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Employees' Risky Behaviors Raise HIPAA Concerns

Under the Health Insurance Portability and Accountablity Act (HIPAA), it's clear that health plans can construct wellness programs that penalize smokers by imposing surcharges on their health premiums. But what about other risky behaviors? Say, an employee who likes to jump out of planes for relaxation? Or ride motorcycles? Just how far can employers go to force employees to lead risk-free lives?

Sky Pilots May Be Out Of Luck

HIPAA requires that group health plans not discriminate against employees based on a health factor. Health factors include participation in activities such as motorcycling, snowmobiling, all-terrain vehicle riding, horseback riding, skiing, and other similar activities.

For premium and benefits purposes, HIPAA's non-discrimination provisions mandate that plans group together similarly situated employees. Different groups can be treated differently, but all members of a group must be treated the same. Plans have latitude in making groups, but they must base distinctions between or among groups on *bona fide* employment-based classifications consistent with the employer's usual business practices. *Allowable distinctions:* full-time vs. part-time status, geographic location, union membership, date of hire, length of service, current vs. former employee, and occupation.

While HIPAA's non-discrimination provisions protect employees who like high-risk activities, HIPAA also allows plans to deny benefits based on the source of the injury, provided all members of a group are treated the same. So employees who enjoy high-risk sports must be allowed to enroll in the health plan and can't be charged a higher premium than a couch potato in the same group. Employees' sports-related injuries, however, don't necessarily have to be covered by the plan, provided the plan denies benefits to all employees who engage in high-risk sports.

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