Wellness Program Illustration

BimGroup

Now more than ever, **wellness plans** are being scrutinized. These plans are regulated by ERISA, PPACA, HIPAA, EEOC, ACA, GINA, COBRA, FLSA, ADEA and more! No matter the reason or desired outcome, at the foundation of any wellness program is compliance. Understanding the myriad of regulatory requirements is crucial to a successful and compliant wellness program.

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. These programs may be purely educational, while others offer financial incentives. There are four common types of employer-sponsored wellness programs:

(1) General educational or participatory & not health plan-related
    a. Designed to provide general health information.
        i. Voluntary – does not require access or engagement
    b. Designed to promote healthy lifestyle choices
        i. Include some type of health-related activity
        ii. Voluntary
        iii. No reward or the reward is not tied to the health plan
(2) Participatory & health plan-related
    a. Require participation in a health-related activity
        i. Reward is not tied to the results of participation.
        ii. Health plan-related (i.e. biometric screening)
(3) Activity-only & health plan-related
    a. Activity only
        i. Requires completion of a specific activity in order to receive reward
(4) Outcome-based & health plan-related
    a. Based on either the existence of a particular health condition or the results of a test such a biometric screening, and
    b. The reward is tied to participation in the health plan.
    c. Outcomes-based because they require the individuals to satisfy a health-related standard in order to receive the reward.

Due to the numerous regulatory agencies that govern wellness programs and the complexity of plan designs, we designed this brief overview with illustrations of varying wellness programs ranked from the least complex (less risk, less compliance) to the most complex approach (compliance risk, unknown variables) for your information.

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Activity-Only Programs

An activity-only program is a program that will fall under *general educational or participatory & not health plan-related or participatory & health plan-related*. This type of program requires the individual to perform or complete an activity related to a health factor in order to obtain the wellness reward. However, the person simply needs to complete the activity, and not achieve specific results, to receive the reward. An activity-only program includes things like:

- A walking program
- Nutrition counseling
- A smoking cessation program, if the program does not have a target health measure

It may include programs that require individuals with certain health factors – such as those who have unhealthy body mass indexes (BMIs), blood pressure levels, etc. – to participate in educational programs, even though they only need to attend the programs, because those individuals are required to do more to get the reward than those who have healthy levels.

Health-Contingent (Activity- or Outcome-Based) Program Requirements

A health-contingent wellness program must meet all five of these requirements:

1. Be reasonably designed to promote health or prevent disease (the same rules apply to activity-only and outcome-based programs).

2. Give employees a chance to qualify for the incentive at least once a year (the same rules apply to activity-only and outcome-based programs).

3. Cap the reward or penalty at 50% of the total cost of coverage for avoiding tobacco and at 30% for all other types of wellness incentives (the same rules apply to activity-only and outcome-based programs).

4. Provide an alternative way (reasonable alternative) to qualify for the incentive for those who have medical conditions (different rules apply to activity-only and outcome-based programs).

5. Describe the availability of the alternative method of qualifying for the incentive in written program materials (the same rules apply to activity-only and outcome-based programs).

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Least Complex / Least Risk		Moderately Complex / Moderate Risk			Most Complex / Most Risk
Plan 1	Plan 2	Plan 3	Plan 4	Plan 5	Plan 6

Plan 1

- Wellness Program applies to employees only and is 100% voluntary and offers $0 incentives.
    - Workplace posters with tips on how to avoid the flu
    - Newsletters with articles on healthy eating and weight loss
    - Healthy food choices in vending machines/cafeteria
    - Lunch and Learns

Plan 2

- Wellness Program applies to employees only and is 100% voluntary and offers $0 incentives. It may include a drawing for a gift card*. Examples include:
    - Workout equipment available to employees onsite to use during lunch, before or after work
    - A lunchtime walking program without regard to outcome*
    - Financial Wellness course
    - Flu Shots and Other Screenings
    - Individualized health coaching – 100% voluntary

