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The Risks Of Using Workplace Wellness Programs To Foster A Culture Of Health

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Abstract

In many respects, employers are well positioned to take a leading role in helping create a culture of health. Employers have access to many programs that could be beneficial to their employees' health. The potential for financial gains related to health improvement may motivate employers to offer these programs, and if the gains are realized, they may help finance the programs. At the same time, employers' involvement in such programs may create substantial risks. Enthusiasm about the financial and health gains that wellness programs might yield coexists with concerns about health costs shouldered by employees, the possibility of employment discrimination, and the potential for employers' invasion of employees' privacy. A fragmented regulatory regime, including a recently issued final rule under the Americans with Disabilities Act, has been created to address these concerns. Whether the regime strikes the right balance between wellness
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fragmented regulatory regime, including a recently issued final rule under the Americans with Disabilities Act, has been created to address these concerns. Whether the regime strikes the right balance between wellness program benefits and risks remains to be determined.

Employers have both incentives and opportunities to contribute to a culture of health. Workplace wellness programs have been touted as ways to enhance morale, boost productivity, reduce turnover, and lower health care costs, in addition to improving health. Opportunities exist for employers to alter physical workspaces; influence how employees spend their time; facilitate employees' interactions; share information with employees; finance health insurance; and motivate employees through a variety of mechanisms, including financial incentives. Employers can build central stairwells or exercise rooms to increase employees' physical activity; sponsor weight loss competitions and alter cafeteria selections to encourage healthier eating; and create educational offerings, benefit structures, or reward programs designed to promote health.

The potential for workplace wellness programs to improve employees' health while also benefiting corporate bottom lines has generated enthusiasm among both employers and policy makers for more than thirty years.1 Wellness programs have become widespread. A 2014 survey found that of firms offering health benefits, 64 percent of large firms (those with 200 or more workers) and 26 percent of small firms (those with 3-199 workers) offered gym discounts or on-site exercise facilities.2 And a 2015 survey found that among firms offering health benefits, 71 percent of large firms and 41 percent of small firms offered smoking cessation programs.3 The Centers for Disease Control and Prevention offers information, training programs, and other forms of support for employers seeking to promote health through a variety of strategies.4

As enthusiasm for wellness programs has grown, however, so have skepticism and concerns about them. The very incentives and opportunities that position employers so well to contribute to a culture of health may also create risks for employees. Positive financial returns may provide both means and motive for wellness initiatives, but employers focused on the bottom line might adopt initiatives that produce financial gains without improving health. In addition, employers' payment formulas and benefit programs might promote some employees' engagement in wellness initiatives but also impose heavy financial burdens on other employees. And the collection of personal health information might facilitate the tailoring of wellness initiatives but might also invade employees' privacy, foster stigma, and facilitate employment discrimination.

For more than two decades, federal policy makers have sought to navigate between the promise and perils of employer involvement in employee health programs. They have done so not through an integrated regulatory regime that targets workplace wellness programs, but through a series of exceptions for the programs embedded in statutes that target broader policy concerns, such as discrimination against individuals with disabilities.5 Taken together, regulations under the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Genetic Information Nondiscrimination Act (GINA) of 2008, along with recently released final regulations under the

Americans with Disabilities Act (ADA) of 1990, constitute a fragmented regulatory regime that highlights the challenges of maintaining a federal commitment to workplace wellness programs while addressing the diverse concerns the programs raise (Exhibit 1).

In this article I review key provisions of this regulatory regime, discuss the tensions embodied in it, and emphasize the need for ongoing evaluation of wellness programs. Whether the current body of federal statutes and regulations ensures that employers play an appropriate role in fostering a culture of health will undoubtedly be a matter of continued debate, given the breadth of wellness programs' potential impacts, the paucity of information available about these impacts, and ongoing concerns about privacy and related matters.

Wellness Programs And Insurance Affordability

One explanation for the regulatory fragmentation is that workplace wellness programs take many different forms. Some wellness initiatives, such as the prominent display of healthy food in a cafeteria, may be subject to few regulatory constraints. Other initiatives are subject to much more extensive bodies of regulation.

