

“Wellness” Programs: What’s Not to Like?



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HIPAA Act of 1996

- *Improved portability, continuity of coverage*
- *Prohibited discrimination in health coverage based on a health factor:*
 - *Health status*
 - *Medical condition*
 - *Claims experience*
 - *Receipt of care*
 - *Medical history*
 - *Genetic information*
 - *Disability*

Regulations for HIPAA

- *Agencies with jurisdiction: DOL, HHS, Treasury*
- *Slow to issue, finalize regulations*
- *Exception to nondiscrimination for “wellness” programs first proposed in 2001; finalized December 2006 (29CFR Part 2590)*
- *Why expand exceptions when we have little evaluation of impact of current regulations?*

Two Types of “Wellness Programs”

- *Reward is not based on individual satisfying a standard related to health factor*
- *Reward based on satisfying standard related to a health factor must meet five tests:*
 - *Limit reward or absence of surcharge to 20% of value of employee-only coverage*
 - *Reasonably designed; at least 1X per year to meet requirements*
 - *Reasonable alternative standard*
 - *Available to all similarly situated individuals*
 - *Disclosure requirement for alternative*

One Type Raises Big Concerns

- *Reward based on satisfying standard related to health factor; linked to premiums, cost-sharing*
- *Concerns center on disparate impact based on income, disability, race/ethnicity, even occupation*
- *Cost savings for employers is cost shifting to workers*
- *Privacy concerns*

North Carolina Pushes Envelope

- *All state employees enrolled in PPO with 70-30 cost-sharing*
- *On 7/1/2010 all active & retired can “earn back” PPO with 80-20 if attest to no smoking*
- *On 7/1/2011 must abstain from tobacco & have BMI<40 to earn 80-20 split*
- *On 7/2012 must have BMI<35 to earn 80-20*
- *Employee premium share for family coverage \$455/mo—54% of total; OOP max \$19,500*

North Carolina Exempts Itself

- **Notice to Plan Members:**

A federal law known as the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, as amended, sets forth certain requirements for group health plans. HIPAA also permits state and local governmental employers that sponsor health plans to elect to exempt their plan from these requirements for any part of the plan that is “self-funded” by the employer, rather than provided through a health insurance policy. The State Health Plan is self-funded. In order to implement its comprehensive wellness initiative, the State of North Carolina has elected to exempt the State Health Plan from the HIPAA rules prohibiting discrimination against individual participants and beneficiaries based on health status related factors, including health status, medical condition (physical and mental illnesses), claims experience, receipt of health care, insurability, and disability.

Senate Amendments Raise Serious Concerns

- *Varying premium and cost-sharing based not just on participation, but on adherence and outcomes*
- *Size of premium variation: 30%-50% has bigger financial impact on lower-income workers, families*
- *“Failing” to participate or adhere could mean unaffordable coverage & inability/hardship to comply with individual mandate*
- *Workers likely to struggle to adhere also most likely to qualify for subsidies in exchange—wellness program steers workers in poorer health to exchange or Medicaid.*
- *Often not coordinated with patient’s primary care provider, or even the health plan; who is accountable?*

Some Workers Face Bigger Challenges Than Others

- *8.6 million U.S. workers perform shift work*
- *Shift work is associated with higher risk of obesity, diabetes, and heart disease*
- *Effect is independent of “behavior” (e.g. diet)*
- *Affects both women and men*
- *Shift work unavoidable in hospitals, nursing homes, other settings and industries*