Plan 3

- Wellness Program applies to employees only and includes an outcome or activity-based requirement if the employee participates in:
    - Tobacco User - A smoking cessation class – 100% voluntary, no incentives.
    - Health Plan Participant - Complete a health risk assessment – 100% voluntary, no incentives.
    - Health Plan Participant - Biometric screening – 100% voluntary, $10 gift card to all participants
    - Actively participates in a gym membership – 100% voluntary, membership reimbursement.
    - Humana Go365 program – 100% voluntary, Built-in incentives, no payroll incentives.

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Plan 4

- Wellness Program applies to employees only and includes and outcome or activity-based requirement and includes $150 monthly premium reduction (incentive) if an employee completes:
    - A health risk assessment, or
    - Biometric testing, or
    - Tobacco free affidavit
    - Humana Go365 program – 100% voluntary, Built-in incentives AND payroll incentives
    - Points Program – participants earn points for completing activities; payroll incentive contingent on points earned in designated timeframe.

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Plan 5

- Wellness Program applies to employees and spouses, and it includes and outcome or activity-based requirement and includes $150 monthly incentive for both the employee and the spouse, if one or both:
    - Participate in a walking program by walking 30 minutes every day, or
    - The employee and/or spouse have a body mass index below 30 (or Cholesterol below 200, blood pressure below 130/85, etc.)

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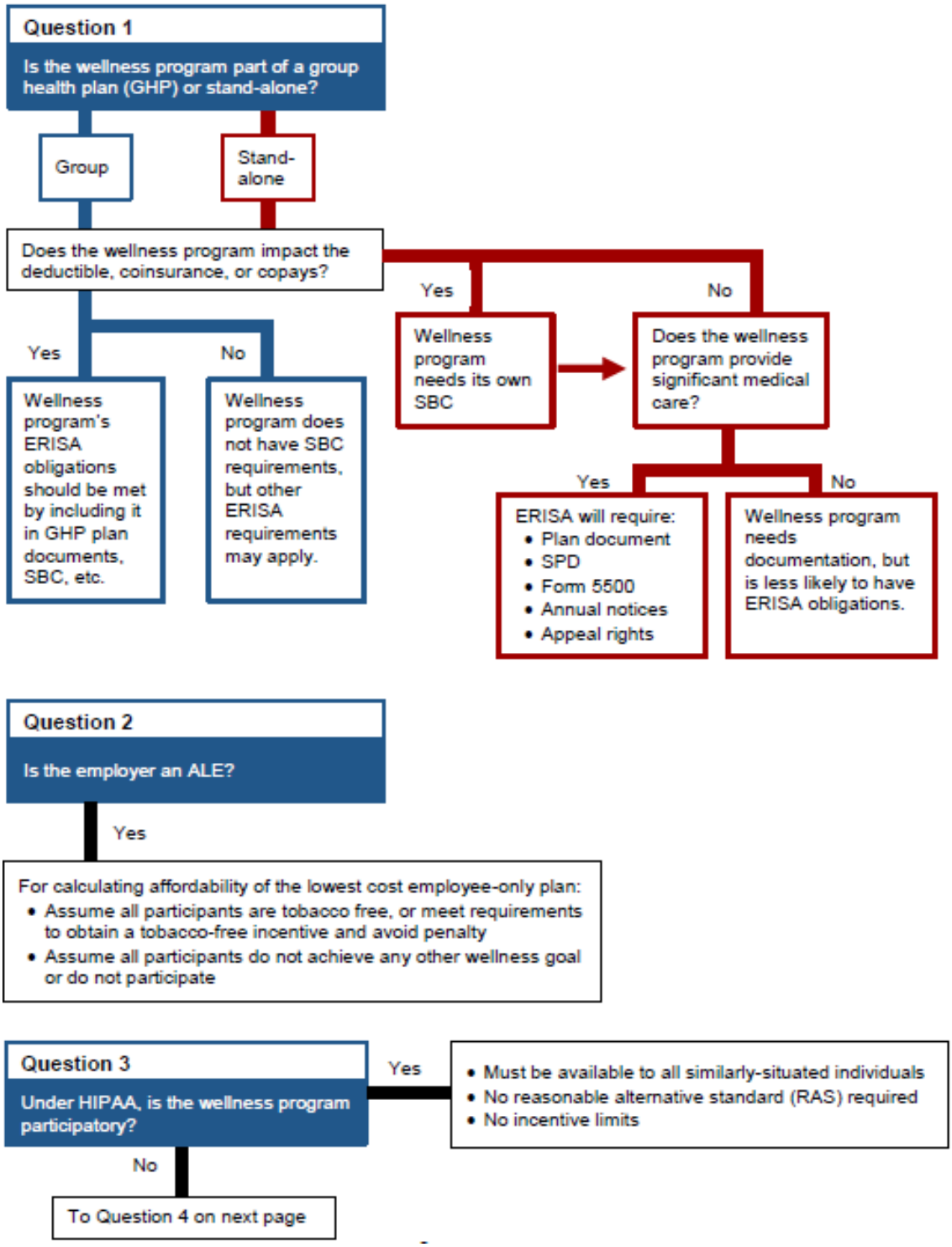
Plan 6

