

111TH CONGRESS
1ST SESSION

H. R. 3468

To amend the Internal Revenue Code of 1986, the Public Health Service Act, and the Employee Retirement Income Security Act of 1974 to promote the use of prevention and wellness programs.

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2009

Mr. CASTLE (for himself, Mr. GERLACH, and Mr. LOBIONDO) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means and Education and Labor, 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

A BILL

To amend the Internal Revenue Code of 1986, the Public Health Service Act, and the Employee Retirement Income Security Act of 1974 to promote the use of prevention and 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 “Promoting Health and
5 Preventing Chronic Disease through Prevention and

1 Wellness Programs for Employees, Communities, and In-
2 dividuals Act of 2009”.

3 **SEC. 2. FINDINGS.**

4 Congress finds the following:

5 (1) Keeping people healthy and preventing dis-
6 ease must be an important part of improving our
7 federal health system.

8 (2) More than 133 million Americans, which ac-
9 counts for 45 percent of the U.S. population, have
10 at least one chronic condition.

11 (3) With the growth in obesity, especially
12 among younger Americans, the diagnosis of child-
13 hood chronic diseases has almost quadrupled over
14 the past four decades and is expected to continue to
15 rise.

16 (4) Chronic diseases are the leading causes of
17 preventable death and disability in the United
18 States, accounting for 7 out of every 10 deaths and
19 killing more than 1,700,000 people in the United
20 States every year.

21 (5) Two-thirds of the increase in health care
22 spending is due to increased prevalence of treated
23 chronic disease.

24 (6) Seventy-five percent of the nation’s aggre-
25 gate health care spending is on treating patients

1 with chronic disease, and the vast majority of these
2 diseases are preventable. Unfortunately, less than
3 one percent of total health care spending goes to-
4 ward prevention.

5 (7) According to a recent study, treatment of
6 the seven most common chronic diseases, coupled
7 with productivity losses, cost the U.S. economy more
8 than \$1 trillion dollars annually. It has been esti-
9 mated that modest reductions in unhealthy behaviors
10 could prevent or delay 40 million cases of chronic ill-
11 ness per year.

12 (8) Chronic diseases are burdensome to Amer-
13 ican businesses. Not only does a sicker American
14 workforce have higher health care costs, but it is
15 also less productive. Chronic illnesses lead to absen-
16 teeism and decreased effectiveness while at work due
17 to illness.

18 (9) Prevention not only saves lives, it is highly
19 cost-effective. One study concluded that an invest-
20 ment of \$10 per person per year in proven commu-
21 nity-based programs to increase physical activity,
22 improve nutrition, and prevent smoking and other
23 tobacco use could save the country more than \$16
24 billion annually within five years. This is a return of
25 \$5.60 for every \$1 spent.

1 **SEC. 3. TAX CREDIT TO EMPLOYERS FOR COSTS OF IMPLE-**
2 **MENTING PREVENTION AND WELLNESS PRO-**
3 **GRAMS.**

4 (a) IN GENERAL.—Subpart D of part IV of sub-
5 chapter A of chapter 1 of the Internal Revenue Code of
6 1986 (relating to business related credits) is amended by
7 adding at the end the following:

8 **“SEC. 45R. PREVENTION AND WELLNESS PROGRAM CRED-**
9 **IT.**

10 “(a) ALLOWANCE OF CREDIT.—

11 “(1) IN GENERAL.—For purposes of section 38,
12 the prevention and wellness credit determined under
13 this section for any taxable year during the credit
14 period with respect to an employer is an amount
15 equal to 50 percent of the costs paid or incurred by
16 the employer in connection with a qualified preven-
17 tion and wellness during the taxable year. For pur-
18 poses of the preceding sentence, in the case of any
19 qualified prevention and wellness offered as part of
20 an employer-provided group health plan, including
21 health insurance offered in connection with such
22 plan, only costs attributable to the qualified preven-
23 tion and wellness and not to the group health plan
24 or health insurance coverage may be taken into ac-
25 count.

1 “(2) LIMITATION.—The amount of credit al-
2 lowed under paragraph (1) for any taxable year shall
3 not exceed the sum of—

4 “(A) the product of \$200 and the number
5 of employees of the employer not in excess of
6 200 employees, plus

7 “(B) the product of \$100 and the number
8 of employees of the employer in excess of 200
9 employees.

