

Health Information Compliance Alert

Compliance Strategies: Consider All the Legal Aspects Before Implementing A Wellness Program

First step: Choose a participation-only or standard-based program.

Having a company wellness program is a great way to help your employees improve their health and, in turn, reduce the cost you, as an employer, pay for poor employee health. But before you jump into a new program, make sure you know all the legal ins and outs.

There are many different rules you should consider when you design a wellness program, including HIPAA, the Americans with Disabilities Act (ADA), the Consolidated Omnibus Budget Reconciliation Act (COBRA) and your state's laws, says **Rob Krieg, JD, GBA**, with the Health and Wellness Compliance department of Hill, Chesson & Woody Employee Benefit Services in Chapel Hill, N.C.

Read on to learn what you need to know about these regulations before you start planning your wellness program.

Focus on HIPAA's Wellness Exception Program

When you offer your employees a wellness program, you have to ensure you're not violating the HIPAA non-discrimination rule. "In general, a group health plan cannot establish any rule for eligibility or pricing that discriminates because of a 'health factor,'" Krieg explains. Health factors include health status, medical conditions or illnesses, genetic information or disabilities, he adds.

Good news: The HIPAA non-discrimination rule, however, doesn't mean you cannot offer a wellness program that offers incentives to employees to participate, however. Under the Wellness Exception Program, "a group health plan may vary benefits, including cost sharing mechanisms, or premiums that are required, based on whether the individual has met the standard of the wellness program," Krieg says.

HIPAA Offers Two Types of Programs

Under HIPAA regulations, there are two types of wellness programs you can choose to offer to your employees:

Participation-only programs. This type of program rewards employees for participating in the wellness program, regardless of the results. For example, if you reimburse employees for smoking cessation counseling regardless of whether the person successfully stops smoking, you are offering a participation-only program.

Standard-based programs. This form of wellness program rewards participants for attaining a certain standard or result. An example of a standard-based program would be a testing program that reduces the employee's contribution to his health care premiums if the his cholesterol count is under 200 or shows at least a 10 percent improvement from the last cholesterol test, Krieg says.

New regulations: If your organization chooses to offer a standard-base program, HIPAA regulations require that you must meet these five criteria:

1. There must be a limited value on the reward, whereas the combined reward for wellness programs offered by the plan cannot exceed 20 percent of the cost of applicable coverage, Krieg explains.
2. The program must be reasonably designed to promote health or prevent disease among participants.
3. Employees need to qualify for the reward annually, meaning at least once per year. The program can allow the

employees to qualify for the reward more than once per year if you find it to be administratively feasible, Krieg points out.

4. The reward needs to be available to all similarly situated individuals. "If it is unreasonably difficult or medically inadvisable for an individual to satisfy the standard due to a medical condition, a reasonable alternative standard (or waiver of the standard) must be made available," Krieg says.

5. You must provide full disclosure of alternative standards and waiver opportunities.

Look Beyond HIPAA For Additional Rules

Other regulations you want to consider before designing your wellness plan include the ADA, COBRA and individual state laws.

ADA: This act generally prohibits employment discrimination for individuals with disabilities, and limits what health inquiries and medical exams you as an employer can request. There is an exception to the ADA, which says that voluntary physical exams and health inquiries that are part of an employee wellness program are permitted. This means that as long as your wellness program is voluntary, it can require health inquiries, assessments and/or exams, Krieg says.

COBRA: If your wellness program provides any sort of medical treatment, COBRA applies. Furthermore, if your reward is tied to the employee's health coverage, then you may need to offer COBRA as part of the wellness program.

State law: Check to see if there are any regulations from your state that you need to consider before implementing your wellness program. For example, some states, such as North Carolina, have lawful product laws (smoker protection laws) that you need to consider.