

Health Incentives:

The Science and Art of Motivating Healthy Behaviors

by Barry Hall

Employers seeking to motivate and encourage healthy behaviors among their employees are increasingly turning to incentive rewards. In fact, a recent Buck Consultants survey of 555 employers, titled *Working Well: A Global Survey of Health Promotion and Workplace Wellness Strategies*, predicts the use of such rewards to more than double over the next two to three years. This article provides an overview of the key considerations for employers seeking to maximize the value of incentive rewards. Discussion includes incentive strategies, types of rewards, reward amounts and regulatory considerations under the Health Insurance Portability and Accountability Act (HIPAA) and the Americans with Disabilities Act (ADA).

THE CHALLENGE

If the current health trends in the U.S. population continue, we will see dramatic increases in serious health problems and early mortality due to preventable conditions such as diabetes and heart disease. At the same time, the employer-based health funding mechanism is already approaching the breaking point, with some employers recognizing that their global competitiveness will be in jeopardy unless sufficient steps are taken to curb rapidly escalating health care costs.

A number of strategies commonly included under the category of health care “consumerism” have demonstrated some ability to contain health care cost trend. When applied effectively, health care consumerism does not simply shift costs; it more appropriately helps drive greater responsibility on the part of the health plan member—for decisions involving lifestyle, health care consumption and cost.

Employer-sponsored wellness programs are typically a key component of a consumerism strategy. Also known as health promotion, health improvement or disease prevention programs, these initiatives

focus on promoting healthy lifestyles among employees by targeting the risks that result from poor nutrition, lack of physical activity, excessive stress, tobacco use and other unhealthy habits. These risk factors can lead to expensive chronic diseases and health issues that also affect workforce productivity, absence from work, safety and employee morale.

In order to achieve their potential of containing health care cost trend, today’s health promotion programs require intelligent program design, ongoing measurement and refinement, attention to the uniqueness of each company’s culture and effective incentives that motivate lifestyle changes and improve the health of individuals and the employee population as a whole.

Health incentive rewards are the focus of this article. Currently more prevalent in the United States than elsewhere, incentive rewards are gaining in popularity with employers around the world.¹ This article focuses on practical considerations for employers that want to strategically utilize incentives as a key program element to motivate greater employee participation and engagement in their health promotion initiatives.

THE NEED FOR INCENTIVES

Over the last 15 years, researchers have observed that preventable illness makes up 70% or more of the total cost of health care.² Preventable illnesses often result when individuals do not adequately address a number of modifiable health risk factors such as nutrition, weight control, physical activity, cholesterol, blood pressure, tobacco use, safety and mental well-being. Health promotion programs seek to reduce these risk factors by promoting healthy lifestyle choices and discouraging behaviors and attitudes that are detrimental to good health.

For example, program educational materials and interventions encourage individuals to eat nutritious meals, exercise regularly, avoid smoking and reduce stress. Some health promotion programs also seek to make employees more personally accountable for specific, measurable health status factors, such as body mass index (BMI) (a measure of weight control) or cholesterol levels. Other programs tout the benefits of regular preventive health care services and compliance with disease management and care management programs. But, ultimately, these programs have no impact until people take action by learning about their personal health situation, adopting new attitudes and behaviors that improve or maintain their health, and actively managing their current risks and conditions. Incentives are a tool to help focus attention on health risks and to motivate desired behavior changes.

Lifestyle behaviors related to health risk factors, such as eating, exercising and smoking, are among the most challenging to modify. For lasting results, individuals must make a conscious choice to permanently implement positive lifestyle changes. People generally do not change their behavior without good reasons that outweigh the pain and annoyance associated with giving up longstanding habits. The purpose of wellness incentives is to help provide those good reasons.

Health promotion programs use a research-driven, cognitive-behavioral model to impact behavior change. Unlike reflexive conditioning (think of Pavlov's dogs), a cognitive-behavioral model engages the participant in understanding the thought process and motivations leading to positive habit and behavioral changes. In order to effect change, behavioral patterns are analyzed and modified using both education and a system of incentives as reinforcement.

A theoretical view of the stages of cognitive behavior change, as developed and refined by James Prochaska and colleagues, is shown in Figure 1 on the next page. Individuals attempting a change will

progress through the stages as their motivational readiness increases.

Movement beyond the first two stages requires awareness. This is achieved by educating employees about the benefits of positive lifestyles and the detriments of unhealthy behaviors. Education alone, while an important early step, will motivate only a small percentage of a population to take action. For example, most smokers already know that their habit is unhealthy and potentially life threatening. Stronger motivational forces are necessary for most people to make a change. This is where incentives come into play.

