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Submitted through the Federal eRulemaking Portal

Office of Health Plan Standards
and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Attention: RIN 1210–AB27

Ladies and Gentlemen:

We are pleased to submit this response to the request for comments on the interim final rules implementing sections 101 through 103 of the Genetic Information Nondiscrimination Act of 2008 ("GINA"). The request was published by the Departments of Labor, Health and Human Services, and the Treasury (collectively, the "Departments") in the *Federal Register* on October 7, 2009.

The interim final rules implement provisions of GINA that prohibit group health plans from discriminating on the basis of genetic information. GINA provides that a group health plan may not (1) increase premiums or contributions for a group based on the genetic information of individuals in the group, (2) request or require an individual or family member to undergo a genetic test, or (3) request, require, or purchase genetic information prior to or in connection with enrollment or for underwriting purposes.

Our wellness programs: We have been committed to the use and expansion of wellness, prevention, and disease management programs for a number of years. These programs address potential health problems of our employees, often before they develop into more costly and deadly chronic disease. These efforts to encourage and guide healthy behavior, which have become increasingly popular within our workforce, have helped to control our healthcare costs while improving quality of life for our employees.

A critical component of our wellness programs is the Health Risk Assessment (HRA), which is the gateway through which employees become aware of potential health risk factors and can be directed to appropriate disease management programs. A key element of the HRA, sometimes the most important element, is a series of questions designed to gather family medical history. Based on the information elicited by the HRA, medical professionals can design a program to address the individual health needs of our employees, with special attention paid to diseases or conditions for which they are potentially vulnerable (as highlighted by the family medical history).

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All individual information collected in the HRA of course remains confidential and is never shared with the employer, as required by the Health Insurance Portability and Accountability Act.

Impact of the regulation: Most employees need to be encouraged to complete a long, detailed HRA and to start to participate in a program of healthy living; financial incentives provide a key motivational trigger. The interim final regulation under Title I of GINA would decimate our wellness programs by precluding our ability to provide a financial incentive to individuals who complete an HRA that requests family medical history and to provide rewards to employees for meeting certain health-related goals. If this regulation is allowed to be implemented, completion rates of HRAs will suffer significantly, and participation in wellness programs will plummet.

The regulation will also hamstring our ability to guide employees into disease management programs based on information provided in an HRA.

In conclusion: Wellness, prevention, and disease management programs are one of the few avenues available to us to help control our soaring healthcare costs. Moreover, these are programs that generally are met with enthusiasm by our employees, who are often relieved to be encouraged to lead a healthier lifestyle. Some employees are especially grateful to have completed an HRA and to have found out for the first time that they are at risk for certain diseases and that there are steps they can take to minimize their vulnerability. Making our tasks in this regard more difficult, such as by preventing the use of financial incentives to garner family medical history in an HRA, is an incomprehensible action in view of the dire necessity of holding down medical costs and encouraging individuals to assume more active control of their health.

We appreciate this opportunity to provide comments and would be happy to further discuss our concerns with you.

Sincerely,

Mark Holloway
Director, Compliance Services
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