

Chicago Daily Law Bulletin®

Volume 162, No. 184

Serving Chicago's legal community for 161 years

'Pokemon Go,' wellness efforts can work together

Anyone working with employers knows that a major concern is the continued increase of health-care costs at a rate much faster than the overall rate of inflation. For this reason human resources departments, health-care consultants and brokers have been suggesting the adoption (or enhancement) of consumer-driven health plans and robust wellness programs.

In an oversimplified fashion, the thinking goes like this:

- Consumer-driven health-care designs generally pair high-deductible health plans with health savings accounts, the funds from which can be used to cover certain health-care costs.

- These consumer-driven health-care programs will (theoretically) encourage employees to be most "cost-conscious" about their health-care decisions. They will gather more information and make thoughtful decisions about their care which will, in essence, lower health-care costs.

- On the other side of the coin, employers want their population to be healthier to reduce their experience and control costs. Thus, employers adopt wellness programs (also known as health management) designed to incentivize healthy behaviors.

- Wellness programs are highly regulated (including potentially by the IRS, Departments of Labor and Health and Human Services, and the Equal Employment Opportunity Commission) and come in many flavors ranging from participation-based to outcome-based (meaning, financial incentives awarded for achieving a particular fitness or wellness standard).

Since the introduction of consumer-driven health care about 15 years ago and the explosion of

wellness programs in the past decade, the industry supporting these programs (platform vendors, wellness consultants, nutritional coaches, compliance squads) has similarly expanded.

While employers have invested millions in these "solutions" to the health-care cost crisis, the results have been mixed. One thing is certain — the overall results are somewhat disappointing for employers. They certainly have not gained popularity anything like "Pokemon Go."

For those not familiar with the "Pokemon Go" phenomenon (also known as Pokemania), you need to get with the times.

In the last few months, this free video game was released and quickly swept the globe, garnering the (all-consuming) attention of millions. The concept is relatively simple — gamers download the game and use their smartphones to locate, battle and train various Pokemon (virtual beings). Anyone can download the app and start using the game in a matter of moments.

The novel concept is that gamers need to actually get up and go out into the world to find the Pokemon.

While the game has been subject to much criticism (for, among other reasons, being a nuisance and possibly endangering its players who are not paying attention to the real world), it has been wildly successful in engaging its audience and encouraging physical activity.

Arguably, many of the subscribers have remained inside playing video games rather than engaging on expeditions outside.

What can employers with health-care cost concerns learn from "Pokemon Go"? Here are a couple of things:

First, the program needs to be

BY CARRIE E. BYRNES

Carrie E. Byrnes is a partner in Michael Best & Friedrich LLP's employee benefits group, where she focuses her practice on a wide variety of benefits and compensation matters ranging from health and welfare plans to retirement and executive compensation arrangements. In her practice, Byrnes primarily counsels employers on design, adoption, operation and termination of their benefit and compensation arrangements.

simple.

Second, the program needs to be fun.

Helping make the program simpler

As legal counselors, we can help demystify many complexities by suggesting straightforward strategies (rolled out through clear communications) to incentivize the behaviors sought after by employers.

Many wellness programs have so many components that employees get lost in how it all works. Even more problematic is the multifaceted legal regime that applies to wellness programs. Having too many facets could lead to inadvertent compliance issues under the Internal Revenue Code, Employee

health savings accounts offering a tool to help employees understand these programs is a fantastic start.

For example, engaging a health advocate company (a health advocacy, patient advocacy and assistance organization) to guide employees through the appropriate use of their high-deductible health plans — assisting in selecting the appropriate health-care provider and services and working with insurers and providers. This type of program aids the effective use of high-deductible health plans. It makes it simpler.

Making the program fun

Since health care isn't inherently fun, creativity is required. On the wellness program front, fun can certainly be achieved. Whether it's encouraging your employees to engage in "Pokemon Go" contests over lunch breaks or suggesting a more traditional "most steps" or "Biggest Loser" challenge, this can make the wellness program engaging and enjoyable.

With the annual open enrollment for employee benefits about to begin in many companies, here's a thought: Companies should revisit their health program designs to ascertain how much they are

likely to meet the employer's intended outcomes.

Does the program design embody

Pokemania — simple and fun — to incentivize employee engagement and positive behavior? And, after a close review of the many intersecting laws governing health programs (the Revenue Code, ERISA, HIPAA, ADA and so forth), is the program legally compliant?

An affirmative answer to each question could put the employer on a path toward better control of its health-care costs.

Many wellness programs have so many components that employees get lost in how it all works.

Retirement Income Security Act, Health Information Portability and Accountability Act or Americans with Disabilities Act.

Even failure to comply with a simple requirement (such as too high of a tobacco-use surcharge or failure to distribute the EEOC's new annual notice) can trip major penalties.

When it comes to high-deductible health plans and