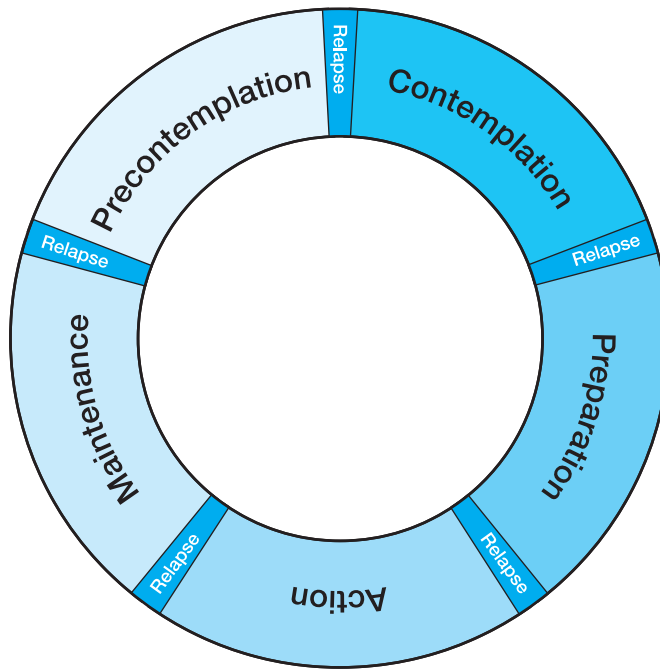
People generally do not change their behavior without good reasons that outweigh the pain and annoyance associated with giving up longstanding habits. The purpose of wellness incentives is to help provide those good reasons. ◀

Every intentional decision made involves weighing the perceived advantages and disadvantages of the options. *Decisional balance* is the relative weight assigned to these pros and cons. For an incentive to be effective, it must help tip the decisional balance again and again and keep the individual on track to sustain the desire for behavior changes.

An optimal incentive program utilizes the simplest, most cost-effective incentives that cause the maximum number of individuals to move from a state of contemplation to action. Further, the best incentives will promote long-term lifestyle changes to such a degree that, even when the rewards are removed, desired behaviors will continue due to *intrinsic reinforcements*. These reinforcements are the consequence of several factors, including successful goal achievement (such as weight loss or smoking cessation), as well as the boost in well-being and self-esteem that often accompanies health improvement activities. A key objective of employer-sponsored (or *external*) incentives, then, is to provide additional motivation for individuals to initiate action and maintain

FIGURE 1
THE STAGES OF CHANGE

- 1. Precontemplation:**
not even thinking about it
- 2. Contemplation:**
considering change
- 3. Preparation:**
planning to act
- 4. Action:**
practicing new behaviors
- 5. Maintenance**
sustaining new behaviors
and
Occasional Relapse



Source: Adapted from *Transtheoretical Model/Stages of Change*, developed by James O. Prochaska, Ph.D., and Carlo C. DiClemente, Ph.D.

the new behaviors until their own *internal* reinforcement takes over to sustain the positive change.

Health promotion would be much easier if internal motivators were strong enough so that external incentives were not necessary. In a perfect world, the prospect of living a longer, healthier life should be enough to motivate individuals to adopt healthy behaviors. And logically, a prolonged, painful illness and early death should be enough to dissuade people from continuing habits they know to be unhealthy. But alas, even this grim specter is apparently not a sufficient motivator to overcome the inconvenience or pain required to undertake change. Research shows that among heart attack patients, for whom behavior change is an immediate life-and-death issue, 90% do not change their unhealthy habits (too much smoking, drinking, eating and stress and too little exercise), even when ordered to do so by their doctor.³

Employers face the challenge of motivating employees to adopt healthier behaviors and supporting them in maintaining healthy lifestyles. Education plays a role in raising awareness and building a desire for change. Peer pressure (as well as other intangibles discussed later) is also a key motivator—both in the

workplace, where individuals seek a sense of belonging and accomplishment; and at home, where they feel a sense of accountability to those they love. And the final piece—hopefully the tipping point that moves individuals from inaction to action—is the use of external incentives.

ADVANTAGES AND DISADVANTAGES OF INCENTIVES

Incentives are widely used in employer health promotion programs because they can have powerful behavioral effects. If incentive rewards and rules are well designed, they can induce a significant change in behavior for a significant percentage of the target population.⁴ They also can be flexible, relatively simple to comprehend and easy to administer. Additionally, incentive rewards can be combined to increase motivation, for example, combining a tangible reward (cash) with an intangible reward (recognition).

Incentives also have possible disadvantages. For instance, with certain reward approaches some individuals may figure out how to “game” the system or be dishonest in self-reporting (such as smoking cessa-

tion). Additionally, some incentives may inadvertently reward unhealthy behaviors, for example, a per pound weight loss incentive could encourage unhealthy or hazardous weight loss practices. Finally, desired behavior may last only as long as the reward does. For example, a reward for regular fitness center usage that expires after one year could result in employees ceasing their regular exercise program when the reward stops. However, experts say that a habit such as regular exercise tends to “stick” once the individual makes it past the 30-day point. A key objective of incentive design is motivating individuals to explore and acquire desirable behaviors that become permanent, sustainable lifestyle changes over time.

