

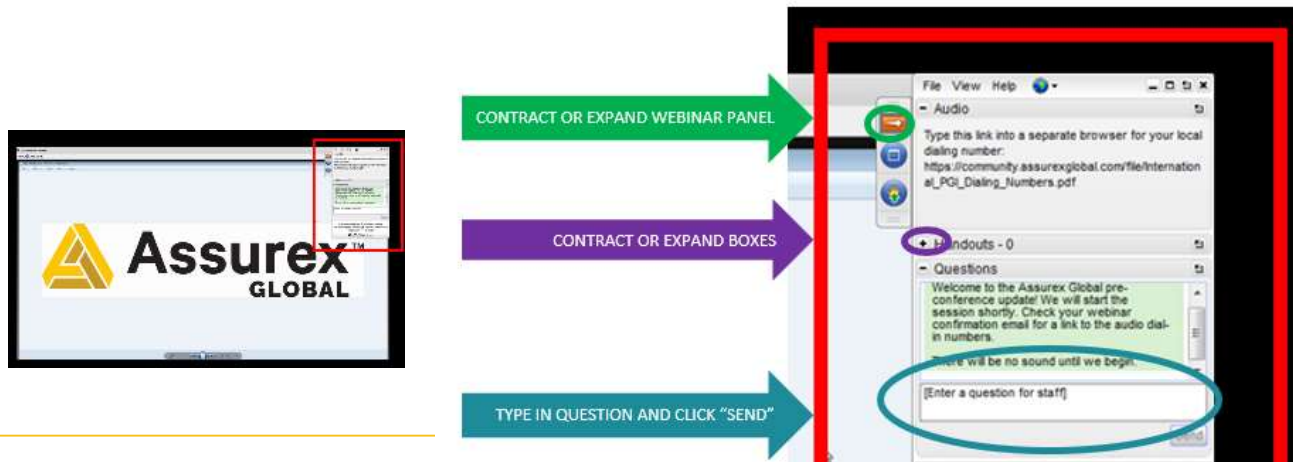
2021

Wellness Rules Overview

Presented by Benefit Comply

Wellness Rules Overview

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” or “Chat” box located on your webinar control panel.
- Slides can be printed from the webinar control panel – expand the “Handouts” section and click the file to download.



Assurex Global Partners

- Bolton & Company
- Catto & Catto
- Cottingham & Butler
- Cragin & Pike, Inc.
- Daniel & Henry
- Foa & Son
- The Graham Company
- Haylor, Freyer & Coon, Inc.
- Henderson Brothers, Inc.
- The Horton Group
- The IMA Financial Group
- INSURICA
- Kapnick Insurance Group
- Lyons Companies
- The Mahoney Group
- MJ Insurance
- Oswald Companies
- Parker, Smith & Feek, Inc.
- R&R Insurance
- RCM&D
- The Rowley Agency
- Starkweather & Shepley
- Sterling Seacrest Pritchard
- Woodruff Sawyer

