



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

February 12, 2015

President Barack Obama
The White House
1600 Pennsylvania Ave, NW
Washington DC 20500

Dear President Obama:

The undersigned members of the Consortium for Citizens with Disabilities (CCD) write to urge the Administration not to erode the workplace rights afforded by the Americans with Disabilities Act (ADA) as it makes policy concerning employer-based wellness programs. CCD is a coalition of national disability organizations working for national public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

We were concerned by recent comments from the White House spokesperson indicating that the U.S. Equal Employment Opportunity Commission's ADA enforcement efforts relating to wellness programs "could be inconsistent with what we know about wellness programs and the fact that we know that wellness programs are good for both employers and employees." The ADA protects employees with disabilities from being forced to disclose medical information unrelated to their ability to do their jobs. The EEOC's enforcement actions to safeguard this right, in cases where steep financial penalties were used to force such disclosures, are important to the disability community and are consistent with the law. As the EEOC proceeds with rulemaking on the ADA's application to wellness programs, we hope that you will not send the message that the ADA's workplace privacy protections do not matter. People with disabilities have faced a long history of employment discrimination, and fought hard for these protections.

As you know, the employment rate for people with disabilities has remained far below the rate for any other group tracked by the Bureau of Labor Statistics. It is less than half of the employment rate for people without disabilities. Effective enforcement of the ADA is a critically important element of efforts to improve these numbers.

Congress included in the ADA a detailed scheme to limit employer inquiries seeking medical information from employees and applicants. These limits are a core protection of the ADA. Congress prohibited medical inquiries and medical exams of employees that are not job-related and consistent with business necessity in order to prevent discrimination. See S. Rep. 101-116, at 39-40 (1989) (“As was abundantly clear before the Committee, being identified as disabled often carries both blatant and subtle stigma. An employer’s legitimate needs will be met by allowing the medical inquiries and examinations which are job-related.”). As the EEOC noted in its guidance concerning disability-related inquiries of employees:

Historically, many employers asked applicants and employees to provide information concerning their physical and/or mental condition. This information often was used to exclude and otherwise discriminate against individuals with disabilities -- particularly nonvisible disabilities, such as diabetes, epilepsy, heart disease, cancer, and mental illness -- despite their ability to perform the job. The ADA’s provisions concerning disability-related inquiries and medical examinations reflect Congress's intent to protect the rights of applicants and employees to be assessed on merit alone, while protecting the rights of employers to ensure that individuals in the workplace can efficiently perform the essential functions of their jobs.¹

While there is an exception to this rule for *voluntary* medical exams and inquiries that are part of an employee health program, common sense dictates that such exams and inquiries are not voluntary if failure to submit to them results in thousands of dollars in penalties. Indeed, since 2000, the EEOC has said that for these exams and inquiries to be voluntary, an employer may neither require participation nor penalize employees who do not participate.² The Affordable Care Act does not change this rule; it does not specifically address penalties for failure to answer medical inquiries and it does not supersede or eliminate the requirements of the ADA. Employer-based wellness programs can and should operate in ways that both promote better health outcomes and comply with the ADA’s workplace protections.

We know it is a priority of yours to improve employment opportunities for people with disabilities. We hope that you will ensure that wellness programs do not become a vehicle to undermine the rights of people with disabilities. Wellness programs should work for all employees, including those with disabilities.

¹ *EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act* (July 27, 2000), General Principles, <http://www.eeoc.gov/policy/docs/guidance-inquiries.html> (“EEOC Enforcement Guidance”).

² *EEOC Enforcement Guidance*, Question 22.

Sincerely,

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Washington, DC 20006

The Arc of the United States
1825 K Street NW Suite 1200
Washington, DC 20006

Easter Seals
1425 K Street, Suite 200
Washington, DC 20005

National Alliance on Mental Illness
3803 North Fairfax Drive
Arlington, VA 22203

Vietnam Veterans of America
8719 Colesville Road #100
Silver Spring, MD 20910

Paralyzed Veterans of America
801 18th Street NW
Washington, DC 20006

American Diabetes Association
1701 North Beauregard Street
Alexandria, VA 22311

Epilepsy Foundation
8301 Professional Place East, Suite 200
Landover, MD 20785-2353

National Council on Independent Living
2013 H St. NW, 6th Floor
Washington, D.C. 20006

Association of University Centers on Disabilities
1100 Wayne Avenue, Suite 1000
Silver Spring, MD 20910

National Disability Rights Network
820 1st Street NE, Suite 740
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Disability Rights Education and Defense Fund
3075 Adeline Street, Suite 210
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United Spinal Association
1660 L Street NW, Suite 504
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National Multiple Sclerosis Society
1100 New York Ave., NW
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ACCSES
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Brain Injury Association of America
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Bazelon Center for Mental Health Law
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National Down Syndrome Congress
30 Mansell Court, Suite 108
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American Foundation for the Blind
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Autistic Self Advocacy Network
P.O. Box 66122
Washington, DC 20035

American Association on Health and Disability
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American Medical Rehabilitation Providers Association
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American Therapeutic Recreation Association
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Attention Deficit Disorder Association
3 Boysenberry Drive
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Health & Disability Advocates
205 W. Randolph St. Suite 510
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National Assn for the Advancement of Orthotics & Prosthetics
1501 M Street NW, 7th Floor
Washington, D.C. 20005

Tourette Syndrome Association
1301 K Street NW, #600 East
Washington, DC 20005

cc: Jenny Yang, Chair, U.S. Equal Employment Opportunity Commission
Tom Perez, Secretary of Labor
Sylvia Burwell, Secretary of Health & Human Services