For example, offering health insurance discounts to nonsmokers or to people meeting a body mass index (BMI) target could run afoul of HIPAA, which precludes discrimination based on health status in the premiums that employees pay for their group health plans. Congress carved out an exception in HIPAA, however, for incentives offered "in return for adherence to programs of health promotion and disease prevention"-thus accommodating employers' efforts to tie premium adjustments to healthrelated targets.

While the HIPAA exception reflects congressional support for wellness programs, subsequent regulations implementing this exception reflect regulators' concerns about the programs' impact. One of these concerns is that premium adjustments might motivate some employees to improve their health but could raise insurance premiums for others. For example, employees struggling with high cholesterol or a high BMI might miss a target and find insurance unaffordable as a result. Another concern is that in some cases, it might be medically inadvisable for such employees to even attempt to meet a target.

Initially defined by the final HIPAA regulations in 2006 and subsequently defined by similar provisions in the Affordable Care Act (ACA), requirements for health plan-based wellness programs are designed to address these concerns. By placing a ceiling on the magnitude of planbased, health-contingent incentives, the statutory and regulatory provisions arguably help "avoid a reward or penalty being so large as to have the effect of denying coverage or creating too heavy a financial penalty."6 The regulations also require employers to make alternative standards available in certain circumstances, such as when an employer-sponsored health plan ties a reward to a health outcome.7 For example, if a plan offers employees premium discounts for

meeting a BMI target, an employee who fails to meet the target might nonetheless qualify for the discount by following his or her physician's recommendations. In short, federal law permits health plan-based wellness incentives but seeks to limit the risks and burdens that wellness programs might impose.

Wellness Programs, Disability, And Coercion

Federal policy makers used a similar approach to reduce the likelihood that wellness programs might lead to discrimination based on disability. In 1990 Congress passed the ADA, which sought to combat discrimination against employees with disabilities in part by prohibiting employers from requiring medical examinations or making disability-related inquiries-unless they were "job-related and consistent with business necessity." By limiting employers' access to informa- tion that might reveal disabilities, the ADA reduces the potential for employment discrimination and disability-related stigma.

As was the case with HIPAA, however, Congress also created an exception in the ADA to accommodate wellness programs: Employers are permitted to "conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program." Many firms conduct health risk assessments that would fit this description. The assessments' questionnaires may ask employees about a wide range of health-related issues, including seat belt use, fruit and vegetable consumption, physical activity, stress, alcohol use, and current and past health conditions.

In 2015 about half of large firms with health benefits offered health risk assessments, and 62 percent of the firms that offered them also offered employees incentives to complete them.3 A similar number of firms offered biometric examinations, which could include measurements of BMI, blood pressure, or cholesterol levels, with a majority of the firms offering an incentive for completing the exam.

Questions about cancer or other topics likely to elicit information about disabilities pose risks for employees, regardless of the context in which the questions are asked. The fact that the questions are incorporated into a health risk assessment does not itself eliminate risk. However, the ADA's language and recently enacted final regulations impose restrictions that help shield employees from wellness programs for which the risks may outweigh the benefits. The ADA's final regulations, borrowing language from the ACA, require employee health programs to be "reasonably designed to promote health or prevent disease," a standard intended to prevent programs from being "overly burdensome" or "exist[ing] mainly to shift costs from the covered entity to targeted employees based on their health."8

The regulations prohibit employers from taking adverse employment actions or denying benefit packages in response to employees' failure to participate in a health program. They also cap the magnitude of program incentives at 30 percent of the total cost of self-only insurance coverage. Program incentives subject to this cap include both those related to health risk assessments and those tied to biometric outcomes, regardless of whether or not they are offered through health plans. A 2015 employer survey suggested that the average cost for a health insurance policy covering a single individual was more than $6,000 per year,3 which means that the ceiling for health program incentives is typically about $1,800.

Policy makers' approach to combating genetic discrimination closely resembles their approach to combating disability discrimination. GINA is designed to block genetic discrimination in a number of settings, including employment. The statute prohibits employers from requesting genetic information about their employees or employees' family members, thus minimizing the potential for discrimination based on genetic characteristics. At the same time, however, it creates an exception for "genetic services ...offered by the employer, including such services offered as part of a wellness program" if "the employee provides prior, knowing, voluntary, and written authorization" and certain other requirements are met.

