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Trustee Alert – Proposed GINA Amendment & Wellness Programs

The Genetic Information Nondiscrimination Act (GINA) restricts employers from requesting or requiring employees to disclose genetic information. A narrow exception allows an employee to voluntarily accept health services offered by an employer, including those offered as part of a wellness program, in exchange for providing this information. The proposed amendment to GINA clarifies that an employee's spouse may also provide health status information under this exception.

An employee's genetic information includes information about the "manifestation of a disease or disorder in family members," including his or her spouse. The proposed amendment clarifies that an employer's health plan may offer a limited incentive to an employee whose spouse (1) is covered under the employee's health plan; (2) receives health services offered by the employer; and (3) provides information about his or her current or past health status, including through a health risk assessment (HRA) questionnaire or medical examination.

The total incentive for an employee and spouse to participate in a wellness program may not exceed 30 percent of the total cost of the plan. For example, if an employee and spouse are enrolled in family coverage that costs \$12,000, the maximum incentive the employee and spouse may receive is \$3,600.

The maximum portion of an incentive that may be offered to an employee alone may not exceed 30 percent of the total cost of self-only coverage. If the employer in the example above offers self-only coverage at a total cost of \$4,000, the maximum portion of the \$3,600 incentive for the employee's participation is \$1,200.

This exception applies to information regarding the current and past health status of spouses, but not of children. GINA continues to prohibit employers from requesting, requiring, or purchasing genetic information about an employee's children.

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