

ADA & GINA Considerations

In 2016 the EEOC issued regulations under the ADA and GINA, which required applicable wellness programs to be voluntary, reasonable, and confidential, and imposed limitations on certain health-contingent wellness programs that went above and beyond the requirements of HIPAA. These regulations apply to any wellness program that involves:

- A health risk assessment (HRA)
- A medical exam
- A biometric screening

The EEOC's regulations under the ADA only included incentive limits for employees and did not address wellness incentives for participation by spouses, as the ADA rules generally apply to employee. The regulations under GINA included incentive limits for spouses, because information about the manifestation of a spouse's disease or disorder is considered "family medical history" and thus genetic information protected under GINA. GINA prohibits offering wellness programs with an HRA, medical exam, or biometric screening to an employee's children in any circumstance, even if the children are not biologically related to the employee. Conversely, GINA permits offering these wellness programs to spouses so long as they provide prior, knowing, written consent and authorization to receive the inducement (financial reward) in return for their participation.

The ADA and GINA have different, stricter incentive limits than the HIPAA limits. Financial incentives for wellness programs regulated by GINA are the same as the ADA, and they are limited to:

- 1. 30 percent of the total cost of self-only coverage (including both the employee's and employer's contribution) of the group health plan in which the employee is enrolled when participation in the wellness program is limited to employees enrolled in the plan;**
- 2. 30 percent of the total cost of self-only coverage under the covered entity's group health plan, where the covered entity offers only one group health plan and participation in a wellness program is offered to all employees regardless of whether they are enrolled in the plan;**
- 3. 30 percent of the total cost of the lowest cost self-only coverage under a major medical group health plan where the covered entity offers more than one group health plan but participation in the wellness program is offered to employees whether or not they are enrolled in a particular plan; and**
- 4. 30 percent of the cost of self-only coverage under the second lowest cost Silver Plan for a 40-year-old nonsmoker on the state or federal health care Exchange in the location that the covered entity identifies as its principal place of business if the covered entity does not offer a group health plan or group health insurance coverage.**