



January 25, 2013

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
U.S. Department of Labor
<http://www.regulations.gov>

Attention: Wellness Programs

Thank you for the opportunity to comment on the proposed rules for Incentives for Nondiscriminatory Wellness Programs in Group Health Plans, published in the November 26, 2012 *Federal Register*. The National Committee for Quality Assurance strongly supports nondiscriminatory wellness programs. They help people to actively engage in improving their own health, which improves outcomes and lowers health care spending. We promote good wellness programs through our Wellness and Health Promotion Accreditation program.

Your proposed rule has potential to support good programs while providing strong consumer protections and clear guidance to employers. This could help to alleviate concerns about discrimination and litigation that have shadowed otherwise broad enthusiasm for good programs. To achieve this goal, however, requires a clearer definition of what constitutes reasonable program design and reasonable alternatives for those who cannot participate and/or meet targets.

Defining ‘Reasonable Program Design’

We recommend that you look at our Wellness and Health Promotion Accreditation program standards to establish a clearer definition of ‘reasonable program design.’

This is especially important on key areas of concern such as reasonable alternative or waiver if it is “unreasonably difficult due to a medical condition” or “medically inadvisable”

You should also look to recommendations published last year in a consensus statement of the Health Enhancement Research Organization, American College of Occupational and Environmental Medicine, American Cancer Society and American Cancer Society Cancer Action Network, American Diabetes Association, and American Heart Association.¹ This will give employees, employers and vendors confidence that compliance with your final rules will provide strong protection against potential discrimination and litigation.

There is wide agreement that NCQA-accredited wellness programs protect employee rights, promote health through evidence-based services and are not the subterfuge for discrimination that federal law prohibits.

Our Wellness and Health Promotion Accreditation program requires program vendors to document that they meet clear, high standards for:

- Health appraisals and coaching;
- Targeted preventive health services;
- Identification and follow-up, including referral tracking for individuals with wellness or health promotion needs;
- Evidence-based services to increase health awareness and health management skills, including access to self-management tools and opportunities for engagement;
- Protections for participants’ confidential information;
- Easy-to-understand information about incentives;
- Alternatives for people with medical conditions or other difficulties in achieving wellness and health promotion goals; and
- Evaluating the effects of incentives at least once every two years.

We developed our standards with a literature review, advisory council of consumers, employers, vendors, plans and academics, as well as public comment solicitation. We are now using the same process to review and strengthen our standards, with a public comment solicitation set to begin this February. We would be happy to share the updated standards as soon as they are final.

¹ *Guidance for a Reasonably Designed, Employer-Sponsored Wellness Program Using Outcomes-Based Incentives* © 2012 American College of Occupational and Environmental Medicine, http://www.acoem.org/uploadedFiles/Public_Affairs/Policies_And_Position_Statements/JOEM%20Joint%20Consensus%20Statement.pdf

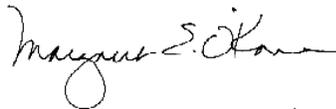
Reporting Standardized, Audited Performance Measures

We further urge you to encourage reporting of standardized, audited performance measures and require reporting in future rule making. We encourage vendors to annually report standardized, audited measure by requiring re-accreditation every three years instead of our two-year reaccreditation requirement for those who do not report.

We do not now require all vendors to report standardized, audited measures as some have not yet developed the capability, but expect to require such reporting in the future. The majority of NCQA-accredited vendors now do so. Once we can benchmark the results, we will be able to provide apples-to-apples comparisons of different programs' effectiveness and insights on the features that best impact behaviors and outcomes.

Thank you again for the opportunity to share our thoughts. If you have any questions please contact Paul Cotton, Director of Federal Affairs at cotton@ncqa.org or 202 955 5162.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret O'Kane". The signature is fluid and cursive, with a large initial 'M' and 'O'.

Margaret O'Kane,
President