



Illinois Department of Insurance

JB PRITZKER
Governor

DANA POPISH SEVERINGHAUS
Acting Director

TO: All Companies Writing Accident and Health Insurance and Managed Care Plans in Illinois

FROM: Dana Popish Severinghaus, Acting Director *dps*

DATE: December 22, 2021

RE: Company Bulletin 2021-16
Use of Vaccination Status in Group Health Ratings

The Illinois Department of Insurance (“DOI” or “Department”) recognizes that COVID-19 vaccinations offer life-saving protection that makes all Illinoisans safer. Additionally, the Department is aware that employers and businesses have successfully implemented incentives to increase vaccination rates to help fight the spread of COVID-19. Therefore, the Department is issuing guidance related to the use of vaccination status in group health ratings.

The Department encourages issuers of group health insurance coverage to take proactive steps to further the COVID-19 vaccination effort. One innovative incentive devised this year is a premium discount for group enrollees who provide documentation that they have been vaccinated. The federal government has determined that the Patient Protection and Affordable Care Act allows issuers to offer these discounts based on vaccination status as activity-only wellness programs as described in 45 C.F.R. 146.121. *See also* FAQs About Affordable Care Act Implementation [Part 50](#). Illinois law affords the same opportunity to issuers and permits group policies to offer health contingent wellness programs, including activity-only wellness programs. 215 ILCS 5/356z.17(e)(iii); 50 Ill. Adm. Code 2001.9(j).

Pursuant to 215 ILCS 5/151, any wellness program offered by a health insurance issuer must be described in or incorporated by reference into a policy form. As such, the Department will temporarily waive the prohibition on amendments for small group policy filings to permit small group policies to create or amend a wellness program offering a premium discount for receipt of the COVID-19 vaccine. Issuers of large group policies may create or amend a COVID-19 vaccine wellness program via rider or amendment for all of the group policyholder’s enrollees under current processes. If the description is incorporated by reference, the incorporated material must be included in the SERFF filing for approval. The issuer should also submit a rate filing through SERFF to account for the program’s impact on rates. If the wellness program is offered to enrollees of an existing group policyholder, the policy and/or certificate amendments must take effect at the time of renewal. *See* 42 U.S.C. 300gg-2(d); 215 ILCS 97/30(D).

Please note that an employer with a fully insured plan that offers a wellness program directly to its employees without involving the issuer does not need file anything with the Department of Insurance, though it remains subject to federal requirements including, but not limited to, 29 C.F.R. 2590.702.

Per Part 50 of the FAQs and the regulations it addresses, an activity-only wellness program must meet the following five criteria:

1. Individuals must be able to qualify for the activity-only wellness program at least once per year;
2. The reward for the activity-only wellness program, together with any reward for other health-contingent wellness programs with respect to the group health plan, must not exceed 30% (or 50% for wellness programs that include measures to combat tobacco use) of the total cost of employee-only or family coverage under the plan. Note: If an employer offers a wellness program directly to its employees, any wellness program offered by the issuer must not cause the total reward to exceed these percentages when combined with the employer's direct program;
3. The activity-only wellness program must be reasonably designed to promote health or prevent disease;
4. The full reward under the activity-only wellness program must be available to all similarly situated individuals, which includes allowing a reasonable alternative standard or waiver of the standard for an individual for whom it is unreasonably difficult due to a medical condition or medically inadvisable to engage in the activity. Note: The Department will not approve any alternative or waiver provision based on the vaccination being medically contraindicated for the individual that does not require the documented recommendation of the individual's personal physician as described in 50 Ill. Adm. Code 2001.9; and
5. The plan or issuer must disclose in all plan materials describing the activity-only wellness program the availability of a reasonable alternative standard or waiver of the standard to qualify for the reward.

Please consult the statutes and rules identified above for further details on the implementation of an activity-only wellness program. The Department also recommends consulting the October 4, 2021 guidance issued by the U.S. Departments of Health and Human Services, Labor, and Treasury on this topic. See <https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/FAQs-Part-50.pdf>.

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