THE HENRY J. KAISER FAMILY FOUNDATION

Filling the need for trusted information on national health issues...

May 2016 | Issue Brief

Workplace Wellness Programs Characteristics and Requirements

Karen Pollitz and Matthew Rae

The majority of large employers that offer health benefits today also offer at least some wellness programs in an effort to promote employee health and productivity and reduce health related costs. Workplace wellness programs vary in the services and activities they include, and about three-in-ten large employers use incentives to encourage employees to participate. Depending on a program's characteristics, different federal rules might apply. Final regulations recently issued by the Equal Employment Opportunity Commission (EEOC) would change standards applicable to certain workplace wellness programs that use incentives to encourage workers and their spouses to provide personal health information. These new rules are intended to be more consistent with other standards implementing requirements in the Affordable Care Act (ACA) that apply to certain workplace wellness programs. Both rules seek to balance employer interest in incentivizing workers to participate in wellness programs against requirements that prohibit discrimination based on health status, disability, and genetic information.

Federal Standards for Workplace Wellness Programs

Three federal laws directly address workplace wellness programs within the context of other broad rules that prohibit discrimination based on health status. The Employee Retirement Income Security Act (ERISA) prohibits discrimination by group health plans based on an individual's health status. ERISA makes exceptions for wellness programs to offer premium or cost sharing discounts based on an individual's health status in certain circumstances. The Americans with Disabilities Act (ADA) prohibits employment discrimination based on health status and generally forbids employers from inquiring about workers' health status, but makes an exception for medical inquiries that are conducted as part of voluntary wellness programs. Finally, the Genetic Information Nondiscrimination Act (GINA) prohibits employment discrimination based on genetic information and forbids employers from asking about individuals' genetic information, including information about family members' health status, or family history. Like the ADA, GINA allows an exception for inquiries through voluntary wellness programs.

Another federal law – the Health Insurance Portability and Accountability Act (HIPAA) – establishes standards to protect the privacy of personal health information, including information that may be collected by some workplace wellness programs. The ADA and GINA also include certain privacy protections.

In May 2016, the EEOC, which enforces ADA and GINA, issued new regulations to modify ADA requirements for workplace wellness programs "in a manner that reflects both the ADA's goal of limiting employer access to medical information … and the ACA's provisions promoting wellness programs." A new final rule made similar changes to GINA wellness program requirements.

ERISA standards for health-contingent wellness program incentives - In 2010, the Affordable Care Act amended ERISA to permit group health plans to adopt wellness program incentives that vary a person's group health plan premiums or cost-sharing based on their health status.[1] Such programs are called "health-contingent" wellness programs. Some health-contingent programs provide rewards, such as premium discounts, to people who can meet certain health outcomes, such as normal weight or blood pressure. Others might identify people with health problems and then provide rewards if they participate in wellness classes or activities.

Final regulations to implement ACA provisions, issued in 2013 by the US Department of Labor (DOL), said health-contingent wellness programs can vary group health plan premiums or cost sharing based on health status and will not be considered to discriminate based on health status if they meet five standards. One limits the amount of rewards.[2] The maximum reward is 30% of the total cost (both the employer and employee share) of self-only group health plan coverage. The maximum can be increased to 30% of the cost of family coverage if spouses and dependents are eligible to participate in the wellness program, and to 50% if tobacco-related components are included in the wellness program. In 2015, the average annual cost of group health plan coverage was $6,251 for an individual and $17,545 for a family. Variation around the average is substantial; for example, 25% of covered workers are enrolled in plans that cost more than $7,000 for single coverage and $20,000 for family coverage. As a result, the maximum wellness incentive could reach thousands of dollars.[3]

Health-contingent wellness programs also must be reasonably designed to promote health or prevent disease. "Reasonably designed" is defined as having a reasonable chance of improving the health or preventing disease, not being overly burdensome or a subterfuge for discrimination, and not being highly suspect in the method chosen to promote health. By regulation, this is "intended to be an easy standard to satisfy… There does not need to be a scientific record that the method promotes wellness to satisfy this standard."[4] In addition, reasonably designed health-contingent wellness programs must meet other standards related to providing notice to participants, providing waivers or alternative ways for participants to earn rewards, and making rewards available to participants at least annually.

