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Comment On: IRS-2008-0103-0018
Genetic Information Nondiscrimination Act

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Comment on FR Doc # E9-22512

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Organization: StayWell Health Management
Government Agency Type: Federal

General Comment

Comments on interim final rules to Title I of the Genetic Information Nondiscrimination Act of 2008.

Attachments

IRS-2008-0103-0057.1: Comment on FR Doc # E9-22512

December 31, 2009

Office of Health Plan Standards and
Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U. S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210
Attn: RIN 1210-AB27

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attn: CMS-4137-IFC/RIN 0991-AB54
P. O. Box 8017
Baltimore, Maryland 21244-8010

CC:PA:LPD:PR (REG-123829-08)
Room 5205
Internal Revenue Service
P. O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Comments on Interim Final Rules Prohibiting Discrimination Based on Genetic Information in Health Insurance Coverage and Group Health Plans

Dear Sir or Madam:

On behalf of StayWell Health Management ("StayWell"), thank you for the opportunity to comment on the interim final rules to Title I of the Genetic Information Nondiscrimination Act of 2008 ("GINA Title I") published in the *Federal Register* on October 7, 2009 (the "Interim Final Rules").

StayWell is a wellness program provider to large and mid-size employers throughout the nation. As part of its wellness program offerings, StayWell provides participants the opportunity to participate in various health improvement programs, including the offering of health assessments ("HAs"). As you know, HAs are designed to help individuals identify potential health risks, and they usually include questions regarding an individual's current lifestyle and health status, as well as more general questions about the individual's family medical history. The information that StayWell obtains allows it to generate a comprehensive assessment of the individual's potential health risks—and with the family history question included, this risk assessment is even more comprehensive. This information then allows us to direct the individual to beneficial health programs (e.g., disease management programs), which aid the individual in understanding and reducing his or her health risks.

The effectiveness of a HA in identifying an individual's health risks is largely dependent on two factors: (1) the individual's willingness to complete the HA; and (2) the validity and

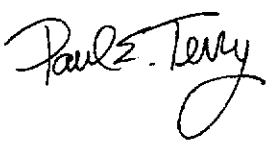
thoroughness of the questions presented in the HA. Years of experience have proven that employers offering incentives or rewards in connection with their wellness programs have significantly higher employee participation rates than those that do not offer incentives or rewards. As you can imagine, higher employee participation inevitably leads to an overall improvement in employee health and productivity.

StayWell whole-heartedly supports Congress' efforts to prevent discrimination on the basis of genetic information. We have adhered to the statutory requirements set forth in GINA Title I and other privacy laws, and we have employed appropriate safeguards to protect against the improper use and disclosure of genetic and other medical information. We believe, however, that the Interim Final Rules exceed the original Congressional intent of GINA Title I. We respectfully submit that the Interim Final Rules undermine Congress' goals for health care reform and threaten to curtail employee participation in wellness programs and HAs. Specifically, the Interim Final Rules take an overly broad view of what constitutes "underwriting purposes." The additional prohibitions set forth in the Interim Final Rules will certainly have an unintended and adverse effect on participation in wellness programs and HAs. For the following reasons, we believe enforcement of the Interim Final Rules should be delayed until the definition of "underwriting purposes" is revised to closely mirror the definition found in GINA Title I.

The broad definition of "underwriting purposes" in the Interim Final Rules prohibits the collection of family medical history information as a part of a HA if an incentive or reward is given. The underlying GINA Title I statute does not prohibit or otherwise discourage the use of incentives or rewards in connection with wellness programs or HAs. Furthermore, Congress has demonstrated its support for incentives in other privacy laws. In particular, the Health Insurance Portability and Accountability Act of 1996 permits employer-sponsored group health plans to establish reasonable premium discounts, rebates, or deductibles in return for participation in and compliance with health promotion and disease prevention programs. According to the Interim Final Rules, "underwriting purposes" now includes activities that have traditionally been considered both lawful, as well as beneficial, for purposes of health care reform. We respectfully submit that the definition of "underwriting purposes" in the Interim Final Rules conflicts with the Congressional intent for GINA Title I and the Health Insurance Portability and Accountability Act of 1996. We urge the agencies to resolve this conflict by adopting a definition of "underwriting purposes" that does not encompass reasonable incentives or reward programs.

In closing, StayWell appreciates the opportunity to comment on the Interim Final Rules, and respectfully requests that the definition of "underwriting purposes" be revised to reflect the original Congressional language and intent.

Sincerely,



Paul E. Terry
President, StayWell Health Management