10 “(b) QUALIFIED PREVENTION AND WELLNESS.—For
11 purposes of this section—

12 “(1) QUALIFIED PREVENTION AND
13 WELLNESS.—The term ‘qualified prevention and
14 wellness’ means a program which—

15 “(A) consists of any 3 of the prevention
16 and wellness components described in sub-
17 section (c), and

18 “(B) which is certified by the Secretary of
19 Health and Human Services, in coordination
20 with the Director of the Center for Disease
21 Control and Prevention, as a qualified preven-
22 tion and wellness under this section.

23 “(2) PROGRAMS MUST BE CONSISTENT WITH
24 RESEARCH AND BEST PRACTICES.—

1 “(A) IN GENERAL.—The Secretary of
2 Health and Human Services shall not certify a
3 program as a qualified prevention and wellness
4 unless the program—

5 “(i) is consistent with evidence-based
6 research and best practices, as identified
7 by persons with expertise in employer
8 health promotion and prevention and
9 wellness,

10 “(ii) includes multiple, evidence-based
11 strategies which are based on the existing
12 and emerging research and careful sci-
13 entific reviews, including the Guide to
14 Community Preventive Services, the Guide
15 to Clinical Preventive Services, and the
16 National Registry for Effective Programs,
17 and

18 “(iii) includes strategies which focus
19 on employee populations with a dispropor-
20 tionate burden of health problems.

21 “(B) PERIODIC UPDATING AND REVIEW.—
22 The Secretary of Health and Human Services
23 shall establish procedures for periodic review of
24 programs under this subsection. Such proce-
25 dures shall require revisions of programs if nec-

1 essary to ensure compliance with the require-
2 ments of this section and require updating of
3 the programs to the extent the Secretary, in co-
4 ordination with the Director of the Centers for
5 Disease Control and Prevention, determines
6 necessary to reflect new scientific findings.

7 “(3) HEALTH LITERACY.—The Secretary of
8 Health and Human Services shall, as part of the
9 certification process, encourage employees to make
10 the programs culturally competent and to meet the
11 health literacy needs of the employees covered by the
12 programs.

13 “(c) PREVENTION AND WELLNESS PROGRAM COM-
14 PONENTS.—For purposes of this section, the prevention
15 and wellness components described in this subsection are
16 the following:

17 “(1) HEALTH AWARENESS COMPONENT.—A
18 health awareness component which provides for the
19 following:

20 “(A) HEALTH EDUCATION.—The dissemi-
21 nation of health information which addresses
22 the specific needs and health risks of employees.

23 “(B) HEALTH SCREENINGS.—The oppor-
24 tunity for periodic screenings for health prob-

1 lems and referrals for appropriate follow up
2 measures.

3 “(2) EMPLOYEE ENGAGEMENT COMPONENT.—

4 An employee engagement component which provides
5 for—

6 “(A) the establishment of a committee to
7 actively engage employees in worksite preven-
8 tion and wellness through worksite assess-
9 ments and program planning, delivery, evalua-
10 tion, and improvement efforts, and

11 “(B) the tracking of employee participa-
12 tion.

13 “(3) BEHAVIORAL CHANGE COMPONENT.—A

14 behavioral change component which provides for al-
15 tering employee lifestyles to encourage healthy living
16 through counseling, seminars, on-line programs, or
17 self-help materials which provide technical assistance
18 and problem solving skills. Such component may in-
19 clude programs relating to—

20 “(A) tobacco use,

21 “(B) obesity,

22 “(C) stress management,

23 “(D) physical fitness,

24 “(E) nutrition,

25 “(F) substance abuse,

1 “(G) depression, and

2 “(H) mental health promotion (including
3 anxiety).

4 “(4) SUPPORTIVE ENVIRONMENT COMPO-
5 NENT.—A supportive environment component which
6 includes the following:

7 “(A) ON-SITE POLICIES.—Policies and
8 services at the worksite which promote a
9 healthy lifestyle, including policies relating to—

10 “(i) tobacco use at the worksite,

11 “(ii) the nutrition of food available at
12 the worksite through cafeterias and vend-
13 ing options,

14 “(iii) minimizing stress and promoting
15 positive mental health in the workplace,

16 “(iv) where applicable, accessible and
17 attractive stairs, and

18 “(v) the encouragement of physical
19 activity before, during, and after work
20 hours.

21 “(B) PARTICIPATION INCENTIVES.—

22 “(i) IN GENERAL.—Qualified incentive
23 benefits for each employee who participates
24 in the health screenings described in para-

1 graph (1)(B) or the behavioral change pro-
2 grams described in paragraph (3).

