



# THE VIEWSLETTER

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## WEARABLES IN WELLBEING PROGRAMS

More and more people are buying fitness trackers. These popular wearable devices monitor heart rate as well as steps walked, stairs climbed, hours slept and so on.

- According to Statista:
  - The wearable market exceeded \$2 billion in 2015, hit almost \$3 billion in 2016 and may reach over \$4 billion in 2017.
  - Just over 50 million devices were shipped in 2015 and over 125 million devices are expected to ship in 2019.
- According to Tech Times, employees using wearable fitness trackers reported an 8.5 percent increase in productivity and a 3.5 percent increase in job satisfaction.

Because wearables are becoming so popular, many employers are incorporating these devices into activity-based wellbeing challenges. According to a Corporate Health and Wellness Association 2015 survey, about 35 percent of wellbeing programs include wear-

able devices. The same survey offered the following insights:

- Almost a third of survey respondents said they do not have a wearable device program because they are unaware these programs and devices exist.
- Over 60 percent of the employers that offer wearable device programs were satisfied or very satisfied with their programs.
- Forty-six percent of employers with wearable device programs felt that the programs significantly affected employee engagement.
- The two primary uses for the data these wearables collect are:
  - Wellness incentive evaluation
  - Incentive calculation

Wearables include tracking devices, smart watches, and even smart clothing. Most are supported by software. Some wellness vendors can take wearable information from different



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## DID YOU KNOW

- 65% of survey respondents indicate they have budgets devoted to wellness.
- Another 10% indicate they don't currently have a budget but expect to adopt one.
- Survey respondents offer the following screening/treatment initiatives:
  - 83% free or discounted flu shots
  - 67% health screenings
  - 66% smoke-free work policies
  - 61% health risk assessment/appraisals
- Survey respondents offer the following fitness/nutrition initiatives:
  - 57% wellness competitions
  - 49% healthy food choices
  - 48% health coaching
  - 45% standing/walking stations

Source: *Workplace Wellness Trends: 2017 Survey Results, International Foundation of Employee Benefit Plans*

types of devices for activity-based wellness programs.

Employers need to be aware of the compliance rules that apply, if wearables are included in wellbeing initiatives. For example, if the employer provides the device at no cost or a less than market value cost, the amount the employer subsidizes should be treated as taxable income to the employee.

Also, the Health Insurance Portability and Accountability Act (HIPAA) rules apply to wearables in two ways. (Wellness rules related to activity-based health contingent wellness programs are detailed in our *Benefit Advisor* at [http://mcgrawwentworth.com/wp-content/uploads/BA\\_Issue\\_V19\\_4.pdf](http://mcgrawwentworth.com/wp-content/uploads/BA_Issue_V19_4.pdf).) First, if the employer offers an incentive for participating in an activity involving the wearable, the employer must provide another way for employees to earn the incentive when a doctor states it is medically inadvisable

for them to participate in the activity. Second, HIPAA Privacy and Security rules may affect wearable wellbeing programs depending on the type of information collected and shared as part of the program. If the employer has access to protected health information from the wearable, that information can be used only if HIPAA permits it under the Privacy and Security mandates. For example, if the wellbeing program collects information only on steps, Privacy and Security rules would likely not apply. However, if it collects average daily heart rate, that medical information would likely bring HIPAA into the compliance review.

The Americans with Disability Act (ADA) may also apply. The ADA does not allow employers to discriminate because of a disability. It may be a stretch, but the data a wearable collects might identify a disability or perceived disability. The ADA also requires employers to make reasonable

accommodations for anyone with disabilities. Employers launching an activity tracker wellness competition with incentives or rewards should consider what options will be available to disabled employees who may not be able to fully participate.

Employers should also find out whether state laws affect incentives to participate in a wearable wellbeing initiative. Many state ADA requirements differ from federal requirements.

Since the wearable revolution is fairly new, most existing regulations were not written with wearables and wellbeing initiatives in mind. However, various laws may apply to the data collected as part of your wearable wellbeing efforts. Consider the information you will have access to through initiatives you offer and how you will store it. In general, the less access you have to individually identifiable health information, the better off you will be from a compliance standpoint. If you want the information wearable devices gather on participants, your vendor should provide the information in aggregate. It is also important to understand the security measures your organization and your wellness vendor take to keep this data secure.

Before you implement a wearable device wellbeing initiative, take these key steps:

- Identify the wearable devices employees can use
- Determine whether your organization is paying for the device or a portion of the device
- Review the data elements the device collects

- Understand the scope of the data and the process for sharing the data collected
- Understand all security issues relating to storing and transferring health information from the device

It is good practice to access only the data you need for the wellbeing plan. Be sure to update your wellness policy to discuss using wearables, the data elements involved in wellbeing programs, and the security measures to keep medical information associated with these wearables secure.