Wellness Programs

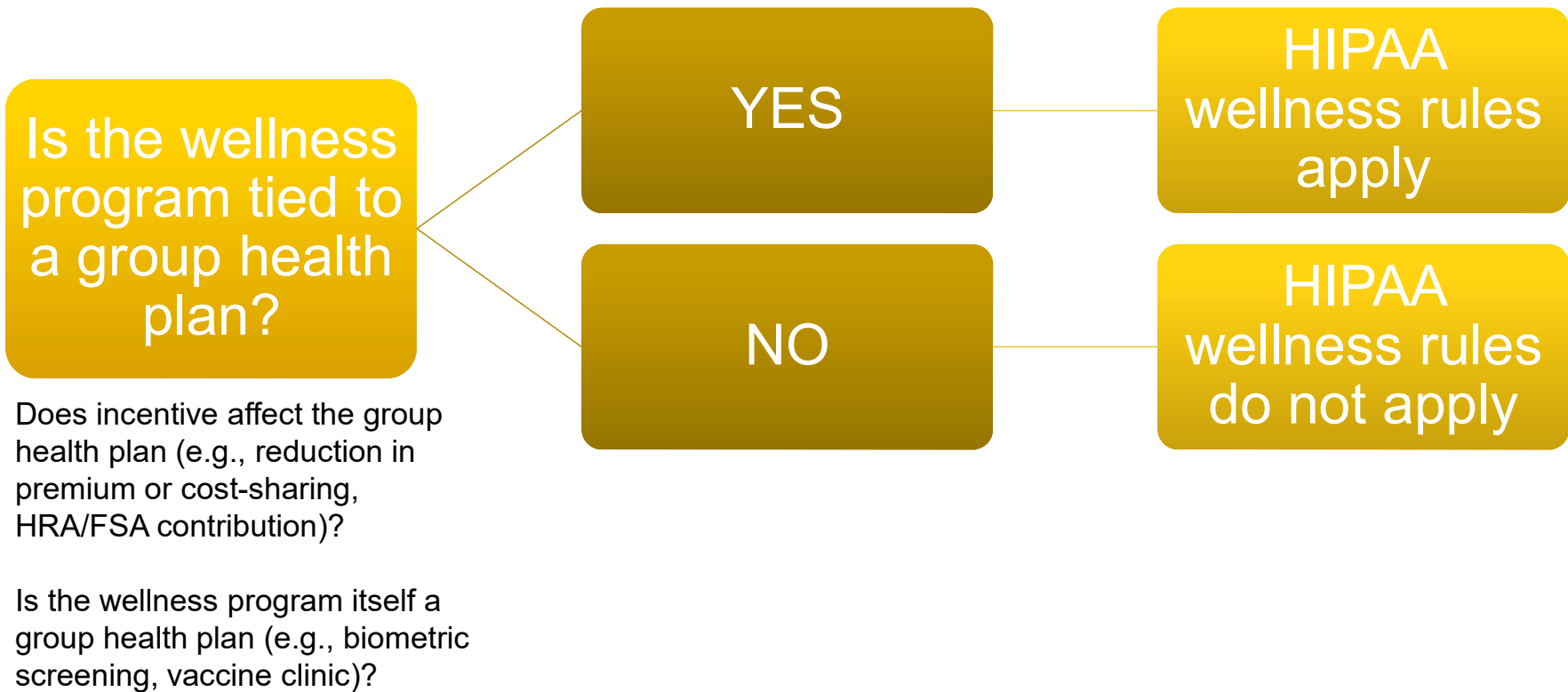
Employer-provided programs and activities intended to help employees improve health and reduce costs

Wellness Program Incentives

- Incentives/Penalties
 - Wellness programs that provide incentives to participate (or penalties for failure to participate) must consider:
 - HIPAA wellness rules
 - EEOC wellness rules
 - Taxation
 - Affordability (if incentive affects employee contribution toward medical premiums)
 - COBRA (if incentive affects group health plan cost-sharing – e.g., deductible, copays)