ERISA standards for participatory wellness programs - Under the DOL rule, wellness programs that do not base rewards or penalties on health status are called "participatory" wellness programs. Participatory wellness programs are not required to meet any of the five standards that apply to health-contingent wellness programs and generally are not considered to implicate ERISA nondiscrimination rules. However, the DOL rule notes that other employment discrimination laws, such as the ADA and GINA, also apply, and that being in compliance with the ERISA/ACA wellness program standards does not relieve employers from having to comply with other federal laws.

ADA and GINA standards for wellness programs - In 2000, the EEOC issued enforcement guidance that a wellness program is considered voluntary under the ADA "as long as an employer neither requires participation nor penalizes employees who do not participate." In 2010, final regulations to implement GINA restated this definition of voluntary wellness programs.

In 2014, EEOC brought enforcement actions against several employers that penalized workers who would not participate in wellness programs that included medical inquiries. One action involved an employer that used financial incentives to encourage participation. Employer groups expressed disagreement with these actions, urging that the ADA should be interpreted to permit use of financial incentives similar to those authorized under the ACA/ERISA.

Revised ADA standards for wellness programs offered through a group health plan - Final regulations issued by the EEOC reinterpret ADA standards for voluntary wellness programs. For programs offered on or after January 1, 2017, the rule requires any wellness program that involves medical inquiries to be reasonably designed, as defined under the ERISA/ACA rule. The ADA rule also specifies a reasonably designed wellness program must not be designed mainly to shift costs onto employees based on their health. Further, reasonably designed wellness programs that collect health information must also provide participants with their results, follow-up information, or advice designed to improve health or use collected information to design a program that addresses at least a subset of health conditions identified. A program also is not reasonably designed if it exists "simply to give an employer information to estimate future health care costs." Whether a wellness program is reasonably designed to promote health or prevent disease will be evaluated by EEOC in light of all relevant facts and circumstances.

In addition, two new standards relating to financial incentives and notice will apply. With respect to incentives, employers cannot deny eligibility for group health plan benefits or take adverse employment action, or retaliate against, intimidate, or threaten employees who refuse to participate in workplace wellness programs. The rule allows use of financial or in-kind incentives (such as time off awards or other items of value) to encourage participation in wellness programs that include medical inquiries. The maximum financial incentive is 30% of the total cost (employer and employee share) of self-only group health plan coverage. This limit applies to both health-contingent and participatory wellness programs. A wellness program will be considered voluntary under the ADA if the amount of an incentive offered for participation – alone or in combination with incentives offered for health-contingent wellness programs – does not exceed this maximum. The rule further specifies that incentives need not be conditioned on participating in the group health plan. For example, if an employer offers a wellness program but does not offer group health plan benefits, the maximum incentive to participate in the wellness program must not exceed 30% of the cost of self-only coverage under the second lowest cost silver plan offered for a 40-year-old nonsmoker in the health insurance exchange located where the employer's principal place of business is located. Finally, the rule specifies that wellness programs cannot condition the incentive on the individual's agreeing to the sale, exchange, sharing, transfer, or other disclosure of medical information (except which would otherwise take place to carry out the reasonably designed wellness program) or to waive confidentiality protections that would otherwise apply.

Notice requirements will also apply to wellness programs that involve medical inquiries such as HRAs. Programs will be required to provide workers notice of what information would be requested, how it would be used, and how the privacy and security of personal information would be protected. Notice requirements also apply to any workplace wellness program, either health-contingent or participatory, that involves medical inquiries.

