

Health Promotion Program Legal Updates

Webinar Q&A: December 16, 2020

The following questions were submitted during WELCOA's *Health Promotion Program Legal Updates* webinar session that aired on **December 16, 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.**

1. Any updates on the EEOC recommendation regarding incentive design in 2021?

I did just see the Fall Regulatory Agenda for 2020. Here's the link: <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202010&RIN=3046-AB10>. The EEOC gives November 2020 as the anticipated release date of the proposed rules. Of course, that hasn't happened, making the regulatory agenda timeline unreliable. With the change in administrations, it may be a while before we see the proposed rules discussed in June 2020. But then again, it may not.

2. For a company that offers onsite biometric screenings, is there anything to be aware of to stay compliant with ERISA?

Biometric screens present an interesting conundrum when it comes to determining whether such a service qualifies as "medical care" and therefore subject to ERISA and other federal laws that apply only to group health plans. I have looked at this question for other clients and believe it is possible to avoid ERISA application if the screens are not the result of a physician's order and are not followed by disease management, as examples. To be fully compliant, the employer should seek legal counsel to apply the laws to their specific situation.

3. Earlier in the presentation, you provided a list of services deemed "not significant" for HSA considerations; however, your response to the Case study #2 seemed to contradict this. Can you clarify?

I think the key difference is physical exams do not necessarily constitute significant medical benefits, but comprehensive primary care services do. If all an onsite clinic provides is physical exams (such as for job eligibility), but no other PCP services, the onsite clinic would likely not jeopardize HSA eligibility, at least according to the IRS.



Q&A responses provided by
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