In contrast to the approach regulators took in the disability context, regulators chose to prohibit employers from tying incentives to health risk assessment questions concerning genetic information.9 In this respect, the law's tolerance for genetic discrimination risks is lower than its tolerance for disability discrimination risks.

Wellness Programs, Privacy, And Confidentiality

In addition to addressing health-related discrimination in health plans, HIPAA has long been an important source of federal protection for the confidentiality of health-related data. Health plans are covered entities under HIPAA, so wellness programs that are part of employersponsored health plans are subject to HIPAA's restrictions on the use or disclosure of individually identifiable health information. For example, HIPAA regulations restrict covered entities' ability to sell protected health information.10 They also restrict plan sponsors' access to health plan data and call for separation between the group health plan and the plan's sponsor.11 And they require that group health plan documents prohibit the use or disclosure of protected health information for employment-related actions.12

The ADA imposes a separate set of restrictions on data collected under its voluntary health program exception. The statute requires that information collected be maintained in separate medical files and treated as confidential medical records. ADA regulations specify that to be voluntary, health programs that include disability- related inquiries or medical examinations must be accompanied by a notice to employees that describes the information to be obtained, the purposes for which it will be used, and restrictions on the sharing of this information.13

Information collected can be used for administrative purposes, but it "may only be provided to an ADA covered entity in aggregate terms that do not disclose, or are not reasonably likely to disclose, the identity of any employee."14 Furthermore, employers cannot require employees to sign a confidentiality waiver or agree to the sale of data as a condition of participating in a wellness program.15

GINA regulations impose similar restrictions on data collected in conjunction with its exception for genetic services offered as part of a voluntary wellness program. Individuals must provide "prior knowing, voluntary, and written authorization" on a form that describes disclosure restrictions.16 The genetic information "is provided only to the individual...and the licensed health care professionals or board certified genetic counselors involved in providing such services, and is not accessible to managers, supervisors, or others who make employment decisions, or to anyone else in the workplace."16 In addition, information may not be disclosed to the covered entity except in aggregate terms.

HIPAA's protections for health plan data, the ADA's protections for data collected through voluntary health program examinations and disability-related inquiries, and GINA's protections for genetic data collected through its voluntary wellness program exception all facilitate the operation of wellness programs but attempt to address the risks of breach of confidentiality and invasion of privacy. The protections have some common features but nevertheless use different language and have different focuses.

Discussion

To play a major role in building a culture of health, workplace wellness programs will need to promote health across broad worker populations while also benefiting corporate bottom lines. Accomplishing both goals is not easy.Wellness initiatives might fail to change behavior, or behavioral changes might not translate into better health. The programs might help some employees but not others, and they could harm morale or create or exacerbate a sense of exclusion among employees not able to take full advantage of program offerings. Program costs might exceed financial gains. And even if programs succeeded in improving both employees' health and employers' bottom lines, they might have problematic implications outside of the health sphere, such as for privacy.

These problems are not unique to workplace wellness programs. Any efforts to build a culture of health could fail to achieve intended goals, prove financially unsustainable or unjustified, or help some people more than others; and some initiatives could be criticized as threatening nonhealth values such as liberty or autonomy. Employers' mixed motives, however, mean that policy makers and legislators will need to be especially vigilant if they hope to ensure that workplace wellness programs achieve broad health goals. Employers seeking economic returns might be content with wellness incentive designs that shift costs from employer health plans to individual

employees by imposing surcharges. Wellness programs could generate economic gains for employers by attracting healthier employees who are enthusiastic about wellness, while accelerating the exit of less engaged employees. Employers might also benefit from programs that aid some employees while leaving many others behind. If the goal of creating a culture of health is to benefit everyone,17 such programs would clearly fall short.

