

Courts Scrutinize Tobacco Surcharges and Wellness Program Alternatives

EBIA Weekly (August 21, 2025)

Chirinian v. Travelers Cos., Inc., 2025 WL 2147271 (D. Minn. 2025);

Buescher v. N. Am. Lighting, Inc., 2025 WL 1927503 (C.D. Ill. 2025)

Two federal trial courts have weighed in on the imposition of tobacco surcharges under employer-sponsored group health plans and the provision of reasonable alternative standards under employer wellness programs. In one case, a former employee filed a putative class action on behalf of all employees who had been “illegally surcharged” for tobacco use under her employer’s health plan. She asserted that the wellness program failed to comply with ERISA and federal regulations by (1) imposing arbitrary deadlines for enrolling in a tobacco cessation program, thus denying participants the “full reward”; (2) failing to properly disclose the availability of a reasonable alternative standard; and (3) failing to inform participants of their right to involve personal physicians in the crafting of the alternative standard. The employer responded that its plan complied with regulations by offering participants an annual opportunity to avoid the surcharge through timely completion of the cessation program and by providing retroactive refunds to participants who completed the program by the deadline. The court agreed that the plan’s structure met regulatory requirements. However, noting that the plan’s summary plan description lacked wording that would inform participants of their right to involve a personal physician, the court allowed that portion of the claim to proceed.

In the other case, an employer health plan similarly imposed a surcharge for tobacco use unless participants completed a cessation program, but completion of the program only allowed the surcharge to be waived for the following year—there were no refunds for the current year. A former employee alleged that the prospective-only waiver violated ERISA because it did not provide a retroactive refund of the surcharge when the cessation program was completed during the year. The employer argued—and the court agreed—that the plan was compliant because it gave employees a full year to complete the cessation program before a surcharge would be imposed. Thus, the “full reward” was available to all participants who, in the prior year, were either not tobacco users or completed the cessation program. The employee separately claimed that the plan provided inadequate notice of the cessation program as a reasonable alternative standard; that claim was allowed to proceed based on a technicality.

EBIA Comment: Tobacco surcharges and alternative standards for avoiding them continue to be challenged in the courts. Participants must be offered a genuine opportunity to avoid surcharges through a reasonable alternative standard—typically, a tobacco cessation program—and must ensure that the “full reward” is available as required. Plan sponsors and their advisors should regularly review plan documents and communications to ensure full compliance with applicable substantive and procedural requirements. For more information, see EBIA’s Consumer-Driven Health Care manual at Section VI (“Wellness and Disease-Management Programs”) and EBIA’s HIPAA Portability, Privacy & Security manual at Section XI.I (“Wellness Programs Must Meet Specific Nondiscrimination Requirements”).

Contributing Editors: EBIA Staff.