

# Financial Penalties for Obesity and Chronic Diseases in the Guise of Wellness

Joe Nadglowski

President/CEO

Obesity Action Coalition

[jnadglowski@obesityaction.org](mailto:jnadglowski@obesityaction.org)

@jnadglowskioac

# Disclosures

I have no personal financial relationships with industry.

I am an employee of the Obesity Action Coalition (OAC).

- Untreated obesity is driving chronic diseases and healthcare costs
- Affordable Care Act allows financial incentives/penalties in wellness programs
- Some employers are implementing thoughtful programs
- Some employers are simply shifting costs through penalties
- Discriminatory programs are illegal but often not contested

# Costs of Obesity are Substantial

## Untreated Obesity Harms Nearly Every Organ System



- Pulmonary
- Nonalcoholic fatty liver
- Gall bladder disease
- Gynecologic
- Osteoarthritis
- Dermatologic
- Gout
- Intracranial hypertension
- Stroke
- Cataracts
- Cardiovascular
- Diabetes
- Pancreatitis
- Cancer
- Phlebitis

# Annual Cost \$500 Billion



# Interest and Investment in Wellness Programs is Expanding

- RAND estimated in 2012 that half of employers of 50 or more people offered wellness programs with half of the remaining saying they intended to offer one.
- According to Mercer in late 2015, 42% of employers surveyed planned to add or expand wellness programs in 2016.
  - “It may be tough to measure, but a lot of employers believe in programs to improve employee health have paid off in medical savings.” Beth Umland, Mercer September 2015
- Estimates are the workplace wellness is a \$6 billion industry in the United States and continuing to grow according to RAND.

# ACA and Wellness Programs

- The Affordable Care Act expanded existing wellness program policies, under an amendment to legislation commonly referred to as the “Safeway” amendment.
- Regulation is jointly overseen by the departments of Health and Human Services (HHS), Labor (DOL) and Justice (DOJ).
- Continue to support “participatory” wellness programs which give no regard to employee health status.
- Major expansion is generally allowing for “health-contingent” wellness programs that requires individuals to meet a specific standard related to their health.
- Maximum permissible reward/penalty is 30% of the cost of health coverage and may reach as high at 50% for tobacco prevention.

# Wellness Program Regulations

- Health contingent wellness programs must be **reasonably designed** to promote health or prevent disease. The must:
  - Have a reasonable change of improving health or preventing disease in participants
  - Be not overly burdensome
  - Not be subterfuge for discrimination on a health factor
  - Not be highly suspect in the method chosen to promote health or prevent disease.

- In addition, to be reasonably designed, an outcome-based program must provide a reasonable alternative standard to qualify for the reward for all individuals who do not meet the initial standard that is related to a health factor.
- EEOC in 2015 reinforced that penalties are OK as long within ACA limits.
- Regulations are continually being propagated including some as recently as October 30 when EEOC said that spouses may be incentivized/penalized similarly to employees but such incentives/penalties may not apply to dependents.



# Obesity Wellness Done Well

Thoughtful Obesity Wellness Programs are based on supporting employees pursuing good health. Good programs, in addition to creating a healthy work environment, include the following:

- Include evidence-based treatment as part of their employee health plans – simply telling folks to go lose weight is not enough.
- Recognize bias and stigma are a major hurdle in overcoming obesity.
- Create access at work such as onsite fitness or for example, Weight Watchers at work.
- Go beyond a one-size-fits all approach when it comes to success measures.

# AHA Best Practices

**Table 2. Nine Best Practice Principles of CWWPs**

Design Principle	Description
Leadership	Elements that set program vision and organizational policy, ensure resources, support implementation, and connect programs to business goals
Relevance	Elements that address factors critical to participation and employee engagement
Partnership	Collaborative efforts with other stakeholders, including unions, vendors, and community organizations
Comprehensiveness	Elements consistent with the Healthy People 2010 definition of comprehensiveness
Implementation	Elements that ensure a planned, coordinated, and fully executed work plan and process tracking system
Engagement	Promotion of an ongoing connection between employees and the program that creates trust and respect and builds a culture of health
Communications	Elements that ensure a strategic approach to making the program visible on an ongoing basis
Data driven	The intentional use of data in measuring, integrating, evaluating, and reporting on the program and its improvement over time
Compliance	Elements that ensure that the program meets regulatory requirements and protects personal information of employees and participants

CWWP indicates comprehensive workplace wellness program.

