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# Workplace Wellness Programs Characteristics and Requirements

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Most 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 one-in-five use financial incentives to encourage employees to participate. Depending on a program's characteristics, different federal rules might apply. A proposed regulation recently issued by the Equal Employment Opportunity Commission (EEOC) would change standards applicable to certain workplace wellness programs that use incentives. 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 and disability. This brief summarizes key regulatory standards in light of survey data from the Kaiser Family Foundation and other national studies about the design and impact of workplace wellness programs.

## 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. Like the ADA, GINA allows an exception for inquiries through voluntary wellness programs.

Two other federal laws – the ADA and the Health Insurance Portability and Accountability Act (HIPAA) – establish standards to protect the privacy of personal health information, including information that may be collected by workplace wellness programs.

Recently the EEOC, which enforces ADA and GINA, issued a proposed regulation 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." The proposed rule indicates that regulations to modify wellness program requirements in GINA will be proposed later this year.

**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. 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.[1] 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 2014, the average annual cost of group health plan coverage was $6,025 for an individual and $16,834 for a family; thus the maximum financial incentive could reach thousands of dollars.[2] Health-contingent wellness programs also must meet four other standards related to being reasonably designed, 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 might 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 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.

Shortly thereafter, in April 2015, EEOC issued a proposed regulation to reinterpret ADA standards for voluntary wellness programs. The proposed rule would require any wellness program that involves medical inquiries to be reasonably designed to promote health, not act as a subterfuge for discrimination or be overly burdensome, and not be designed mainly to shift costs onto employees based on their health.

**Proposed ADA standards for wellness programs offered through a group health plan -** In addition, two new standards relating to notice and financial incentives would apply only to wellness programs that are offered as "part of a group health plan." The proposed rule would allow use of financial incentives to promote employee participation in wellness programs that include medical inquiries. The maximum financial incentive would be 30% of the total cost (employer and employee share) of self-only group health plan coverage. The proposed rule specifies this limit would apply to both health-contingent and participatory wellness programs. A wellness program would 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.

In addition, new notice requirements would apply to wellness programs that involve medical inquiries such as HRAs. Programs would 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 would also apply to any workplace wellness program, either health-contingent or participatory, offered as part of a group health plan.

The EEOC proposed rule does not address use of financial incentives or notice requirements in workplace wellness programs offered outside of group health plans. Nor does the rule define what it means for a wellness program to be offered as "part of" a group health plan.

**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. With respect to employer wellness programs, the proposed EEOC rule reiterates that 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.

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.

The EEOC proposed 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. Under the proposed rule, privacy standards established under the ADA would continue to apply to any ADA covered entity. Guidance issued with the proposed EEOC rule suggests that when a wellness program is part of group health plan, its obligation to comply with ADA privacy rules is generally satisfied by adhering to HIPAA privacy rules.

## 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 addition, the federal government contracted with RAND Corporation to evaluate wellness program efficacy and participation rates.

According to the KFF/HRET survey, in 2014, 74 percent of all firms offering health benefits in 2014 offered wellness programs.[3] Large firms (200 or more employees) are more likely to offer wellness programs than smaller firms (98% vs. 73%). Large firms that offered health benefits and wellness programs in 2014 collectively employed 44.6 million covered workers.[4]

Workplace wellness programs vary in the services and activities they include, such as wellness newsletters, onsite flu vaccines, disease management programs, smoking cessation classes, or other fitness and lifestyle programs. Some programs offer a comprehensive range of services, while others are more limited, for example, offering just a wellness newsletter or health screening. Workplace wellness programs also vary in their use of financial incentives, their use of health screenings, and whether programs are offered as part of or outside of the group health plan. (See Table 1)

**Wellness Programs and Group Health Plans -** The KFF/HRET survey asks employers whether most of their wellness programs are provided by the group health plan, or by the firm. In 2014, 55% of large firms said most wellness benefits were provided by the group health plan. The survey does 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 –** Nearly half (48%) of employer wellness programs are open for participation by the spouses or dependents of workers, as well. This is 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 2014, 33% of firms offering health benefits 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 (51% vs. 32%). Similarly, 27% 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 (51% vs. 26%).

Some programs use the HRA or physical exam to screen workers for participation in other wellness services or activities; other programs offer screening as the primary focus, with few other wellness services or activities.

**Wellness Program Incentives -** Employee participation in workplace wellness programs generally has not been very high. To encourage participation, about one-in-five workplace wellness programs use incentives. Large firm wellness programs are more likely (36%) to use financial incentives than smaller firms (18%). Some large firm programs (24%) offer rewards in the form of cash, gift cards or other merchandise. Some firms provide financial incentives through the health plan such as premium discounts (14%), cost sharing discounts (3%), or additional contributions to a worker's health savings account or health reimbursement account (8%). In all, about 22.8 million covered workers are in large firms that offer a financial incentive to participate in the wellness program.

