



## AMERICAN BENEFITS COUNCIL

March 6, 2015

The Honorable Lamar Alexander  
Chairman  
U.S. Senate Committee on Health,  
Education, Labor and Pensions  
Washington, DC 20510

Dear Chairman Alexander:

I write on behalf of the American Benefits Council (“the Council”) in support of S. 620, the Preserving Employee Wellness Programs Act of 2015.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees, retirees and family members. Collectively, the Council’s members either sponsor directly or provide services to health and retirement plans that cover more than 100 million Americans.

The Council believes that employer-based wellness programs are important for achieving better health outcomes for employees and the communities in which they operate. Wellness programs also have the potential to increase employee productivity, improve workforce morale and engagement and reduce health care spending.

Employers applaud Congress for having worked on a bipartisan basis to craft the wellness provisions in the Patient Protection and Affordable Care Act (PPACA) that built on the existing framework created in the Health Insurance Portability and Accountability Act of 1996 (HIPAA). PPACA’s bipartisan wellness provisions increased employer flexibility in designing programs to improve the health of employees and their families. Additionally, it signaled a recognition that wellness programs are a cornerstone of health reform.

Notwithstanding employers' increasing interest in establishing wellness programs, a great deal of legal uncertainty exists with respect to the application of both the Genetic Information Nondiscrimination Act (GINA) and the Americans with Disabilities Act (ADA) to these programs. To address this, the Council's recent public policy strategic plan, [\*A 2020 Vision: Flexibility and the Future of Employee Benefits\*](#), notes that "A critical component of encouraging employers to offer meaningful wellness programs is consistent federal policy that promotes the health of Americans and is aligned across multiple agencies and Congress." Unfortunately, existing guidance from the U.S. Equal Employment Opportunity Commission (EEOC) is not clear regarding what constitutes a voluntary wellness program for purposes of the ADA and questions remain regarding how GINA applies to various aspects of some common wellness program designs.

The EEOC announced in its most recent semi-annual regulatory agenda that it intends to issue regulations later this year addressing wellness programs under the ADA and GINA. Unfortunately, for employers operating in good faith, the EEOC decided to pursue litigation before actually issuing guidance on this matter. This is very frustrating for employers who care about the well-being of their employees and take seriously their compliance obligations – and, of course, it is detrimental to the employees and family members served by employers' wellness initiatives.

When Dr. Catherine Baase, Chief Medical Officer for The Dow Chemical Company recently testified on behalf of her company and the Council before the Senate Health, Education, Labor and Pensions Committee, she [encouraged Congress and/or the EEOC](#) to work within the existing HIPAA and PPACA legislative and regulatory framework to provide certainty to employers. We sincerely appreciate that S. 620 achieves that objective and also strikes the right balance between providing certainty to employers while also ensuring an appropriate role for the EEOC to protect employees from discrimination.

#### Under The Preserving Employee Wellness Programs Act:

- Plans that comply with the wellness provisions of HIPAA that were amended by PPACA (included in Section 2705(j) of the Public Health Service Act) shall not violate the ADA or GINA by offering rewards in compliance with PHSA 2705(j). In general, this protection extends to health contingent wellness programs, including activity-only and outcome-based programs.
- Participatory programs shall receive the same protection if the reward is less than or equal to the maximum reward amounts applicable to health contingent wellness programs.
- The collection of information about the "manifested disease or disorder of a family member shall not be considered an unlawful acquisition of genetic

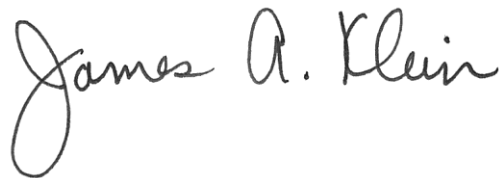
information with respect to another family member participating in workplace wellness programs” and shall not violate GINA.

- The bill also includes two rules of construction. The first states nothing should be construed to limit the continued application of the *bona fide* benefit plan exception to wellness programs. The second rule of construction states that nothing “shall be construed to prevent an employer that is offering a wellness program to an employee from establishing a deadline of up to 180 days for employees to request and complete a reasonable alternative standard.”
- The legislation shall take effect as if enacted on March 23, 2010, and shall apply to the ADA and GINA, including amendments made by such Acts.

As the Council’s *A 2020 Vision* report states, employer-sponsored benefit plans are now being designed with the express purpose of giving each worker the opportunity to achieve personal health and financial well-being. This well-being drives employee performance and productivity which, in turn, drives successful organizations. To maintain global competitiveness and help achieve good health in our communities, American companies must encourage healthy behavior with every tool in our toolkit. In other words, a healthy workforce is a productive workforce, and a productive workforce makes for a healthier American economy.

We thank you for your sponsorship of S. 620. We look forward to working with you and your colleagues to provide clarity for employer-sponsored wellness programs and to improve the health of American workers and their families.

Sincerely,

A handwritten signature in black ink that reads "James A. Klein". The signature is written in a cursive style with a large, looping initial "J".

James A. Klein  
President

CC: Senator Johnny Isakson  
Senator Orrin Hatch  
Senator Tim Scott  
Senator Pat Roberts  
Senator Michael B. Enzi