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NAM National Association of Manufacturers

Jeri Kubicki

Vice President, Human Resources Policy

December 1, 2009

The Honorable Timothy Geithner
Secretary
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Hilda Solis
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Stuart J. Ishimaru
Acting Chairman
U.S. Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507

2009 DEC -7 PM 12:39

Dear Secretary Geithner, Secretary Solis, Secretary Sebelius and Acting Chairman Ishimaru:

On behalf of The National Association of Manufacturers (NAM), the nation's largest industrial trade association representing small and large manufacturers in every industrial sector, I am writing to express our concerns with elements of the October 7, 2009, Genetic Information Nondiscrimination Act (GINA) interim final rule. This new rule would create significant barriers to employer wellness and chronic disease management programs. While we support the goals of the rule, we respectfully request a moratorium on implementation of the final rule to further evaluate the broad impact on health promotion programs. With open enrollment underway and the GINA regulations set to take effect on December 7, 2009, employers have a very narrow window of opportunity to assess and understand the regulations and adjust their programs accordingly.

The joint interim final rule bars employers from collecting family medical history for "underwriting purposes". The regulation expands upon the statutory definition of "underwriting purposes" to include financial incentives to employees for providing family medical histories as part of a health risk assessment (HRA). Furthermore, by extending the definition of underwriting, the regulations disallow use of an HRA that collects family medical history to match individuals with appropriate chronic disease management services.

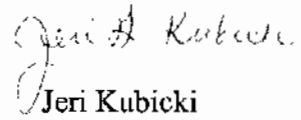
The HRA is a widely used, evidence-based tool to ensure individuals at risk of chronic conditions receive the appropriate and beneficial wellness, prevention and disease management services offered by their employer. One recent study showed that individuals who complete an HRA receive needed physician care, medication and cancer screenings more often than those who do not. The same study found that those who had received inadequate care for chronic conditions in the year preceding the HRA were more likely to complete the HRA, underscoring its usefulness in identifying good candidates for targeted care.

Incentives serve as powerful motivators for participation. A $25 cash incentive can generally spur a 50 percent HRA participation rate compared with a 10 percent to 15 percent rate in programs without incentives. A 2009 survey conducted by Health2Resources with participation from NAM members illustrates that more employers are using incentives to encourage employees to complete an HRA and that employers have increased the value of incentives they offer. Furthermore, employers are extending wellness and disease management programs to spouses and family members and use incentives to encourage health management. Even if they forgo incentives, employers still could not use family medical history gained through an HRA to direct employees or other participants to beneficial disease management services.

The GINA interim final rule leaves two key problematic options for employers: employers must remove questions about family medical history from their HRAs, which will significantly diminish their effectiveness, or must end the use of incentives altogether, which will significantly impair employee participation rates in wellness and prevention programs.

Much of the health care reform effort is built on a foundation of improved care and lower cost. Both Congress and the Administration believe in the benefits of wellness and prevention, and we believe Congress did not intend GINA to be interpreted in a way that would conflict with these efforts. Please place an immediate moratorium on the implementation and enforcement of these regulations.

Sincerely,



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cc: Robert Kocher, M.D., Special Assistant to the President, National Economic Council, The White House
Ezekiel Emanuel, M.D., Special Advisor for Health Policy, Office of the Director, Office of Management and Budget