- Wellness Program applies to employees and spouses, and it includes an outcome or activity-based requirement and includes $150 monthly incentive for both the employee and spouse, if one or both:
    - Complete a health risk assessment ($100 incentive), and
    - Complete biometric testing ($50 incentive)
    - Tobacco Free
        - Payroll Incentives for Tobacco/Non-Tobacco/Engaged/Non-Engaged

***Director of Compliance Payroll Deduction Analysis and ACA Affordability Testing**

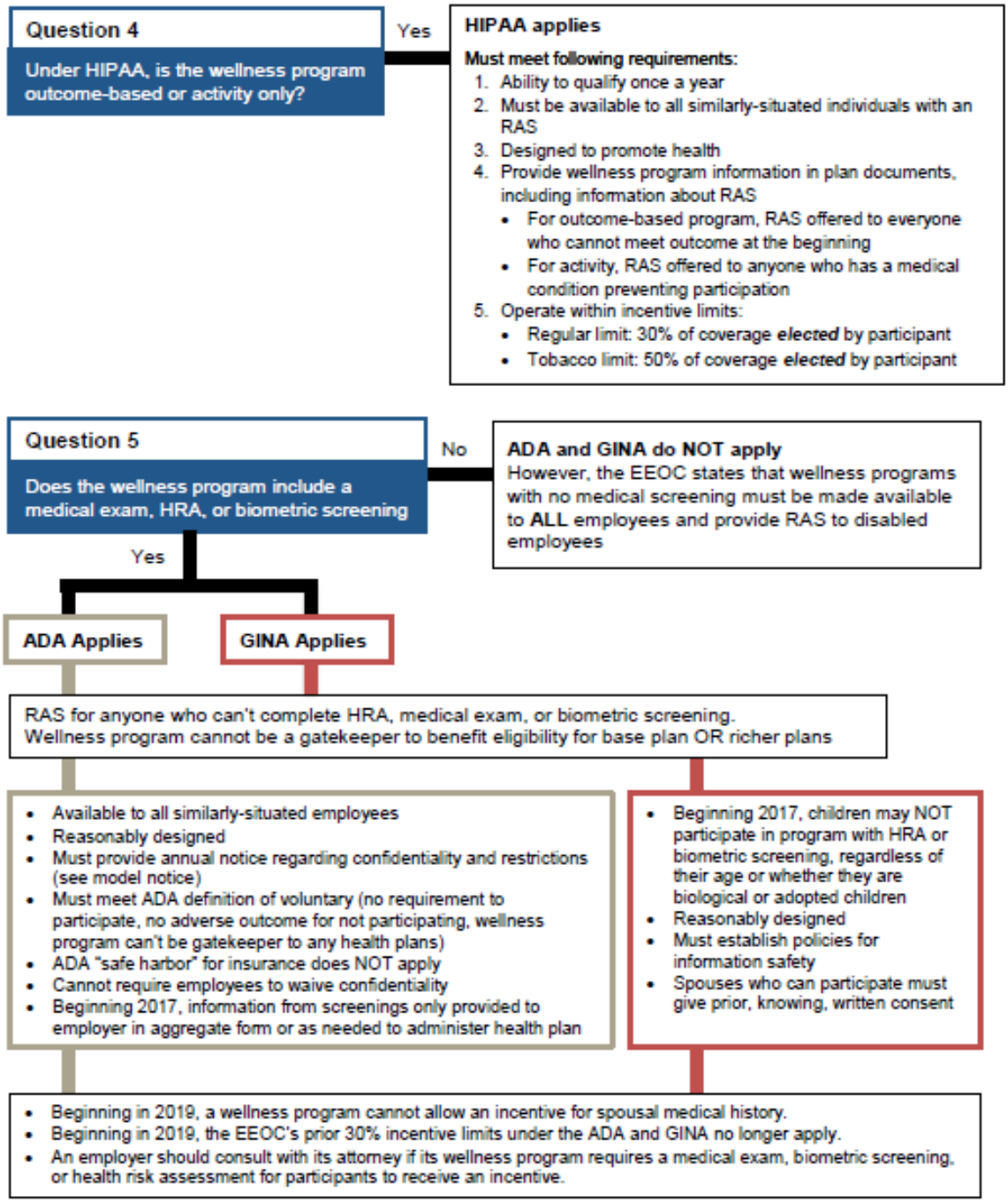
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Flow Chart of Wellness Regulations



