

From: Jaan Sidorov [mailto:jaans@aol.com]
Sent: Tuesday, October 20, 2009 10:06 PM
To: EBSA, E-OHPSCA - EBSA
Subject: Feedback on the GINA interim final regulations

To Whom It May Concern:

This is regarding the regulations that prohibit the collection of family history in health risk assessment surveys. As I understand it, the rules prohibit the collection of HRA family history information at the time of new/re-enrollment and financial incentives cannot be used as an incentive to increase HRA completion rates.

The original statute and does not included the term 'health risk assessment.' I doubt our legislators intended to sweep HRAs into the scope of this legislation.

It is also illogical to group the practice of increased payment to all enrollees both with and without significant family histories with the other repugnant practices of charging more or denying benefits on the basis of genetic history. The resemblance is superficial and while technically an interpretation of the statute, it is certainly not consistent with its intent.

In addition, in real practice, it is highly unlikely that the underwriters in any health plan would harvest the data from HRAs and mathematically price it into their premium decision-making. It is theoretically possible, but that's simply not how the business is operates.

Last but not least, the risk of harm from showing some flexibility around this topic is far less than the risk of harm from hobbling how HRAs are distributed, completed and used. Thanks to HRAs, companies are not only extending hard cash but using the information to provide a higher level of service to individuals who would benefit from it.

May I recommend that the rule be put on hold until this is reconsidered? One possibility may be to reinterpret a family's 'medical history' as not necessarily being 'genetic information.' Alternatively, health plans could be allowed to have the information HRA information held outside of the Plan until after enrollment is completed. Perhaps cash incentives have nothing to do with premium.

I'm no lawyer, and the recommendations above may not be workable. That being said, this is an area that calls out for greater flexibility and collaboration with the health insurance entities that want to use HRAs to do the right thing.

Thanks so much for your consideration

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