Are Employer Wellness Programs Discriminatory? The AARP Thinks So

We've been hearing about wellness programs for many years now. They've been the gold standard for corporate H.R. managers trying to tamp down escalating benefit costs by stressing the role of the individual employee in achieving "wellness."

It's a win, win for everyone -- right? Well maybe not, the nation's leading lobby for seniors said this week. In a unique legal challenge, AARP took a shot across the bow of such corporate-sponsored programs that offer employees financial incentives because workers must submit personal medical information that could prove embarrassing and possibly held against them.

The AARP - the consumer advocacy group that represents older Americans - has filed the first major legal challenge to federal regulations over employer-based wellness programs.

The suit against the Equal Employment Opportunity Commission, the federal agency responsible for issuing the rules governing what employers can do, surely will "add fuel to one of the hottest debates in health care," reports The New York Times.

At issue: recent rules allowing employers to offer wellness benefits that can run as high as 30 percent of the annual cost of a worker's health insurance coverage. With the average cost of individual
coverage nearly $6,500, refusing to participate can now cost workers nearly $2,000 a year.

Older people must choose between incurring taking financial hits or divulging medical information that "once revealed, will never be confidential again," the AARP suit states.

The AARP is seeking a preliminary injunction in Federal District Court in Washington to stop the new rules, which kick in next year. The ACA allows employers to use financial incentives as a carrot - or stick, depending on one's view - to entice employees to join in such programs. The goal has been to lower escalating health insurance costs for employers.

But critics say some corporate wellness programs require employees to fill out health risk assessments or undergo biometric testing for conditions such as high blood pressure. By doing so, critics say, they're "forcing workers to hand over private medical or genetic information," the Times reports.

They say this violates anti-discrimination provisions under laws like the Americans with Disabilities Act. "Those provisions are meant to protect someone with depression or a genetic predisposition for breast cancer, for example, from having to tell an employer about a condition."

The Times notes that "companies argue that wellness programs are essential to their efforts at improving the health of their work forces. Companies generally gather medical information through third parties as a way to protect the privacy of individual employees."

Click here to read more about this legal challenge to what has become a staple of workplace-based health care.

VCU and HCA Team Up in NICU

Click here to read about a partnership between VCU Health and HCA Virginia to provide neonatal intensive care.

"For the past three years, HCA Virginia has contracted with VCU to operate the NICUs at HCA Virginia's Johnston-Willis and Chippenham hospitals and bring its neonatologists and specialists to those hospitals," the Times-Dispatch reports.

HCA Virginia's Chippenham Hospital, one of two sites of
Officials at both health systems praised this as "an example of an academic medical institution partnering with community hospitals to bring evidence-based practices and the newest research advances to the general public faster," the TD reports.

"This is something we really feel is very vital to the improvements of care for children within our community," said Dr. Karen D. Hendricks-Munoz, who leads VCU's Division of Neonatal-Perinatal Medicine, which includes HCA's NICU operations.

Said Kim Jarrelle, administrative director of women's and neonatal services for Johnston-Willis and Chippenham: "The outcomes for our babies have been phenomenal. [The VCU physicians] have come in and embraced our culture and worked around our protocols."

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Holy MACRA! "Seismic Changes" Ahead with Medicare's Major Pay Overhaul for Doctors

Federal health officials "unveiled a far-reaching overhaul of how it pays doctors and other clinicians" under Medicare, reports the Associated Press.

"The goal is to reward quality, penalize poor performance, and avoid paying piecemeal for services," AP reports. "Whether it succeeds or fails, it's one of the biggest changes in Medicare's 50-year history."

Click here to read more about the rules for MACRA - the Medicare Access and CHIP Reauthorization Act - with two new payment systems, or tracks, for clinicians.

The Wall Street Journal reports that new bonuses and penalties "would be paid or imposed depending on how well doctors do on measures of quality, electronic health records and managing costs. Doctors can also enter Medicare contracts that include quality and cost-control incentives and earn bonuses."

An early draft of the rule was opposed by physician groups that "feared doctors in small medical practices would suffer under the new formula," the Journal notes. "CMS officials have sought to allay those concerns by making it easy to avoid penalties in the first year, giving doctors more time to prepare, and with other changes they said would make it easier for doctors to participate."

