

# Protect Women and Families From Discrimination

Prevent Employer “Wellness” Programs From Unfairly Increasing Health Insurance Premiums

## ISSUE BRIEF

*Congress is considering significant changes to the rules governing employer wellness plans. These changes include provisions that would allow employers offering health insurance to potentially discriminate against employees who fail to achieve health-related targets.*

*If enacted, these changes would undermine the insurance reforms that have been a key goal of health care reform by providing a “back-door” way to discriminate based on pre-existing conditions, health status and gender. This issue brief discusses the scope of the threat to vulnerable groups, including the anticipated adverse impacts on low-income women and families.*

## Background

For many years, employers have been implementing wellness programs for their employees as a way to encourage a healthy and productive workforce. In many instances, these wellness programs provide significant and positive opportunities for employees. Health promotion activities such as making exercise equipment available at the worksite, allowing flex-time for walking or other physical activity, offering healthy lifestyle education classes and other workplace initiatives have encouraged employees to engage in valuable wellness activities.

For working women in particular, these programs can help them achieve their wellness goals by providing activities at a time and location that fits within the time constraints associated with their responsibilities at home and in the workplace.

Under current law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) provides safeguards that prohibit discrimination based on health status in the context of employer-sponsored health care coverage. In particular, there are two types of wellness programs that are permissible under HIPAA regulations:

- 1) employers may reward employees under wellness programs for living healthy lifestyles without conditioning receipt of the reward on achieving a certain health status; and
- 2) employers may reward employees in wellness programs by providing financial incentives to employees, and in some cases, their dependents, who satisfy a health status standard such as achieving a targeted body mass index or a certain cholesterol level.

For this second form of wellness program, the current regulations permit financial incentives to be offered to enrollees only if specific safeguards are met. One of the most important safeguards is that the reward must not exceed 20 percent of the cost of the employee’s health insurance coverage (i.e., the employee’s premium plus the employer’s contribution). Regulations also provide that the reward under the program must be available to all similarly situated individuals. The employer must offer alternatives to people who cannot meet the target because of a medical condition.

Recent activity in the employer market raises significant questions regarding whether these safeguards are sufficient to prevent discrimination in the workplace, especially discrimination against low-income women and families:

- A disproportionate number of women head low-income families and are unable to pursue daily exercise programs when faced with significant caregiver responsibilities at home;

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- A disproportionate number of women are in low-income families and are unable to access safe areas for physical activity or affordable healthy food choices; and
  - Many of the most vulnerable women and children who would benefit greatly from assistance in living healthier lives are ill-prepared to sustain the added financial burden that arises from paying significantly more for health insurance under the current “20 percent” standard.

Under current law, concerns arise from reports that employers increasingly are establishing “wellness programs” that effectively penalize employees with risk factors for chronic disease by creating health coverage in which at-risk individuals pay significantly higher health premiums. At the same time that these reports are surfacing, there is a lack any meaningful evidence to support the conclusion that the “20 percent” standard is adequate to influence behavior.

### **So-Called “Workplace Wellness” Provision in the Senate Health Reform Bill Could Further Penalize Women and Families**

Each of the major health reform bills being considered by Congress includes provisions related to employer-based wellness programs. In general, the Senate bill contains more aggressive – and troubling – provisions that would allow employers to further link health insurance premiums to the ability of employees to achieve certain health-related targets. The Senate health care reform bill would replace the current 20 percent standard with an upper threshold of 50 percent. In other words, wellness requirements imposed by employers could result in differences between the premiums paid by otherwise similarly situated employees by up to 50 percent of the total premium cost on the basis of an employee’s health status.

The House bill, instead, provides funding for employer-based wellness programs, demonstration programs and research to test the effectiveness of premium incentives before undertaking the type of premium variation expansions envisioned by the Senate.

#### **Senate**

The Senate health care reform bill would expand HIPAA’s wellness program exemption from the non-discrimination rules to allow employers to offer employees rewards of up to 30 percent, and could be expanded to 50 percent (if the Secretaries of Labor, Health and Human Services, and Treasury approved) of the cost of their coverage for meeting employer-defined health targets. Rewards could be in the form of premium discounts, waivers of cost-sharing requirements or benefits that would otherwise not be provided.

