



January 25, 2013

Daniel Maguire  
Office Director  
Office of Health Plan Standards and Compliance Assistance  
Employee Benefits Security Administration  
Room N-5653  
U.S. Department of Labor  
200 Constitution Ave. NW  
Washington, DC 20210

Attention: Wellness Programs

***Submitted online at [www.regulations.gov](http://www.regulations.gov)***

Dear Mr. Maguire:

The National Business Coalition on Health (NBCH) appreciates the opportunity to provide comments on the proposed rule, Incentives for Nondiscriminatory Wellness Programs in Group Health Plans. Wellness and prevention are critical issues for employers as they seek to maintain a healthy and productive workforce. We are encouraged by the direction the ACA provides employers to offer strong incentives to their employees who take an active role in their health and health care.

The National Business Coalition on Health (NBCH) is a national non-profit membership organization of purchaser-led health care coalitions. NBCH and its members are dedicated to value-based purchasing of health care services through the collective action of public and private purchasers. NBCH seeks to accelerate the nation's progress towards safe, efficient, high-quality health care and the improved health status of the American population. NBCH has a membership of 54 coalitions across the United States representing over 7,000 employers and approximately 25 million employees and their dependents. These business coalitions are comprised of mostly mid- and large-sized employers in both the private and public sectors in a particular city, county, or region. NBCH member coalitions are committed to community health reform, including an improvement in the value of health care provided through employer-sponsored health plans and to the entire community. Many of our members are active in assisting their employer members in offering wellness programs, including offering access to worksite clinics.

#### Applicability to all plans, regardless of grandfather status

We are pleased to see that the government intends to apply the new wellness program standards to both grandfathered and non-grandfathered plans. While grandfather status is important in other contexts related to health reform, there is no reason to delay allowing employers to offer stronger incentives to employees who take ownership of their health and health care. Please ensure that this standard remains in the final rule.

#### Stronger shift toward health-contingent wellness programs

While participatory wellness programs and incentives are important, employers recognize that improving the overall health and productivity of the workforce comes from employees actually improving their health status or avoiding illness in the first place. Stronger mechanisms by which to catalyze employees to take affirmative steps toward achieving a healthier lifestyle are welcomed by employers.

Wellness and prevention programs sit at an important intersection between employee benefits and public health. Simply put, when it comes to wellness, health, and productivity, employers are engaged in population health management. Employers are interested in making investments in managing their employee populations, and are often in a strong position to do so, given the overall importance of the employer-employee relationship.

#### Fair and reasonable alternative standards

We understand and appreciate the necessity for employers to “meet employees where they are” and ensure that wellness programs truly are designed to promote health and/or prevent disease. Our members and their employer members understand that wellness programs cannot be designed as a subterfuge for medical underwriting, or otherwise be used in a discriminatory manner. Strong consumer protections are necessary, but must be reasonable and implemented in a way that is not overly burdensome to either the employer or the employee seeking to use the alternative standard. We welcome the clarification in the proposed rule that employers are not required to anticipate all potential needs for alternative standards and can wait to establish an alternative standard until an employee asks for one.

While we appreciate this clarity and the acknowledgement that requiring such anticipation by employers would be very burdensome, we request that the government place some outer bounds around such alternative standards, perhaps by way of illustrative examples. Employers should not be expected to create an individualized wellness program for each individual employee who requests an alternative standard. Surely that would be unreasonably burdensome for employers. We would welcome some additional guidance about whether and how to create sub-classifications of employees and what kinds of alternative standards would be acceptable for those groups, keeping in mind that the employees seeking the alternative standards may be the employees most in need of the wellness intervention being incented.

#### Measurement and evaluation

We are encouraged by the proposal for the government to fully support data collection, measurement, and evaluation of wellness and prevention programs and interventions. While potential cost savings should not be the only motivation for an employer to offer a wellness program, employers are interested in seeing a positive return on investment in a wellness program, both in terms of real dollars saved, as well as increased productivity. Any activity the government can undertake to assist employers in measuring and evaluating wellness interventions should be strongly encouraged, and data should be

freely shared and publicly available. Perhaps the government might even consider forming and sponsoring learning collaboratives or networks of employers and others interested in wellness program efficacy to provide a forum for discussing these important issues.

NBCH and its members appreciate your thoughtful consideration of these comments on the proposed regulations. If you have any questions about these comments or wish to discuss anything further, please contact Colleen Bruce, Director of Value-Based Purchasing and Public Policy at (202) 775-9300 or [cbruce@nbch.org](mailto:cbruce@nbch.org).

Sincerely,

A handwritten signature in black ink that reads "Andrew Webber". The signature is written in a cursive, flowing style.

Andrew Webber  
President and CEO