Early reviews were mixed. The AMA praised CMS for its flexibility even as it got down in the weeds of a more than 2,000 page document. The Medical Group Management Association didn't
sound as thrilled, saying the rules seem to become less flexible, leaving doctors to cool their heels before Medicare rules on either bonuses or penalties.

"The sheer magnitude of a 2,400 page regulation and its impact on physician practices can't be ignored," the MGMA warned.

The dual payment system comes as the Obama administration continues to link Medicare payments to measures of quality or costs, rather than the number of tests, visits and procedures.

Starting in 2018, clinicians can earn higher reimbursement by joining a leading-edge track (Alternative Payment Models) that involves higher risk, but also higher reward, for medical practices willing to participate. Medicare expects some 70,000 to 120,000 clinicians to use APMs.

"Most clinical practitioners - an estimated 590,000 to 640,000 - will be in a second track called the Merit-Based Incentive Payment System," AP reports. This brings more modest financial risks and rewards, and accountability for quality, efficiency, use of electronic medical records, and self-improvement.

Another 380,000 clinicians at small practices are expected to be exempt from the new system because they don't see enough Medicare patients or their billings don't reach a given threshold.

Despite the news reports, one health care consultant told the AP that many doctors remain unaware of the seismic changes ahead.

"MACRA is a huge change in how physicians are paid, and there is a wide spectrum on whether they are ready," said John Feore at Avalare Health.

Click here to visit CMS's educational website, and here for some other early reviews about the new rule.

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Turning Tide vs. Addiction Epidemic

**Physicians & Addiction**

A CASE FOR SOCIAL LEADERSHIP 11/15 | CCV

S. Hughes Melton, MD

Understanding the science and social context of the nation's
addiction epidemic is key to taking effective steps to turn the tide of this often-deadly war raging across Virginia and the rest of the U.S.

Come hear S. Hughes Melton, MD, MBA, a recognized expert on this critical - and often vexing - issue. His talk - "Physicians and Addiction: A Case for Social Leadership" - will go beyond the hype and the headlines about opioid abuse. Academy members will be given practical steps to providing effective leadership to bring real change that makes sense for doctors and patients alike.

Join us on Tuesday, November 15th at the Country Club of Virginia for RAM’s next General Membership meeting.

Cocktails at 5:30 p.m., dinner at 6:15 p.m., and Dr. Melton's presentation at 7:00 p.m.

Free to RAM Members. Guests are welcome --- $40 Guest fee.

CLICK HERE to register, call Lara at 804-622-8137 to reserve or email her at lknowles@ramdocs.org.

Dr. Sinha Appointed to State Board

Congrats to Sunil K. Sinha, MD, MBA, FACP of Glen Allen for his appointment by Gov. Terry McAuliffe to the Virginia Health Workforce Development Authority.

Dr. Sinh is Director, Clinical Quality and Patient Safety, at ChenMed Neighborhood Centers (the parent company of JenCare Senior Medical Centers). He’s also a member of RAM’s Legislative Committee.

Dr. Bear's "50 Ways to Practice Better Medicine"

The Fall 2016 edition of Ramifications brings you an insightful column by RAM President Dr. Harry Bear with his own 50 picks from the "Choosing Wisely" list posted by the American Board of Internal Medicine Foundation.
The print edition was mailed this week to your home or office!

Click here to read the new edition online. Check out Dr. Isaac L. Wornom III's "What makes Richmond a fine place to be a doctor?" RAM Executive Director Jim Beckner's notes on new ideas and initiatives in the Academy ("Falling forward"). Dr. David Elliott's moving account about Doctors Without Borders near the Syrian border ("The surgeon becomes a thief"). Dr. Harvey V. Lanksford's high-altitude experiences ("From endocrine to Everest"). Dr. Nathan D. Zasler's deep dive into treating concussions ("Concussive brain injury: A primer for community physicians"). Dr. Richard P. Wenzel's global perspective on the Zika outbreak ("Zika virus: The latest pandemic").

And you'll learn much more about RAM's upcoming socials, family events and informative meetings!

Va. Rolls Back Restrictions on Abortion Clinics

The Virginia Board of Health voted this week "to scrap hospital-style building codes for all abortion clinics, saying they were unconstitutional under a recent U.S. Supreme Court ruling," The Washington Post reports.

The board indicated months ago that it planned to lift the requirement for 14 existing clinics but would impose them on any new ones. But by an 11-4 vote Monday, the panel decided that the construction requirements should not apply to Virginia's clinics.

