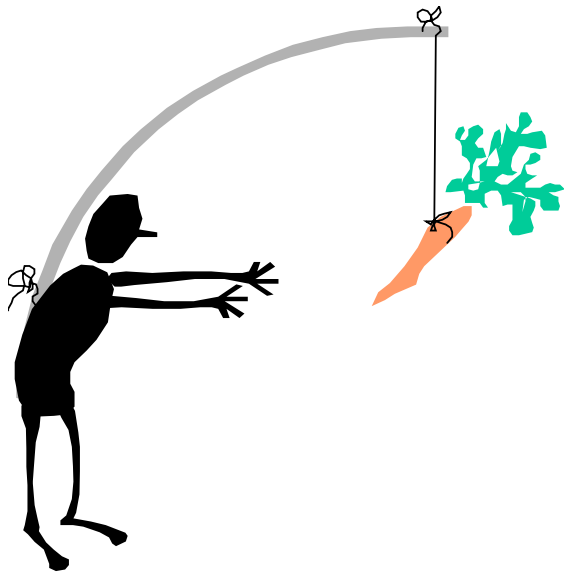
David Paul Morris/Bloomberg via Getty Images

EEOC Alleges Orion Energy Violated the ADA By Firing Worker Who Declined Wellness Plan

-Bloomberg BNA, August 25, 2014



Incentive Design Pitfalls



- Motivation for incentive is to penalize people, not improve health
- Incentives are posed (or perceived) as penalties vs. rewards
- Wellness programming focus is only on employees participating in Medical*
- Communication is inadequate
 - *Lacking, infrequent or too late*
 - *Messaging not engaging/understandable*
- Culture is not supportive of wellness
 - *No buy-in from senior and middle management*
 - *"The way we do things" conflicts with the message of wellness*

Recent Compliance Changes Affecting Wellness Incentive Design

- There are a number of compliance issues to consider when designing a wellness program
- New Final Rules released June 3, 2013
 - Incentives for Nondiscriminatory Wellness Programs in Group Health Plans, *Federal Register Vol. 78, No. 106*
- A lot of “grey area”
- Advice of counsel is important

Disclaimer

This presentation is intended to convey general information and is not an exhaustive analysis. This information is subject to change as guidance develops.

USI does not provide legal or tax advice.
For advice specific to your situation, please consult an attorney or other professional.

Health Insurance Portability and Accountability Act (HIPAA)

General Rule

- All group health plans and health insurance issuers are prohibited from conditioning eligibility in the health plan or discriminating with respect to premiums and/or contributions on the basis of a *health factor*
 - *Health factor* means health status, medical condition, claims experience, receipt of health care, medical history, genetic information, evidence of insurability, or disability

Wellness Program Exceptions

- Participatory wellness programs
- Health-contingent wellness programs

Participatory Wellness Programs

- Programs that either do not provide a reward or do not include any conditions for obtaining a reward that are based on an individual satisfying a standard that is related to a health factor
 - No extra “HIPAA rules” as long as participation is available to all similarly situated individuals, regardless of health status

Examples

- Reimbursing employees for all or part of the cost of membership in fitness centers
- A diagnostic testing program that provides a reward for participation and does not base any part of the reward on outcomes
- Reimbursing employees for the costs of participation, or providing a reward for participation, in a smoking cessation program without regard to whether the employee quits smoking
- Rewarding employees for attending a monthly, no-cost health education seminar
- Rewarding employees who complete a health risk assessment regarding current health status, without any further action required by the employee

Health-Contingent Wellness Programs

- Programs that require an individual to satisfy a standard related to a health factor to obtain a reward (or require an individual to undertake more than a similarly situated individual based on a health factor in order to obtain the same reward)
 - ▢ Activity-Only Wellness Programs
 - e.g., reward based on participation in walking, diet, or exercise programs
 - ▢ Outcome-Based Wellness Programs
 - e.g., reward based on not smoking or attaining certain biometric results
- Permitted under HIPAA, provided 5 requirements are met

1. Annual Opportunity for Qualification

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



2. Size of the Reward

- For plan years beginning on or after 1/1/14, cannot exceed 30% of the total cost of coverage under the plan (EE + ER contribution)
 - For tobacco cessation – reward can be up to 50%
- If dependents are eligible to participate, based on the cost of employee + dependent coverage
- Reward may be:
 - Discount or rebate of a premium or contribution (or absence of a premium surcharge)
 - Waiver of all or part of a cost-sharing mechanism (e.g., deductibles, copays)
 - Additional benefit
 - Any financial or other incentive related to the Plan

Reward Size Example

Employee-only total annual premium = \$6,000

Employer wishes to provide a health-contingent wellness program


- If offering non-tobacco incentive
 - 30% incentive = \$1,800 max incentive ($\$6,000 \times 30\%$)
- If offering only tobacco incentive
 - 50% incentive = \$3,000 max incentive ($\$6,000 \times 50\%$)
- If offering both tobacco and non-tobacco health-contingent incentive
 - Tested separately, must pass 30% / 50% rule