3 “(ii) QUALIFIED INCENTIVE BEN-
4 EFIT.—For purposes of clause (i), the
5 term ‘qualified incentive benefit’ means
6 any benefit which is approved by the Sec-
7 retary of Health and Human Services, in
8 coordination with the Director of the Cen-
9 ters for Disease Control and Prevention.

10 “(C) EMPLOYEE INPUT.—The opportunity
11 for employees to participate in the management
12 of any qualified prevention and wellness to
13 which this section applies.

14 “(d) PARTICIPATION REQUIREMENT.—

15 “(1) IN GENERAL.—No credit shall be allowed
16 under subsection (a) unless the Secretary of Health
17 and Human Services, in coordination with the Direc-
18 tor of the Centers for Disease Control and Preven-
19 tion, certifies, as a part of any certification described
20 in subsection (b), that each prevention and wellness
21 component of the qualified prevention and wellness
22 applies to all qualified employees of the employer.
23 The Secretary of Health and Human Services shall
24 prescribe rules under which an employer shall not be
25 treated as failing to meet the requirements of this

1 subsection merely because the employer provides
2 specialized programs for employees with specific
3 health needs or unusual employment requirements or
4 provides a pilot program to test new wellness strate-
5 gies.

6 “(2) QUALIFIED EMPLOYEE.—For purposes of
7 paragraph (1), the term ‘qualified employee’
8 means—

9 “(A) for employers offering health insur-
10 ance coverage, an employee who is eligible for
11 such coverage, or

12 “(B) for employers not offering health in-
13 surance coverage, an employee who works an
14 average of not less than 25 hours per week dur-
15 ing the taxable year.

16 “(e) OTHER DEFINITIONS AND SPECIAL RULES.—
17 For purposes of this section—

18 “(1) EMPLOYEE AND EMPLOYER.—

19 “(A) PARTNERS AND PARTNERSHIPS.—
20 The term ‘employee’ includes a partner and the
21 term ‘employer’ includes a partnership.

22 “(B) CERTAIN RULES TO APPLY.—Rules
23 similar to the rules of section 52 shall apply.

24 “(2) CERTAIN COSTS NOT INCLUDED.—Costs
25 paid or incurred by an employer for food or health

1 insurance shall not be taken into account under sub-
2 section (a).

3 “(3) NO CREDIT WHERE GRANT AWARDED.—
4 No credit shall be allowable under subsection (a)
5 with respect to any qualified prevention and wellness
6 of any taxpayer (other than an eligible employer de-
7 scribed in subsection (f)(2)(A)) who receives a grant
8 provided by the United States, a State, or a political
9 subdivision of a State for use in connection with
10 such program. The Secretary shall prescribe rules
11 providing for the waiver of this paragraph with re-
12 spect to any grant which does not constitute a sig-
13 nificant portion of the funding for the qualified pre-
14 vention and wellness.

15 “(4) CREDIT PERIOD.—

16 “(A) IN GENERAL.—The term ‘credit pe-
17 riod’ means the period of 10 consecutive taxable
18 years beginning with the taxable year in which
19 the qualified prevention and wellness is first
20 certified under this section.

21 “(B) SPECIAL RULE FOR EXISTING PRO-
22 GRAMS.—In the case of an employer (or prede-
23 cessor) which operates a prevention and
24 wellness for its employees on the date of the en-
25 actment of this section, subparagraph (A) shall

1 be applied by substituting ‘3 consecutive taxable
2 years’ for ‘10 consecutive taxable years’. The
3 Secretary shall prescribe rules under which this
4 subsection shall not apply if an employer is re-
5 quired to make substantial modifications in the
6 existing prevention and wellness in order to
7 qualify such program for certification as a
8 qualified prevention and wellness.

9 “(C) CONTROLLED GROUPS.—For pur-
10 poses of this paragraph, all persons treated as
11 a single employer under subsection (b), (c),
12 (m), or (o) of section 414 shall be treated as a
13 single employer.