In 2011, the General Assembly voted to make the clinics operate like outpatient surgical centers, requiring costly renovations such as wider hallways and doorways, expanded parking and entrance awnings.

"Supporters said the changes would safeguard women undergoing abortions at the clinics and ensure the emergency-medical personnel had access to patients," the Post reports. "Abortion rights advocates called the rules medically unnecessary and a transparent attempt to force clinics out of business."
Monday's vote doesn't shield clinics from parts of the 2011 regulatory package that require more complete record-keeping and inspections. The regulations now go to the attorney general and governor for administrative review, and will be posted online during a final public comment period.

Attend an Upcoming Legislator Meet & Greet

Please join us on **Wednesday, November 30th** or **Wednesday, December 7th** for one of our annual legislator meet and greets. Get to know your elected officials! Come out and enjoy light refreshments and a discussion of physicians' concerns. We want to see you there!

**WEDNESDAY, NOV. 30**
7:00 - 8:00 a.m.

**Henrico Doctors' Hospital**
*Forest Conference Room*
1602 Skipwith Road
Richmond, Virginia  23229

Come hear from Senators Rosalyn Dance and Siobhan Dunnavant and Delegates Buddy Fowler, John O'Bannon and Roxann Robinson.

**WEDNESDAY, DEC. 7**
6:00 - 7:00 p.m.

**Virginia Urology - Stony Point**
9105 Stony Point Drive
Richmond, Virginia  23235

Meet with Senators Siobhan Dunnavant and Glen Sturtevant and Delegates Betsy Carr, Riley Ingram, Manoli Loupassi, Jimmie Massie, John O'Bannon and Chris Peace.

[Click here](#) to sign up for the 11/30/16 Meet & Greet at Henrico Doctors' Hospital from 7 - 8 a.m. [Click here](#) to sign up for the 12/7/16 Meet & Greet at Virginia Urology (Stony Point) from 6 - 7 p.m. Or email Lara Knowles at [lknowles@ramdocs.org](mailto:lknowles@ramdocs.org) to register!
VOTE!

Cast your vote NOW in the RAM Board of Trustee elections!

Electronic polls are open until midnight on Monday, November 14. Click here to vote for FIVE Trustee positions for the 2017-2018 term.

You will be prompted to log in to vote. Note: If you have not yet created a password - or don't remember it - click "forgot password" and follow the prompts.

Questions? Email Kate Gabriel by clicking here or calling her at 622-8133.

Trump "Winds Down" Fund Raising

Even as he kept sparring over Obamacare (see item below), GOP presidential candidate Donald Trump surprised his supporters by announcing an end to high-dollar fundraisers that are key to battling Hillary Clinton for the White House, reports The Washington Post.

"We've kind of wound down," said Steve Mnuchin, Trump's national finance chairman as he explained the decision not to hold major fundraisers that are continuing for Clinton. "But the online fundraising continues to be strong."

Trump's visit to Virginia Beach last week "flabbergasted political analysts and GOP strategists who have considered the swing state off the table for months," the Post reported.

"There is absolutely no logical reason for Trump to be spending resources in Virginia," said Jennifer Duffy of the nonpartisan Cook Political Report. "Especially since there are a handful of very tight states out there that could use those resources."

Trump's on-again, off-again interest in Virginia reflects differences of opinion within national and state GOP circles over whether it made sense to bring him into the Old Dominion.

Because there was no "down ballot" Senate race, said Corey Stewart, Trump's former Virginia co-chairman, "We got totally hosed."
The campaign fired Stewart - a Prince William County Republican supervisor - after he took part in a protest in front of Republican National Headquarters earlier this month.

That protest was aimed at warning the national party against abandoning Trump. Stewart has announced plans to seek the Virginia Republican party's nomination for governor in 2017.

Click here for a TD editorial about Trump's Old Dominion strategy.

Meanwhile, Clinton's running mate, Va. Sen. Tim Kaine, was profiled by The New Yorker last week. And click here for a Loudoun Times article on Kaine's efforts to reach out to Republicans.

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Ocare Premiums Jumping by 25 percent

Federal health exchange premiums are expected to rise an average of 25 percent next year, with many consumers down to one insurer, the Obama administration confirmed this week.

Before taxpayer-provided subsidies kick in, "premiums for a midlevel benchmark plan will increase an average of 25 percent across the 39 states, including Virginia, served by the federally run online markets," reports AP.