HIPAA Wellness Rules

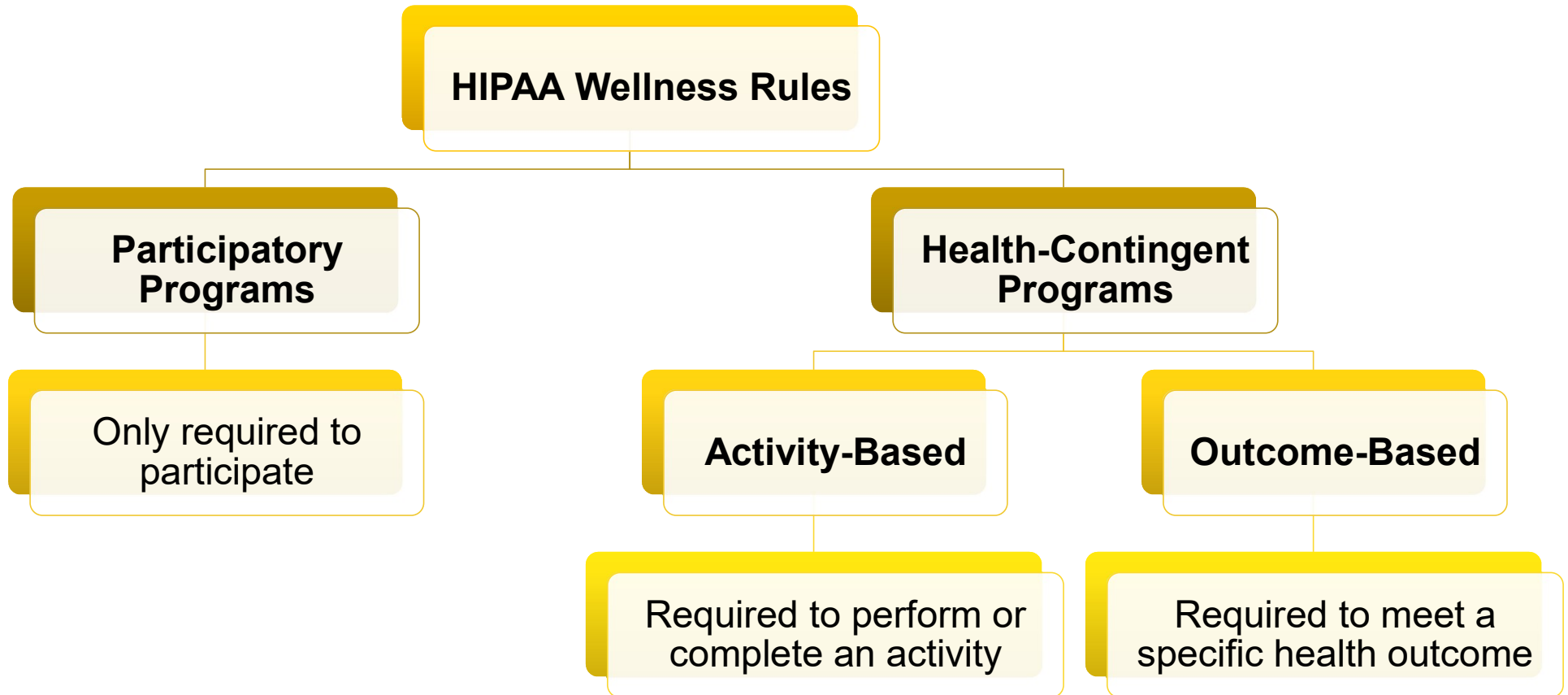
HIPAA Wellness Rules



HIPAA Nondiscrimination Rules

- General Rule
 - HIPAA prohibits group health plans from differentiating eligibility, cost of coverage, or benefit levels on health status (no health status discrimination)
- Exception for Wellness Programs
 - Allowed to differentiate group health plan premium contributions or cost-sharing if HIPAA wellness rules are followed

HIPAA Wellness Rules



HIPAA Wellness Rules

- Participatory Programs
 - Incentive(s) not based on satisfying a standard that is related to a health factor
- Example
 - Incentive for participating in a biometric screening or completing a physical exam (incentive not based on screening outcomes or scores)
- Program Requirements
 - Must be offered to all similarly situated individuals (no incentive limit)

HIPAA Wellness Rules

- Health-Contingent Programs
 - Incentive(s) based on performing or completing an activity (activity-based)
 - Could also include a program in which health status may prevent participation
 - Incentive(s) based on achieving or maintaining a specific health outcome
- Examples
 - Walking program
 - Vaccination clinic
 - Cholesterol or BMI score
 - Not a tobacco user

HIPAA Wellness Rules

Health-Contingent Program Requirements

Must be given an annual opportunity to earn the incentive

Maximum incentive cannot exceed 30% of the total cost of coverage, or 50% for tobacco-related programs

Must be reasonably designed to promote health or prevent disease and not overly burdensome or a subterfuge for violating discrimination laws

Must be available to all similarly situated individuals and individuals who qualify by satisfying a reasonable alternative

Must disclose availability of a reasonable alternative standard in all plan materials describing wellness program (model notice available)

HIPAA Wellness Rules

- **Health-Contingent Programs – Incentive Limits**

- Based on total cost of coverage or premium, including both the employer and employee contribution
 - If only employee is eligible for an incentive, limit is based on single cost of coverage
 - If family members are also eligible for an incentive, limit is based on whatever tier of coverage employee enrolls in
 - All health-contingent wellness incentives must be aggregated when determining whether limit is met

	Single Medical Premium - \$500	Family Medical Premium - \$1,200
EE-Only, Non-Tobacco	Incentive up to \$150/month	N/A
EE-Only, Tobacco	Incentive up to \$250/month	N/A
Family, Non-Tobacco	Incentive up to \$150/month	Incentive up to \$360/month
Family, Tobacco	Incentive up to \$250/month	Incentive up to \$600/month

