

115TH CONGRESS  
1ST SESSION

# H. R. 1313

To clarify rules relating to nondiscriminatory workplace wellness programs.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 2017

Ms. FOXX (for herself and Mr. WALBERG) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Energy and Commerce, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To clarify rules relating to nondiscriminatory workplace wellness programs.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preserving Employee  
5 Wellness Programs Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) Congress has a strong tradition of pro-  
9 tecting and preserving employee workplace wellness

1 programs, including programs that utilize a health  
2 risk assessment, biometric screening, or other re-  
3 sources to inform and empower employees in making  
4 healthier lifestyle choices;

5 (2) health promotion and prevention programs  
6 are a means to reduce the burden of chronic illness,  
7 improve health, and limit the growth of health care  
8 costs;

9 (3) in enacting the Patient Protection and Af-  
10 fordable Care Act (Public Law 111–148), Congress  
11 intended that employers would be permitted to im-  
12 plement health promotion and prevention programs  
13 that provide incentives, rewards, rebates, surcharges,  
14 penalties, or other inducements related to wellness  
15 programs, including rewards of up to 50 percent off  
16 of insurance premiums for employees participating  
17 in programs designed to encourage healthier lifestyle  
18 choices; and

19 (4) Congress has struck an appropriate balance  
20 among employees, health care providers, and  
21 wellness plan sponsors to protect individual privacy  
22 and confidentiality in a wellness program which is  
23 designed to improve health outcomes.

1 **SEC. 3. NONDISCRIMINATORY WORKPLACE WELLNESS**  
2 **PROGRAMS.**

3 (a) UNIFORMITY ACROSS FEDERAL AGENCIES.—

4 (1) PROGRAMS OFFERED IN CONJUNCTION  
5 WITH AN EMPLOYER-SPONSORED HEALTH PLAN.—

6 (A) IN GENERAL.—Notwithstanding any  
7 other provision of law, workplace wellness pro-  
8 grams and programs of health promotion or  
9 disease prevention offered by an employer in  
10 conjunction with an employer-sponsored health  
11 plan that meet the requirements set forth in  
12 subparagraph (B) shall be considered to be in  
13 compliance with—

14 (i) the acceptable examinations and  
15 inquiries set forth in section 102(d)(4)(B)  
16 of the Americans with Disabilities Act of  
17 1990 (42 U.S.C. 12112(d)(4)(B));

18 (ii) section 2705(d) of the Public  
19 Health Service Act (42 U.S.C. 300gg-  
20 4(d)); and

21 (iii) section 202(b)(2) of the Genetic  
22 Information Nondiscrimination Act of  
23 2008 (42 U.S.C. 2000ff-1(b)(2)).

24 (B) PROGRAM REQUIREMENTS.—The re-  
25 quirements referenced in subparagraph (A) are  
26 that—

1 (i) the programs described in such  
2 subparagraph comply with section 2705(j)  
3 of the Public Health Service Act (42  
4 U.S.C. 300gg-4(j));

5 (ii) any reward provided or offered by  
6 a program described in such subparagraph  
7 shall be less than or equal to the maximum  
8 reward amounts provided for by section  
9 2705(j)(3)(A) of the Public Health Service  
10 Act (42 U.S.C. 300gg-4(j)(3)(A)), regard-  
11 less of whether such programs are other-  
12 wise subject to such limitations; and

13 (iii) the programs described in such  
14 subparagraph comply with any regulations  
15 promulgated with respect to section  
16 2705(j) of such Act by the Secretary of  
17 Labor, the Secretary of Health and  
18 Human Services, or the Secretary of the  
19 Treasury.

20 (C) SAFE HARBOR.—Notwithstanding any  
21 other provision of law, section 501(c)(2) of the  
22 Americans with Disabilities Act of 1990 (42  
23 U.S.C. 12201(c)(2)) shall apply to workplace  
24 wellness programs or programs of health pro-  
25 motion or disease prevention offered by an em-

1           employer in conjunction with an employer-spon-  
2           sored health plan.