Some employers also express a concern about rewarding certain people for doing something they would have done anyway, such as regular exercise. However, there are several arguments to counter this concern. First, it’s important that an incentive program is equitable to all employees. Those who are already making responsible life choices deserve the same rewards and support as those who are just starting. Both groups contribute to the employer’s objective of creating and maintaining a lower risk population. Remember, incentive rewards are not just about encouraging change; they are also about sustaining healthy lifestyles. For example, a “good driver” auto insurance discount applies to everyone who maintains a good driving record, not just those who achieved good driver status for the first time. Further, anyone can “fall off the wagon” at any time. An incentive, such as a fitness club subsidy, may be just what’s necessary to keep someone’s exercise routine on track for the long term.

TYPES OF INCENTIVES

Incentives can range from *carrots* (with desirable rewards) to *sticks* (with undesirable consequences). Historically, most employer-sponsored health promotion programs have tried to maximize the use of carrots, using sticks only when necessary, preferring to be perceived as giving something positive to their employees rather than taking something away (or disciplining). However, in recent years more employers have moved to sticks, in part spurred by a frustration with the lack of effectiveness of previous carrot-based approaches. Several of the most punitive of these programs have received a lot of media attention, to the point of sensationalism; for example, programs that dock the pay of overweight employees, or employers that fire employees who choose to smoke. Most employers are not prepared to adopt such severe and extreme tactics.

Psychological literature offers a variety of opinions on the most effective ways to motivate individuals, but most experts agree that pleasure or reward is a more effective long-term motivator than fear or punishment. Furthermore, employers considering a stick-wielding approach should weigh the cultural impact such an incentive will have on their overall programs. It seems likely that a punitive approach will not be synergistic with the positive “employer of choice” message that most successful wellness strategies work hard to convey.

Incentive rewards can be *tangible* or *intangible*. Examples include the following.

Tangible Incentive Rewards

- Cash
- Merchandise
- Vacation days
- Avoidance of costs (such as health care premiums or deductibles)

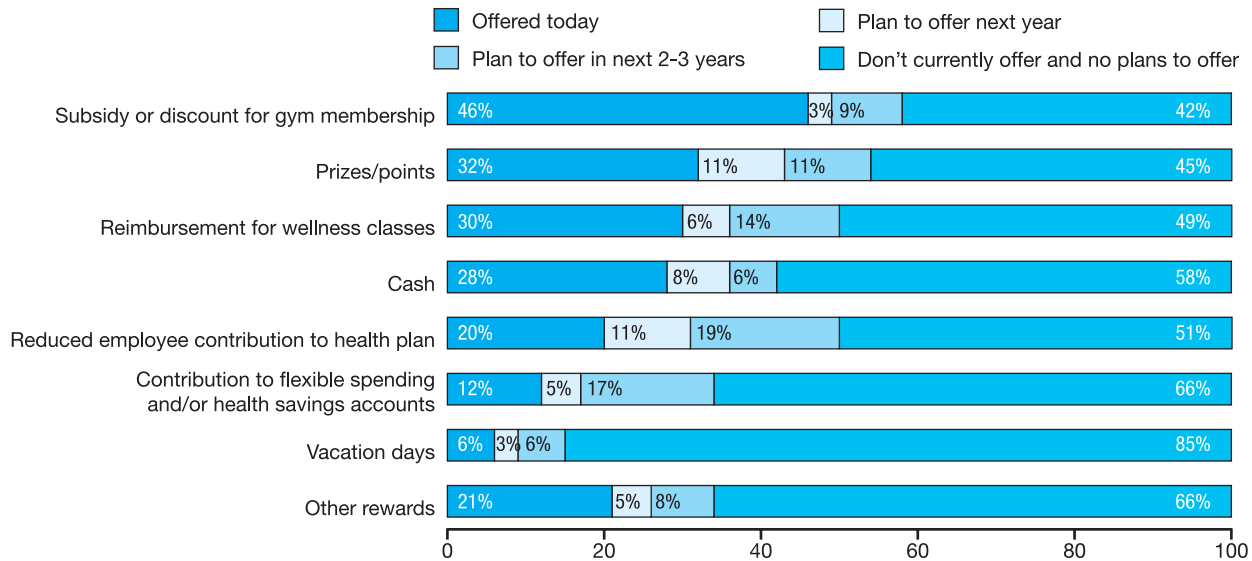
Intangible Incentive Rewards

- Recognition
- Personal challenges
- A sense of accomplishment
- Group competition
- A sense of belonging
- Acceptance and approval of peers

In the past, the most prevalent incentives in employer wellness programs have been intangible. However, in recent years tangible rewards have become more common as employers appreciate, and measure, the financial impact of reducing health risks in their workforce. Even when tangible rewards are the primary motivator, many intangible incentives are still present. For example, a cash prize awarded to a departmental team for a walking competition would likely be accompanied by recognition, a sense of accomplishment and the approval of peers.