HIPAA Wellness Rules

- Health-Contingent Programs – **Reasonable Alternative Standard**
 - Must allow participants to earn same incentive by waiving original requirement or offering a reasonable alternative standard
 - For outcome-based programs, reasonable alternative standard must be available to any who cannot achieve the original standard
 - For activity-based programs, reasonable alternative standard must be available to any for whom it is unreasonably difficult due to health status or medically inadvisable
 - Reasonable alternative standard does not have to be determined in advance; may be determined on an employee-by-employee basis as requested
 - Availability of a reasonable alternative standard must be communicated in all wellness-related materials

Your health plan is committed to helping you achieve your best health. Rewards for participating in a wellness program are available to all employees. If you think you might be unable to meet a standard for a reward under this wellness program, you might qualify for an opportunity to earn the same reward by different means. Contact us at [insert contact information] and we will work with you (and, if you wish, with your doctor) to find a wellness program with the same reward that is right for you in light of your health status.

HIPAA Wellness Rules

- **Health-Contingent Programs – Tobacco Surcharges**
 - Incentive affecting group health plan is tied to an outcome (tobacco status), which makes it health-contingent (outcome-based)
 - 50% incentive limit could apply to employee, spouse and dependents
 - If employer offers other health-contingent wellness incentives, remember to aggregate them with the tobacco surcharge to ensure the 50% limit is met
 - Other health-contingent incentives cannot exceed 30% in aggregate
 - Reasonable alternative standard
 - Common practice – offer the incentive (do not impose the surcharge) for those who complete a smoking cessation class or use smoking cessation products

HIPAA Wellness Rules

- **Health-Contingent Programs – Vaccine Surcharges**
 - Incentives or penalties tied to vaccinations may create a group health plan
 - Health status may prevent participation, making it health-contingent (activity-based)
 - 30% incentive limit could apply to employee, spouse and dependents
 - If employer offers other health-contingent wellness incentives, remember to aggregate them with the vaccination incentive to ensure 30% limit is met
 - Reasonable alternative standard
 - Easiest to waive requirement for those who cannot participate due to health status
 - Other possible alternatives: wellness check, regular COVID testing, masking, remote work, etc.

HIPAA Wellness Rules

- Health-Contingent Programs – **Vaccine Surcharges**
 - Vaccination Status
 - Tied to date individual was vaccinated?
 - What about boosters?
 - HIPAA Privacy & Security
 - Information about vaccination status, if collected as part of wellness program, may be protected health information (PHI) subject to HIPAA privacy and security rules
 - Apply required HIPAA privacy and security requirements, including limiting access and using information only for plan administration purposes (not for any other employment-related purposes). Also make sure information is stored in a confidential manner

EEOC Wellness Rules

EEOC Wellness Rules

- General Rule
 - The Americans with Disabilities Act (ADA) restricts employers' ability to make disability-related inquiries or require medical examinations of employees unless they are job-related or consistent with business necessity
 - The Genetic Information Nondiscrimination Act (GINA) prohibits an employer from requesting, requiring or purchasing employee "genetic information" (including the manifestation of a disease or disorder in employee's family member)
- Exception for Wellness Programs that are "Voluntary"
 - Examples:
 - Incentives tied to participation in a biometric screening or a health risk assessment
 - Medical testing to determine tobacco use

EEOC Wellness Rules

EEOC Wellness Program Requirements - ADA

Participation must be voluntary

Must be reasonably designed to promote health or prevent disease and not overly burdensome or a subterfuge for violating discrimination laws

Notice must be provided that includes a description of the medical information collected, who will have access to it, and how it will be used and kept confidential

Information collected may be provided only in aggregate form unlikely to disclose the identity of specific individuals except as necessary to administer the plan. Information must be collected on separate forms, maintained in separate files, and treated as a confidential medical record

Reasonable accommodation is required if a disability or medical condition prevents individuals from participating or earning an incentive

May not be required to agree to the sale, exchange, sharing, transfer, or other disclosure of medical information (except to carry out program), or to waive confidentiality protections under the ADA

EEOC Wellness Rules

EEOC Wellness Program Requirements - GINA

No incentive tied to employee's completion of an assessment that collects genetic information, or make it clear that completing such information is not required to earn incentive

No incentive tied to children providing information about the manifestation of a disease or disorder (considered genetic information of the employee)

When incentives are tied to spouses providing information about the manifestation of a disease or disorder, must follow all ADA rules AND obtain a signed confidentiality notice

Spouses cannot be denied an incentive for failure to satisfy a particular outcome or indicating the manifestation of a disease or disorder

EEOC Wellness Rules

- Incentive Limits ???

