

In Focus

He who pays the piper . . .

They Said It?

"We're all for workplace wellness, where you have time out to go to the gym or you have a gym on premises or you have healthy food in the workplace. That stuff is good. But when you take it to the next level and make it punitive, that's where it's wrong." Dick Woodruff, Senior Director for federal Affairs, American Cancer Society

"Going to a company-sponsored gym or smoking-cessation workshop makes for a healthy society, as every member of Congress seems to agree. But if your company or insurer offers a wellness program and you don't go, should you have to pay higher insurance rates than those who attend?" So begins a January 6, 2010 article in the (Cleveland) Plain Dealer describing a budding healthcare reform legislation debate that has yet to raise any ruckus at a Tea Party, but may shape the future of employer-sponsored wellness programs.

The focal point for this debate is the so-called "Safeway amendment" in the Senate's healthcare reform bill. If it survives the legislative process, the Safeway amendment will be one of the very few examples of healthcare reform bi-partisanship. It was co-introduced by Senators John Ensign, Republican of Nevada and Tom Carper, Democrat of Delaware.

The Safeway amendment increases HIPAA's present 20% limit on wellness incentives (or penalties) to 30%, and also allows the Secretaries of Health and Human Services, Labor and Treasury to boost the limit to as much as 50%. Those sterile percentages take on eye-popping significance when translated into out-of-pocket dollars. Based on 2009 Kaiser health care cost survey data, the 50% level would average \$2,300 for those with employee-only coverage and \$6,500 for those with family coverage.

Some critics of the amendment fear that employers will apply the allowed percentages as harsh penalties on those employees who haven't proven to be fit. And it's not just that they'll get punished for refusing to shape up, eat right and switch from six packs to a nice pinot noir. Instead, Safeway amendment critics assert that it's not a matter of refusal - it's a matter of punishing people who can't comply with wellness goals because their genes won't permit it.

"Weight, high cholesterol and high blood pressure are not just the result of behaviors but are strongly linked to genetics," says Nancy Leamond, AARP Executive Vice President of Social Impact. "This is a big concern for the AARP because many of these conditions [are] not controlled by behavior [and] become more prevalent with age". Such critics are unimpressed by the fact that similar to HIPAA today, the Safeway amendment would allow exceptions if a doctor said it was "unreasonably difficult" or "medically inadvisable" for a patient to satisfy a wellness program's standards.

And to others, even if the genes have lined up in the right way, the Safeway amendment is simply counter to their perception of privacy rights. George Huntley, board chairman of the American Diabetes Association says, "You can take this to a very invasive level. What business is it of your employer to know what your blood sugar level is?" Mr. Huntley and the Diabetes Association were joined by over 100 other chronic disease research organizations in signing a December 21, 2009 letter to Congressmen calling for them to close the privacy invasion "loophole".

The hot breath of genetics-*uber-alles* devotees and privacy guardians may even be beginning to singe the collar of staunch healthcare reform advocate Ohio Senator Sherrod Brown. His spokeswoman, Meghan Dubyak, recently said that the Safeway amendment "is not intended to create a loophole for medical underwriting, which the Senator strongly opposes."

Of course, supporters of the Safeway amendment see things quite differently. "Weight gain and unhealthy lifestyles that focus on smoking and lack of exercise have skyrocketed our healthcare costs," Republican Senator Ensign said. "These costs could be lowered by focusing on what makes us healthy. Our [Safeway] amendment would guarantee that the incentive is strong enough for Americans to want to participate."

It's long since become commonplace for benefits managers to have implemented at least some wellness programming. One major national survey reported in 2009 that:


- 65% of employers with more than 500 employees made HRAs available;
- 76% had installed nurse advice/coaching phone services;
- 47% made health advocate services available, and
- 39% were targeting specific health behavior modification.

These employer-sponsored efforts (and many more) may well spring from a caring corporate culture, but it is much more likely that the main rationale underlying them has to do with the need for businesses to manage their rising healthcare costs. "We are getting to a point where our international competitiveness is in peril," says Safeway Vice President Ken Shachmut. "We don't have to look at taxes on pharma, taxes on hospitals or cuts to Medicare to achieve savings. Changing behavior could turn 15% of overall healthcare spending."

Since employers pay for the majority of employee healthcare services, why shouldn't they have the right, if not the responsibility to their shareholders, to intervene in the health-related behaviors of their employees? Like the proverb says: He who pays the piper calls the tune. When it comes to healthcare costs, employer passivity is not a strategy and a carrot-only approach ignores the realities of human nature. The ADA, HIPPA, GINA and now language in the Safeway amendment provide seemingly sufficient protection against genetic discrimination and unreasonable wellness program operations.

Benefits managers want to do what's right for both their companies and their people. That includes rewards and great resources to help people improve their health. However, a successful business does not run on rewards alone. There's a reason why we have proverbs. It's because they point us to the truth.

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