



## Agency FAQs: Vaccinations and Group Health Plans

On October 4, 2021, the regulatory agencies released a set of five FAQs related to vaccinations and group health plans. [The Agency FAQs](#) are available by clicking the link, and the key points are summarized below.

**Group health plan coverage for COVID-19 vaccinations.** The FAQs clarify the date on which non-grandfathered group health plans had to begin covering COVID-19 vaccinations. According to the FAQs, the requirement became effective on January 5, 2021. As of that date, non-grandfathered group health plans were required to cover any COVID-19 vaccine authorized under an Emergency Use Authorization (EUA) or approved under a Biologics License Application (BLA) by the FDA immediately upon the vaccine becoming authorized or approved. This coverage must be provided without cost-sharing and must be consistent with the scope of the EUA or BLA for the particular vaccine. If the EUA or BLA is amended, plan coverage must be provided consistent with the amendment, including amendments to allow for the administration of an additional dose to certain individuals, administration of booster doses, or the expansion of the age demographic for whom the vaccine is authorized or approved.

**Application of HIPAA nondiscrimination and wellness rules to vaccine incentives.** The FAQs confirm that a program under which a premium discount is offered (or a premium surcharge is imposed) based on a plan participant's vaccination status must comply with the final wellness program requirements applicable under HIPAA. The FAQs further clarify that such a program will be treated as an activity-only health-contingent program as we discussed in our prior articles on vaccine incentives (read "[A Closer Look: COVID-19 Vaccine Premium Incentives](#)" and "[Employee Benefits Compliance Issues for Various Vaccine-Related Wellness Programs](#)"). In an example, the FAQs indicate that the reasonable alternative standard requirement applicable under HIPAA may be satisfied by requiring employees for whom it is unreasonably difficult due to a medical condition or medically inadvisable to obtain a COVID-19 vaccination to attest to complying with the CDC's mask guidelines for unvaccinated individuals to receive the incentive. Other reasonable alternative standards may be appropriate as well, but compliance with the masking guidelines is the only specific example provided.

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**HIPAA prohibits group health plan exclusions for COVID-19 treatment for unvaccinated participants.** In the FAQs, the regulatory agencies take the position that a group health plan may not condition coverage for items or services that are otherwise covered by the plan for COVID-19 treatment on the covered individual being vaccinated against COVID-19. Such a provision would violate the HIPAA nondiscrimination requirements. In other words, a plan may not contain an exclusion for COVID-19 treatment if that exclusion applies only to unvaccinated individuals. According to the agencies, the exception to the HIPAA nondiscrimination requirements for certain wellness programs is not available in this situation because it applies only for premium incentives or modifications of applicable cost-sharing mechanisms, not for denying eligibility for benefits or coverage based on a health factor.

**Impact of premium incentives on affordability.** The FAQs reiterate a point we made in our prior articles (read [“A Closer Look: COVID-19 Vaccine Premium Incentives”](#) and [“Employee Benefits Compliance Issues for Various Vaccine-Related Wellness Programs”](#)) that offering premium incentives (discounts or surcharges) based on vaccination status impacts the affordability of the coverage for purposes of employer shared responsibility penalties. In this context, affordability is calculated for all employees based on the cost charged to *unvaccinated* employees.

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