Some state states will see even bigger jumps, AP reports, while others will see less than the average.

Republicans "pounced on the numbers as a warning that insurance markets created by the 2010 health overhaul are teetering toward a 'death spiral,'" AP reports. Sign-up season starts Nov. 1 before national elections in which the GOP remains committed to a full repeal of the law.

GOP presidential candidate Donald Trump blasted the report, but later had to correct himself when he mistakenly said his own employees would be affected by the rate hikes (Trump's employees are covered by his company's policy).

Meanwhile, Obama Administration officials defended the federal exchange, claiming subsidies "will insulate most customers from sticker shock" and that consumers who are willing to switch to cheaper plans will find bargains.
But given the complexities for patients - especially those with chronic conditions who can't easily switch physicians - this is "shaping up to be the most difficult sign-up season since HealthCare.gov launched in 2013 and the computer system froze up."

Meanwhile, President Obama keeps defending his signature initiative and calls for expanding Medicaid in 18 states that haven't chosen to do so - including Virginia.

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**You May Want to Check Your Medicare Advantage Listing**

"Provider directories for private Medicare Advantage plans are riddled with errors, according to the government's first in-depth review," reports Kaiser Health News.

The results made public Monday, arriving amid the annual enrollment period that runs through Dec. 7, "validate gripes long made by seniors and consumer advocates," Kaiser reports.

"Incorrect information was found for almost half of the 5,832 doctors listed in directories for 54 Medicare Advantage plans checked last fall." Only online directories were checked, and CMS didn't name the insurers that were surveyed.

The CMS survey "found the most error-prone listings involved doctors with multiple offices that did not serve health plan members at each location." Click here to read more about all the bad information on the Internet.

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**"Warm Line" for Anxious Patients**

If you have a patient with mental health concerns, or someone who just wants someone to talk to, our friends at Mental Health America of Virginia shared this number for a non-emergency "Warm Line": **866-400-6428**.

This is a peer-run listening line that also provides mental health referrals. It operates from 9 a.m. to 5 p.m., Monday-Friday. (This isn't an emergency Hotline, which can be reached 24/7 at 1-800-273-8255).

At the Warm Line, "We provide friendly, non-judgmental support if you need to talk, or if you want information on mental health resources in Virginia," says Bruce N. Cruser, Executive Director of MHA of Virginia. Click here to ask him more about this patient support effort.
Meanwhile, a new report by Mental Health America shows that only one out of four Virginia youths suffering from major depression is treated - a rate that falls below all but two other states, reports the Times-Dispatch.

MHA downgraded Virginia to 38th out of 40 states for overall access to care for mental illness.

"There's no question that Virginia needs to strengthen its community behavioral health system," said Dr. Jack Baber, interim commissioner of the state's Department of Behavioral Services.

Mental health advocates, including Cruser, are calling for the General Assembly to expand Medicaid and use $200 million of federal dollars to improve Virginia's behavioral health programs.

Nationwide, the MHA report shows 20 percent of adults (43.7 million people) have a mental health condition, but more than half don't receive treatment.

Among youths, The Washington Post notes, "the rates of depression are rising, but 80 percent of children and adolescents get either insufficient treatment or none at all."

Dr. Levine Wants YOU (to report on disease in Va.)

State Health Commissioner Dr. Marissa Levine needs your help in identifying and reporting "conditions of public concern" and encourages RAM members "to consider the impact your patients' health may have on the larger community." Click here for her update to the regulations "to control the spread of disease in Virginia."

This takes you to some changes for those in clinical practice, including changes with blood lead levels in children, and the addition of Babesiosis and Leptospirosis.

CDC Warning on Heart Infections from Surgical Device

The Centers for Disease Control and Prevention "warned open-heart surgery patients recently that they were at risk of a deadly infection linked to a medical device used during their operations," reports The Washington Post.

Some 500,000 patients could have been exposed to the nontuberculous mycobacteria, or NTM. "Although infections are rare, experts are worried because patients may not develop symptoms or
signs of infection for months, so diagnosis may be missed or delayed."

The device in question is a heater-cooler unit, which helps keep a patient's circulating blood at a specific temperature during an operation. It's used in an estimated 250,000 surgeries in the U.S. each year, including cardiac bypass, valve replacement and liver transplants.

The CDC advises hospitals to notify patients who had open-chest surgery involving a German-made Stockert 3T heater-cooler (made by LivaNova PLC, formerly Sorin Group Deutschland GmbH.). The advisory is for open-chest surgery involving these devices going back to Jan. 1, 2012.