While HIPAA, the ACA, and the ADA have some structural similarities, they differ in their objectives-and so do their accompanying regulations. It is not clear whether collectively these regulations will achieve the same result that would be achieved by an agency charged with establishing a single, integrated regulatory regime forwellness programs. The ACA's incentive ceiling differs from the ADA's, and an agency tasked with simultaneously considering an incentive program's monetary benefits, its health benefits, insurance affordability concerns, and employment discrimination concerns might settle on a ceiling somewhere in the middle. A policy maker focused solely on achieving broad health gains might select the same ceiling or an entirely different one. The only way to address such issues-indeed, the only way to judge whether the ACA or the ADA has established the right ceiling-is to undertake a careful, comprehensive analysis of the likely effects of wellness programs.

Continuing Questions About Wellness Programs' Impacts

A comprehensive analysis of wellness programs should involve an examination of many different issues, even if the focus were limited to the incentive-based programs at the heart of much of the federal regulatory regime (Exhibit 1). Evaluators could seek to determine whether the programs have any benefits, including improved health, increased productivity, or reduced health care costs. If employers appear to benefit from increased productivity or reduced health care costs, evaluators could try to determine whether those gains stem from health improvement or other factors. They could also devote special attention to employees likely to be disproportionately affected by wellness programs, such as people with disabilities or low incomes.

The evidence about wellness programs that has been accumulated thus far is both limited and mixed. Some studies of individual corporate wellness programs highlight their economic success,1819 and at least one widely cited academic meta-analysis found program savings in the form of reduced medical costs.20 One recent study failed to detect economic gains,21 however, and another frequently cited academic study concluded that "evidence suggests that savings to employers may come from cost shifting."22

A RAND study sponsored by the Departments of Labor and Health and Human Services found that employers "expressed confidence that workplace wellness programs reduce medical cost, absenteeism, and health-related productivity losses," but only about half of these employers reported formally evaluating program impacts.23 There is a need for more systematic, formal analyses of a wider cross-section of wellness programs.

It is also important to identify the effects of the different components of these programs, particularly because each component may present a different risk-benefit profile for employers and employees. For example, a finding that appropriately structured employee incentives are key to the programs' generating significant economic gains for employers could have quite different policy implications than a finding that walking clubs and smoking cessation programs make all of the difference. If economic factors contribute to policymakers' support for wellness programs, but a premium discount does not ultimately lead to economic gains, then there is less reason to permit this form of incentive, given the risks it poses. Greater public funding for researchers may accelerate the acquisition of information about these issues.

Evidence of the health impacts of wellness programs is also mixed. The RAND researchers conducted an empirical analysis of wellness programs that found "improvements in exercise frequency, smoking behavior, and weight control, but not cholesterol control," but they acknowledged that there may have been "unobservable differences between program participants and nonparticipants."23 A recent randomized controlled study found that premium-based financial incentives did not improve weight loss.24 There is evidence that incentives improve participation rates in wellness programs,25 but participation does not necessarily result in health improvement. Thus, there is also a need for high-quality studies that focus on the components of wellness programs that might make a significant difference in employees' health status.

Evidence on the potential drawbacks of wellness programs-such as financial burden, employment discrimination, coercion, and invasion of privacy-is in even shorter supply than evidence on the programs' health and financial impacts. Some of these drawbacks are hard to define with precision, and while employers have reason to trumpet their programs' financial and health successes, few would have an interest in disclosing problematic program impacts. Policy makers therefore may always find it difficult to assess whether they have found the right balance in shaping employers' role in the development of a culture of health. Requiring reporting on selected wellness program metrics, such as the magnitude of incentives offered and earned, changes in targeted health metrics, and the frequency of use of alternative standards, may be one way to begin to address this issue.26

Conclusion

To build a successful culture of health will require a clear understanding of what that culture entails, and which tools used by employers can help achieve it. The recently established fragmented regulatory regime for wellness programs maybe a step in the right direction, but it is built on incomplete information. As additional evidence accumulates, further tailoring of the regulatory regime may be required to establish the optimal balance between program benefits and risks for both employers and employees. *

Sidebar

Policy makers and legislators will need to be vigilant if they hope to ensure that workplace wellness programs achieve broad health goals.

Each wellness program component may present a different risk-benefit profile for employers and employees.

Evidence on the potential drawbacks of wellness programs is in even shorter supply than evidence on the programs' health and financial impacts.

Footnote

NOTES

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