Affordability under PPACA

When assessing affordability (9.5%) under the Employer Mandate, the employer must use the non-compliant employee contribution rate (i.e., contribution without the wellness reward) in all cases except for incentives related to tobacco use

- Must base affordability on assumption that employee satisfied tobacco cessation program rules, even if they actually did not


*Non-incentive rate
used to assess
affordability for a
program that incentivizes
any other health-
contingent opportunity*



Example:

- Employee premium contribution if fail to meet criteria = \$300/month
- Employee premium contribution if meet criteria = \$200/month

*Incentive rate used to assess affordability
for a program that incentivizes tobacco use*



3. Reasonable Design

- Reasonable chance of improving the health of, or preventing disease in, participating individuals
- Not overly burdensome
- Not a subterfuge for discrimination based on a health factor
- Not highly suspect in the method chosen to promote health or prevent disease
- Facts and circumstances analysis



4. Uniform Availability and Reasonable Alternative Standards

- The same, full reward must be available to all similarly situated individuals who qualify by satisfying a reasonable alternative standard as is provided to individuals who qualify by satisfying the program's otherwise applicable standard
 - e.g., A tobacco user must be offered an alternative way to earn the same incentive as the non-tobacco user, typically by participating in a company-sponsored tobacco cessation program



4. Uniform Availability and Reasonable Alternative Standards (con't)

- Employers offered tremendous flexibility in determining what is “reasonable”
- Plan sponsor (employer) must assist the employee in finding a program and may not require an individual to pay for the program
- The time commitment required must be reasonable
- If the individual’s personal physician states that a plan standard is not medically appropriate for that individual, the Plan sponsor must provide a reasonable alternative standard that accommodates the recommendations of the individual’s personal physician re: medical appropriateness
- Reasonableness can be on an individual-by-individual basis; alternatively, may waive standard entirely
- For outcomes-based program, reasonable alternative standard must be made available to all individuals who don’t meet the initial program – not just those with a medical necessity

Examples of Reasonable Alternative Standards

- Engagement in health coaching
 - *e.g., complete calls with a health coach*
- Participation in a seminar
 - *e.g., attend the company's lunch 'n learn series*
- Completion of an alternative program that does not require meeting a standard/outcome
 - *e.g., self-paced online program, telephonic coaching, or onsite program on tobacco cessation, cholesterol control, etc.*
- Physician-recommended alternative

5. Disclosure

- No disclosure required if plan materials merely mention that a health contingent wellness program is available without describing its terms
- But if terms are described, the plan must disclose in all plan materials the availability of a reasonable alternative standard to qualify for the reward:

“Your health plan is committed to helping you achieve your best health. Rewards for participating in a wellness program are available to all employees. If you think you might be unable to meet a standard for a reward under this wellness program, you might qualify for an opportunity to earn the same reward by different means. Contact us at [insert contact information] and we will work with you (and, if you wish, with your doctor) to find a wellness program with the same reward that is right for you in light of your health status.”

Main Changes Between the New and Old Rules

OLD RULES	NEW RULES
Two types of wellness programs: participatory and health-contingent	Two types of wellness programs, with health-contingent subdivided into activity-only and outcome-based
The Plan may seek verification from a physician that a health factor makes satisfying the standard unreasonably difficult or medically inadvisable	Activity-only wellness programs <i>may</i> seek verification that it is unreasonably difficult or medically inadvisable to meet the standard, but outcome-based wellness program cannot
The employer and participant can determine the alternative standard	The Plan must accommodate the recommendations of an individual's personal physician in terms of a reasonable alternative standard for all health-contingent programs
For health-contingent programs, disclaimer language must be included in plan materials describing the terms of the wellness program	Disclaimer language updated to be easier to understand and indicate that recommendations of an individual's physician will be accommodated
Incentive maximum for health-contingent = 20% of total premium	Incentive maximum for health-contingent = 30% of total premium (50% for tobacco)

Additional Notes

- Compliance with HIPAA does not mean compliance with all other laws
 - ▢ Genetic Information Nondiscrimination Act (GINA)
 - ▢ Americans with Disabilities Act (ADA)
 - ▢ Patient Protection and Affordable Care Act (PPACA)
 - ▢ ERISA
 - Some questions on whether programs that offer “medical care” (e.g., flu shots and medical screenings) to non-Medical participants are subject to ERISA (including notice, disclosures, reporting, COBRA, etc.)
 - ▢ State and Local Laws
 - ▢ Federal Tax Code
 - ▢ etc.

Putting Incentives Into Action – Scenario #1



- ABC Company's CEO wants to penalize tobacco users by charging them more for their health insurance.
- Employees were required to sign a one-time tobacco affidavit at the last Open Enrollment indicating either that they were or were not currently tobacco users.
- In future years, if an employee wants their tobacco status changed, they must proactively request a new form from HR.