"There is new information that indicates these devices were probably contaminated during manufacturing," the Post reports.

The Silence Around Cytomegalovirus

While the world has been galvanized by the Zika epidemic spreading through the Americas - leaving more than 2,000 infants with severe brain damage - "For pregnant women and their infants in the United States, cytomegalovirus, or CMV, is the far greater viral threat," reports The New York Times.

"Every year, 20,000 to 40,000 infants are born with CMV. At least 20 percent - up to 8,000 - have or develop permanent disabilities, such as hearing loss, microcephaly, intellectual deficits and vision abnormalities," the Times reports. There are no vaccines or standard treatments.

But there are now hints that some newborns may benefit from antiviral drugs, "a finding that has reinvigorated the debate over whether they should be routinely screened for the infection."

CMV is a "hardy member of the herpes family, and it is transmitted by contact with saliva and urine - often from diaper-wearing children to adults. Pregnant women often get it from toddlers, especially those who share drool-drenched toys."

"Toddlers are hot zones for CMV," said Dr. Gail Demmler-Harrison, a pediatric infectious disease specialist at Baylor College of Medicine in Houston. It's hard for mothers to protect themselves from a virus carried by the children they care for.

Click here to read more about the debate about informing pregnant women of the virus' dangers, including a policy reversal by the American College of Obstetricians and Gynecologists, which
last year issued a statement saying, "Patient instruction remains unproven as a method to reduce the risk of congenital CMV infection."

But mothers whose babies were hurt by the virus beg to differ.

Why Does Zika Spread?

"Researchers have discovered a piece in the puzzle of how the Zika virus spreads in human cells and neutralizes the body's defenses," reports Kaiser Health News.

A study by scientists at UC/San Diego found that "Zika infections lead to modifications in the genetic material of both the virus itself and humans' immune systems, influencing the virus' spread and the body's immune response." Click here to read more about the study, which one of its authors said showed that changing viral RNA let the Zika virus "hide in plain sight."

The study probably won't help find a vaccine for Zika, but it could contribute to the discovery of drugs to prevent birth defects in some babies born to women who contract the disease while pregnant.

Because Our Members Are Amazing …

Click here to read a touching tribute that thanks physicians, nurses and other health care professionals for their daily care and compassion.

It was written by Peter DeMarco in tribute to his wife, Laura Levis, who passed away due to an asthma attack in Boston.

Advance Care Planning Forum: "Hope is not a plan"

JOIN US for a free screening of PBS Frontline's Being Mortal. Based on the best-selling book by Atul Gawande, MD, the
documentary explores the hopes of patients and families facing terminal illness and their relationships with the physicians who treat them.

See the segment, then join in dialogue with families, caregivers and health care professionals, including leaders from Honoring Choices® Virginia, the Academy's advance care planning initiative. Free Certificate of Attendance provided to health care professionals.

Please email agingstudies@vcu.edu if you wish to receive a Certificate of Attendance for this event.

**November 3rd 6-8 p.m.**

**Virginia Historical Society**

Halsey Family Lecture Hall.
428 North Boulevard
Richmond, Virginia 23220

For registration and other information: tinyurl.com/z29ss2s, agingstudies@vcu.edu or 804-828-1565.

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**Capt. Sully Inspired this Doc**

"I've had 40 years in the air, but in the end, I'm going to be judged by 208 seconds."

This line spoken by Tom Hanks in the biopic about Capt. Chesley "Sully" Sullenberger inspired physician Mike Sevilla, MD.

Click [here](#) to see what he learned from the heroic pilot who managed to land a disabled US Airways airliner on the Hudson River in New York City in early 2009, saving many lives in the process.
"Thank you, Captain Sully," he writes, "not only for saving all those people, but also for recharging my passion and my drive in the decisions that I make on a daily basis as a physician."

Touch Base!

We draw from a wide range of print, online and medical journals to bring you information we hope is relevant to your practice of medicine.

But as a former reporter, I recognize that mistakes do happen. So please contact me if you have any concerns, complaints, or ideas/articles you’d like to share by clicking here or calling 622-8136.

Click here if you’d like to see some of my books. THANK YOU for being part of the Academy and its continuing conversation about the best practice of medicine.

And please check out some back issues!

Chip Jones
RAM Communications & Marketing Director