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Wellness Programs – They're Not Above the Law!

Wellness programs can help health plan participants become healthier while simultaneously helping health plans reduce costs for employers. These programs vary in design and implementation and are subject to numerous federal laws and requirements. As witnessed by a spate of lawsuits filed late last year, they can also be problematic for employers.

Applicable Laws

Wellness programs are subject to several federal laws, including the Employee Retirement Income Security Act (ERISA), the Affordable Care Act (ACA), the Health Insurance Portability and Accountability Act (HIPAA), and the Americans with Disabilities Act (ADA), among others. Components of some wellness programs can also implicate state laws.

Integrating a wellness program into a compliant group health plan can satisfy some key requirements of ERISA and the ACA, as well as the HIPAA privacy and security requirements. There are, however, some specific non-discrimination rules that apply expressly to wellness programs.

HIPAA Non-Discrimination Rules

HIPAA's non-discrimination rules generally prohibit discrimination with respect to plan eligibility, cost, and coverage. Wellness programs that meet certain requirements are an exception to this rule.

Common types of wellness programs include standard-based, stand-alone, and participatory programs. Applicability of the HIPAA non-discrimination rules depends on the type of program.

Standard-Based Wellness Programs

Wellness programs that require participants to meet a health standard to qualify for a reward are referred to as "standard-based" programs. These programs are subject to HIPAA's non-discrimination rules, including requirements related to:

- The frequency and size of the reward;
- The reasonableness of the program's design;
- The uniform availability of the program;
- The availability of reasonable alternative standards to qualify for the reward; and
- A specific notice describing the program.

Stand-Alone Programs

Wellness programs that do not provide or pay for benefits, and under which the reward or incentive is not connected to a group health plan, generally are not subject to the HIPAA non-discrimination rules. Other laws and regulations may, however, still apply to standalone programs.

Participatory Programs

In this type of wellness program, participation is rewarded without requiring the satisfaction of a particular health standard. So long as the program is available to all similarly situated individuals, it is deemed to comply with the HIPAA non-discrimination rules.

ADA Non-Discrimination Rules

Restrictions under the ADA may also apply to wellness programs. For example, if a program requires participation, it must also offer reasonable accommodations to individuals with disabilities whose participation may be more difficult. Additionally, programs that require medical exams or disability-related inquiries may be subject to voluntariness and related requirements set forth by the Equal Employment Opportunity Commission (EEOC).

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