Putting Incentives Into Action – Scenario #1

Issue	Recommendation
Compliance	
Program does not provide an annual opportunity to qualify for incentive	Be sure to offer <i>at least</i> an annual opportunity to qualify
No alternative standard is available or advertised	Include disclosure notice and provide and pay for reasonable alternative standard; also, be prepared to accommodate physician's request for alternative
Health Promotion	
May be perceived by some employees as an attempt to discriminate vs. improve health	Clearly communicate program's intention and resources: <i>"At ABC Company, we care about employee's health. We recognize that tobacco is an addiction and for those of you who want to quit, we want to encourage you and offer you help. Complete the no cost tobacco cessation program we are offering and you can earn the reward rate."</i>
Doesn't encourage people to even make a quit attempt	
Doesn't provide tobacco cessation assistance or build a culture of health	

Putting Incentives Into Action – Scenario #2

- ABC Company's CEO heard that the new regulations allow employers to tie 30% of medical premiums to measures of health status like blood pressure, weight and cholesterol levels.
- ABC Company has never before focused on or communicated the importance of employee health and wellness
- The CEO wants to offer screenings at next month's open enrollment and, based on the results, implement a premium differential for the upcoming plan year.

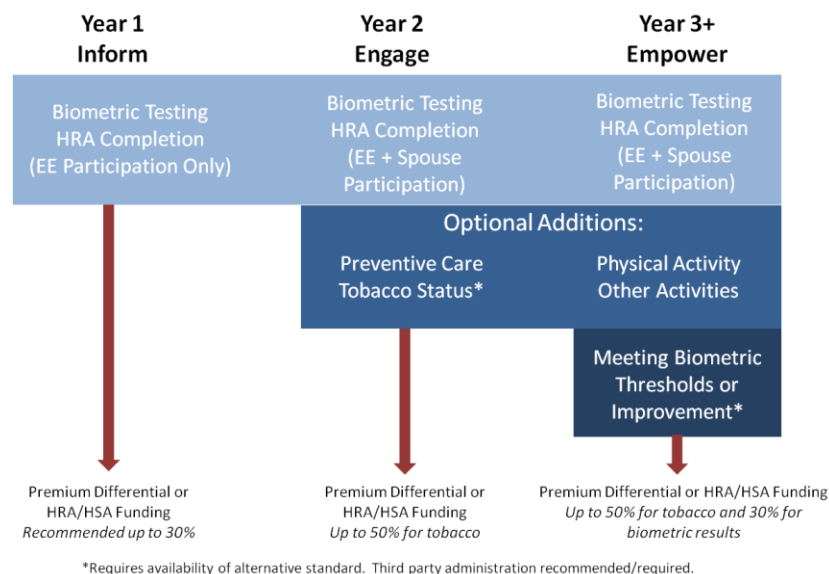
Putting Incentives Into Action – Scenario #2

Issue	Recommendation
Compliance	
Program does not provide a reasonable amount of time to meet the standard	Implement a more gradual incentive approach. When migrating to a health-contingent approach, allow adequate time for people to meet the standard or alternative.
No alternative standard is available or advertised	Include disclosure notice and provide and pay for reasonable alternative standard; also, be prepared to accommodate physician's request for alternative
Health Promotion	
Program design doesn't convey a "culture of health" approach	Consider this as part of a larger, long-term strategy
Timeline for communications and program are too short	Communicate early and often
Little consideration for how to administer this type of program and maintain employee privacy	Partner with a third-party vendor to administer

Putting Incentives Into Action – Scenario #2

Health Promotion Remedy:

- Take a well-designed, progressive approach
- Identify a partner to track and report incentives in a way that maintains employee privacy
- Remember that the incentive strategy is only one aspect of a comprehensive wellness strategy



Putting Incentives Into Action – Scenario #2

Carefully craft messaging to gain employee buy-in and give notice about future plans

“At ABC Company, we want employees to achieve their optimal level of health. To be healthy, it’s important to establish a relationship with a health care provider and know where our health currently stands. We can’t improve what we don’t know! To encourage you to take these steps, we’ll be offering a reduced premium to everyone who visits their doctor for an annual physical with biometric testing and completes a health risk assessment online. Be assured that ABC Company will not see your specific data. All we will know is who earns the incentive.

Also, keep an eye out for information about additional wellness opportunities and programs we’ll be releasing soon to help you achieve your best you.”

What Now?

- If you currently have a wellness program (with incentives) in place, review it for compliance against the newly released guidance
 - *Especially applies if you are offering a health-contingent wellness program (even tobacco!)*
- If you are considering implementing a wellness program (with incentives), design a strategy in light of the newly released regulatory guidance
- Step back and consider opportunities and strategies to embed health and wellness into the culture of the organization

Thank you!

- **Juli Dennis, MS, CHES**
Director, Wellness & Population Health Mgmt.
juli.dennis@usi.biz
- **Ali Esfahani, JD**
Regional Director of Compliance & ERISA Attorney
ali.esfahani@usi.biz