3           (2) OTHER PROGRAMS OFFERING MORE FAVOR-  
4           ABLE TREATMENT FOR ADVERSE HEALTH FAC-  
5           TORS.—Notwithstanding any other provision of law,  
6           workplace wellness programs and programs of health  
7           promotion or disease prevention offered by an em-  
8           ployer that provide for more favorable treatment of  
9           individuals with adverse health factors as described  
10          in 45 CFR 146.121(g) (or any successor regula-  
11          tions) shall be considered to be in compliance with—

12                   (A) the acceptable examinations and in-  
13                   quiries set forth in section 102(d)(4)(B) of the  
14                   Americans with Disabilities Act of 1990 (42  
15                   U.S.C. 12112(d)(4)(B));

16                   (B) section 2705(d) of the Public Health  
17                   Service Act (42 U.S.C. 300gg–4(d)); and

18                   (C) section 202(b)(2) of the Genetic Infor-  
19                   mation Nondiscrimination Act of 2008 (42  
20                   U.S.C. 2000ff–1(b)(2)).

21          (3) PROGRAMS NOT OFFERED IN CONJUNCTION  
22          WITH AN EMPLOYER-SPONSORED HEALTH PLAN.—

23                   (A) IN GENERAL.—Notwithstanding any  
24                   other provision of law, workplace wellness pro-  
25                   grams and programs of health promotion or

1 disease prevention offered by an employer that  
2 are not offered in conjunction with an em-  
3 ployer-sponsored health plan that are not de-  
4 scribed in section 2705(j) of the Public Health  
5 Service Act (42 U.S.C. 300gg-4(j)) that meet  
6 the requirement set forth in subparagraph (B)  
7 shall be considered to be in compliance with—

8 (i) the acceptable examinations and  
9 inquiries as set forth in section  
10 102(d)(4)(B) of the Americans with Dis-  
11 abilities Act of 1990 (42 U.S.C.  
12 12112(d)(4)(B));

13 (ii) section 2705(d) of the Public  
14 Health Service Act (42 U.S.C. 300gg-  
15 4(d)); and

16 (iii) section 202(b)(2) of the Genetic  
17 Information Nondiscrimination Act of  
18 2008 (42 U.S.C. 2000ff-1(b)(2)).

19 (B) LIMITATION ON REWARDS.—The re-  
20 quirement referenced in subparagraph (A) is  
21 that any reward provided or offered by a pro-  
22 gram described in such subparagraph shall be  
23 less than or equal to the maximum reward  
24 amounts provided for by section 2705(j)(3)(A)  
25 of the Public Health Service Act (42 U.S.C.

1           300gg–4(j)(3)(A)), and any regulations promul-  
2           gated with respect to such section by the Sec-  
3           retary of Labor, the Secretary of Health and  
4           Human Services, or the Secretary of the Treas-  
5           ury.

6           (b) COLLECTION OF INFORMATION.—Notwith-  
7           standing any other provision of law, the collection of infor-  
8           mation about the manifested disease or disorder of a fam-  
9           ily member shall not be considered an unlawful acquisition  
10          of genetic information with respect to another family  
11          member as part of a workplace wellness program described  
12          in paragraph (1) or (2) offered by an employer (or in con-  
13          junction with an employer-sponsored health plan described  
14          in section 2705(j) of the Public Health Service Act (42  
15          U.S.C. 300gg–4(j))) and shall not violate title I or title  
16          II of the Genetic Information Nondiscrimination Act of  
17          2008 (Public Law 110–233). For purposes of the pre-  
18          ceding sentence, the term “family member” has the mean-  
19          ing given such term in section 201 of the Genetic Informa-  
20          tion Nondiscrimination Act (Public Law 110–233).

21          (c) RULE OF CONSTRUCTION.—Nothing in sub-  
22          section (a)(1)(A) shall be construed to prevent an em-  
23          ployer that is offering a wellness program to an employee  
24          from requiring such employee, within 45 days from the  
25          date the employee first has an opportunity to earn a re-

1 ward, to request a reasonable alternative standard (or  
2 waiver of the otherwise applicable standard). Nothing in  
3 subsection (a)(1)(A) shall be construed to prevent an em-  
4 ployer from imposing a reasonable time period, based upon  
5 all the facts and circumstances, during which the employee  
6 must complete the reasonable alternative standard. Such  
7 a reasonable alternative standard (or waiver of the other-  
8 wise applicable standard) is provided for in section  
9 2705(j)(3)(D) of the Public Health Service Act (42 U.S.C.  
10 300 gg-4(j)(3)(D)) (and any regulations promulgated  
11 with respect to such section by the Secretary of Labor,  
12 the Secretary of Health and Human Services, or the Sec-  
13 retary of the Treasury).

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