Modified GINA standards for wellness programs – In addition, EEOC issued a final rule to make similar changes in workplace wellness standards under GINA. The GINA wellness rule addresses the extent to which an employer may offer inducements to an employee's spouse to participate in its workplace wellness program. Inducements for the spouse to participate in a wellness program can be made without regard to whether the employer offers group health benefits to the spouse or whether the spouse participates in the employer's group health plan.

Under GINA, genetic information is defined to include not only results of a genetic test, but health information about an individual's family members, including the spouse. The rule makes an exception to this definition and permit wellness programs to offer incentives to spouses to provide information about their own health status, though not about results of genetic tests. The final rule does not permit workplace wellness programs to offer incentives for children (including adult children) of employees to disclose their genetic information or any other health information.

The GINA wellness rule also adopts the ERISA/ACA definition of a reasonably designed wellness program as modified by the ADA wellness rule. The proposed rule had specifically sought comment on whether to adopt other restrictions on collection of genetic information by workplace wellness programs, including a requirement to collect only the minimum necessary information to administer the program, or a prohibition on collecting genetic information from other sources, such as patient medical records and health insurance claims data. The final rule declined to adopt these restrictions.

In addition, the GINA wellness rule amends the standard for voluntary wellness programs to permit a maximum incentive for the spouse to participate in the workplace wellness program. The maximum incentive applicable to the spouse would also be 30% of the cost of self-only coverage offered by the employer, regardless of whether the spouse participates in the health plan. If the employer does not offer a health plan, the maximum incentive would be based on the cost of the second lowest cost silver plan in the Marketplace.

The final GINA wellness rule also includes the ADA rule requirement that wellness programs cannot condition the incentive on the individual's agreeing to the sale, exchange, sharing, transfer, or other disclosure of medical information (except which would otherwise take place to carry out the reasonably designed wellness program) or to waive confidentiality protections that would otherwise apply.

Federal privacy standards and workplace wellness programs – Federal privacy protections may also apply to personal information gathered under workplace wellness programs. The ADA establishes privacy standards for covered entities subject to that law – employers with 15 or more workers. Covered employers are required to keep private all medical information about workers that they may obtain, whether such information is collected through a wellness program or gathered for other permitted employment-related purposes. Access to identifiable medical information is restricted and only need-to-know exceptions are allowed, such as for administering a health plan. Identifiable medical information must be kept securely and separate from other employment records. ADA privacy standards also generally require that personal health information gathered by a wellness program shall not be used for any purpose inconsistent with the ADA prohibition on employment discrimination. Medical information obtained by the program may only be provided to the employer in aggregate terms that do not disclose or are not reasonably likely to disclose the identity of any employee. In

case of a suspected violation of ADA privacy rules, individuals may file a complaint with the EEOC and/or initiate a private law suit. Similar privacy standards under GINA apply to genetic information.

Federal privacy protections under HIPAA also apply to some workplace wellness programs. Covered entities under HIPAA include most health care providers, health care clearinghouses, and health plans, including group health plans sponsored by employers, but employers are not covered entities under HIPAA. As a consequence, HIPAA privacy rules do not apply to wellness programs that are offered directly by employers outside of a group health plan. Under HIPAA, a group health plan generally cannot disclose personal health information to a person's employer without that person's authorization, but a group health plan is permitted to disclose protected health information to the employer without authorization if the employer certifies to the plan that it will safeguard the information and not use or share it for any employment-related activity or in connection with any other benefit. In case of a suspected violation of HIPAA privacy rules, individuals may file a complaint with the US Department of Health and Human Services (HHS); there is no private right of action under HIPAA. For a complaint involving a covered workplace wellness program, HHS would investigate and verify whether the plan had received the required certifications from the employer. If the group health plan had not obtained the required certification HHS could seek civil monetary penalties. However, if HHS found that an employer had violated its promise to only use the information that it receives for permitted purposes, HHS could not pursue enforcement against the employer due to the agency's limited jurisdiction.