Incentive rewards are most meaningful and effective when closely tied to the behaviors they intend to reinforce. Although a cash reward can be a strong motivator, it may not achieve the impact an employer desires because it is transient, is taxable to the recipient and might even be used to support unhealthy lifestyle activities such as buying beer and pizza or a new television. An alternative more consistent with the program’s objective is to allocate the cash reward to health care savings or reimbursement accounts offered as part of the benefits program. These include:

- Flexible spending accounts (FSAs)
- Health reimbursement accounts (HRAs)
- Health savings accounts (HSAs).

FIGURE 2**TYPES OF INCENTIVE REWARDS OFFERED—U.S. EMPLOYERS**

Source: Buck Consultants, *Working Well: A Global Survey of Health Promotion and Workplace Wellness Strategies*, October 2007.

These accounts increasingly are being used to promote consumerism in health care purchasing behaviors.⁵ In this way, the incentive dollars can help offset health care expenses, emphasizing the strong connection between healthy living and reducing the individual's health care costs. Given the continued strong growth in account-based plans,⁶ this type of incentive will grow significantly in the coming years, as indicated in Figure 2.

Another common technique for more closely aligning incentive rewards with the cost of health care benefits is to reduce health care premiums or deductibles and copayments. For instance, employers can focus the savings specifically on preventive health care services, such as waiving deductibles for mammograms, well-baby visits or similar activities.

Some employers allow employees to earn points for a variety of activities. Accumulated incentive points can be redeemed for merchandise, vacation days or cash, depending on the program design.

Wellness-focused contests, or workplace challenges, can also be powerful motivators. Most commonly used to promote action in exercise habits, weight loss, nutrition and smoking cessation, competitions can be structured to encourage individual and/or team activity. In addition to tangible rewards provided to winners and participants, the intangible rewards of this type of incentive include recognition,

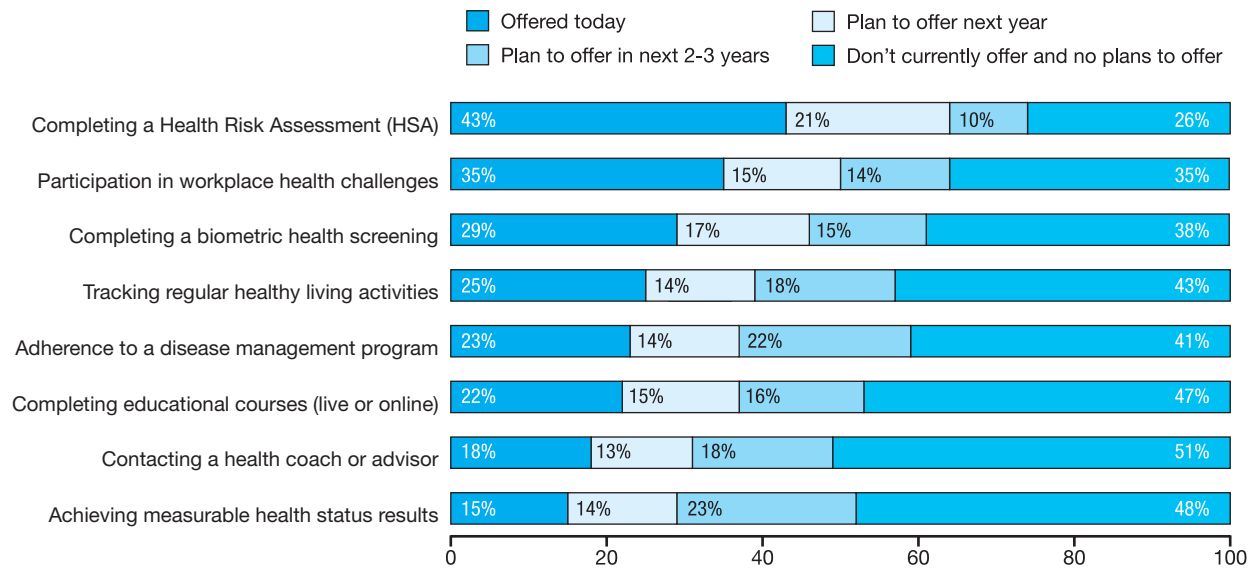
visibility and camaraderie. Some element of peer pressure can also be a component of these programs, ideally in a positive way. It's important to structure these contests so that each participant, including those with disabilities or other special circumstances, has the potential to succeed.

Figure 2 indicates the prevalence of a variety of incentive reward types among U.S. employers. Note that the two fastest growing reward types (premium reductions and health account contributions) are those that are most directly tied to health care benefits.

BEHAVIORS THAT EMPLOYERS REWARD

Employers use incentives to motivate a variety of behaviors. The most common approaches are shown in Figure 3. In addition to current practices, this chart illustrates the tremendous expected increase in growth of the use of incentives over the next one to three years—over 100% growth in most categories.

