



WORKSITE WELLNESS AND HIPAA PRIVACY

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MINNESOTA EMPLOYERS who establish worksite wellness programs must comply with certain legal requirements. Important legal issues to consider are the HIPAA nondiscrimination regulations, the HIPAA Privacy Rule, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), the Minnesota Consumable Products Act, federal and state nursing mothers laws and federal income tax law. Please refer to the corresponding fact sheet for a description of each legal requirement. This fact sheet provides an overview of the HIPAA Privacy Rule as it applies to worksite wellness programs. When setting up a worksite wellness program, it is important to consult with an attorney to make sure that the program meets all legal requirements.

Q What is HIPAA?

A HIPAA refers to the Health Insurance Portability and Accountability Act of 1996.¹ It provides a wide variety of rights and protections for participants and beneficiaries in group health

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plans. The two aspects of HIPAA that apply to worksite wellness programs are the nondiscrimination regulations and the privacy rule.² A different fact sheet describes the HIPAA nondiscrimination regulations, *Worksite Wellness and HIPAA Nondiscrimination Regulations*.

Q What does the HIPAA Privacy Rule do?

A It limits disclosure and use of individual health information, known as Protected Health Information or PHI, to only those persons and entities that require the information.

Q What is PHI?

A The following types of information are considered PHI

- » Health condition
- » Treatment
- » Payment records
- » Demographics, such as address or birth date.

Q How does the HIPAA Privacy Rule limit the disclosure and use of PHI?

A It outlines when and under what circumstances PHI can be used and disclosed based on who requests the information and how they plan to use it. There are three types of disclosure: required, permitted, and authorized.

- » **Required** The information must be disclosed when requested.

Example: An individual requests his or her own PHI.

- » **Permitted** The information may be disclosed without the individual's authorization.

Example: A health plan, health care provider or employer requests PHI for treatment, payment or healthcare operations.

- » **Authorized** The information may only be disclosed when the person who is the subject of the PHI authorizes it.

Example: A request to use PHI for marketing purposes; a request for an individual's psychotherapy notes.

Q Who is required to comply with the HIPAA Privacy Rule?

A Only "covered entities" are required to comply. A covered entity is a health plan, a health care clearinghouse or a health care provider who transmits health information in electronic form.³

Q How does the HIPAA Privacy Rule apply to worksite wellness programs?

A In most cases, it does not apply directly to employer-run worksite wellness programs because a worksite wellness program is not usually considered a covered entity under HIPAA. Employers should be familiar with HIPAA and its terminology if any part of the worksite wellness program is being run by the employer's health plan. The health plan is a covered entity and is subject to HIPAA.



Q What issues should I discuss with my attorney?

- A
- » Is my wellness program a covered entity under HIPAA?
 - » If so, does the program collect or keep Protected Health Information (PHI)?
 - » Does the program use and disclose PHI as required?



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¹ Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936.

² 45 C.F.R. §§ 164.500 - 164.534.

³ 45 C.F.R. § 160.103.