14 “(f) PORTION OF CREDIT MADE REFUNDABLE.—

15 “(1) IN GENERAL.—In the case of an eligible
16 employer of an employee, the aggregate credits al-
17 lowed to a taxpayer under subpart C shall be in-
18 creased by the lesser of—

19 “(A) the credit which would be allowed
20 under this section without regard to this sub-
21 section and the limitation under section 38(e),
22 or

23 “(B) the amount by which the aggregate
24 amount of credits allowed by this subpart (de-
25 termined without regard to this subsection)

1 would increase if the limitation imposed by sec-
2 tion 38(e) for any taxable year were increased
3 by the amount of employer payroll taxes im-
4 posed on the taxpayer during the calendar year
5 in which the taxable year begins.

6 The amount of the credit allowed under this sub-
7 section shall not be treated as a credit allowed under
8 this subpart and shall reduce the amount of the
9 credit otherwise allowable under subsection (a) with-
10 out regard to section 38(c).

11 “(2) ELIGIBLE EMPLOYER.—For purposes of
12 this subsection, the term ‘eligible employer’ means
13 an employer which is—

14 “(A) a State or political subdivision there-
15 of, the District of Columbia, a possession of the
16 United States, or an agency or instrumentality
17 of any of the foregoing, or

18 “(B) any organization described in section
19 501(c) of the Internal Revenue Code of 1986
20 which is exempt from taxation under section
21 501(a) of such Code.

22 “(3) EMPLOYER PAYROLL TAXES.—For pur-
23 poses of this subsection—

24 “(A) IN GENERAL.—The term ‘employer
25 payroll taxes’ means the taxes imposed by—

1 “(i) section 3111(b), and

2 “(ii) sections 3211(a) and 3221(a)
3 (determined at a rate equal to the rate
4 under section 3111(b)).

5 “(B) SPECIAL RULE.—A rule similar to
6 the rule of section 24(d)(2)(C) shall apply for
7 purposes of subparagraph (A).

8 “(g) TERMINATION.—This section shall not apply to
9 any amount paid or incurred after December 31, 2017.”.

10 (b) TREATMENT AS GENERAL BUSINESS CREDIT.—
11 Subsection (b) of section 38 of the Internal Revenue Code
12 of 1986 (relating to general business credit) is amended
13 by striking “plus” at the end of paragraph (34), by strik-
14 ing the period at the end of paragraph (35) and inserting
15 “, plus”, and by adding at the end the following:

16 “(36) the prevention and wellness credit deter-
17 mined under section 45R.”.

18 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C of
19 the Internal Revenue Code of 1986 (relating to certain
20 expenses for which credits are allowable) is amended by
21 adding at the end the following new subsection:

22 “(g) PREVENTION AND WELLNESS PROGRAM CRED-
23 IT.—

24 “(1) IN GENERAL.—No deduction shall be al-
25 lowed for that portion of the costs paid or incurred

1 for a qualified prevention and wellness (within the
2 meaning of section 45R) allowable as a deduction for
3 the taxable year which is equal to the amount of the
4 credit allowable for the taxable year under section
5 45R.

6 “(2) SIMILAR RULE WHERE TAXPAYER CAP-
7 ITALIZES RATHER THAN DEDUCTS EXPENSES.—If—

8 “(A) the amount of the credit determined
9 for the taxable year under section 45R, exceeds

10 “(B) the amount allowable as a deduction
11 for such taxable year for a qualified prevention
12 and wellness,

13 the amount chargeable to capital account for the
14 taxable year for such expenses shall be reduced by
15 the amount of such excess.

16 “(3) CONTROLLED GROUPS.—In the case of a
17 corporation which is a member of a controlled group
18 of corporations (within the meaning of section
19 41(f)(5)) or a trade or business which is treated as
20 being under common control with other trades or
21 business (within the meaning of section
22 41(f)(1)(B)), this subsection shall be applied under
23 rules prescribed by the Secretary similar to the rules
24 applicable under subparagraphs (A) and (B) of sec-
25 tion 41(f)(1).”.

1 (d) CLERICAL AMENDMENT.—The table of sections
2 for subpart D of part IV of subchapter A of chapter 1
3 of the Internal Revenue Code of 1986 is amended by add-
4 ing at the end the following:

“Sec. 45R. Prevention and wellness program credit.”.

5 (e) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to taxable years beginning after
7 December 31, 2009.

8 (f) OUTREACH.—

9 (1) IN GENERAL.—The Secretary of the Treas-
10 ury, in conjunction with the Director of the Centers
11 for Disease Control and members of the business
12 community, shall institute an outreach program to
13 inform businesses about the availability of the pre-
14 vention and wellness credit under section 45R of the
15 Internal Revenue Code of 1986 as well as to educate
16 businesses on how to develop programs according to
17 recognized and promising practices and on how to
18 measure the success of implemented programs.