Employers implementing incentive rewards may be overwhelmed by the broad variety of potential approaches. An initial philosophical decision involves the type of behaviors the program will reward. Wellness incentives can be classified into three categories—the “three As”—based on the type of behaviors rewarded: activities, achievement and adherence.

FIGURE 3**ACTIVITIES FOR WHICH INCENTIVE AWARDS ARE OFFERED—U.S. EMPLOYERS**

Source: Buck Consultants, *Working Well: A Global Survey of Health Promotion and Workplace Wellness Strategies*, October 2007.

Activity incentives reward employees for participating in, or completing, specific activities, including:

- Attending an educational session
- Participating in a contest or challenge
- Completing a health risk assessment
- Completing online activities
- Attending a health fair
- Completing a certain number of activities over a defined period (e.g., 30 minutes of physical activity four days/week for six weeks).

Achievement incentives require more than just participation. In order to receive a reward, the individual must demonstrate achievement of specific goals or metrics, such as:

- Maintaining low cholesterol, or reducing it by ten points if appropriate
- Stopping smoking, or remaining tobacco free
- Maintaining BMI below 25, or reducing it by one point if above optimal
- Maintaining healthy blood pressure, or reducing it if appropriate
- Maintaining healthy blood glucose level, or reducing it if appropriate.

Adherence incentives reward longer term maintenance of lifestyle goals. For example:

- Remaining tobacco free for 12 months
- Maintaining a target BMI for 12 months
- Maintaining other biometric measures within healthy range over a defined period of time
- Maintaining a target accident rate at work
- Working three out of four calendar quarters without an unscheduled leave day.

These options frame a fundamental question that employers must consider when designing an incentive program—Should their program encourage and reward specific *activities* related to low-risk behaviors, or should it reward demonstrated, measurable *results*? Activity-based incentives are by far the most common approach used by employers today, but achievement and adherence incentives are increasing in popularity as employers seek to “pay for success” in order to drive positive, measurable results in their populations.

For these employers, participation is no longer a sufficiently compelling measure of their programs’ success. They want to see measurable evidence of risk reduction and lifestyle change among their employees and covered members. The table on the next page outlines some of the benefits and disadvantages of each approach.

Programs need not use only one of the above approaches—They can be combined. For example, employees could bank points or dollars from a com-

TABLE

**PROS AND CONS OF INCENTIVE REWARD TYPES:
REWARDING ACTIVITY VS. ACHIEVEMENT VS. ADHERENCE**

Activity Rewards	Achievement Rewards	Adherence Rewards
<p>Pro</p> <ul style="list-style-type: none"> • Motivates incremental action steps toward healthier lifestyles • Might be more readily achievable for all individuals • Helps build awareness by rewarding educational activities • Can be perceived as “fairer” because effort is rewarded, rather than inherent health factors 	<p>Pro</p> <ul style="list-style-type: none"> • Provides a clear, objective basis for measurement • Focuses on individual accountability for personal health management • Uses metrics to quantify real risk reduction as well as incremental progress • Can also measure how well low-risk individuals maintain their good health 	<p>Pro</p> <ul style="list-style-type: none"> • Provides motivation to sustain long-term lifestyle improvements • Reinforces the most important determinant of wellness return on investment (ROI) • Allocates the greatest reward to those contributing the greatest value to the program
<p>Con</p> <ul style="list-style-type: none"> • Performing specific activities is not necessarily enough to decrease health risks or produce financial ROI. • Activity-based incentives are the easiest to “game.” 	<p>Con</p> <ul style="list-style-type: none"> • Involves additional costs if using biometric testing • Risks excessive employee focus on measurement techniques, accuracy, scoring methodology and fairness across groups • Is subject to HIPAA requirements and limitations 	<p>Con</p> <ul style="list-style-type: none"> • Involves longer time before incentive is awarded • Administration can be complicated due to multiyear time frames. • Risks undervaluing the effort required for initial change • Is subject to HIPAA requirements and limitations

bination of activities and achievements. However, although it’s possible to design elaborate incentive programs, there could be greater value in striving for simplicity. With incentives, simpler is usually better. In contrast, a complex, multilevel program may be packed with potential rewards, but it can easily become demotivating if employees are confused or overwhelmed by the choices. Remember, participation is *optional*; the primary objective is making the program as easy as possible for employees to understand what’s in it for them and how to get started.