Interpretive guidance issued with the final ADA wellness rule notes that different privacy standards might apply to worksite wellness programs, depending on whether the program is offered as part of a group health plan. The guidance states that privacy standards established under the ADA continue to apply to any ADA covered entity. In addition, when a wellness program is part of group health plan, its obligation to comply with ADA privacy rules will likely be satisfied by adhering to HIPAA privacy rules.

Under all three privacy standards, it remains permissible for wellness programs to share participants' health information with their business partners for purposes of administering the program. Under the "reasonably designed" standard, for example, this could include sharing information with a business partner to market health- or wellness-related products and services to the enrollee.

What is Known About Workplace Wellness Programs Today?

The annual Employer Health Benefit Survey conducted by the Kaiser Family Foundation and Health Research and Annual Trust (HRET) has collected data on workplace wellness programs since 2005. In 2015, the survey was revised to capture new information on employer's wellness offerings. RAND Corporation studies on workplace wellness programs provide further information about program efficacy and participation rates.

According to the KFF/HRET survey,[5] 50% of firms offering health benefits in 2015 offered wellness programs related to "tobacco cessation," "weight loss," and/or "other lifestyle or behavioral coaching."[6] Large firms (at least 200 employees) are more likely to offer such programs than smaller firms (81% vs. 49%). Large firms that offered health benefits and wellness programs in 2015 collectively employed 66.4 million workers, 42.7 million

of whom were covered by one of the firms' health plans.[7] Programs vary in their use of financial incentives, health screenings, and whether they are offered as part of or outside of the group health plan. (See Table 1)

Wellness Programs and Group Health Plans - The 2014 KFF/HRET survey asked employers whether most of their wellness programs are provided by the group health plan, or by the firm. In 2014, 55% of large firms that offered wellness programs said most of their wellness benefits were provided by the group health plan. The survey did not ask respondents to specify which wellness program components are offered through the health plan. Absent a formal definition of what it means for wellness benefits to be offered through a group health plan, the categorization remains somewhat subjective.

Wellness Programs and Dependent Eligibility – In 2013, nearly half (48%) of employer wellness programs were open for participation by the spouses or dependents of workers as well. This was more often the case for wellness programs offered by large firms than for small firms (65% vs. 47%).

Health Risk Assessments and Biometric Screening - In 2015, 19% of firms offering health benefits required or offered their employees the opportunity to complete a health risk assessment or HRA – a survey that asks workers to self-report their health status, health history, and other information. Large firms were more likely than smaller firms to offer HRAs (50% vs. 18%). Similarly, 14% of firms offering health benefits offered their employees the opportunity to complete biometric screening – a physical examination that provides an objective source of health information, such as body mass index and blood pressure. Large firms were more likely than smaller firms to offer biometric screening (50% vs. 13%). A quarter of firms offering health benefits, including 64% of large firms, offered either type of wellness screening. Thirty-six percent of large firms offering health benefits offer wellness programs that include both an HRA and biometric screening.

Wellness Program Incentives - Employee participation in workplace wellness programs generally has not been very high. To encourage participation, in 2015, 11% of employers offering health benefits, offered incentives for employees to complete an HRA, complete biometric screening or participate in a wellness programs related to tobacco use, weight loss, or coaching. Large firms offering health benefits are more likely (46%) to use financial incentives than smaller firms (11%). Most large firms with wellness incentives (65%) offer incentives in the form of cash, gift cards or other merchandise. Some provide incentives through health plan premium or cost sharing discounts (34%), or other incentives such as paid time off (19%). In all, about 24.1 million covered workers are in large firms that offer a financial incentive to participate in the wellness program, and 29.7 million covered workers are in large firms that offer a financial incentive to participate and/or to complete health risk assessments or biometric screening.

- *Financial Incentives to Complete HRAs and Biometric Screening-* At firms which offer an HRA, on average about half of employees complete it (51% of employees in small firms, 45% in large firms). Sixty-two percent of large firms offering health risk assessments (or 31% of all large firm wellness programs) offer financial incentives to employees who complete the health risk assessment. Large firms that offer incentives to complete health risk assessments, collectively, employ about 24.4 million covered workers. Half of large employers who have an incentive to complete an HRA, award employees through health plan premium and/or cost sharing discounts. Five percent of large firm wellness

programs that offer health risk assessments require employees to complete the assessment in order to enroll in the health plan.

