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LEADING HEALTH ORGANIZATIONS, EMPLOYERS ISSUE JOINT CONSENSUS STATEMENT IN RESPONSE TO PROPOSED WELLNESS REGULATIONS

Consensus addresses five key areas of Equal Employment Opportunity Commission's (EEOC) proposed guidelines for employer-sponsored wellness programs

EDINA, Minn. (April 25, 2016)—HERO (the Health Enhancement Research Organization) announced today the publication of a joint consensus statement in response to the Equal Employment Opportunity Commission's (EEOC) proposed guidelines for employer-sponsored wellness programs. The consensus statement reflects the support of 15 organizations—representing the perspectives of employees, employers, occupational medicine, health plans, and wellness program providers—and focuses on five key areas of the proposed regulations.

Convened by HERO, the American College of Occupational and Environmental Medicine (ACOEM), the American Heart Association (AHA) and Population Health Alliance (PHA), the consensus process included review of existing and proposed regulations, identification of key areas where consensus is needed, and a methodical consensus-building process. The detailed recommendations in the consensus statement stem from the overarching conclusion of the participating organizations that comprehensive, evidence-based employee health and well-being initiatives are generally in alignment with federal regulations and are generally viewed as voluntary by individual participants.

The guidance document, “A response to proposed Equal Employment Opportunity Commission regulations on employer-sponsored health, safety and well-being initiatives,” was published in the [*Journal of Occupational and Environmental Medicine \(JOEM\)*](#) in March.

The statement focuses on five key areas of the proposed EEOC regulations:

1. Whether consumers receive adequate privacy notice about how medical data are collected, used and protected;
2. How the use of incentives or penalties influences employee perceptions about whether a wellness program is voluntary or not;
3. What constitutes a “reasonable alternative standard” for achieving an incentive;
4. What constitutes a “reasonably designed wellness program;” and
5. Whether or not there is adequate alignment and consistency between the EEOC regulations and regulations from the Departments of Health and Human Services, Labor and Treasury (Tri-Agencies), with which employers must also comply.

“A core tenet of health promotion is that it is a combination of voluntary actions and learning experiences, which is the same balance that comprehensive, evidence-based workplace

wellness programs strive to achieve,” said Paul Terry, Ph.D., president and CEO of HERO. “This consensus statement is significant because it represents the collective voice of a broad cross-section of organizations that touch the lives of wellness program participants across the country. It is based on their extensive experience designing and implementing wellness programs for employees, which means it is based both in hard science and the reality of today’s workplace—and we believe it addresses the concerns that are at the heart of the EEOC’s recommended guidelines.”

The joint consensus statement provides detailed recommendations and responses to the EEOC’s proposed regulations, including the following key takeaways:

- Formal EEOC guidance regarding wellness and incentive programs as they relate to the Americans with Disabilities Act (ADA) and the Genetic Information Nondisclosure Act (GINA) is needed and appreciated, but should be consistent with other regulations (such as Tri-Agency regulations).
- Retaliation or adverse action against individuals who do not participate in wellness programs should be prohibited. This includes denial of coverage, termination of employment, or requiring 100 percent payment of medical care premiums.
- Clear notice that programs are voluntary is needed, as is clear notice regarding what personal health information will be gathered, who will have access to it, how it will be used, and how it will be protected.
- Protected health information should not be sold or provided for commercial purposes.
- Final ADA and GINA regulations should be released jointly, should not be enforced retroactively, and a reasonable time period for employers and health plans to modify program designs is needed.
- In order to create common standards for wellness programs and incentives, the final regulations from EEOC should be consistent with the ADA and GINA.

In addition to addressing these important recommendations, the joint consensus statement calls for future research that would inform ongoing policy efforts related to:

- The effects of select wellness program components, including incentives, based on the types of workers and the types of industries in which these components are used.
- How the use of premium differentials for smokers versus non-smokers may impact lower versus higher wage earners based on their readiness, willingness, or ability to change health behaviors or manage a chronic condition. Currently, the ACA and EEOC indicate a financial incentive ceiling of 30 percent of the health insurance premium for nonsmokers and 50 percent for smokers.
- How various levels of rewards, such as t-shirts, mugs, or gift certificates impact differently situated employees.

Organizations involved in developing, and endorsing, the consensus statement include the American College of Occupational and Environmental Medicine (ACOEM), the American Council on Exercise (ACE), the American Heart Association (AHA), Bravo Wellness, HealthFitness, HealthPartners, Healthways, HERO, Interactive Health, Johnson & Johnson Services Inc., Optum, Performance pH, Population Health Alliance (PHA), StayWell, and Truven Health Analytics.

The varied backgrounds, constituencies and functions of the organizations involved in this collaborative effort help ensure that the guidance reflects the interests of individual employees,

employers that sponsor health care benefits and workplace wellness programs, and wellness companies that offer these programs.

Visit the HERO [website](#) to learn more or to view a [white paper](#) version of the article published in JOEM.

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About HERO – Based in Edina, Minn., the Health Enhancement Research Organization (HERO) is a non-profit corporation dedicated to the creation and dissemination of employee health management research, education, policy, strategy, and leadership. HERO was established in 1996 as a not-for-profit, 501(c)3 corporation to create high quality employee health management (EHM) research, especially that dealing with the impact of modifiable health risks on health care costs. To learn more, visit www.hero-health.org. Follow us on [Twitter](#) or [LinkedIn](#).