REWARD AMOUNTS

Employers driven by return on investment (ROI) seek to determine the optimal amount to invest in wellness to achieve the greatest return. A discussion of the ROI of health promotion programs is beyond the

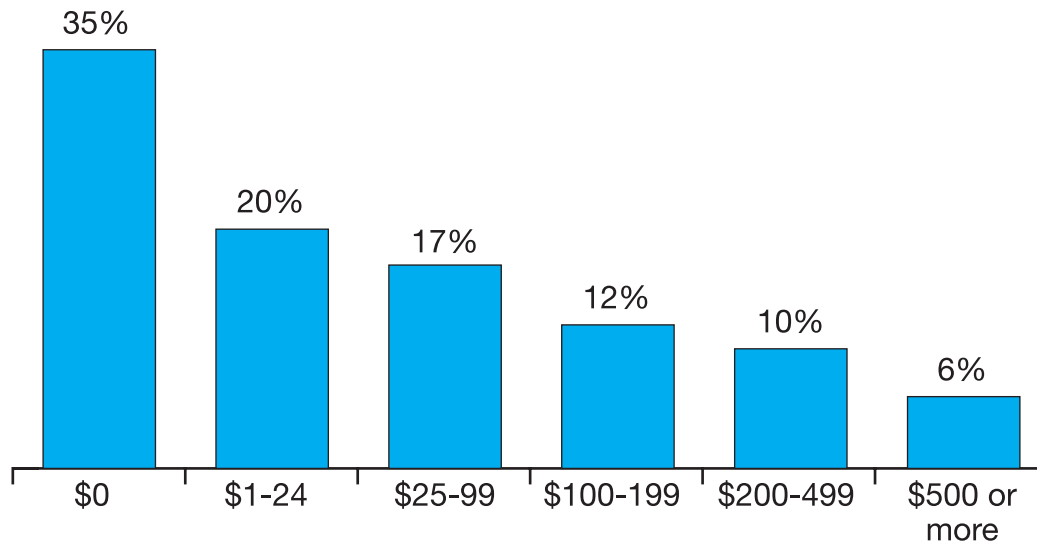
scope of this article, but when considering the costs, remember that an employer’s return from wellness initiatives extends well beyond any savings in health care claims or premiums. The returns also include increased productivity, decreased absenteeism, enhanced ability to attract and retain employees, and reduced costs from safety violations and disability-related issues. Wellness programs also can increase worker morale and *presenteeism* (a measure of workers’ effectiveness due to their health and well-being). Happier, healthier workers are more alert, motivated and productive. All of these factors impact a company’s bottom line.

Incentive rewards are just one piece of the cost equation. Employers’ investments in wellness programs typically also include educational resources, programming, health services, screening, coaching, technology and employee communications.

Figure 4 identifies incentive reward expenditures per employee as reported by U.S. employers. The av-

FIGURE 4

**ESTIMATED ANNUAL COST OF WELLNESS INCENTIVES PER EMPLOYEE—
IN U.S. DOLLARS**



Source: Buck Consultants, *Working Well: A Global Survey of Health Promotion and Workplace Wellness Strategies*, October 2007.

verage amount reported is \$100 per employee, but the amounts range up to over \$500.

The process of determining the optimal incentive amount is an art and a science. Success with incentives requires understanding the culture of a company, the related benefit structure and other aspects of the covered population. There is no easy “one-size-fits-all” solution. To maximize its perceived value, an incentive should be designed so that participants’ perceived value is high relative to the employer’s actual cost. Such an approach might lead one employer to offer lump-sum cash rewards, another to utilize raffles for high-value prizes and another to offer highly visible discounts on health benefit premiums.

Some experts recommend setting incentives, especially cash rewards, at as low a level as possible while still retaining their effectiveness. The optimal reward amount should be just enough to tip the scales. Individuals who have been moved to the “contemplation” stage by wellness program communications and education may look at a small incentive amount as a “token”—not really meaningful enough on its own to motivate a behavior change. However, when combined with factors such as aggressive education, that token becomes sufficient reason to make a change now rather than waiting for a better reason.

The reward amount should be commensurate with what the individual is being asked to do in return. For completing an online health assessment questionnaire, an incentive award might be in the \$10-\$50 range. A more extensive screening including biometric testing (which involves drawing blood) might require a \$50-\$100 incentive, while participation in a yearlong program of targeted activities related to exercise, nutrition and stress management might warrant an incentive of \$200 or more.

In addition to reward strength, a reinforcement schedule is also important. The goal of a reinforcement schedule is to replace the use of external rewards over time with naturally occurring intrinsic reinforcements that will maintain the desired behavior. Fortunately, most healthy behaviors provide plenty of intrinsic reinforcement, such as improved energy and better self-esteem. A program strategy should incorporate a multi-year approach that progressively moves behaviors and associated rewards toward a long-term, sustainable goal. For example, in the first year, a program might reward participating in a health screening; in the second year, require the screening plus participation in several classes or activities recommended based on the screening results; and in the next year, require an improved health screening score (or maintenance of a low-risk score). By

progressively raising the bar, the program establishes a longer term trajectory toward new behaviors.