Wearables can add fun, energy and competitiveness to wellbeing challenges. Your employees may have more energy and be more engaged when they use

wearables for wellness. To avoid legal complications, however, remember to consider compliance issues and inform employees you may have limited access to data.

MMA

## DIABETES IN THE WORKPLACE

Diabetes is a growing problem in many workplaces. According to the American Diabetes Association, approximately 10 percent of Americans currently have diabetes. Estimates show that close to a third of Americans will have diabetes by 2050. According to the CDC, diabetes is becoming a common problem. It estimates 86 million people in the United States

are currently classified as pre-diabetic. Nine out of ten of those are not aware they are pre-diabetic.

Employers need to be concerned about the growing number of employees with diabetes and the significant effect diabetes has on health plan cost and productivity. Losses related to diabetes can differ depending on how an employee manages the condition. Employees that properly manage their diabetes cost the health plan less and have better productivity. However, not all diabetic employees manage their condition properly. Poorly managed diabetes can result in higher medical plan costs and lower productivity.

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## YOUR QUESTIONS

- Q.** We have an employee getting ready to retire. He has asked questions about Medicare and COBRA coverage. He thinks he should be electing COBRA because he has had Medicare for a year and does not really understand its benefit. We are not sure the best way to help him understand the best situation for him. Any suggestions?
- A.** More and more employers will struggle with this issue as Medicare-eligible individuals decide to retire. Employers have always provided health coverage. It is natural to look to your HR department for help. However, once this individual retires, he will be responsible for his Medicare coverage. So it is important to help him understand the situation. A good first step would be to download the *Medicare & You Guide* published by the Centers for Medicare and Medicaid Services (CMS). It is long, but it explains Medicare options clearly.

You should also discuss the COBRA issue directly with the employee. You must offer COBRA and he can elect it for 18 months. However, the COBRA option may not make the most sense financially. The employee would have to pay COBRA premiums and will have to elect Medicare Part B and pay Part B premiums for two reasons. First, he will have to pay a late enrollment penalty if he does not enroll when he loses group health plan coverage by virtue of current employment status at retirement. (COBRA is not considered group health plan coverage by virtue of current employment status.) Next, COBRA coverage pays secondary to Medicare. Almost all group health plans will pay for benefits secondary with the assumption Medicare Part B is in effect. Benefits will not change if the individual does not elect Part B. This means the group health plan will provide only minimal coverage for outpatient services without Part B coverage. An "all Medicare" option will likely be a better financial choice for this Medicare-eligible retiree.

Encourage the employee, after reading the CMS guide, to search for coverage options at [Medicare.gov](http://www.Medicare.gov). If he is still confused, have him seek help from your local area agency on aging or from an individual insurance agent.

Employers have always focused on managing the costs associated with diabetes. Historically, most employers have offered diabetes disease management programs and these programs have had some success. In many cases, the biggest challenge is getting employees to participate. Many employees will not. Efforts to pull employees into these programs are often not sufficient. Sometimes employers send letters asking employees to call in and enroll in the program. Sometimes the program makes outbound calls to convince them to enroll. The problem is these programs are often not affiliated with the employee's primary care physician. Employees managing chronic conditions tend to rely on their primary care physician for treatment options.

Traditional disease management may not be the best way to tackle the diabetes challenge. Employers can improve care management of diabetic employees in a number of other ways. Patient-centered medical homes (PCMHs) may provide more comprehensive primary care. Blue Cross Blue Shield of Michigan has one of the largest networks

of PCMHs in the country. PCMH practices may offer services that are not available at non-designated practices. One example is 24-hour access to the care team. PCMH practices coordinate specialists and other care, like nutrition counseling, home care and links to community services. They also teach patients how to manage conditions such as asthma and diabetes.

Personalized attention to treating diabetes makes a difference. A case study reported by the Northeast Business Group on Health illustrates the success a PCMH can have with diabetes management. A New Jersey health system built an informal PCMH for their 110 employees battling diabetes. Two full-time and two part-time RNs staffed the program. They provided consultations in person and over the phone. The program offered several benefits:

- Diabetes medication at no cost if the patient shared current specific health information, including their lipid profiles and hemoglobin levels. They needed to share food logs, blood sugar logs and proof of a podiatry visit. They had to complete

baseline tests and received financial incentives to complete health assessments.

- The RNs coordinated with ophthalmologists and podiatrists in the health system to make sure diabetics got necessary exams. The RNs also referred 75 percent of participants to counseling for depression.

The results were dramatic:

- 50 percent of participants had reduced sick time.
- 90 percent of participants had reduced AC1 levels in the first year.
- Before the program, 75 percent of participants had not seen a podiatrist in the past five years; during the program, nearly all participants saw a podiatrist in the first year.