Fifty-six percent of large firms offering biometric screening (or 28% of all large firm wellness programs) offer financial incentives to employees to complete the biometric screening. Forty-seven percent of large employers that offer biometric screening also offer incentives to complete it that are tied to the health plan premium and/or cost sharing, and 7% of large firm wellness programs that offer biometric screening require employees to complete screening in order to enroll in the health plan.

Twenty-one percent of large firms offering health benefits have an incentive for both biometric screening and health risk assessments. In total, 39% of large firms offering health benefits offer incentives for either screening.

Among large firms offering financial incentives to participate in workplace wellness programs, (including incentives to complete HRAs or biometric screening the maximum value of financial incentives is $500 or less in 64% (or 19% of all large firm offering health benefits) and is greater than $1,000 in 15% of firms (or 5% of all large firms offering health benefits.)

- *Financial Incentives to Meet Biometric Outcomes* - A small percentage of programs offered by employers today are health-contingent wellness programs as authorized under the ACA. In 2015, 5% of large employers that offer health plans and wellness programs included financial incentives for participants to complete biometric screening and meet one or more biometric outcomes. Most often in such large firms, biometric outcomes relate to blood pressure (93%), body mass index (87%), blood cholesterol (85%), and blood glucose (67%) levels. About 5.1 million covered workers are at large firms offering health-contingent wellness programs. When such programs are offered, most large employers use more limited financial incentives than the maximum permitted under the ACA. In most (51%) health-contingent wellness programs offered by large employers in 2015, the financial incentive is $500 or less, though in 29% of such programs, the reward or penalty exceeds $1,000.

Who Administers Wellness Programs?

The corporate wellness services industry has experienced rapid growth in recent years. In 2011, the industry reportedly generated $1.8 billion in revenue. Today, more than 5,600 vendors reportedly generate annual revenue of $8 billion. Market analysts note the industry is characterized by intense competition and fragmented market share, as barriers to entry are modest. Leading vendors include health insurance companies, as well as non-insurer entities.

Table 1: Characteristics of Large Firms Offering Health Benefits and Workplace Wellness Programs and Number of Covered Employees*		
	Percent of Large Firm Wellness Programs**	Covered Employees (millions)
All	100	46.8
General Features		
Dependents eligible to participate in wellness program (2013)	65	31.7~
Health Screenings		
Offer HRA	50	32.0
Offer biometric screening	50	30.7
Offer HRA *or* biometric screening	64	37.5
Offer HRA *and* biometric screening	36	25.1
Incentives		
Incentive to participate in wellness programs, HRA, or biometric screening (combined)	46	32.6
Incentive to participate in wellness programs	31	24.1
Incentive to complete HRA	31	24.4
Incentive to complete biometric screening	28	22.7
Incentive to complete either HRA or biometric screening	39	29.7
Amount of incentive to participate in wellness programs, HRA or biometric screening (combined):		
• $1 to $500	19	13.3
• $501 to $1,000	6	7.1
• >$1,000	5	3.5
Require HRA to join health plan	2	1.2
Require biometric screening to join health plan	2	1.3
Financial incentive to meet biometric outcome #	5	5.1
Amount of incentive to meet biometric outcome:		
• $1 to $500	3	2.6
• $501 to $1,000	1	1.3
• >$1,000	1	0.8

* Covered employee refers to covered by the group health plan, not necessarily participating in the wellness program.
** Large firms have 200 or more workers. Estimates are based on all large firms offering wellness programs. Only firms which offer biometric screening or HRAs are asked about their use of financial incentives for completing those activities.
~ Estimates, including counts of covered workers, based on 2013 Employer Health Benefit Survey.
# Excludes firms which have incentives for meeting biometric outcomes tied to other wellness activities.
SOURCE: KFF/HRET Annual Employer Health Benefits Survey, 2013 and 2015.