For an employee population that has not previously been offered health promotion incentives, it can be quite valuable to conduct a survey or focus groups with potential participants in order to gauge interest in potential program offerings, incentive types and incentive amounts. This can be a tremendous aid when determining the most appropriate program design and the level of rewards necessary to achieve the desired participation rate. The act of collecting employee input can also serve as an advance communication event to build interest and anticipation for the coming program.

For employers that use health care premium discounts as an incentive reward, it is important that employees perceive the premium reduction amount to be significant. One technique for boosting this perception, referred to as *play or pay*, involves first increasing health plan premium contributions and then forgiving a substantial part of the contribution for those who participate in the wellness program. ◀

When designing an incentive program, it's important to remember that there are possible tax consequences for most tangible rewards. The value of a reward will be considered "wages" by the Internal Revenue Service (IRS) and therefore is subject to payroll withholding and taxation unless it qualifies as either an "eligible medical expense" or a "fringe benefit" under the applicable IRS Code sections.⁷ However, health insurance premium reductions and incentives deposited in spending accounts are not taxable to the employee.

ADMINISTRATION

Administrative capabilities and/or limitations should be factored into incentive design decisions. How will activities or achievements be tracked? Will they be verified, or will the employees self-report under an honor system? Many employers are not equipped to manage the type of administrative activities that wellness incentives may require, which can tax an employer's capabilities in areas such as bene-

fits administration and payroll. Employers must also consider how they will handle any cash payouts, premium reductions, or point accumulation and redemption, as well as the required reporting and personal tax withholding related to the imputed income associated with rewards.

Some vendors offer services to track and administer incentive rewards, though the market is still immature. As a result, most employers that want to institute complex program designs find that they must figure out how to administer the incentives themselves.

FUNDING INCENTIVES

Intangible incentives, such as recognition, acceptance and personal challenge, can have a relatively low "cost" to an employer. On the other hand, financial incentives require a source of funds. For the ROI equation to work, the cost of the incentives must be less than the expected savings that the program will produce.

Due to the lag in health cost savings attributable to claims avoidance, most programs take several years to develop a positive ROI. As a result, employers must be willing to design their programs with a multi-year horizon, spreading incentives, program costs and expected savings over several years.

For employers that use health care premium discounts as an incentive reward, it is important that employees perceive the premium reduction amount to be significant. One technique for boosting this perception, referred to as *play or pay*, involves first increasing health plan premium contributions and then forgiving a substantial part of the contribution for those who participate in the wellness program. This approach can be rationalized as cutting the employer's premium subsidy, and then offering employees the option to win it back by committing to a program of risk awareness and personal accountability for healthy behaviors.

Employers can use different variations on this approach. For example, some may want to hold premiums level or close to level for a "healthy living" plan, while allowing the premium costs for nonparticipants to rise with the prevailing trend. However, keep in mind that, if this practice is allowed to compound over time, it can result in a significant disparity in premium contributions between groups.

Incentive design such as this could be perceived as a scheme to shift health program costs to less healthy employees. Some employers, fed up with escalating health care costs coupled with excessively unhealthy group health profiles of their employee populations, might argue that the time for individual accountabil-

ity is overdue. However, although a cost shift to less healthy employees is a potential outcome of some program designs, there is more at play than simple cost shifting.

A cost-shifting paradigm is a zero-sum game—It requires that some must lose in order for others to win. In contrast, the value proposition of health promotion is a win/win situation—Employees receive rewards, their health is improved and the employer's health care costs are reduced. This underlying concept is often overlooked or not fully appreciated by employers when designing incentive programs, but it is a fundamentally important principle of health promotion. With health promotion, everyone can participate in the program and everyone can win. The strength and effectiveness of incentives are a key factor driving how well this objective can be achieved.

LEGAL CONSIDERATIONS

The primary regulation that impacts wellness incentive rewards is the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Although a key portion of HIPAA contains provisions that prohibit group health plans and insurers from discriminating against individuals based on “health status-related factors,” there are specific HIPAA wellness program rules,⁸ issued in 2006, that permit wellness programs to discriminate based on health status-related factors as long as certain requirements are met.

In brief, a wellness program that bases its rewards on health factors must meet five basic requirements:

1. The total reward must not exceed 20% of the cost of employee-only coverage (or 20% of the total cost of coverage if dependents can participate in the program).
2. The program must be reasonably designed to promote health and prevent disease.
3. Individuals eligible for the program must be given the opportunity to qualify for the reward at least once per year.
4. The reward must be available to all similarly situated individuals. The program must allow a reasonable alternative standard (or waiver of initial standard) for obtaining the reward to any individual for whom it is unreasonably difficult due to a medical condition, or medically inadvisable, to satisfy the initial standard.
5. The plan must disclose in all materials describing the terms of the program the availability of a reasonable alternative standard (or the possibility of a waiver of the initial standard).

