

**Bargaining Employee Participation in Worksite Health Promotion Programs  
2012**

Worksite health promotion programs are an essential component of systematic efforts to reduce health care costs. A comprehensive worksite health promotion program, as defined by Healthy People 2010, contains five elements: health education, supportive social and physical environments, integration of the organization’s worksite program into its structure, programs like employee assistance programs and other programs to help employees balance work and family, and worksite screening programs (U.S. Department of Health and Human Services, 2000).

In January 2012, the State Employment Relations Board (SERB) conducted the annual survey of public employers, including school districts and educational service centers. Table 1 illustrates the variability observed in the frequency with which various components of such programs were offered in this market. When asked if the organization had an active worksite wellness or health promotion program that was independent of the medical insurance plan, 66% responded affirmatively. When asked to identify the components of the plan, the most common was screening programs, followed by a supportive social and physical work environment, health education, related programs, and integration of the worksite wellness program into the organization’s structure. Those organizations’ worksite wellness programs which possessed all 5 components represented just over 14% of survey respondents.

Table 1: *School district and educational service center worksite wellness program components*

	Number of employers	Percent of employers
Education or counseling opportunities relative to physical activity, workplace injury prevention	335	51%
Policies against tobacco use, classes or counseling on nutrition or fitness	333	51%
Dedicated staff, office, or budget	528	81%
Employee assistance, work/family, occupational safety and health programs, etc.	465	71%
Blood pressure, blood cholesterol screening programs	414	63%

A variety of free public information is available to school districts and educational service centers that wish to improve their worksite wellness programs. One excellent guide developed for this purpose is *School Employee Wellness: A Guide for Protecting the Assets of Our Nation’s Schools*, which is available from the Directors for Health Promotion and Education (DHPE) at <http://www.schoolempwell.org/>. Before embarking on any worksite wellness initiative in a

collective bargaining setting, however, it is best to investigate the language in the collective bargaining agreement(s) and evaluate it in light of federal law. Beyond locally bargained matters, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, prohibits discrimination among employees on the basis of health factors in terms of co-payments, deductibles, benefit levels and premium contributions (45 C.F.R. 146.121(b)(1)(i)). There are certain exceptions to HIPAA's nondiscrimination rule, including an exception for "bona fide" wellness programs that satisfy the requirements set forth in the Regulations.

A wellness program is a program designed to promote health or prevent disease (45 C.F.R. 145.121(f)). A reward that is offered by a wellness program can include all of the following:

- a discount or rebate on premiums or contributions;
- a waiver of all or part of a cost-sharing mechanism such as a deductible, co-payment or coinsurance;
- the absence of a surcharge; or
- the value of a benefit that would not otherwise be provided under the plan

If these are offered in conjunction with a worksite wellness program that does not condition a reward on a health-related standard, the wellness program does not violate HIPAA if participation in the program is made available to all similarly situated individuals. Examples of programs that need not adhere to the requirements discussed below, if available to all similarly situated individuals, include:

- A program that reimburses all or part of the cost for membership in a fitness center;
- A diagnostic testing program that provides a reward for participation and does not base any part of the reward on outcomes;
- A program that encourages preventative care through the waiver of the co-payment or deductible requirements under a group health plan for the costs of, for example, prenatal care or well-baby visits;
- A program that reimburses employees for the costs of smoking cessation programs without regard to whether the employee quits smoking; or
- A program that provides a reward to employees for attending a monthly health education seminar (45 C.F.R. §146.121(f)(1)).

However, if any of the conditions of the wellness program's reward is based on an individual satisfying a standard related to a health factor, the wellness program must meet **all** of the following five requirements to qualify for the exception to the HIPAA nondiscrimination provisions:

- 1) The reward for all of the Plan's wellness programs that require satisfaction of a health standard must not exceed 20% of the cost of coverage under the plan.<sup>1</sup>

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<sup>1</sup> This is scheduled to change to 30 percent in 2014 as per federal health care reform. There is the possibility of this increasing up to 50% in the future.

- a. For employee only coverage, it is 20% of the cost of that coverage. For family coverage, it is 20% of the total cost of coverage for which the employee/dependents are enrolled.
  - b. Cost of coverage includes employer and employee contributions.
- 2) The wellness program must be reasonably designed to prevent disease or promote health. The program must not be overly burdensome, a subterfuge for discrimination, or highly suspect in the method chosen to promote health or prevent disease;
  - 3) The wellness program must enable individuals to qualify for the reward at least once a year; and
  - 4) The reward must be available to all similarly situated individuals. To be available to similarly situated individuals, the reward must:
    - have a reasonable alternative (or waiver) for an individual whose medical condition makes it unreasonable to satisfy the reward requirements; and
    - have a reasonable alternative (or waiver) for an individual for whom it is medically inadvisable to satisfy the reward requirements.

The plan may seek verification that the health factor makes it unreasonably difficult or medically inadvisable for the individual to satisfy or attempt to satisfy the otherwise applicable standard.

- 5) All plan materials describing the terms of the wellness program must disclose the availability of a reasonable alternative standard (or possibility of waiver) required under Requirement 4. This disclosure is not required in plan materials that simply mention the wellness program without describing its terms. HHS has provided the following sample language which will satisfy this requirement: “If it is unreasonably difficult due to a medical condition for you to achieve the standards for the reward under this program, or if it is medically inadvisable for you to attempt to achieve the standards for the reward under this program, call us at [insert telephone number] and we will work with you to develop another way to qualify for the reward” (45 C.F.R. §146.121(f)(2)).

Please consult and 42 C.F.R. §146.121(f)(1) and (f)(2) for the specific regulations as necessary. This bulletin summarizes the requirements of the Code of Federal Regulations only, and you may need to access the actual language of the law in specific instances. Other questions should be directed to OEA Research.

## **COLLECTIVE BARGAINING & RESEARCH DIVISION (CBaR)**

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