Efficacy of Workplace Wellness Programs

The federal government contracted with the RAND Corporation to describe the design of workplace wellness programs and review their experience achieving cost savings and health status improvements, as well as the experience of programs that use financial incentives and how incentives affect participation rates.[8, 9]

RAND identified configurations of workplace wellness programs, based on whether and the extent to which programs offer three types of services: (1) screening to identify health risks, (2) lifestyle management services to reduce risks through encouraging healthier behavior, and (3) disease management services to support

people who already have chronic conditions. It found that roughly half of all employer wellness programs are limited in the extent and nature of services they offer. Twenty percent of programs focus primarily on health screening and offer limited other wellness activities, while 34% are limited in screening services as well as other wellness services and interventions. Only 13% of programs were characterized as comprehensive, offering extensive screening, disease management, and other lifestyle wellness services. (See Table 2)

Table 2: Workplace Wellness Program Configurations and Definitions

Program Configuration	Definition	% of Programs
Limited	Limited services across all three components	34%
Comprehensive	Extensive services across all three components	13%
Screening-focused	Broad range of screening services but limited lifestyle- and disease-management services	20%
Intervention-focused	Broad range of lifestyle-and disease management services but limited screening	21%
Prevention-focused	Broad range of screening- and lifestyle-management services but limited disease management	12%

SOURCE: RAND Employer Survey 2012, in S. Mattke, et al., Workplace Wellness Programs Study, Santa Monica, CA: RAND Corporation, RR-254-DOL, 2013.

With respect to cost savings, RAND observed strong employer confidence in the effectiveness of wellness programs to save money, while also observing that fewer than half of employers engage in formal evaluation of wellness program impacts. Analyzing results of programs that did collect data, RAND found that overall, wellness programs reduced average health care costs by about $30 per member per month, but 87% of savings were attributable to disease management programs that focus interventions on individuals with already-diagnosed conditions in order to reduce complications and related health care utilization. Lifestyle management wellness programs (e.g., promoting exercise or healthier nutrition) accounted for 13% of health care savings. RAND also found statistically significant that behavioral changes associated with workplace wellness programs, though changes were small and not clinically significant. For example, wellness-fitness program participants were found to increase the number of days per week during which they exercise at least 20 minutes by 0.15 days, compared to nonparticipants. Participants in wellness-weight control programs were found to lose about 1 pound over the first three years, on average, compared to nonparticipants.

With respect to the impact of financial incentives, the report observed a median participation rate of 40% across all wellness program types, then compared the experience of limited wellness programs (for example, that are largely screening focused) with programs that offer more extensive lifestyle and disease management activities and services. It found that financial incentives are associated with a significant increase in employee participation in wellness programs overall, by about 20 percentage points, but noted that "building a better programs is almost as effective." Among programs that use no financial incentives, the median participation rate in comprehensive programs was 52%, compared to 20% in limited programs (e.g., that offer health

screening only.) The report found no evidence of cost savings among participants in lifestyle programs that use incentives; instead, utilization among lifestyle program participants increased slightly in the first year of participation. Use of financial incentives was associated with decreased participation in disease management programs. Finally, the report also noted that financial incentives can have unintended consequences of shifting cost to employees with poor health.

Another national survey conducted by the Employee Benefits Research Institute (EBRI) explored factors affecting employee decisions to participate in wellness programs, with results that were generally consistent with the RAND study. Participating employees most often cited a desire to improve health and convenience of the workplace wellness program as the reason for joining a wellness program (70-77%). Financial incentives were cited less often (50-58%). Among top reasons cited by those declining to participate, 69% said they could make wellness changes on their own, 56% said they did not have enough time to participate, 43% said the program was not conveniently located for them, and 33% worried their employers would learn their personal health information.