19 (2) AUTHORIZATION OF APPROPRIATIONS.—
20 There are authorized to be appropriated such sums
21 as are necessary to carry out the outreach program
22 described in paragraph (1).

1 **SEC. 4. GRANTS TO INCREASE PHYSICAL ACTIVITY AND**
2 **EMOTIONAL WELLNESS, IMPROVE NUTRI-**
3 **TION, AND PROMOTE HEALTHY EATING BE-**
4 **HAVIORS.**

5 Part Q of title III of the Public Health Service Act
6 (42 U.S.C. 280h et seq.) is amended by striking section
7 399W and inserting the following:

8 **“SEC. 399W. GRANTS TO INCREASE PHYSICAL ACTIVITY**
9 **AND EMOTIONAL WELLNESS, IMPROVE NU-**
10 **TRITION, AND PROMOTE HEALTHY EATING**
11 **BEHAVIORS AND HEALTHY LIVING.**

12 “(a) ESTABLISHMENT.—

13 “(1) IN GENERAL.—The Secretary, acting
14 through the Director of the Centers for Disease
15 Control and Prevention and in coordination with the
16 Administrator of the Health Resources and Services
17 Administration, the Director of the Indian Health
18 Service, the Secretary of Education, the Secretary of
19 Agriculture, the Secretary of the Interior, the Direc-
20 tor of the National Institutes of Health, the Director
21 of the Office of Women’s Health, and the heads of
22 other appropriate agencies, shall award competitive
23 grants to eligible entities to plan and implement pre-
24 vention and wellness programs that promote health
25 and wellness and prevent chronic disease. Such
26 grants may be awarded to target at-risk populations

1 including youth, health disparity populations (as de-
2 fined in section 485E(d)), and the underserved.

3 “(2) TERM.—The Secretary shall award grants
4 under this subsection for a period not to exceed 4
5 years.

6 “(b) AWARD OF GRANTS.—An eligible entity desiring
7 a grant under this section shall submit an application to
8 the Secretary at such time, in such manner, and con-
9 taining such information as the Secretary may require, in-
10 cluding—

11 “(1) a plan describing a comprehensive pro-
12 gram of approaches to encourage healthy living,
13 emotional wellness, healthy eating behaviors, and
14 healthy levels of physical activity;

15 “(2) the manner in which the eligible entity will
16 coordinate with appropriate State and local authori-
17 ties and community-based organizations, including
18 but not limited to—

19 “(A) State and local educational agencies;

20 “(B) departments of health;

21 “(C) State directors of programs under
22 section 17 of the Child Nutrition Act of 1966
23 (42 U.S.C. 1786); and

24 “(D) community-based organizations serv-
25 ing youth; and

1 “(3) the manner in which the applicant will
2 evaluate the effectiveness of the program carried out
3 under this section.

4 “(c) COORDINATION.—In awarding grants under this
5 section, the Secretary shall ensure that the proposed pro-
6 grams show a history of addressing these issues, have pro-
7 gram evaluations that show success, and are coordinated
8 in substance and format with programs currently funded
9 through other Federal agencies and operating within the
10 community.

11 “(d) ELIGIBLE ENTITY.—In this section, the term
12 ‘eligible entity’ means—

13 “(1) a city, county, tribe, territory, or State;

14 “(2) a State educational agency;

15 “(3) a tribal educational agency;

16 “(4) a local educational agency;

17 “(5) a federally qualified health center (as de-
18 fined in section 1861(aa)(4) of the Social Security
19 Act);

20 “(6) a rural health clinic;

21 “(7) a health department;

22 “(8) an Indian Health Service hospital or clinic;

23 “(9) an Indian tribal health facility;

24 “(10) an urban Indian facility;

25 “(11) any health provider;

1 “(12) an accredited university or college;

2 “(13) a youth serving organization;

3 “(14) a community-based organization; or

4 “(15) any other entity determined appropriate
5 by the Secretary.

6 “(e) USE OF FUNDS.—An eligible entity that receives
7 a grant under this section shall use the funds made avail-
8 able through the grant to plan and implement prevention
9 and wellness programs that promote health and wellness
10 and prevent chronic disease.

