

June 19, 2015

Bernadette Wilson, Acting Executive Officer  
U.S. Equal Employment Opportunity Commission  
131 M. Street, NE  
Washington, DC 20507

Re: RIN 3046-ABO1  
Electronic Submission: [www.regulations.gov](http://www.regulations.gov)

Dear Ms. Wilson:

Thank you for the opportunity to provide comments in response to the Equal Employment Opportunity Commission's (EEOC) proposed rule to amend regulations under Title 1 of the American with Disabilities Act (ADA). We appreciate the work the EEOC has done to date to clarify the requirements for employers working to comply with the upcoming final rule.

The Alliance is a not-for-profit cooperative representing over 240 self-funded employers and health insurance trusts in Wisconsin, northern Illinois, and northeastern Iowa. These employers share the common goal of moving health care forward by controlling costs, improving quality, and engaging individuals in their health. Our members believe that providing health benefits and supporting employees' health are both business imperatives, and the key to maintaining a productive and competitive workforce.

Our members see healthy employees as essential to having a strong workforce. They invest resources in wellness programs as part of their employees' compensation packages and as a tool to attract and retain a quality workforce. We believe that employers should be able to use innovative and cost-effective strategies to improve the health and wellness of their employees, and that these strategies should be able to include the use of both positive incentives and disincentives to encourage better health habits.

We strongly believe that employers' investments in wellness programs and incentives reduce both individual and overall health care spending. Therefore, employers should be given the flexibility and authority to create reasonable and appropriate financial incentives for their employees and their families to promote healthy behaviors. We ask for clarity regarding regulations that govern wellness programs while maintaining the flexibility needed to customize approaches to meet the unique needs of our workforces. We also ask that safe harbors be extended to employers who are making good faith efforts to comply with rules that are still evolving.

The Alliance is encouraged by the recent efforts that have been made by the EEOC to propose rules which provide more consistency with existing ADA regulations and the requirements under the Health Insurance Portability and Accountability Act (HIPAA) as amended by the Affordable Care Act (ACA). While the proposed rules address some issues, further clarification is needed on the following:

**Maximum Allowable Incentive**

The proposed rule references 30 percent of the total cost of *employee-only coverage* as the “maximum allowable incentive” available for health-contingent wellness programs. However, this is inconsistent with HIPAA and the ACA which permit incentives of up to 30 percent of the *total cost of coverage* for the employee. Our employers believe that better health outcomes are achieved when family members are included in their incentives to improve health. We would urge the EEOC to issue a final rule that would allow incentives to vary up to 30 percent of the cost of individual *or* family coverage.

**Tobacco Cessation Incentive**

The ACA gave the Secretaries of Labor, Health & Human Services, and the Treasury, the authority to increase the incentive available for participation in a tobacco cessation program up to 50 percent of the cost of self-only coverage. Unfortunately, the proposed rule does not provide that same flexibility. We would urge the EEOC to consider adopting this same flexibility in order to maintain consistency for employees currently using a cessation incentive, and to support continued efforts to reduce overall tobacco usage.

**Genetic Information Non-discrimination Act (GINA)**

The proposed rules do not address how Title II of GINA affects an employer’s ability to base incentives on a family member’s participation in a wellness program. Our employers have modified their health risk assessments to focus only on the employee’s history of medical issues, and believe that since there is no blood relation between an employee and spouse, there is no violation of GINA with spousal participation in an employee’s incentive program. We look forward to further guidance and clarification of this issue in future EEOC rulemaking.

We appreciate the opportunity to provide comments on the proposed rules amending ADA regulations related to employer wellness programs. Your thoughtful consideration of these comments is appreciated. Please feel free to contact me, if you have any questions or would like additional information.

Sincerely,

Cheryl DeMars,  
CEO and President  
The Alliance