Onsite or near site clinics may be an option for larger employers. These clinics can offer ongoing monitoring, data collection, bloodwork and one-on-one self-management training. These clinics make it convenient and easy for employees to use primary care services to better manage their diabetes.

Pharmacy-based coaching may be another option. Employers can meet with their pharmacy benefit manager to discuss coaching programs available. With these programs, the pharmacist provides face-to-face or telephone counseling to increase medication adherence rates.

## TREND TIDBITS

- \$ Nationally, large employer (500 or more employees) PPO/POS plan cost increased 5.4% in 2016. Annual PPO plan costs were \$12,235 per employee in 2016.
- \$ Nationally, large employer HMO plan costs increased by 2.8% in 2016. Annual HMO plan costs were \$12,388 per employee in 2016.
- \$ Nationally, large employer CDHP cost including HSAs increased by 3.6% in 2016. CDHPs paired with HSAs cost \$9,551 annually per employee in 2016. This includes employer contributions to HSAs.
- \$ Employers expect cost to increase at 6% in 2017, but will make plan changes to reduce the increase to 4.1% on average.

Source: 2016 National Survey of Employer-Sponsored Health Plans, Mercer

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Value-based benefit designs, paired with coaching, may also be helpful. By lowering copays on proven medications to treat chronic conditions, value-based plan designs remove financial barriers to obtaining necessary medication. Pairing them with coaching could make sure diabetic employees understand that activity and nutrition are important in managing their condition.

Employers should review their plan data to determine how many employees are diabetic. If the number is substantial, they should consider options beyond traditional disease management to help these employees deal with their condition. If organizations have only a small number of diabetics, they should keep an eye on plan utilization. Diabetes is a growing problem that may affect the organization in the future. [MMA](#)

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## Technical Corner

### CYBERSECURITY

Cybersecurity is an issue most employers need to take seriously. Over the last several years, the number of ransomware and cyberattacks has increased substantially. Employers are victims of these attacks for two reasons. First, they may hold significant personal or financial information about customers. Second, they may have significant personal employee information because they sponsor health and retirement plans.

Knowing that cyber-criminals are looking at your organization as a potential target, can you say you are ready for a possible attack? While most employers would check with the IT Department, they should also keep Human Resources involved in protecting data from a breach or an attack. This is especially critical as employers expand the number of third parties they use to communicate and store critical data.

Organizations should take the following steps to protect their data:

- Develop a process to identify, communicate and handle cyber incidents
- Develop a process to review security levels when adding new vendors or when vendors update their software systems. It is critical to identify vulnerabilities and improve them before a potential attack.
- Conduct regular data backups and store them securely off-network and offline.
- Review your password protection protocols.
- Invest in security software and systems.
- Review bids for cyber-security insurance.

With cybercrimes, the question now seems to be what action steps do we need to take *when* we get hit, not *if* we get hit. Health plan information breaches are subject to HIPAA's reporting rules. Other laws in your state may require notifications and specific handling of breaches when customer information is involved or pension plan information is involved.

Employers need to understand the federal and state laws that affect the data their organizations use and store. Understanding the requirements up front allows organizations to create a plan in case of a cyber-attack. Because these attacks pose a serious risk, response time is critical. Employers need to minimize the potential for an attack and minimize potential harm if they are attacked. [MMA](#)

# LIABILITY LESSONS

## THE OUT OF STATE DEBATE

In Michigan, employers are required to purchase workers' compensation insurance. What if a Michigan employee travels to another state to conduct business? Many employers wrongfully assume that workers' compensation policies cover out-of-state exposures automatically if payrolls are included on the Michigan policy. For many reasons, this assumption may not be correct and could be costly.

### **Michigan Workers' Compensation Act**

The Michigan Workers' Compensation Act indicates that if an employee lives in Michigan and is injured on the job, they would be covered under the Michigan Workers' Compensation Act. This is true even if the injury occurred in another state. But if the employee actually lives in another state and Michigan was the "at-will" contract of the hire state, then Michigan benefits would apply as long as

the employee's state of residence is listed in the policy.

### **Are all states of work listed in the policy?**

Workers' compensation claims could be denied if the policy wasn't specifically endorsed to reflect all states where the employer has or will have employees during the current policy year. It is essential to have these listed in the policy. You never can assume that coverage is automatic.

A standard workers' compensation policy will have a section where you must list states where you do **not** conduct business but may possibly in the future. If your organization has an employee conducting business in one of those states that is injured, it will be covered as long as the state was listed in the policy, prior to the work being conducted.

If your organization does work in a state that is not listed in the policy, you must report this to the insurance company within 30 days of work beginning in order for coverage to apply.

### **Compliance Is Critical**

Employers, who fail to comply with workers' compensation laws, even if the failure was inadvertent, can face both civil and criminal penalties. The safest way to make sure your organization is in compliance is to list every state where that employer has employees working, residing, or entering into a contract of hire. [MMA](#)

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