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Quest
Diagnostics

December 7, 2009

Submitted through the Federal eRulemaking Portal

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Attention: RIN 1210-AB27

Dear Director:

On behalf of Quest Diagnostics Incorporated, I am pleased to provide comments on the interim final regulations implementing sections 101 through 103 of the Genetic Information Nondiscrimination Act of 2008 (GINA). The request for comments was published by the Departments of Labor, Health and Human Services, and the Treasury in the Federal Register on October 7, 2009.

Quest Diagnostics is the world's leading provider of diagnostic testing, information and services that patients and doctors need to make better health care decisions. The company offers the broadest access to diagnostic testing services through its national network of laboratories and patient service centers, and provides interpretive consultation through its extensive medical and scientific staff. The company is also a leading provider of wellness and prevention screening for employers.

Quest Diagnostics is a strong proponent of patient privacy and security. As a covered entity that performs genetic and other clinical laboratory testing services and also as the employer of 43,000 people, we support the purpose of the *Genetic Information Nondiscrimination Act of 2008* ("GINA") to prohibit discrimination in health coverage and employment based on genetic information.

However, we are writing to raise our concern that the recently released interim final regulations go far beyond the original intent of the GINA legislation and threaten to negatively affect Quest Diagnostics which uses wellness programs to promote healthy behaviors and reduce avoidable medical costs

The Health Risk Assessment (HRA) is a key tool to identify persons who would most benefit from wellness programs such as education, increased activity, tobacco cessation, weight management, and preventive testing. Modest incentives materially increase the rate at which employees complete their HRAs and, therefore, enter wellness and prevention programs.

By prohibiting the collection of family medical history in all cases of HRAs, per Rules and Regulations For Health Plans, 74 Fed. Reg. 51685 (October 7, 2009), amending 29 C.F.R. §2590.702, to be codified at §2590.702-1(d), the interim regulations will act as a roadblock to early identification of at-risk individuals, making individuals less aware of how family history may predispose them to risk. By restricting the use of financial incentives for the completion of HRAs that include family history questions, the interim regulations will inevitably reduce participation in wellness and prevention programs sponsored by employers, impairing the ability of employers to help employees reduce their risk. As a matter of health care policy, we have difficulty reconciling the intent of these interim final regulations with the Administration's commitment to promoting wellness and engaging people in their own health (including use of genetic testing and technologies) and with the Congress' actions to provide funding for and encourage greater participation in wellness and prevention programs. This is particularly hard to reconcile when the prohibition on collecting family medical history information even where the individual's family history response information is not made available to the individual's employer or health plan. Under these circumstances there is no risk of discrimination associated with collecting this information, which is collected solely for the individual's benefit.

We ask that you delay the effective date of the related portions of these regulations to provide immediate relief to thousands of employers and their employees. We also ask that you reopen the public comment period to take further input and to allow for a full and robust public debate on these issues.

Quest Diagnostics appreciates the opportunity to comment on these interim final regulations. As a covered entity, Quest Diagnostics strongly respects patient privacy. At the same time, our concern is that the interim final regulations as proposed will harm national efforts to promote wellness and prevention tools to improve the health and welfare of employees and lead to reduced health care costs.

If you have any questions concerning our comments, or if we can be of further assistance, please feel free to contact me.

Sincerely yours,

Charles J. Silverman
Director, Government Affairs & Regulatory Policy