



Genetic Information Nondiscrimination Act of 2008 (GINA)

INTERMIT REGULATIONS

GINA LEGISLATION AND YOUR ORGANIZATION'S HEALTH RISK MANAGEMENT/ WELLNESS PROGRAM

What is GINA?

On May 21, 2008, President Bush signed into law the Genetic Information Nondiscrimination Act of 2008 (GINA). This law provides broad protections in employment and health benefits against the improper collection, use or disclosure of employees' genetic information, in part by amending a number of major laws such as ERISA, HIPAA and the Internal Revenue Code. There are two parts to the GINA legislation:

Title I prohibits group health plans, health insurance issuers in the group and individual markets, and issuers of Medicare Supplemental policies from discriminating based on genetic information, as well as from collecting this information. It also requires HHS to revise the HIPAA privacy regulations to clarify that genetic information is health information under the rule and to prohibit the use or disclosure of genetic information for underwriting purposes. These rules apply to group health plans and group health insurance issuers for plan years beginning on or after December 7, 2009.

Title II prohibits discrimination in employment based on genetic information, and limits the acquisition and disclosure by employers and other entities covered by GINA. These rules become effective November 21, 2009.

What is the potential impact of Title I of GINA on my Health Risk Management/Wellness Program?

The interim rules of GINA prohibit collecting genetic information (including family medical history) for underwriting purposes. Wellness programs that provide rewards for completing health risk assessments that request genetic information, including family medical history, violate the prohibition against requesting genetic information for underwriting purposes. As an employer offering a Health Risk Assessment with an incentive, it is important that your HRA is reviewed for questions that ask about genetic information.

Example of a Compliant Wellness Program (taken from 74 Fed. Reg. 51664)

A group health plan waives its annual deductible for enrollees who complete a health risk assessment. The health risk assessment is requested to be completed after enrollment. Whether or not the health risk assessment is completed or what responses are given on it has no effect on an individual's enrollment status, or on the enrollment status of members of the individual's family. The health risk assessment does not include any direct questions about the individual's genetic information (including family medical history), and also states when answering questions not to include any genetic information, including family medical history or information related to genetic testing, genetic counseling, etc.

Why is this program compliant?

The plan's request for medical history explicitly states that genetic information should not be provided. Therefore, any genetic information collected in response to the question is within the incidental collection exception. However, the plan may not use any genetic information collected incidentally for underwriting purposes.

Example of a Non-Compliant Wellness Program (taken from 74 Fed. Reg. 51664)

A group health plan provides a premium reduction to enrollees who complete a health risk assessment. The health risk assessment is requested to be completed after enrollment. Whether or not it is completed or what responses are given on it has no effect on an individual's enrollment status, or on the enrollment status of members of the individual's family. The health risk assessment includes questions about the individual's family medical history.

Why is this program non-compliant?

The health risk assessment includes a request for genetic information (family medical history) and because there is a premium reduction associated with the completion of the health risk assessment, the request for genetic information is for underwriting purposes.



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This document has been provided as a general information about the GINA regulations. This document has not been legally reviewed for legislative or legal compliance related to the unique employee benefit plans, labor practices and taxation laws that could impact wellness plans within your organization. Should your organization have questions about obtaining external legal counsel for a legislative/legal review of your organization's wellness program please contact your Scott Benefit Services Representative.



GINA, cont'd.

In Closing...

Each wellness program is unique and should be reviewed in its entirety by legal counsel, the insurance issuer and vendor partner to ensure compliance with GINA regulations. The legal interpretation of the GINA legislation continues to evolve and change. This is to be expected and the Scott Health Risk Management professionals are monitoring the legislation and will provide updates when they become available.

If you have any questions about the proposed legislation please contact your Scott Benefit Services Health Risk Management representative.

SCOTT BENEFIT SERVICES - YOUR BUSINESS - OUR EXPERTISE - PERFORMANCE REWARD

Scott Benefit Services has a dedicated team of Health Risk Management and Wellness professionals to serve as advocates, coaches and strategic business advisors to decision-makers. Our expertise includes work with clients to manage expectations, develop strategy, prioritize health risk, measure results, navigate the maze of current wellness products, and the constant changes in health risk management and wellness legislation.

Sources

- Equal Employment Opportunity Commission Proposed Rule 29 CFR Part 1635 RIN 3046-AA84
- Interim Final Rules Prohibiting Discrimination Based on Genetic Information in Health Insurance Coverage and Group Health Plans (74 Fed. Reg. 51664)
- "The Genetic Information Nondiscrimination Act of 2008" Legislative Brief; Zywave, Inc.
- "Genetic Information Nondiscrimination Act Regulations Expected: Are Your Wellness Programs Ready?"; www.jacksonlewis.com/legalupdates/article.cfm?aid=1832



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