

EMPLOYEE BENEFITS ALERT

GENETIC INFORMATION NONDISCLOSURE ACT

On October 1, 2009, the U.S. Departments of Health and Human Services, Labor and the Treasury jointly released an advanced copy of the interim final regulations on the Genetic Information Nondisclosure Act of 2008 (“GINA”). GINA prohibits group health plans from (with some very limited exceptions) requesting genetic tests, obtaining genetic information prior to enrollment, and requesting genetic information for underwriting purposes. Significantly, the interim final regulations include under the definition of “genetic information” information regarding an employee’s family medical history (such as history of heart disease, diabetes, etc.). It has become common in employer-sponsored wellness programs or disease management programs to require that participants complete a health risk assessment (“HRA”) prior to enrollment in the program or in connection with open enrollment for a plan year. Under GINA, HRAs that are offered prior to or as part of the enrollment process are not permitted to request genetic information such as family medical history. Moreover, HRAs may not provide any reward, including taxable payments, in exchange for completing an HRA that asks for genetic information such as family health history. For example, it is common for wellness programs to provide a participant with a premium reduction to medical insurance if the participant completes an HRA. GINA would prohibit such a program to the extent the HRA requires family medical history.

The rules will become effective on December 7, 2009. GINA’s provisions for group health plans are effective for plan years beginning on or after May 21, 2009. Thus, the effective date for calendar year plans is January 1, 2010. If your health plan requested (or plans to request) HRAs that include family health history during open enrollment for 2010 or intends to provide any financial incentive to employees after December 31, 2009 from completion of such HRAs, you may be in violation of GINA.

Under GINA, participants or beneficiaries will be able to sue non-compliant group health plans for damages and equitable relief. In addition to private remedies, GINA also authorizes the imposition of civil penalties against employers and other sponsors of group health plans that violate applicable requirements of GINA of up to \$500,000.

Please do not hesitate to contact any member of our Employee Benefits Group listed below if you have any question regarding the impact of GINA.

*If you have any questions about this alert or any other issues relating to employee benefits, please contact **Kathryn English** at 412.566.1226, **Michael Herzog** at 412.566.6130, **Sandra Mihok** at 412.566.1903, **Brandon Richards** at 412.566.1263, or **Paul Yenerall** at 412.566.1944.*

© Eckert Seamans Cherin & Mellott, LLC, 2009, all rights reserved.