Serving Colorado's Counties

Technical Update

Volume 21 Number 50 October 5, 2017

Changes Coming to Employer-Sponsored Wellness Plans

According to HealthCare.gov, an employee wellness program is:

> A program intended to improve and promote health and fitness that's usually offered through the work place, although insurance plans can offer them directly to their enrollees. The program allows your employer or plan to offer you premium discounts, cash rewards, gym memberships, and other incentives to participate. Some examples of wellness programs include programs to help you stop smoking, diabetes management programs, weight loss programs, and preventative health screenings.

There is debate about the effectiveness of employee wellness plans. Proponents for the plans argue that healthier employees will reap company-wide cost savings in the long run with fewer sick days and lower insurance premiums. However, opponents believe that the plans will lead to higher costs because they entail more health screenings and promote what they believe to be unnecessary care.

The Carrot or Stick Approach

Most employer-sponsored wellness plans offer participation incentives (e.g., lower insurance premiums, cash rewards), penalties for non-participation (e.g., higher insurance premiums), or a combination of both. The Equal Employment Opportunity Commission (EEOC) regulations governing wellness plans allow employers to increase premiums for employee self-only coverage by as much as 30% for employees who choose not to participate in employer-sponsored plans that meet EEOC requirements. A powerful incentive, as a 2016 study by the Rand Corporation, found that penalties for failure to participate or meet plan benchmarks were a more effective motivator than offering employees incentives. However, the legality of these penalties is under review.

Recent Rulings about Penalties

In August, the U.S. District Court for the District of Columbia ruled that the fees the EEOC allows employers to assess to non-participates in wellness plans were arbitrary. Note that these penalties only apply to wellness plans that require employees to disclose personal health information protected under the Americans with Disabilities Act or the Genetic Information Nondiscrimination Act. The court did not vacate the rules but did send them back to the agency for redrafting. While this does create ambiguity for the non-participation penalty, it does not change the current rules.

What This Means for Counties

If your county offers or is considering offering an employer-sponsored wellness plan that requires employees to disclose personal medical information, verify that any non-participation penalties are assessed in compliance with the current 30% ruling. If you have questions about your county's wellness plan, please contact CTSI at 303 861 0507.