- *Financial Incentives to Complete HRAs* - Fifty-one percent of large firms offering health risk assessments (or 26% of all large firm wellness programs) offer financial incentives to employees who complete the health risk assessment. In most of these large firms, the incentive is worth less than $500. Large firms that offer incentives to complete health risk assessments, collectively, employ about 21.1 million covered workers. Only 3% of large firm wellness programs that offer health risk assessments require employees to complete the assessment in order to enroll in the health plan, and 1% percent of large firm wellness programs that offer biometric screening require employees to complete screening in order to enroll in the health plan.
- *Financial Incentives to Meet Biometric Outcomes* - A small percentage of wellness programs offered by employers today are health-contingent wellness programs as authorized under the ACA. In 2014, 4% of large employers that offer health plans and wellness programs included financial incentives for participants to meet one or more biometric outcomes. About 3.4 million covered workers are at large firms offering health-contingent wellness programs. When health-contingent wellness programs are offered, most large employers use more limited financial incentives than the maximum permitted under the ACA. In most health-contingent wellness programs offered by large employers in 2014, the financial reward or penalty is less than $500.

| 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 | 44.8 |
| **General Features** | | |
| Dependents eligible to participate in wellness program (2013) | 65 | 31.7 |
| **Health Screenings** | | |
| Offer health risk assessment | 51 | 32.6 |
| Offer biometric screening | 51 | 29.6 |
| Offer health risk assessment or biometric screening | 65 | 36.5 |
| **Incentives** | | |
| Any financial incentive to participate*** | 36 | 22.8 |
| Incentive to complete HRA | 26 | 21.1 |
| Incentive < $500 | 17 | 14 |
| Incentive > $500 | 10 | 7.1 |
| Require health risk assessment to join health plan | 1.3 | 0.7 |
| Financial incentive to meet biometric outcome | 4 | 3.4 |
| Incentive < $500 | 2.3 | 1.7 |
| Incentive > $500 | 1.6 | 1.8 |
| Require biometric screening to join health plan | 0.7 | 0.9 |

* 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.
*** Any financial incentive indicates firms that offer employees who participate in wellness programs one of the following incentives: smaller premium contributions, smaller deductibles, higher HRA or HSA contributions, gift cards, travel, merchandise, or cash
SOURCE: KFF/HRET Annual Employer Health Benefits Survey, 2013, 2014

## 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.

## 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.[5, 6]

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: Worksite Wellness Program Configurations and Definitions**

| Program Configuration | Definition | % of Employer Wellness 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 proposed EEOC rule seeks to harmonize ADA requirements with ERISA regulations governing health-contingent wellness programs, though different standards could continue to apply to wellness programs depending on their features and structures. Questions remaining to be answered 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 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 may be one factor discouraging large firms from offering health-contingent wellness programs. If the proposed EEOC rule is adopted, the number of health-contingent wellness programs may grow. On the other hand, because the proposed EEOC financial incentives would apply to both participatory and health-contingent wellness programs, the number of workers who are incentivized to provide health information to workplace wellness programs in general could also grow.

*Might further regulatory standards be established for the design of wellness programs?* The EEOC proposed rule requests public comment on best practices of wellness programs that promote health without shifting costs to employees with health conditions. Pending comment, the proposed rule mirrors the ERISA requirement

that wellness programs should be reasonably designed. Under the ERISA regulation, the reasonably designed standard is "intended to be an easy standard to satisfy,"[7] and does not require evidence of effectiveness at improving health. Research suggests there may be elements of well-designed programs that are more likely to inspire workers to participate and save costs, even without the use of financial incentives. It remains to be seen whether the final regulation might incorporate additional standards for reasonably designed workplace wellness programs.

*What standards will apply to workplace wellness programs offered outside of group health plans, and how will such plans be identified?* The EEOC proposed rule applies new notice and financial incentive standards only to wellness programs offered through group health plans. The proposed rule seeks comment about whether standards should also apply to wellness programs offered outside of group health plans. It leaves unanswered what standards would apply to such programs absent further regulation. The proposed rule also suggests a safe harbor with respect to ADA privacy requirements, deeming them to be satisfied by wellness programs offered through group health plans that comply with HIPAA. Because requirements under the two laws and their enforceability are not identical, questions remain as to how privacy protections could be impacted by this change.

Finally, the proposed rule does not define what it means for a wellness program to be "part of" a group health plan. Might this include, for example, programs that incentivize participation by varying health plan premiums? Or that limit eligibility to health plan participants? Or that use the group health plan's insurer to administer the wellness program? An unintended consequence of this ambiguity could be to create incentives to redesign wellness programs to fit the more advantageous standards.

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 regulatory standards for workplace wellness programs evolve, so will the balancing of these important goals.

# ENDNOTES

1 Under the rule, "reward" is defined to include the avoidance of a penalty.

2 Kaiser Family Foundation, Health Research and Educational Trust, 2014 Employer Health Benefits Survey. Available at http://ehbs.kff.org/

3 Kaiser Family Foundation, Health Research and Educational Trust, 2014 Employer Health Benefits Survey

Available at http://ehbs.kff.org/

4 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.

5 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.

6 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.

7 71 Federal Register at 75018-75019.