11 “(f) MATCHING FUNDS.—In awarding grants under
12 subsection (a), the Secretary may give priority to eligible
13 entities who provide matching contributions. Such non-
14 Federal contributions may be cash or in-kind, fairly evalu-
15 ated, including plant, equipment, training, curriculum, or
16 a preexisting evaluation framework.

17 “(g) TECHNICAL ASSISTANCE.—The Secretary may
18 set aside an amount not to exceed 10 percent of the total
19 amount appropriated for a fiscal year under subsection (j)
20 to permit the Director of the Centers for Disease Control
21 and Prevention to provide grantees with technical support
22 in the development, implementation, and evaluation of pre-
23 vention and wellness programs under this section and to
24 disseminate information about effective strategies and

1 interventions in promoting health and wellness and pre-
2 venting chronic disease.

3 “(h) LIMITATION ON ADMINISTRATIVE COSTS.—An
4 eligible entity awarded a grant under this section may not
5 use more than 10 percent of funds awarded under such
6 grant for administrative expenses.

7 “(i) REPORT.—Not later than 6 years after the date
8 of enactment of this section the Director of the Centers
9 for Disease Control and Prevention shall review the results
10 of the grants awarded under this section and other related
11 research and identify prevention and wellness programs
12 that have demonstrated effectiveness in promoting health
13 and wellness and preventing chronic disease. Such review
14 shall include an identification of model curricula, best
15 practices, and lessons learned, as well as recommendations
16 for next steps to promote health and wellness and prevent
17 chronic disease. Information derived from such review, in-
18 cluding model prevention and wellness program curricula,
19 shall be disseminated to the public.

20 “(j) DEFINITION.—In this section, the term ‘preven-
21 tion and wellness program’ means a program that consists
22 of a combination of activities that are designed to increase
23 awareness, assess risks, educate, and promote voluntary
24 behavior change to improve the health of an individual,
25 modify his or her consumer health behavior, enhance his

1 or her personal well-being and productivity, and prevent
2 illness and injury.

3 “(k) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to carry out this section,
5 \$60,000,000 for fiscal year 2010, and such sums as may
6 be necessary for each of fiscal years 2011 through 2014.”.

7 **SEC. 5. PREVENTION AND WELLNESS PROGRAMS FOR INDI-**
8 **VIDUALS AND FAMILIES.**

9 (a) IN GENERAL.—The Secretary of Health and
10 Human Services shall encourage States to work with in-
11 surance companies on ways to promote and incentivize the
12 participation of individuals and families in prevention and
13 wellness programs, such as through insurance premium
14 reductions.

15 (b) DEFINITION.—In this section, the term “preven-
16 tion and wellness program” means a program that con-
17 sists of a combination of activities that are designed to
18 increase awareness, assess risks, educate, and promote
19 voluntary behavior change to improve the health of an in-
20 dividual, modify his or her consumer health behavior, en-
21 hance his or her personal well-being and productivity, and
22 prevent illness and injury.

1 **SEC. 6. RECOGNIZING FOR WELLNESS PROGRAMS UNDER**
2 **GROUP HEALTH PLANS.**

3 (a) PUBLIC HEALTH SERVICE ACT.—Section 2702 of
4 the Public Health Service Act (42 U.S.C. 300gg–1) is
5 amended—

6 (1) in subsection (b), by adding at the end the
7 following new paragraph:

8 “(4) TREATMENT OF WELLNESS PROGRAMS.—
9 Paragraph (1) shall not be construed as permitting
10 variation of premiums based on adherence to or par-
11 ticipation in reasonably designed programs of health
12 promotion and disease prevention, if such programs
13 exist and a group health plan (or health insurance
14 coverage offered in connection with such a plan)
15 may establish premium discounts or rebates for
16 modifying otherwise applicable copayments or
17 deductibles in return for adherence to or participa-
18 tion in such programs.”; and

19 (2) by adding at the end the following new sub-
20 section:

21 “(g) PROGRAMS OF HEALTH PROMOTION OR DIS-
22 EASE PREVENTION.—

23 “(1) GENERAL PROVISIONS.—

24 “(A) GENERAL RULE.—For purposes of
25 this section, a program of health promotion or
26 disease prevention (referred to in this sub-

1 section as a ‘wellness program’) shall be a pro-
2 gram that is designed to promote health or pre-
3 vent disease that meets the applicable require-
4 ments of this subsection.

