

Tobacco Cessation Wellness Programs: A Guide for Employers

Several class action lawsuits have been filed against employer-sponsored health plans, alleging that tobacco cessation wellness programs violate ERISA and HIPAA regulations. These programs, designed to promote health by discouraging tobacco use, typically offer reduced health insurance premiums for non-tobacco users and impose surcharges on tobacco users unless they participate in cessation programs.

HIPAA Compliance for Wellness Programs

HIPAA nondiscrimination rules generally prohibit discrimination based on health status but allow incentives for participation in wellness programs, provided they meet specific requirements:

- Reasonable design: Must aim to improve health or prevent disease.
- Size of reward: Incentives cannot exceed 50% of total coverage costs.
- Uniform availability: A reasonable alternative standard (e.g., an educational seminar) must be offered.
- Frequency of reward: Participants must have an opportunity to qualify at least once per year.
- Notice of availability: Clear communication about program terms and alternative options must be provided.

Key Legal Allegations

Recent lawsuits claim that some tobacco cessation wellness programs fail to meet these requirements due to:

- Lack of or improper communication about the reasonable alternative standard.
- Prospective-only removal of the tobacco surcharge after completion of a cessation program, rather than retroactive adjustments.
- Allegations that surcharge collections constitute a breach of fiduciary duty, benefiting plan sponsors at the expense of participant's expense.

Next Steps for Employers

To reduce legal risk, plan sponsors should:

1. Review wellness programs for compliance with HIPAA and ERISA.
2. Ensure clear communication about alternative standards.
3. Provide retroactive premium adjustments for employees completing cessation programs.

The outcome of these lawsuits will clarify how courts interpret these regulations, potentially impacting the design and implementation of future wellness programs. Source: [Morgan Lewis](#)



The Key to Longevity: Sleep, Exercise and Diet

Silicon Valley has a strong interest in longevity, with anti-aging startups backed by prominent entrepreneurs, including the founders of Amazon, PayPal, and Google. The complementary and alternative medicine market is valued at approximately \$63 billion and is projected to surpass \$100 billion by 2030. This growth continues despite limited evidence supporting the effectiveness of products like cold tubs, ultrasound, red light therapy and supplements in extending lifespan.

So, what does work? Numerous studies, including a recent study published in BMS, support the life-extending benefits of sleeping at least 7 hours, 42 minutes of moderate to vigorous exercise, and adherence to a Mediterranean diet. That combination results in a 60% lower risk of premature death than those who don't. The great news that comes from this study is that even some variation of improved sleep, exercise and diet can still cut mortality risk. In this study, modest collective variations, such as sleeping 15 minutes longer, exercising an extra two minutes, and eating an extra half-portion of vegetables, cut their mortality risk by 10 percent. *Continued on page 2...*

The Key to Longevity: Sleep, Exercise and Diet, *continued*

The study goes on to explain the ripple effect of collective small changes. Research shows a lack of sleep increases a hormone that increases appetite and decreases a hormone that signals when you're full. Simply put, when you get less sleep, your body automatically tells you it's hungrier but does a worse job of letting you know when you're full.

Less sleep also hurts your sensitivity to the insulin your body produces. Insulin turns food into fuel. After just 4 nights of reduced sleep, your insulin sensitivity decreases by 30%, which means you don't properly use the food you consume. That can cause you to gain weight and, according to the NIH, lead to diabetes, heart disease, stroke, and premature death.

Exercise promotes sleep, and getting a little more sleep supports making better food choices. That's the ripple effect of improvement: making an improvement in one area typically leads to improvements in other aspects of your life. Stick to the basics before investing in the next cold tub or red-light therapy membership.

Source: [Inc.](#)



Health and Welfare Compliance with DOL Cybersecurity

The Department of Labor (DOL) has integrated cybersecurity questions into health and welfare plan examinations. While there was some doubt regarding whether the DOL's cybersecurity guidance applied to Health and Welfare ("H&W") plans when first released in 2021, recent guidance suggests the DOL believes the advice applies to all benefit plans qualified under ERISA.

The DOL's position may make H&W plans particularly susceptible to a cybersecurity investigation, especially those impacted by data breach incidents among their providers. H&W plan sponsors should remember that following the DOL's cybersecurity recommendations and adhering to HIPAA is prudent.

The DOL has shown interest in a range of documents linked to cybersecurity procedures as part of investigations of H&W plans, including:

- Documents governing the IT systems, a breach response plan, a disaster recovery plan, and copies of system development lifecycle controls ("SDLC"), if applicable;
- Schedules of systems crucial to the upkeep and protection of participant data and assets (including details on data used by the plan, where data resides, and systems outsourced to service providers, as well as file sharing systems);
- Reports from internal and external cybersecurity audits, including IT system audits (SOC 1 or SOC 2), as well as internal and external (with auditors) communications;
- Proof of cybersecurity insurance coverage;
- Documents that mention or discuss cybersecurity, such as emails and minutes from meetings of the plan committee or the board of trustees or directors where the readiness of the plan for cybersecurity was discussed; and
- Documents that discuss cybersecurity-related events, such as unauthorized access or suspicious activity.

Source: [Roland Criss](#)

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