# Obesity Wellness Done Poorly

Poorly designed wellness programs are more about shifting costs to employees rather than improving health:

- Programs should truly be voluntary. Penalties beyond the 30% allowed in the ACA have been deemed to make programs non-voluntary.
- Programs often have little to no chance to actually improving employee health.
- Potentially violate privacy and provisions of the Americans with Disabilities Act.
- May be mechanisms for discrimination against sick and disabled employees more than health.
- Set unrealistic health measures or fail to provide information on realistic alternatives.

# Obesity Wellness Done Poorly

Many employers who offer wellness programs that require meeting certain BMI standards don't cover the services to treat obesity.

- Work by Kyle, Sanford and myself to be presented here at ObesityWeek shows that among individuals that had incentives or penalties related to BMI coverage for obesity services was often lacking.
- Specifically, those with BMI requirements reported that their health insurance covered the following:
  - » 60% reported dietitian coverage
  - » 53% reported medical weight management coverage
  - » 32% reported bariatric surgery coverage
  - » 30% reported coverage for obesity medications

# Wellness Done Poorly

EEOC has been cracking down on bad players in the wellness world:



The screenshot shows the EEOC website with a red header featuring the agency's seal and the text "U.S. Equal Employment Opportunity Commission". A search bar is located in the top right. A blue navigation bar contains links for Home, About EEOC, Employees & Applicants, Employers, Federal Agencies, and Contact Us. On the left, a sidebar menu lists "About EEOC" with sub-links for Overview, The Commission, Meetings of the Commission, Open Government, Newsroom, and Laws, Regulations, Guidance & MOUs. The main content area displays a breadcrumb trail: "Home > About EEOC > Newsroom > Press Releases". Below this is a "PRESS RELEASE" dated "10-1-14" with a "Share" button. The headline reads "EEOC Lawsuit Challenges Flambeau Over Wellness Program". The sub-headline states: "Threats of Insurance Cancellation and Discipline Make Program Involuntary and Violate Disabilities Act, Federal Agency Charges".

Español | Other Languages

U.S. Equal Employment Opportunity Commission

Enter search terms... Search

Home About EEOC Employees & Applicants Employers Federal Agencies Contact Us

About EEOC

Overview

The Commission

Meetings of the Commission

Open Government

Newsroom

Laws, Regulations, Guidance & MOUs

Home > About EEOC > Newsroom > Press Releases

**PRESS RELEASE**

10-1-14

**EEOC Lawsuit Challenges Flambeau Over Wellness Program**

*Threats of Insurance Cancellation and Discipline Make Program Involuntary and Violate Disabilities Act, Federal Agency Charges*

# Wellness Done Poorly

But pushback on regulation, especially from the business industry, has been substantial:



## CEOs Prefer Fining Employees for Wellness

In a remarkable display of misdirected anger, CEOs from the Business Roundtable are fuming because the EEOC (Equal Opportunity Employment Opportunity Commission) wants to bar them from fining employees for wellness.

In the case that prompted this concern, the EEOC has taken action against Honeywell for a “voluntary” wellness program in which employees must enroll unless they want to pay a penalty of up to \$4,000 per family for not participating. The Americans with Disabilities Act (ADA) bars employers from discriminating against employees based upon their health status and bars them from compelling employees to participate in health screening programs. However, employers are allowed to offer voluntary wellness programs. Provisions of the Affordable Care Act (ACA) say that employers can offer incentives that might amount to as much as 50% of the cost of health insurance.

# Wellness Done Poorly

- Data on number of people who request alternate health goal options is lacking.
- Employee stories about being penalized despite remarkable health improvement are growing more common.
- It appears many “just grin and bear it” when it comes to penalties with one report showing that 70% of people in one smoking wellness program just chose to take the penalty instead of trying to improve their health.

# Conclusions

- Wellness programs are in their infancy with regulations just being finalized throughout the past couple of years.
- Whether wellness is about improving employee health or shifting costs is yet unknown.
- A handful of employers have shown that true wellness programs that improve the health of their employees can benefit both employees and the bottom line.
- Unfortunately, it appears some programs are designed more to shift costs than improve health.