5 “(B) NO CONDITIONS BASED ON HEALTH
6 STATUS FACTOR.—If none of the conditions for
7 obtaining a premium discount or rebate or
8 other reward for participation in a wellness pro-
9 gram is based on an individual satisfying a
10 standard that is related to a health status fac-
11 tor, such wellness program shall not violate this
12 section if participation in the program is made
13 available to all similarly situated individuals
14 and the requirements of paragraph (2) are com-
15 plied with.

16 “(C) CONDITIONS BASED ON HEALTH STA-
17 TUS FACTOR.—If any of the conditions for ob-
18 taining a premium discount or rebate or other
19 reward for participation in a wellness program
20 is based on an individual satisfying a standard
21 that is related to a health status factor, such
22 wellness program shall not violate this section if
23 the requirements of paragraph (3) are complied
24 with.

1 “(2) WELLNESS PROGRAMS NOT SUBJECT TO
2 REQUIREMENTS.—If none of the conditions for ob-
3 taining a premium discount or rebate or other re-
4 ward under a wellness program as described in para-
5 graph (1)(B) are based on an individual satisfying
6 a standard that is related to a health status factor
7 (or if such a wellness program does not provide such
8 a reward), the wellness program shall not violate
9 this section if participation in the program is made
10 available to all similarly situated individuals. The
11 following programs shall not have to comply with the
12 requirements of paragraph (3) if participation in the
13 program is made available to all similarly situated
14 individuals:

15 “(A) A program that reimburses all or
16 part of the cost for memberships in a fitness
17 center.

18 “(B) A diagnostic testing program that
19 provides a reward for participation and does
20 not base any part of the reward on outcomes.

21 “(C) A program that encourages preven-
22 tive care related to a health condition through
23 the waiver of the copayment or deductible re-
24 quirement under an individual or group health
25 plan for the costs of certain items or services

1 related to a health condition (such as prenatal
2 care or well-baby visits).

3 “(D) A program that reimburses individ-
4 uals for the costs of smoking cessation pro-
5 grams without regard to whether the individual
6 quits smoking.

7 “(E) A program that provides a reward to
8 individuals for attending a periodic health edu-
9 cation seminar.

10 “(3) WELLNESS PROGRAMS SUBJECT TO RE-
11 QUIREMENTS.—If any of the conditions for obtaining
12 a premium discount, rebate, or reward under a
13 wellness program as described in paragraph (1)(C)
14 is based on an individual satisfying a standard that
15 is related to a health status factor, the wellness pro-
16 gram shall not violate this section if the following re-
17 quirements are complied with:

18 “(A) The reward for the wellness program,
19 together with the reward for other wellness pro-
20 grams with respect to the plan that requires
21 satisfaction of a standard related to a health
22 status factor, shall not exceed 30 percent of the
23 cost of employee-only coverage under the plan.
24 If, in addition to employees or individuals, any
25 class of dependents (such as spouses or spouses

1 and dependent children) may participate fully
2 in the wellness program, such reward shall not
3 exceed 30 percent of the cost of the coverage in
4 which an employee or individual and any de-
5 pendents are enrolled. For purposes of this
6 paragraph, the cost of coverage shall be deter-
7 mined based on the total amount of employer
8 and employee contributions for the benefit
9 package under which the employee is (or the
10 employee and any dependents are) receiving
11 coverage. A reward may be in the form of a dis-
12 count or rebate of a premium or contribution,
13 a waiver of all or part of a cost-sharing mecha-
14 nism (such as deductibles, copayments, or coin-
15 surance), the absence of a surcharge, or the
16 value of a benefit that would otherwise not be
17 provided under the plan. The Secretaries of
18 Labor, Health and Human Services, and the
19 Treasury may increase the reward available
20 under this subparagraph to up to 50 percent of
21 the cost of coverage if the Secretaries determine
22 that such an increase is appropriate.

23 “(B) The wellness program shall be rea-
24 sonably designed to promote health or prevent
25 disease. A program complies with the preceding

1 sentence if the program has a reasonable
2 chance of improving the health of, or preventing
3 disease in, participating individuals and it is
4 not overly burdensome, is not a subterfuge for
5 discriminating based on a health status factor,
6 and is not highly suspect in the method chosen
7 to promote health or prevent disease. The plan
8 or issuer shall evaluate the program's reason-
9 ableness at least once per year.

10 “(C) The plan shall give individuals eligible
11 for the program the opportunity to qualify for
12 the reward under the program at least once
13 each year.