Discussion

The final EEOC wellness rules seek to harmonize ADA and GINA requirements with ERISA/ACA regulations governing health-contingent wellness programs. New standards will take effect on January 1, 2017. Questions remaining to be answered about the future impact of these rules include:

Will expanding permitted use of financial incentives in participatory wellness programs promote the use of health-contingent wellness programs? Today more than half of large employers offer HRAs and/or biometric screening that would allow them to set and monitor health targets for their workers, but so far few have adopted ACA-authorized health-contingent wellness programs that incentivize workers to meet targets. Concerns related to the ADA and GINA may have be a factor discouraging large firms from offering health-contingent wellness programs. Now that final EEOC rules have been issued, it remains to be seen whether the number of health-contingent wellness programs may grow. On the other hand, because the ADA and GINA wellness financial incentives apply to both participatory and health-contingent wellness programs, and specifically also apply to wellness programs offered by employers that don't offer any group health plan benefits, the number of workers who are incentivized to provide health information to workplace wellness programs in general could also grow.

Will expanding permitted use of financial incentives in all workplace wellness programs change information collection practices by workplace wellness programs? Many workplace wellness programs routinely obtain passive consent from participants to share their personal health information with other business partners or to use such information for other purposes, such as marketing. Final ADA and GINA rules prohibit workplace wellness programs from conditioning participation incentives on a requirement that individuals authorize the sale, exchange, sharing, transfer, or other disclosure of their personal health and genetic information, except as otherwise permitted under the standard for reasonably designed wellness programs. The final rules explicitly do not restrict wellness programs from collecting only the minimum necessary health or genetic information to directly support specific wellness program activities, or prohibit workplace wellness programs from acquiring personal health information or genetic information from other sources, such as patient claims data and medical records data. It remains to be seen whether wellness program information collection practices change under

this standard, or whether attitudes toward workplace wellness programs and individuals' willingness to participate in them change as a result.

The potential for workplace wellness programs to improve health and save costs continues to hold great appeal for employers and policymakers, alike. The challenge is to balance this potential with protections to ensure programs do not discriminate against people with health problems or compel disclosure of health information people want to keep private. As new regulatory standards take effect and workplace wellness programs evolve, so will the balancing of these important goals.

Endnotes

[1] Parallel provisions under the Public Health Service Act apply to employer plans not subject to ERISA.

[2] Under the rule, "reward" is defined to include the avoidance of a penalty.

[3] Kaiser Family Foundation, Health Research and Educational Trust, 2015 Employer Health Benefits Survey. Available at http://ehbs.kff.org

[4] 71 Federal Register at 75018-75019.

[5] The 2015 Kaiser Family Foundation, Health Research and Educational Trust Employer Health Benefits Survey asked additional and new questions about the use of incentives in workplace wellness programs. As a result, statistics reported in the 2015 survey often are not comparable to previous year's findings.

[6] Kaiser Family Foundation, Health Research and Educational Trust, 2015 Employer Health Benefits Survey. Available at http://ehbs.kff.org

[7] Covered worker refers to employees covered by the group health plan, not necessarily participating in a wellness program. Covered workers are a subset of the total number of workers in a firm. Among firms offering health benefits in 2014, 62% of workers were covered by health benefits.

[8] S. Mattke et al., A Review of the US Workplace Wellness Market, 2012; S. Mattke et al., Workplace Wellness Programs Study, 2013; S. Mattke et al., Workplace Wellness Programs: Services Offered, Participation, and Incentives, 2014.

[9] The RAND reports included findings from a national survey of employer-sponsored wellness programs, as well as case studies and data from a smaller sample of programs. RAND followed a similar methodology to the Kaiser/HRET survey and found a similar incidence of wellness programs. In some cases, findings of the two surveys appear different because the RAND survey did not include firms with fewer than 50 employees, while the KFF/HRET survey included firms with as few as 3 employees. In addition, the KFF/HRET data for large firms reflect those with 200 or more employees, while RAND large firm data describe those with more than 1,000 employees.