



December 1, 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:

We are a company whose sole purpose is promoting better health for Americans and their families. Our health management solutions help employers and government agencies deploy health improvement programs designed to increase awareness, educate and empower individuals to improve their health. SHPS serves more than four million lives through programs that drive real value for our clients and improve the health of their employees. As a company focused on improving the health of Americans, SHPS believes that any steps designed to incent individuals to better understand their personal health and strive to be healthier are opportunities worth pursuing. 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”).

SHPS fully supports GINA’s intended purpose of prohibiting discrimination on the basis of genetic and family history information with respect to health insurance and employment and will



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fully comply with its regulations. Regardless of legislation, our employee health programs will continue to have a significant positive impact on the health and quality of life of our member population.

However, we are concerned that certain aspects of the Interim Final Rules, as they pertain to a Health Risk Assessment (HRA), are counterproductive to health improvement programs. The Interim Final Rules specifically prohibit the collection of family medical history as part of a HRA in situations where either a) an incentive is offered for completion of the assessment; or b) the assessment is administered during an annual enrollment period. We believe that these proposed regulations are problematic because:

- There is a high prevalence of chronic disease throughout the United States, arising primarily through unhealthy lifestyles and poor self-management of personal health. With early awareness and simple changes to personal lifestyle, individual Americans can dramatically reduce their risk of developing a chronic condition, while substantially improving overall quality of life.
- The HRA is a powerful tool to assess and educate individuals about their personal health risks – including risks related to chronic conditions. Furthermore, the HRA is a key entry point for individuals to learn about risks and join specific coaching programs to manage those risks.
- An HRA without genetic or family-based health questions will deprive some individuals the opportunity to learn about and manage health risks that they are predisposed to. Often, knowledge about inherent risks driven by family medical history can be an effective motivator for an individual to adopt a healthier lifestyle, or seek appropriate care.
- An HRA that is not tied to incentives can significantly deplete the level of participation by individuals. SHPS serves a number of large employers that offer HRAs to employees. The completion rate of HRAs amongst our clients can vary from as little as 15% of employees to as much as 90% of employees depending on the strength of incentives associated with its completion.



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In summary, the Interim Final Rules, in their current form, force health management programs to trade-off between two limiting aspects: depriving certain individuals the opportunity to learn about their health risks given their family history versus diminishing the completion rate of HRAs without any incentive tied to them.

We think it important to note that the protections afforded under GINA are most relevant to individuals who obtain health coverage through a retail health plan, or through a small employer with a fully insured group health plan. For larger employers who provide self-funded health plans subject to ERISA, the Interim Final Rules for GINA appear to be redundant with robust protections already in force. In fact, GINA protections may add to the cost of healthcare administration for self-funded employers without any practical benefit to their employees.

Given that the abuses that GINA is designed to stop have limited applicability in a self-funded health plan environment, SHPS believes that it would be appropriate to consider the differences between the self-insured and the fully insured markets when designing and enforcing GINA regulations.

SHPS believes there are ways to ensure family medical history information is not used to discriminate in employment or health coverage while simultaneously helping people identify and address health risks through HRAs and health coaching tools. Therefore, we request a delay in the implementation and enforcement of the Interim Final Rules in order for the affected parties to explore ways to ensure that genetic information is protected while encouraging healthier lifestyles through the use of effective health management tools and programs.

Please contact me if you have any questions or would like to discuss our point-of-view in more detail. I can be reached at (502)-420-5535.



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Sincerely,

A handwritten signature in black ink, appearing to read 'Christopher Ryan', with a long horizontal flourish extending to the right.

Christopher Ryan
Executive Vice President,
Chief Strategy & Marketing Officer
SHPS, Inc.

cc: Robert Kocher, MD, Special Assistant to the President, National Economic Council, The White House
Ezekiel Emanuel, MD, Special Advisor for Health Policy, Office of the Director, Office of Management and Budget