LEGAL BRIEFS

Employee Wellness Programs

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A show of hands at the WVMA Practice Management Institute on February 18, 2011, suggests that most veterinary practices offer some kind of health plan to their full-time employees. With the help of health insurance agents and consultants, more and more employers are expanding their health plans to include wellness programs.

A wellness program is generally any kind of program that uses rewards to encourage healthier lifestyles. Healthier employees generate fewer and smaller claims under the health plan and, as a result, can lower the premium amounts paid by both employers and employees.

For example, an employer that normally requires its employees to pay 30% of the health plan premiums might reduce the employee share to 25% for employees who are nonsmokers or who take smoking cessation classes (or for employees whose body mass index is in the normal range or who participate in weight-reduction classes). For another example, an employer might reimburse employees for part of the cost of membership in a fitness center. For another example, an employer might provide lunch to each employee who is enrolled in the health plan and who takes a "health risk assessment" that is administered by a health-plan representative and that asks questions about the employee's health-risk factors and eating/exercise habits and educates the employee about areas of potential improvement.

Federal and state governments favor wellness programs and want more employers to implement them. But a federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), prohibits health plans from discriminating against participants on the basis of health factors.

Wellness programs are legal under HIPAA if they do not require employees to satisfy a standard that is related to a health factor. For example, rewarding employees for attending a quarterly health-education seminar sponsored by the health insurer would be legal.

Even if a wellness program **does** require employees to satisfy a standard that is related to a health factor, such as a requirement that the employee be a nonsmoker, the program is legal under HIPAA if it meets 5 requirements. First, in general, the rewards for all wellness programs with respect to a health plan must not exceed 20 percent of the cost of the employee's coverage under the plan. (Effective January 1, 2014, the federal health care reform law increases the percentage to 30 percent and gives a federal agency the power to raise it to 50 percent in special cases.) Second, the wellness program must be reasonably designed to promote health or prevent disease. Third, the wellness program must give eligible individuals the opportunity to qualify for the reward at least once per year. Fourth, the reward under the wellness program must be available to all similarly-situated individuals, so that, even the smoker in our example (who might have a nicotine addiction) could obtain the reward by satisfying an alternative standard, such as merely attending smoking-cessation classes. Fifth, the program materials must inform employees that, if a medical condition hinders them from achieving the standard for the reward, the employee could earn the reward, despite the medical condition, by satisfying an alternative standard.

Employers need to be careful with health risk assessments, because they are a form of medical examination. The Americans with Disabilities Act generally prohibits employers with 15 or more employees from conducting medical examinations, unless (a) they are voluntary and part of a health plan and (b) the medical information is kept apart from general personnel files and not used to discriminate against employees. Recently, a class action lawsuit was filed against a Florida employer for allegedly violating the ADA by deducting $20 from the biweekly paychecks of employees who chose not to participate in biometric screening (finger stick for glucose and cholesterol) and on-line health risk assessments. The premise of the lawsuit is that the $20-per-paycheck charge makes the biometric screening and health risk assessments involuntary. Health risk assessments that ask family-history questions can also, depending upon the circumstances, violate the Genetic Information Nondiscrimination Act, which prohibits health plans from using genetic information for underwriting purposes. If your wellness program involves health-risk assessments, make sure that your health insurance representative or consultant is familiar with these laws.