Employers often experience some confusion or misunderstanding regarding a few key areas of these

regulations. First, not all wellness programs must comply with the above five HIPAA requirements. These rules apply *only* to wellness incentives that are based on health status-related factors (i.e., achievement or adherence rewards as described above). Incentives based on activities are not subject to the HIPAA requirements. Additionally, the rules do not *prohibit* health status-related incentives; in fact, they *permit* them, subject to the specific limitations stipulated above. Finally, the regulations in their final form are new (as of 2006) and apply to plan years beginning on or after July 1, 2007, and their issuance opens the door to government enforcement of wellness program standards. Employers with existing programs designed without considering these requirements should take note.

The Americans with Disabilities Act (ADA)⁹ prohibits employers from discriminating (in employment and benefits) against disabled individuals. ADA also prohibits medical inquiries or examinations of employees unless they are job related and consistent with business necessity. However, supporting guidance indicates that medical examinations and screenings, such as those typically included in a wellness program, are acceptable if a few key requirements are met. First, any medical records acquired as part of the wellness program must be kept confidential and separate from personnel records. More importantly, the program must be *voluntary*, defined as a program in which an employer “neither requires participation nor penalizes employees who do not participate.” Unfortunately, little guidance currently exists as to whether or not an incentive amount could potentially be high enough to be viewed as essentially compelling employees to participate.

This is a high-level overview of regulatory considerations. Employers should consult legal counsel before implementing any wellness incentive programs that may be impacted by HIPAA or ADA. Additionally, employers must be careful to ensure that incentives are

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not based on factors such as age or gender, in which case they might violate the Age Discrimination in Employment Act (ADEA), the Older Workers Benefit Protection Act (OWBPA) or Title VII of the Civil Rights Act. State regulations also require consideration, for example, regarding the treatment of smokers.

THE BIGGER PICTURE

The use of health incentive systems—especially those providing rewards of significant value—is a relatively new development for employers. Clearly, there is no universally effective approach. Employer programs vary widely in their design, implementation and success rates, as companies seek to understand and motivate their workforces in the manner most appropriate.

It's important to remember that incentives are only part of the total equation for a successful wellness program. Other critical components include:

- Awareness building and education
- Health appraisals and screening
- Comprehensive, effective communications
- Visible support from senior management
- Building a “culture of health” and environment of trust
- Solicitation of participant feedback
- An ongoing process of program measurement and refinement.

Along with incentives, each of these wellness program components also plays a key role in helping

health promotion programs deliver significant value to an organization's bottom line while also enhancing the health and happiness of its employees. ◀

Endnotes

1. Buck Consultants, *Working Well: A Global Survey of Health Promotion and Workplace Wellness Strategies*, October 2007, www.BuckSurveys.com.

2. Multiple studies, including J. Fries, C. E. Koop, C. E. Beadle et al. “Reducing Health Care Costs by Reducing the Need and Demand for Medical Services,” *The New England Journal of Medicine*, 329: 321-325 (July 29, 1993).

3. Alan Deutschman, *Change or Die: The Three Keys to Change at Work and in Life* (New York: Harper Collins, 2007).

4. Larry S. Chapman, M.P.H., *Using Wellness Incentives: Positive Tools for Healthy Lifestyles*, Summex Corporation, 2002.

5. If individual incentive rewards are deposited into an HRA or an FSA, those plans are subject to the Section 105(h) nondiscrimination rules. Also, any employer contribution above \$500 to a health care FSA will make the FSA subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) special enrollment rules. Incentive contributions made to an HSA could run afoul of the Section 4980G comparability rules (and potentially be subject to a 35% excise tax) unless employees have the opportunity to make contributions to their HSAs on a pretax basis through the employer's cafeteria plan. Such contributions, though not subject to the comparability rules, will be subject to the Section 125 nondiscrimination rules (eligibility rules, contributions and benefits tests and key employee concentration tests).

6. Gregory Lopes, “Health Plans Offer Investment,” *Washington Times*, August 20, 2007 washingtontimes.com/article/20070820/BUSINESS/108200017/1006.

7. 26 U.S.C. §213 and 26 U.S.C. §132.

8. 71 *Fed. Reg.*, 75014 (December 13, 2006).

9. 42 U.S.C.A. §12101.

Benefits Quarterly—Publication Guidelines

Benefits Quarterly provides a comprehensive overview and detailed analysis of the major issues in the employee benefits industry. Its articles represent works of substance or original research geared to the employee benefits practitioner. Discussion, opinions and controversial material are desirable for publication. Case study approaches also are encouraged.

Article submissions should relate to employee benefits and compensation, and can include subjects applying to retirement, health care, insurance, law, banking, investments, government, consulting, plan management and administration, actuarial matters, labor relations, accounting, claims management, deferred compensation, work/family, and other areas of human resource management.

Issues represent a mix of articles on subjects reflective of the industry. Some specialty topics, as listed on page 33, are planned for upcoming issues. Individuals interested in contributing articles to *Benefits Quarterly* should contact the editor as soon as possible. Manuscript guidelines are available upon request.

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