This means that an employee who is **not** able to reach a target established by the employer (such as weight reduction or cholesterol targets) could be required to pay a premium that is 50 percent higher than other workers. Employers would be required to offer an alternative standard for individuals, but only if a medical condition prohibits them from meeting the target.

#### **House of Representatives**

Under the House-passed bill (HR 3926), the Secretary of Health and Human Services (HHS) would conduct research and demonstration projects on the use of financial and in-kind subsidies and rewards to encourage individuals and communities to promote wellness, adopt healthy behaviors and use evidence-based preventive health services. The Secretary would report the findings of this research to Congress. Depending on the outcome of the research and other conditions, the Secretary could ensure that subsidy or reward models that are validated by the research are included in the essential benefits package. The term “essential benefits package” refers to the minimal benefit package that all health plans in the new insurance exchange created in this bill — and all employer-based plans after a defined period — would be required to offer.

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## Likely Impacts of the Senate Proposal

If enacted, the Senate proposal to undo the existing safeguards governing premium variation could undermine many of the consumer protections that otherwise are intended under health care reform. The Senate proposal could result in:

- Large disparities in premiums that could undermine key insurance reforms and become a proxy for medical underwriting. Tying premium costs to health conditions like weight, cholesterol, and blood sugar levels under the guise of workplace wellness is, in effect, the same thing as underwriting for a health condition.
- A 50 percent premium difference based on health conditions could lead to adverse risk selection by allowing employers to force those persons who cannot meet the wellness program's health targets to opt out of employer-sponsored insurance. This might reduce costs for employers, but could increase premium costs for the government and for other individuals who purchase through the newly-established insurance exchanges.

Increasing the size of the premium discounts for employees who achieve employer-defined health targets could, over time, lead to premium increases or wage reductions. There is no evidence to suggest that wellness programs can produce 50 percent reductions in total health premiums.

In other words, these 50 percent reductions will not pay for themselves. It is highly unlikely that companies will dip into their profits to provide these incentives. Instead, employers will have to increase baseline employee premiums for everyone to compensate for the money lost from the discounts. Put simply, the discount will come from a higher premium. If employers for some reason are unable to increase baseline premiums, they may decrease wages instead to keep labor costs down.

## Premium Incentives to Promote Wellness: The Evidence Gap

One of the fundamental goals of health insurance reform is to change the way health care decisions are made — to move toward a system that relies more heavily on evidence of the most effective treatment options.

However, the Senate's proposed policy to expand the HIPAA employer wellness exception to as much as 50 percent of the total premium amount is not based on any evidence whatsoever. Stephen Shortell, MPH, PhD, Dean of the School of Public Health at the University of California, Berkeley found that there has been no authoritative research on whether incentive programs work.<sup>1</sup>

Even the most well-known of the premium incentive programs (and one that is frequently touted by members of Congress) — the Safeway Healthy Measures initiative — which creates different premiums for non-union employees based on their blood pressure, cholesterol, obesity and smoking risk factors — has not been in place long enough to evaluate the impact on employees, and on low-income women and families in particular.<sup>2</sup>

## Women and Wellness

Women want to make healthy lifestyle choices for themselves and their families, yet in practice they often neglect their own health because they put the needs of their children, spouses and aging relatives before their own. Employers can help women prioritize their own health by providing a supportive environment for health and wellness in the workplace.

Research has demonstrated that women are more likely than men to suffer from a chronic condition, meaning that women could pay disproportionately more for health insurance under these programs than

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their male colleagues. Such disparities are even more acute for low-income women and women of color. For example, over one-third of African-American women over age 45 report fair or poor health, and almost 30 percent have diabetes.<sup>3</sup>

Proposals to allow employers to discriminate against employees are particularly troubling for the many women with lower incomes who work multiple jobs to support their families. These individuals often lack access to healthy food choices and have limited time or ability to access safe environments for physical activity. In effect, these programs will make health coverage less affordable to the very people who need it the most.