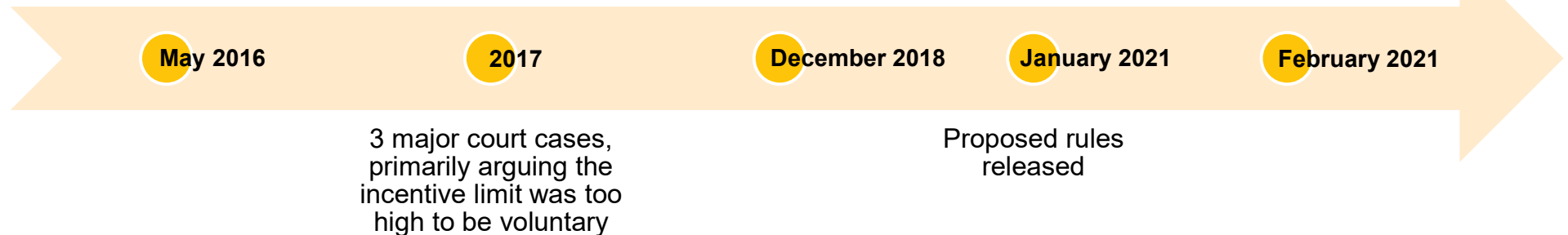
Not clear what level of incentive is permitted

- **TIMELINE – Agency Guidance**

Final wellness rules released outlining requirements for a wellness plan to be considered “voluntary”

Incentive limits removed/vacated

Proposed rules withdrawn



EEOC Proposed Wellness Rules

Voluntary Participation

- Cannot be denied coverage or be subject to any adverse employment action
- Incentive cannot be more than de minimis (safe harbor for some health-contingent programs)

