

December 2, 2009

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

Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Room 639G
Washington, DC 20201

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

*Re: REG-123829-08, CMS-4137-IFC, RIN 1210-AB27-Interim Final Rules Prohibiting
Discrimination Based on Genetic Information in Health Insurance Coverage and Group
Health Plans (Vol. 74, No. 193) (October 7, 2009)*

Dear Secretaries Geithner, Sebelius and Solis:

MedCost Benefit Services is a Third Party Administrator with a focus on Health Management. We appreciate the opportunity to comment on the interim final rules implementing sections 101 through 103 of the Genetic Information Nondiscrimination Act of 2008 ("GINA") (the "Interim Final Rules").

MedCost fully supports GINA's intended purpose of prohibiting discrimination on the basis of genetic information with respect to health insurance and employment. However, we believe that the overly broad definition of "underwriting" in the Interim Final Rules far exceeds the original intent of the law and will have significant and unfortunate consequences on wellness prevention and disease management programs, and ultimately, health care cost. We are concerned that the Interim Final Rules prohibit (i) the collection of family medical history as part of a valid Health Risk Assessment ("HRA") that provides an incentive or is completed during an open enrollment period, and (ii) the use of HRAs that collect family medical history to match individuals with appropriate disease management programs. We believe that rather than apply absolute prohibitions against the use of these tools, there are other appropriate ways to ensure the protections provided under GINA are realized, and we believe that the Agencies should take the appropriate time to evaluate these options.

Health risk assessments and health coaching programs are powerful ways to help people understand their personal health risks, including risks related to family medical history. These important tools help motivate healthier lifestyles and drive appropriate preventive behavior. Family medical history is a vital piece of the HRA.

It is important to note as well that, in general employers today neither request nor receive individually identifiable family medical history information about their employees from the third parties who administer HRAs and other health coaching programs. Common industry practice is that third parties hold this information confidential from employers, which is our practice.

The option presented by the Interim Final Rules of removing incentives related to the completion of HRAs that contain family history questions will significantly decrease participation in HRAs. Incentives have been a key driver in encouraging people to take an HRA and to participate in health coaching programs. A CDC-sponsored employer health and productivity management benchmarking study identified "meaningful incentives," such as insurance premium discounts for completing an HRA, as a promising practice (i) Incentives can serve as powerful motivators: 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. (ii)

We believe that there are ways to ensure family medical history information is not used to discriminate in employment or health coverage, while at the same time helping people identify and address health risks through the use of HRAs and health coaching tools. Therefore, we request a delay in the implementation and enforcement of the Interim Final Rules in order for affected parties to explore ways to ensure we protect genetic information, while also encouraging healthier lifestyles through use of valid and effective wellness and prevention tools.

Please contact me if you have any questions or would like to discuss our concerns in more detail. I can be reached at (336)774-4405.

Sincerely,



Sharon W. Lambros
Chief Operating Officer

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- (i) Goetzel RZ, Shechter D, Ozminkowski RJ, Marmet PF, Tabrizi MJ, Roemer EC. Promising practices in employer health and productivity management efforts: findings from a benchmark study. *J Occup Environ Med* 2007; 49(2):111-30.
- (ii) Hunnicutt D; Lefelman B (2006) *WELCOA's 7 Benchmarks* WELCOA's Absolute Advantage Magazine
- (iii) 6(1) 2-29
- cc: Robert P. Kocher, MD. Special Assistant to the President, National Economic Council, The White House
Emanuel MD. Special Advisor for Health Policy, Office of the Director, Office of Management and Budget