

Publications

EEOC Releases Proposed Rule on Wellness Programs

ATTORNEYS & PROFESSIONALS

Kathryn Bjornstad Aminkamin@groom.com

202-861-2604

Jon Breyfoglejbreyfogle@groom.com

202-861-6641

Christine Kellerckeller@groom.com

202-861-9371

Tamara Killiontkillion@groom.com

202-861-6328

Mark C. Nielsenmnielsen@groom.com

202-861-5429

Seth Perrettasperretta@groom.com

202-861-6335

Christy Tinnesctinnes@groom.com

202-861-6603

Viv Hunter Turnervturner@groom.com

202-861-6324

Allison Ullmanaullman@groom.com

202-861-6336

PUBLISHED

04/27/2015

SERVICES

Employers & Sponsors

On April 20, 2015, the Equal Employment Opportunity Commission (EEOC) published a proposed rule (Proposed Rule) in the *Federal Register* that would amend the regulations and interpretive guidance implementing Title I of the Americans with Disabilities Act (ADA) as they relate to employee wellness programs. The Proposed Rule provides guidance on the extent to which employers may use incentives to encourage employees to participate in wellness programs that include disability-related inquiries and/or medical examinations. Comments with respect to the Proposed Rule must be submitted by June 19, 2015.

The Proposed Rule follows in the wake of significant litigation and legislative activity. As discussed in more detail in a prior Benefits Brief, the EEOC brought court actions against three employers last year, alleging that their wellness programs violated the ADAs prohibition against involuntary medical examinations. In addition, on March 2, 2015, Senator Lamar Alexander (R-Tenn.) and Representative John Kline (R-Minn.), together with a number of Republican co-sponsors, introduced the *Preserving Employee Wellness Programs Act* (H.R. 1189, S. 620) (Bill). The Bill provides, among other things, for certain protections under the ADA for wellness programs that comply with the Health Insurance Portability and Accountability Act of 1996s (HIPAA) wellness program nondiscrimination regulations.

The Proposed Rule only addresses how the ADA applies to wellness programs. It does not provide any guidance regarding how Title II of the Genetic Information Nondiscrimination Act (GINA) applies to wellness programs. In a footnote in the Proposed Rule, the EEOC states that it will address the issue in future guidance. The Proposed Rule makes clear that compliance with the Proposed Rule does not relieve an employer from the obligation to comply with other nondiscrimination laws within the purview of the EEOC, including Title II of GINA.

The Proposed Rule reflects the EEOCs stated intent and efforts in interpreting the ADA in a manner that reflects both the ADAs goal of limiting employer access to medical information and HIPAAs provisions permitting nondiscriminatory wellness programs. However, as discussed in more detail below, the Proposed Rule differs in several important ways from the rules in effect under HIPAA.

This Benefits Brief first provides background regarding the ADA and HIPAA as they apply to wellness programs. It then addresses the substantive provisions of the Proposed Rule. Finally, it addresses what will happen now that the Proposed Rule has been issued.

[EEOC Releases Proposed Rule on Wellness Programs](#)