## Premium Scenarios

Health care reform should support women as they try to live healthy lifestyles and help their families to make healthy choices. It should not make the challenges more difficult. Consider these scenarios based on the proposed Senate language:

- Premiums can vary by up to 50 percent under the Senate proposal: Rebecca and Rob are both mid-level professionals at the same company. The total premium for the health plan offered by their employer is \$4,800 for single coverage. The employee contribution is equal to \$2,400 per year for single coverage. Under the Senate "wellness" proposal, Rebecca and Rob's employer can offer a wellness program and provide a premium incentive of up to 50 percent of the total premium, if employees meet certain health targets. Rebecca and Rob's employer decides to offer a wellness program and sets the incentive at 50 percent. Eligible employees can receive this incentive if they achieve a body mass index of between 19 and 26 and a cholesterol count of under 200. Rob quickly meets both goals by adding a morning workout to his daily routine. Rebecca, who cares for her ailing mother before and after work and cannot afford extra help to allow herself free time, struggles to meet the targets. Rob's success means his premium is reduced to \$0. Rebecca's struggles mean she pays \$2,400 more than Rob for the same coverage, or \$200 per month.
- Significant variance in premiums can arise even from a family member's inability to meet an employer's requirement under the Senate proposal: Michelle's family receives health insurance coverage through her employer. The total cost of the annual premium is \$13,500. Michelle's premium is \$4,725 per year or \$393 per month. Under the Senate proposal, Michelle could be responsible for paying employee premiums that are 30 percent higher than similarly situated co-workers if her employer offers a wellness program tied to a potential incentive of 30 percent of total premiums. Both Michelle and her husband regularly exercise and take care of their health, but Michelle's husband suffers from high cholesterol. Michelle's colleague, Mark, has no trouble with the targets. Michelle's husband was recently laid-off and the financial stress and anxiety has made managing his blood pressure and cholesterol challenging. Despite the fact that her family does all they can to take care of themselves, Michelle's husband is unable to meet the target and Michelle's employer could charge her premiums that are over \$4,000 higher than Mark's.

## Recommendations

There is no doubt that women want their families and themselves to be healthy. Every day, women are leading the charge for improving health across the country. But what women also need is support to achieve healthy lifestyles — not a policy that allows their employer to discriminate against them based on their health status (or a family member's health status). This kind of policy undermines the very goals of health reform. Instead, employers should be encouraged to provide wellness incentives that treat women equitably and respect the challenges they face in meeting the dual demands of work and family.

Although the stated goal of employer wellness programs — to create a healthy and more productive workforce — is admirable, the sad irony is that wellness premium incentives could prevent the people

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most in need of coverage from receiving it. By raising barriers to affordable coverage, those most in need of care and at-risk for serious health crises could be unable to afford the health coverage they need and become sicker as a result. Wellness programs should be based on evidence, and designed in a way that ensures participants are supported for making progress — not penalized for unsuccessful efforts.

The National Partnership supports striking the Senate wellness program language and instead:

- Require federal agencies to rigorously evaluate employer wellness programs that currently allow premium variation to (1) identify the wellness programs that are most effective and (2) ensure that the current 20 percent threshold is not resulting in preventing discrimination in the workplace;
- Allow wellness programs to be exempted from non-discrimination rules only if there is proof that employee access to care will not be impeded;
- Require the development of standardized measures of the impacts of wellness programs on employees' health and on their access to care; and
- Expand resources and incentives for employers to create healthy work environments.

Allowing health insurance premiums to vary by 30 to 50 percent based on meeting employer – not physician – defined health targets takes us backwards. Real health care reform must eliminate all forms of premium discrimination based on health status.

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<sup>1</sup> Bensinger, G. "Corporate Wellness, Safeway Style". *San Francisco Chronicle*. Jan 4, 2009.

<sup>2</sup> Ibid.

<sup>3</sup> Salganicoff, A. et al., "Women and Health Care: A National Profile," *Kaiser Family Foundation*, July 2005. Accessed at <http://www.kff.org/womenshealth/upload/Women-and-Health-Care-A-National-Profile-Key-Findings-from-the-Kaiser-Women-s-Health-Survey.pdf>

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*The National Partnership for Women & Families is a non-profit, non-partisan advocacy group dedicated to promoting fairness in the workplace, access to quality health care and policies that help women and men meet the dual demands of work and family. More information is available at [www.nationalpartnership.org](http://www.nationalpartnership.org).*

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