



January 25, 2013

Submitted electronically via the Federal Rulemaking portal at www.regulations.gov

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

Attention: Wellness Programs

To Whom It May Concern:

Thank you for inviting comments on the Notice of Proposed Rulemaking (NPRM) for Incentives for Nondiscriminatory Wellness Programs in Group Health Plans. The University of Michigan Center for Value-Based Insurance Design (V-BID) is pleased to offer these comments on the NPRM. The University of Michigan Center for V-BID (the Center) leads in research, development, and advocacy for innovative health benefit plans and payment reform initiatives. Established in 2005, the Center works to connect the research community and implementers, including employers, plan designers, and policymakers.

Overview of Value-Based Insurance Design

V-BID—hailed as a “game changer” by the National Coalition on Health Care—refers to insurance designs that vary consumer cost-sharing to distinguish between high-value and low-value health care services and providers. V-BID entails (1) reducing financial barriers that deter use of evidence-based services and high-performing providers, and (2) imposing disincentives to discourage use of low-value care. The more beneficial the service, the lower the patient’s out-of-pocket cost. Through the incorporation of greater clinical nuance in benefit design, payers, purchasers, taxpayers, and consumers can attain more health for every dollar spent.

Key stakeholders are recognizing the merit of V-BID in ever-increasing numbers, as reflected in: the inclusion of a new Section 2713 of the Public Health Service Act in the Affordable Care Act (requiring first dollar coverage for primary preventive services in non-grandfathered health plans); the creation of the Connecticut Health Enhancement Program (offering substantial savings for state employees who commit to evidence-based care regimens); and the adoption of V-BID elements in the health plans of numerous private employers and health plans, including Pitney Bowes and Marriott. Plan confidence in V-BID is well-grounded; the evidence clearly indicates that V-BID can improve health and promote productivity without raising costs.

As mentioned, V-BID's primary goal is to encourage individuals to use high-value services in order to live healthier lives and achieve better health. When combined with wellness programs, V-BID allows businesses to maximize their investment in employee health. V-BID can integrate existing wellness and health management programs to more wisely invest in those employees who most need care and to expand preventive services to those at risk of developing a health condition.

In Support of the Agencies' Approach

Plan sponsors have vested interests in the health and productivity of their beneficiaries and the long-term costs of their health care coverage. It is of utmost importance that plans and employers have tools at their disposal to encourage consumers—especially high-risk consumers—to achieve the best possible levels of health and productivity. In addition, the Center contends properly designed wellness programs can improve the long-term affordability of employer-sponsored health coverage. The regulatory approach outlined in the NPRM enables employers to advance these critical goals.

The Center supports the NPRM's emphasis on flexibility. The agencies permit exciting and worthwhile innovation by avoiding rigid adherence to empirically-evaluated models. Avoiding rigidity is critical, since the evidence for effective health promotion and chronic disease management is constantly evolving, and best practices in this area are not known with certainty.

The V-BID Center also applauds the clarification that "participatory wellness programs"—defined as programs made available to all similarly situated individuals and programs that do not condition obtaining a reward on an individual satisfying a standard that is related to a health factor—are not required to meet the five requirements applicable to "health-contingent wellness programs." The proposed rule lists examples of participatory wellness programs, including:

- a fitness center reimbursement program;
- a diagnostic testing program that does not base any reward on test outcomes;
- a program that waives consumer cost sharing for prenatal or well-baby visits;
- a program that reimburses employees for the costs of smoking cessation programs regardless of whether the employee successfully quits smoking; and
- a program that provides rewards for attending a free health education seminar.

The Center concurs these programs are valuable and notes many existing V-BID programs fall within this category of "participatory wellness programs." Yet, as V-BID advances and as more employers and health plans implement clinically-nuanced plan designs, the Center anticipates more employers and health plans will pursue "health-contingent wellness programs." The Center contends V-BID based health-contingent wellness programs meeting the five criteria outlined in the regulation have the potential to improve health outcomes and lower long-term costs. The regulation clarifies the five criteria plans must meet and proposes important changes included in the Patient Protection and Affordable Care Act, including:

- giving individuals eligible for the program the opportunity to qualify at least once a year;
- ensuring the size of the reward does not exceed 30 percent of the total cost of employee-only coverage under the plan (or 50 percent if the additional percentage is in connection with a program designed to prevent or reduce tobacco use);
- providing uniform availability and reasonable alternative standards;
- ensuring the program is reasonably designed to promote health or prevent disease; and
- disclosing in all plan materials the availability of other means of qualifying for the reward or the possibility of waiver of the otherwise applicable standard.

The Center strongly supports the continued inclusion of these employee safeguards in health-contingent wellness program design. The broad range of permissible health-contingent wellness program designs will encourage the creation and implementation of programs that can offer significant, attention-capturing incentives for the small minority of employees who consume a majority of employer health care expenditures. With the benefit of these guidelines, the Center anticipates the accelerated spread of initiatives like the Connecticut Health Enhancement Program that tie substantial financial incentives (\$1,200+) to adherence with age and gender recommended preventive care, and condition-appropriate, evidence-based services to manage chronic clinical conditions.

Furthermore, the flexibility to leverage 30 percent of the total cost of coverage (50 percent for tobacco-related wellness programs) represents a promising opportunity for plan sponsors to use the resultant savings from disincentives to pay for the increased use of subsidized high-value care. For example, higher employee premiums charged to smokers who refuse to engage in a reasonably-designed tobacco cessation program can be used to offset the cost of heavily-subsidized programs for smokers who attempt to quit.

Conclusion

The V-BID Center writes in support of the proposed rule and agrees with the Administration's statement "the Departments believe that appropriately designed wellness programs have the potential to contribute importantly to promoting health and preventing disease". The Center encourages the agencies to issue final guidance that is in keeping with the flexible philosophy of the regulation. Finally, the Center believes these same opportunities to promote health and prevent disease should be extended to individuals purchasing health insurance.

On behalf of the University of Michigan V-BID Center, thank you again for the opportunity to comment. Please contact me if you would like to discuss any of these issues in further detail.

Sincerely,



A. Mark Fendrick, MD

Professor of Internal Medicine and Health Management & Policy

Director, Center for Value-Based Insurance Design, University of Michigan