

# Health Promotion Program Legal Updates

Webinar Q&A: August 12, 2020

The following questions were submitted during WELCOA's *Health Promotion Program Legal Updates* webinar session that aired on **August 12, 2020**. To help further educate yourself in legal compliance with your wellness program, please review this list of attendee inquiries and the responses provided by presenter and health law attorney, Barbara Zabawa.

**\*\*Please note: The responses provided below do NOT constitute legal advice and should not be used as such. Readers should retain legal counsel to obtain definitive answers. The responses below are for educational purposes only.**

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**1. Do you need to send out an EEOC notice for flu shots?**

If you are collecting health information from the employee, then you should give out the EEOC notice.

**2. What's the best way to stay up to date with the status of the new rules? For example, how can we be notified when the proposed rules are open to the public for comments?**

You can sign up for EEOC press releases here: <https://www.eeoc.gov/newsroom/search>

You can also follow me on social media and sign up for my newsletter at [wellnesslaw.com](http://wellnesslaw.com). Here's my social media handles:

Twitter: @wellnessatty

LinkedIn: [www.linkedin.com/in/barbarazabawa](http://www.linkedin.com/in/barbarazabawa)

Instagram: [wellnessattorney](https://www.instagram.com/wellnessattorney)

Facebook: @centerforhealthandwellnesslaw

**3. What guidance will be given for hybrid incentive programs of outcomes-based and participatory - Inducements for participating in certain components + separate inducements for health measures?**

Current guidance from the EEOC states that the ADA and GINA do not apply to wellness programs that do not collect employee (or family member) health information. The HIPAA/ACA incentive rules would apply, however.

**4. What does 30% of the premium differential mean? I am used to the language of 30% the cost of coverage or self-only coverage. Is this the same?**

We won't know exactly until we see the language of the proposed rules.

**5. How will tobacco be included in the new rules?**

We won't know until we see the language of the new rules.

**6. If the HA is part of a larger Wellness program incentive (not stand-alone) does the total incentive need to be de minimus?**

I'm not sure, but I suspect the de minimus applies only to the health information collection component. Until we see the language of the proposed rules, however, I can't say for certain.

**7. How is it defined if your Wellness Program is "part of group health plan?"**

According to the Office of Civil Rights, the federal agency that enforces HIPAA, a group health plan wellness program is one that is part of an employer's group health plan offering. Incentives may be tied to health plan cost-sharing. But, some wellness programs can be group health plans in and of themselves, depending on the types of services/activities they offer. It is good to check with legal counsel if you are not sure, as the legal requirements between group health plan and non-group health plan wellness programs vary.



Q&A responses provided by  
**Barbara J. Zabawa, JD, MPH**  
Attorney/President  
The Center for Health Law Equity, LLC