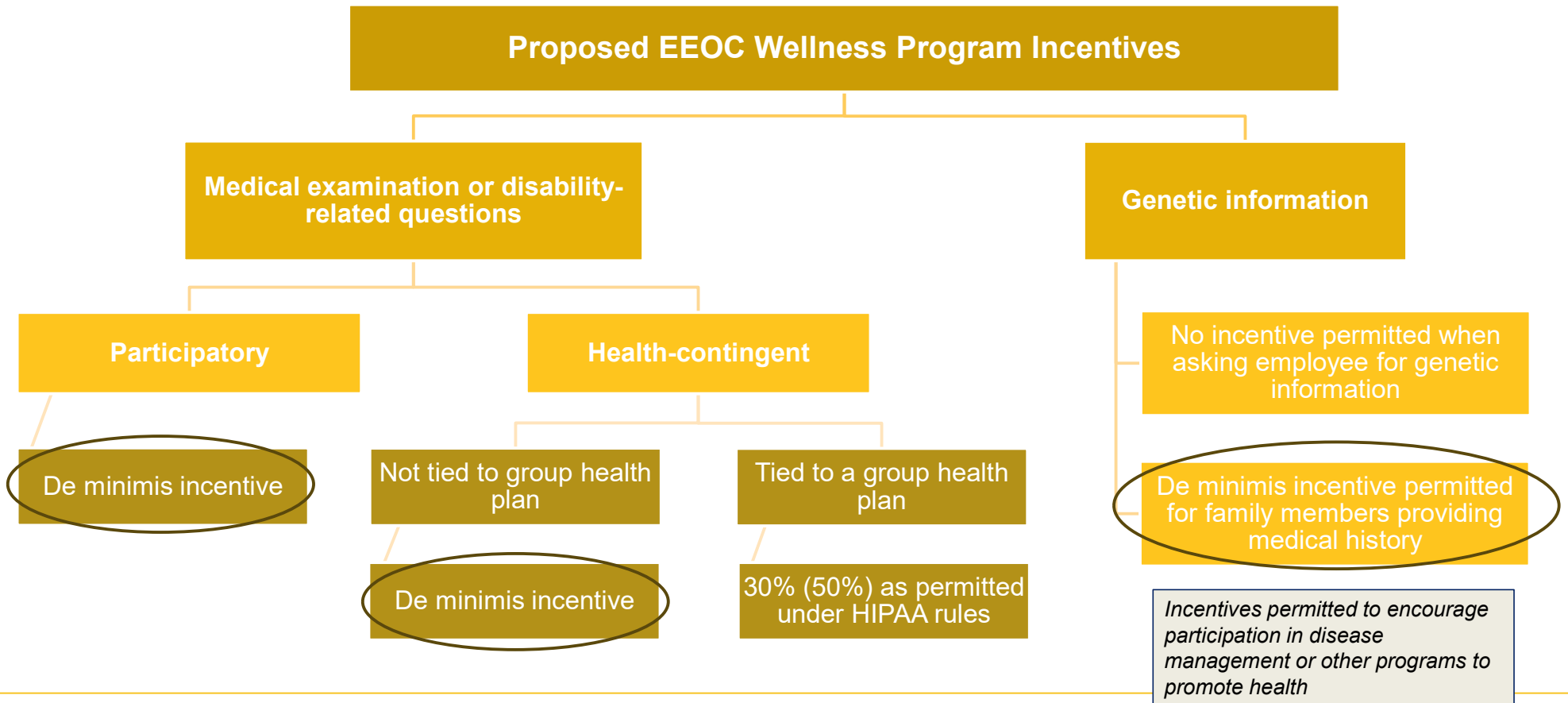
Confidentiality

- Specific information handling requirements
- Cannot require agreement to the sale, exchange, sharing, transfer or other disclosure of information
- ~~Confidentiality notice~~

Reasonable Accommodation

- Required for those with a disability or medical condition that prevents participation

EEOC Proposed Wellness Rules



EEOC Wellness Rules

- Tobacco Surcharges
 - EEOC rules apply only if medical testing is used to verify tobacco/nicotine use
 - EEOC rules do not apply if employer relies on employee attestation

EEOC Wellness Rules

- Vaccination Surcharges
 - Merely asking for proof of vaccination is not subject to EEOC rules
 - Providing vaccines on site may be subject to EEOC rules

Vaccine from
unrelated 3rd party

EEOC rules do not apply

- Flexibility for employer to provide incentive subject to HIPAA wellness rules

Employer
vaccine clinic

EEOC wellness rules may apply

- Incentive limit???
- Confidentiality notice

Miscellaneous

Wellness Programs – Taxation

- General Rule
 - Any incentive should be treated as taxable income unless either specifically addressed as tax-free in the law or considered de minimis
- De Minimis Definition
 - Code §132(e) defines it as *“any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable”*

Wellness Programs – Taxation

Common Incentive Options

- Vacation/PTO - Taxable
- Gift cards, prizes, cash bonus - Taxable
- Medical plan premium surcharge – Not Taxable
- Reduction in medical plan deductible – Not Taxable
- Health FSA, HRA or HSA contribution – Not Taxable

Wellness Programs - Affordability

- Wellness Incentive Affects Employee Premium Contribution
 - General Rule: Affordability is based off non-wellness rate (higher rate)
 - Exception: When incentive is tobacco-related, affordability is based off non-tobacco rate (lower rate)
- Example

Not Tobacco-Related

- Employee contribution is \$250/month
- Wellness incentive reduces employee contribution to \$150/month

Affordable if \$250 does not exceed 9.61% (in 2022) of employee's household income or an affordability safe harbor

Tobacco-Related

- Employee contribution is \$250/month
- Wellness incentive reduces employee contribution to \$150/month

Affordable if \$150 does not exceed 9.61% (in 2022) of employee's household income or an affordability safe harbor

Wellness Programs - COBRA

- Federal COBRA Requirements
 - If wellness program is part of a group medical plan, or is a group health plan on its own, generally COBRA will apply
 - If COBRA applies, whether incentive must be available to COBRA participants depends upon type of incentive offered:
 - A premium differential or any incentive provided outside of the group health plan does NOT need to be available to COBRA participants
 - If incentive affects cost-sharing (e.g., deductible or co-pay differential), it should be available to COBRA participants who meet wellness program requirements

2021

Wellness Rules Overview

Presented by Benefit Comply