

# Understand GINA's new prohibitions on misuse of genetic info

Interim final regulations implementing the Genetic Information Nondiscrimination Act of 2008 (GINA) are now in effect for group health care insurers with plan years beginning on or after Dec. 7, 2009. If you offer group health coverage, that means you must understand and comply with GINA's anti-discrimination provisions relating to genetic information.

GINA protects the confidentiality of an individual's genetic information and modifies the HIPAA privacy regulations to clarify that genetic information is protected health information.

## What GINA prohibits

The interim final regulations prohibit covered health plans from using genetic information to determine eligibility, compute premiums, set pre-existing conditions and make other decisions related to creating, renewing or replacing a contract of health insurance or health benefits.

The interim final GINA regulations specifically prohibit group health plans and health insurance issuers, in both group and individual markets, from requesting, requiring or buying genetic information about an individual and the individual's family members before or after enrollment in a health plan. In addition, plans and issuers may not ask individuals or family members to submit to genetic tests. Plans and issuers cannot increase group premiums or contribution amounts based on genetic information.

The regulations clarify that a post-enrollment request for genetic information does not violate GINA as long as the genetic information obtained after enrollment does not affect future enrollment.

## What's genetic information?

The interim final GINA regulations define "genetic information" as:

- An individual's genetic tests
- The genetic tests of family members

## What employers should do to comply with GINA

Covered employers should consider updating their employment policies and practices to comply with GINA's many technical requirements. Some practical steps include:

**1. Revise your nondiscrimination policies to include genetic information.** Though many state laws regulate genetic information, many employers haven't yet added genetic information to their lists of protected classes. Employers covered by GINA should make sure their policies ban discrimination on the basis of genetic information.

**2. Stop asking for genetic information—including family medical histories—on employment applications and other materials.** In reality, few employers still ask for this information, but GINA now makes clear that this practice is forbidden.

**3. Avoid asking for genetic information in connection with leave.** Employers should modify forms, policies and procedures to ensure they are not requiring the employee to disclose genetic information.

**4. Implement confidentiality and disclosure policies.** To ensure compliance with GINA, employers should carefully screen information to ensure genetic information is stored in a confidential medical record. In addition, employers must adopt policies and procedures for disclosure in the event of covered exceptions, such as a court order.

**5. Ensure that your health and wellness plans comply with GINA.** The act provides extensive regulations for employer-provided health or genetic services. Employers must ensure that the entire process—from written authorization to communication of results—complies with GINA.

In addition, employers should post the EEOC's new poster, "Equal Employment Opportunity is the Law," or the supplement to the previous poster. The EEOC is charged with enforcement of Title II of GINA, and final regulations are expected soon.

of the individual

- The manifestation of a disease or disorder in the individual's family members.

Generally, a genetic test is any test that both analyzes human DNA, RNA, chromosomes, proteins or metabolites and detects genotypes, mutations or chemical changes.

Accordingly, for the purposes of GINA, an HIV test, complete blood count, cholesterol test, liver function test or test for the presence of alcohol or drugs is not a genetic test. A disease or disorder is considered manifested if it has been diagnosed or could reasonably be diagnosed by a health care professional with appropriate training or expertise.

## Not just employees

The GINA regulations broaden the scope of the Employee Retirement Income Security Act by introducing the concept of "family member" and

protect family member information in two ways. First, protected genetic information of an individual includes information about the manifestation of a disease or disorder in the individual's family members. Second, a plan or issuer may not require an individual or an individual's family member to submit to a genetic test.

The statute's anti-discrimination provision defines family member broadly to include dependents and first-, second-, third-, or fourth-degree relatives.

The entities covered by GINA generally include all private employers with 15 or more employees, most public sector employers and employment agencies and labor organizations.

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