BCLP. Client Intelligent

BenefitsBCLP

THE FINAL (AND NOT INTERIM FINAL) REGULATIONS ON WELLNESS PROGRAMS

Jun 04, 2013

While the EEOC continued to grapple with what level of financial incentives is acceptable under nondiscrimination laws (*e.g.*, GINA and ADA), the DOL, HHS and Treasury (the "Departments") issued final regulations addressing incentives for nondiscriminatory wellness programs in group health plans. The final regulations generally follow the proposed regulations issued by the Departments last November (see our prior post), including increasing the maximum incentive threshold for health-contingent wellness programs from 20% to 30% (50% in the case of tobacco related programs) of the total cost of coverage, and provide numerous clarifications.

In addition to the usual commentary, the preamble to the regulations include a report of the findings of a study of wellness programs sponsored by the DOL and HHS and conducted by the Rand Corp. Seventy-three percent of respondents that offered wellness programs believed that they improved employee health and 52% believed that they reduced costs. Larger employers were more positive in believing that wellness programs reduced costs (68% versus 51%).

Although the evidence on the effectiveness of wellness programs was, in some previous studies, found to be promising, it was not conclusive and may not be supported by the Rand survey. In a 2010 survey conducted by Buck Consultants, 40% of employers measured the impact of their wellness program, and of these, 45% reported a reduction in the growth trend of their health care costs (between two to five percentage points per year). A recent article in the Harvard Business Review cited positive outcomes reported by employers in health care savings, reduced absenteeism and employee satisfaction. In studies evaluating the impact of smoking cessation programs (typically education and counseling), participation decreased the smoking rate among participating smokers by 30% in the first year. In the Rand survey, however, only approximately 50% of employers with wellness programs formally evaluated their program's impact, and only 2% reported actual cost savings. Further, an in-depth evaluation of an extensive wellness program involving a hospital system found that although the wellness program reduced inpatient hospitalization costs, these cost savings were cancelled out by increased outpatient costs. A recent article in Health Affairs also found that employer savings from wellness programs may result more from cost-shifting, rather than healthier outcomes and reduced health care usage. In another study investigating the effectiveness of a smoking cessation program, significant differences in smoking rates were found

at a one-month follow-up, but showed no significant differences in quit rates at six months. Nonetheless, employers generally seemed satisfied with their wellness programs, even those who did not know their programs' return in investment.

Over two-thirds of Rand survey respondents use incentives to promote employee participation in wellness programs with the completion of a health risk assessment as the most commonly utilized incentive program. In contrast, only 10% of employers with more than 50 employees use incentives tied to health standards, only 7% link the incentives to health premiums and only 7% administer results-based incentives through their health plans. Not surprisingly, the most common form of outcome-based incentives were for smoking cessation, with almost the same percentage of employers rewarding actual smoking cessation (19%) as rewarding mere participation in a smoking cessation program (21%). The value of incentives varied widely with the average annual value ranging between $152 and $557, or between three and eleven percent of the average cost of individual coverage. According to the Rand survey, maximum incentives averaged less than 10% of the total cost. In light of employers' relatively low use of incentives in wellness programs, the Departments determined that the increase to the maximum reward for participating in a health-contingent wellness program is unlikely to have a significant impact.

Of course, the remaining question is whether the new 30% total cost threshold under the recently issued final regulations (or even the 20% threshold under the prior 2006 regulations) will pass muster with the EEOC. Although the EEOC held a public meeting last month, it sill has provided no guidance on the level of wellness program incentives which an employer may offer without causing the program to be deemed impermissibly mandatory under nondiscrimination provisions other than the HIPAA nondiscrimination provisions.

MEET THE TEAM

Lisa A. Van Fleet

St. Louis

lisa.vanfleet@bclplaw.com
+1 314 259 2326