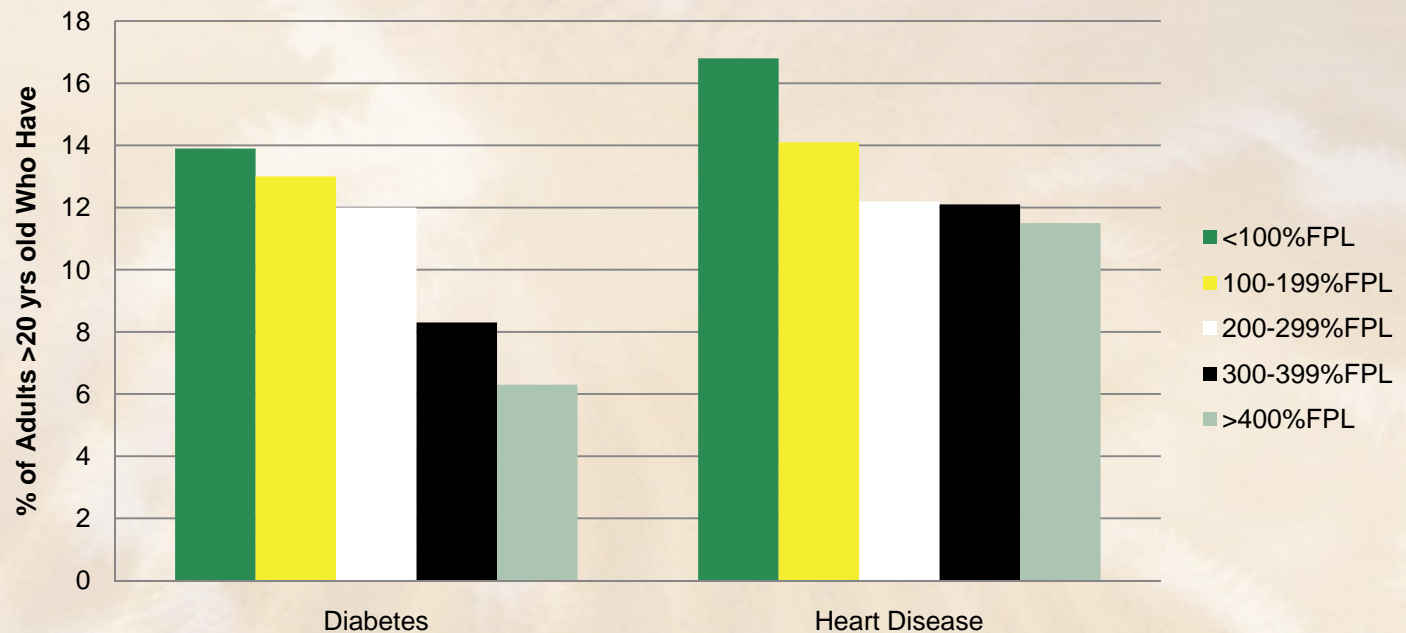
<http://www.bidmc.org/News/InResearch/2009/March/HowShiftWorkCanAdverselyAffectHealth.aspx>

Challenges Faced by Lower-Income Workers

- *May work multiple jobs making participation and adherence more difficult*
- *May have limited access to healthy foods*
- *May have limited ability to have regular meals*
- *May have had previous gaps in coverage that contribute to lower health status when hired*
- *Despite coverage, may have lower quality, less access to regular primary care based on place of residence*

Disparate Impact Likely

Poor Have More Diabetes, Heart Disease



RWJF, "The Poor Pay More," 2009
<http://www.rwjf.org/healthreform/product.jsp?id=49868>

Disability & Conflicting Treatment Goals, Outcomes

- *Weight gain associated with anti-psychotic drugs, other therapies*
 - *Children gained 19 lbs after 11 weeks*
 - *At least one drug in study raised blood sugar, cholesterol, insulin*
- *Employer role problematic when issues of disability, privacy involved*

<http://jama.ama-assn.org/content/vol302/issue16/index.dtl>

Wellness Programs Lack

- *Rigorous testing and evaluation*
- *Standards, even voluntary ones*
- *A proven track record of success over time*
- *A peer reviewed literature*
- *A way to validate or verify claims due to “proprietary” data or trade secrets*
- *Any limits on what health factors, standards can be included*

Wellness Done Well Means

- *Supports, rewards tailored appropriately to workers and families, reinforced by workplace culture, public health investments*
- *Rewards kept separate from insurance premiums, deductibles*
- *Grounded in evidence, evaluated on outcomes over time*
- *Engenders trust of workers, their families, clinicians*

Getting It Right

- *Department of Labor should evaluate impact of current regulation (20% premium variation) before increasing it*
- *Add test for satisfying exception: program must not create potential barriers to care*
- *Require development of mandatory, standardized participation, outcomes, and cost measures to evaluate programs*
- *Require certification or accreditation of wellness programs*