MAY 31, 2013

The new wellness rules are a dream

Further review of the final wellness regulations proves that the updated requirements will be a mixed bag for employers. Whether a particular employer will find these new regulations more restrictive or not will depend ultimately on what type of wellness program the employer has. However, two important points come to mind when reading the new regulations. First, under the prior regulations, it was a fact intensive analysis as to whether a particular wellness program met the rules. Under the new regulations, this fact intensive analysis is raised to a new level with separate rules for activity-only programs and outcome-based programs. Further, regardless of the type of program (activity or outcome-based), you still must offer participants the ability to revise the alternative standards that are provided, if his/her physician decides the alternative standards are unreasonable. In many cases, if you are providing a tobacco cessation class or other education activity as your alternative standard, the probability of a physician finding that unreasonable is low. But, the participant must still be offered it nonetheless. Second, it is apparent that the Agencies are also fans of the movie “Inception.” In case you haven’t seen the movie, it is a story about dreams within other dreams. This concept is also imbedded in the new regulations because a wellness program may now have an activity-only program or an outcome-based program buried inside of another outcome-based program. In such a situation, you need to separately analyze each wellness program (or level of wellness program) to see if the rules are satisfied. So, the key takeaway here is that if you have seen one wellness program, all you have seen is one wellness program. Link to official wellness regulations http://www.gpo.gov/fdsys/pkg/FR-2013-06-03/pdf/2013-12916.pdf