



New Guidance on COVID-19 Vaccine Incentives and Surcharges

On October 4, 2021, the Department of Labor (DOL), the Department of Health and Human Services (HHS), and the Treasury Department (Treasury) issued new guidance in the form of frequently asked questions (FAQs) for employers considering whether to offer health insurance premium incentives (discounts) to employees who elect to receive the COVID-19 vaccine and premium surcharges (penalties) for employees who elect not to receive the vaccine. The FAQs confirm that premium incentives and surcharges based on an individual's COVID-19 vaccination status constitute an activity-based wellness program under HIPAA and, as such, the following five rules must apply:

- The program must be reasonably designed to promote health or prevent disease;

- The program must be available to all employees, and the opportunity to qualify for the premium incentive must be offered at least once per year;
- The program must provide a reasonable alternative standard to qualify for the premium incentive, such as requiring compliance with the CDC's mask guidelines for employees who are unable to take the vaccine;
- The program must provide notice of the availability of this reasonable alternative standard to qualify for the premium incentive; and
- The program's premium incentive (or surcharge) cannot exceed 30% of the total cost of employee-only health coverage.

No Cost-Sharing for Vaccinations:

The FAQs confirm that non-grandfathered group health plans and health insurance issuers must cover, without cost-sharing, 100% of the cost of any COVID-19 vaccine approved by the FDA, including booster shots, and this coverage will automatically be extended in the event of an expansion of the age demographic for whom the vaccine is authorized or approved.

No Discrimination Against the Unvaccinated:

The FAQs further state that non-grandfathered group health plans and health insurance issuers are prohibited from discriminating against participants and beneficiaries with respect to their eligibility for health coverage under the plan based on their vaccination status. Benefits under the health plan must be uniformly available to all similarly situated individuals.

[Full text of FAQs \(DOL, HHS, Treasury, October 4, 2021\)](#)

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