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Revised: May 30, 2019

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ADDITIONAL FACTORS TO CONSIDER

1. **ERISA:** Wellness program sponsors need to consider a wellness program's requirements under ERISA.
    a. If the program is integrated with the Group Health Plan (GHP), include the wellness program information in the GHP documents and SBC.
    b. If the program is stand-alone, it may require separate documentation.
    c. Does the program affect the GHP's deductibles, coinsurance and copays? And/or does it provide significant medical care?
        i. If the answer is yes, the plan may be an ERISA plan, and therefore subject to HIPAA and plan documentation, summary plan descriptions, form 5500 filing, notices, appeal rights and a summary of benefits and coverage (SBC). If the wellness program simply affects premiums, the SBC is not required.

2. **ACA Affordability and Minimum Value:** Determine if the employee's share of the premium is affordable (less than 9.86% for 2019 of the employee's safe harbor income).
    a. The premium for non-smokers will be used to determine affordability (even for smokers).
    b. Any other type of wellness incentive must be disregarded; employers must assume that no one earned the incentive when calculating affordability.

3. **IRS:** Cash or gift cards of any amount are taxable. Non-cash gifts are taxable unless they are found to be de minimums. (and these rewards apply to the total incentive limits under HIPAA).

4. **EEOC / ADA / GINA:** EEOC vacated the ADA and GINA incentive limits (capped at 30%) in December 2018. Employers must choose risk tolerance until new regulations are released. (0% low risk; 20% moderate risk; 30% high risk).

5. **GINA:** Prohibits GHPs and health insurance issuers from adjusting the group premium OR contribution amounts on the basis of genetic information. This information is often obtained through the use of Health Risk Assessments.

6. **Spouses:** Employers are permitted to includes spouses (but not dependent children) in a wellness program – and they may include biometric and health risk assessments on a voluntary basis, if the employer follows GINA's rules about requesting genetic information when offering health or genetic services. Spouses must qualify separately for incentives.

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