
The Honorable Timothy Geithner
Secretary
U.S. Department of Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

The Honorable Hilda L. Solis
Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Ave., SW
Washington, DC 20201

January 25, 2013

*Attn: Wellness Programs, Proposed Rule on Incentives for Nondiscriminatory Wellness Programs in Group Health Plans*

Dear Secretaries Geithner, Solis, and Sebelius:

The American College of Physicians (ACP), the largest medical specialty organization and the second-largest physician group in the United States, appreciates the opportunity to provide comments regarding the proposed rule on incentives for nondiscriminatory wellness programs in group health plans issued by the Departments of Labor, Treasury, and Health and Human Services published in the *Federal Register* on November 26, 2012. ACP members include 133,000 internal medicine physicians (internists), related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific

knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness.

ACP recognizes that chronic disease is a serious threat to the health of all Americans as well as the fiscal solvency of the nation's health care system and supports wellness, preventive care, and chronic disease management as ways to improve patient health and control growing health care costs. College policy recommends that employers and health plans should fund programs proven to be effective in reducing obesity, stopping smoking, deterring alcohol abuse, and promoting wellness and providing coverage or subsidies for individuals to participate in such programs.[i] Regarding tobacco use, ACP suggests that health plans should provide all effective comprehensive tobacco cessation and treatment benefits – including counseling and medication – to all qualifying individuals.[ii]

Wellness programs have the potential to provide a high return on investment for employers while improving the health status and productivity of employees. According to a literature review of workplace wellness programs, medical costs dropped by $3.27 for every dollar spent on wellness programs and employee absenteeism costs were reduced by $2.73 for every dollar spent.[iii] Tobacco cessation programs have also shown to be a crucial part of a user's efforts to quit. Smokers have a significantly higher chance of quitting and staying tobacco free when assisted by smoking cessation medication and/or counseling.[iv,v]

<u>Encourage Healthy Behavior through Evidence-Based Wellness Programs that Reward Rather than Penalize</u>

The College strongly believes that wellness programs must not be used as a means to discriminate against the sick and vulnerable. Wellness programs must be developed to encourage prevention and improve health rather than penalize those who are medically unable to meet wellness program goals.

While patients are to an extent responsible for their own health, there are many determinants that affect health status over which patients have little or no control and wellness programs must consider such variables. A person may be able to reduce their blood pressure through improved diet and regular exercise, but they may not be able to control the health effects of environmental pollution, genetics, and limited access to health care providers. A poorly-designed wellness program that bases premiums or cost-sharing on meeting health outcomes may have the effect of medical underwriting, a practice that the ACA largely eliminates. Wellness programs must also protect the privacy of participants and ensure that a person's health status or other sensitive information is not disclosed to an employer. Future rules should provide detail as to how non-discrimination requirements and patient privacy safeguards will be enforced.

The College cautions the use of any wellness program that negatively penalize participants who are unable to meet program goals; instead, the College recommends that wellness programs provide "carrots" rather than "sticks" to encourage healthy behavior. College policy states that programs designed to affect behavior change must be fair to all and "the incentive structure must not penalize individuals by withholding benefits for behaviors or actions that may be beyond their control."[vi] To further protect patients and promote cost effectiveness, ACP recommends that, in keeping with the requirement that health-contingent wellness programs be "reasonably designed," employers and health plans use evidence-based wellness programs that are proven to reduce unhealthy behaviors and improve patient wellness. This is especially important for health-contingent wellness programs, where participants qualify for rewards when they satisfy a health outcome measure such as lower body mass index or blood pressure. One proposal suggests that a respected scientific body, such as the Institute of Medicine, evaluate and provide standards for effective workplace wellness programs while another suggests creating a grant program to evaluate wellness initiatives.[vii,viii]

Minimize the Administrative Burden on Physicians and Their Staff

The College appreciates that the proposed rule states that plans must abide by the recommendations of the individuals personal physician if they believe that the program has imposed a wellness plan that is not medically appropriate for the patient. This safeguard will protect the doctor-patient relationship and ensure that wellness programs are developed in a way that does not interfere with or have a negative impact on a patient's treatment. Such protections will also ensure that programs that seek to affect patient responsibility do not counter the principles of medical ethics and professionalism.

The proposed rule clarifies that a plan or issuer may seek physician verification that a health factor makes it unreasonably difficulty for the individual to satisfy the otherwise applicable standard unless the claim is obviously valid based on the nature of the individual's medical condition. ACP is concerned that plans may impose an undue administrative burden on physicians and their staffs in attempting to validate such claims. Physicians and their staffs spend significant time and money on interacting with health plans, reducing the time they can spend with patients. On average, primary care physicians spend a total of 3.5 hours per week dealing with health plans. The administrative cost is substantial, as an average primary care physician spends $64,859 a year interacting with insurers.[ix]

Ensuring that an individual's personal physician is involved in wellness activity is crucial, but wellness programs must not impose an additional administrative burden or an unfunded mandate on doctors and their staffs. Future rules should establish policies to minimize the paperwork and administrative burden placed on doctors and require that health plans reimburse physicians in a timely manner for such consultations.

Conclusion

The American College of Physicians appreciates the opportunity to comment on this important matter. The College believes that - providing patient privacy protections are in place, nondiscrimination rules are strongly enforced, and physician administrative cost and burden is minimized - evidence-based wellness

programs can have a positive impact on health by encouraging prevention and discouraging unhealthy behaviors.

Sincerely,

David Bronson, MD FACP
President

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[i] American College of Physicians. Controlling Health Care Costs While Promoting the Best Possible Health Outcomes. Philadelphia: American College of Physicians; 2009: Policy Monograph.

[ii] American College of Physicians. Tobacco Control and Prevention. Philadelphia: American College of Physicians; 2010: Policy Monograph.

[iii] Baicker K, Cutler D, Song Z. workplace Wellness Programs Can Generate Savings. *Health Affairs. 2010;29(2)*

[iv] American Cancer Society. Guide to quitting smoking: a word about quitting success rates. January 11, 2013. Accessed at http://tinyurl.com/d2sfot4 on January 15, 2013.

[v] Tobacco Use and Dependence Guideline Panel. Treating Tobacco Use and Dependence: 2008 Update. Rockville (MD): US Department of Health and Human Services; 2008 May. Accessed at: http://www.ncbi.nlm.nih.gov/books/NBK63952/ on January 15, 2013

[vi] American College of Physicians. Ethical Considerations for the Use of Patient Incentives to Promote Personal Responsibility for Health: West Virginia Medicaid and Beyond. Philadelphia: American College of Physicians; 2010: Position Paper.

[vii] National Institute for Health Care Management. Building a Stronger Evidence Base for Employee Wellness Programs. May 2011. Accessed at http://www.nihcm.org/pdf/Wellness%20FINAL%20electonic%20version.pdf on January 16, 2013.

[viii] Yach D and Dugas J. Evidence-Based Wellness Programs. *Health Affairs.* 2013;32(1):193.

[ix] Levit K, Smith C, Cowan C, Sensenig A, Catlin A. Health spending rebound continues in 2002. *Health Affairs. 2004;23:147-59.*