14 “(D) The full reward under the wellness
15 program shall be made available to all similarly
16 situated individuals. For such purpose, among
17 other things:

18 “(i) The reward is not available to all
19 similarly situated individuals for a period
20 unless the wellness program allows—

21 “(I) for a reasonable alternative
22 standard (or waiver of the otherwise
23 applicable standard) for obtaining the
24 reward for any individual for whom,
25 for that period, it is unreasonably dif-

1 difficult due to a medical condition to
2 satisfy the otherwise applicable stand-
3 ard; and

4 “(II) for a reasonable alternative
5 standard (or waiver of the otherwise
6 applicable standard) for obtaining the
7 reward for any individual for whom,
8 for that period, it is medically inadvis-
9 able to attempt to satisfy the other-
10 wise applicable standard.

11 “(ii) If reasonable under the cir-
12 cumstances, the plan or issuer may seek
13 verification, such as a statement from an
14 individual’s physician, that a health status
15 factor makes it unreasonably difficult or
16 medically inadvisable for the individual to
17 satisfy or attempt to satisfy the otherwise
18 applicable standard.

19 “(E) The plan or issuer involved shall dis-
20 close in all plan materials describing the terms
21 of the wellness program the availability of a
22 reasonable alternative standard (or the possi-
23 bility of waiver of the otherwise applicable
24 standard) required under subparagraph (D). If
25 plan materials disclose that such a program is

1 available, without describing its terms, the dis-
2 closure under this subparagraph shall not be re-
3 quired.

4 “(4) EXISTING PROGRAMS.—Nothing in this
5 section shall prohibit a program of health promotion
6 or disease prevention that was established prior to
7 the date of enactment of this subsection and applied
8 with all applicable regulations, and that is operating
9 on such date, from continuing to be carried out for
10 as long as such regulations remain in effect.

11 “(5) REGULATIONS.—Nothing in this section
12 shall be construed as prohibiting the Secretaries of
13 Labor, Health and Human Services, or the Treasury
14 from promulgating regulations in connection with
15 this section.”.

16 (b) EMPLOYEE RETIREMENT INCOME SECURITY ACT
17 OF 1974.—Section 702 of the Employee Retirement In-
18 come Security Act of 1974 (29 U.S.C. 1182) is amend-
19 ed—

20 (1) in subsection (b), by adding at the end the
21 following new paragraph:

22 “(4) TREATMENT OF WELLNESS PROGRAMS.—
23 Paragraph (1) shall not be construed as permitting
24 variation of premiums based on adherence to or par-
25 ticipation in reasonably designed programs of health

1 promotion and disease prevention, if such programs
2 exist and a group health plan (or health insurance
3 coverage offered in connection with such a plan)
4 may establish premium discounts or rebates for
5 modifying otherwise applicable copayments or
6 deductibles in return for adherence to or participa-
7 tion in such programs.”; and

8 (2) by adding at the end the following new sub-
9 section:

10 “(g) PROGRAMS OF HEALTH PROMOTION OR DIS-
11 EASE PREVENTION.—

12 “(1) GENERAL PROVISIONS.—

13 “(A) GENERAL RULE.—For purposes of
14 this section, a program of health promotion or
15 disease prevention (referred to in this sub-
16 section as a ‘wellness program’) shall be a pro-
17 gram that is designed to promote health or pre-
18 vent disease that meets the applicable require-
19 ments of this subsection.

20 “(B) NO CONDITIONS BASED ON HEALTH
21 STATUS FACTOR.—If none of the conditions for
22 obtaining a premium discount or rebate or
23 other reward for participation in a wellness pro-
24 gram is based on an individual satisfying a
25 standard that is related to a health status fac-

1 tor, such wellness program shall not violate this
2 section if participation in the program is made
3 available to all similarly situated individuals
4 and the requirements of paragraph (2) are com-
5 plied with.

6 “(C) CONDITIONS BASED ON HEALTH STA-
7 TUS FACTOR.—If any of the conditions for ob-
8 taining a premium discount or rebate or other
9 reward for participation in a wellness program
10 is based on an individual satisfying a standard
11 that is related to a health status factor, such
12 wellness program shall not violate this section if
13 the requirements of paragraph (3) are complied
14 with.

15 “(2) WELLNESS PROGRAMS NOT SUBJECT TO
16 REQUIREMENTS.—If none of the conditions for ob-
17 taining a premium discount or rebate or other re-
18 ward under a wellness program as described in para-
19 graph (1)(B) are based on an individual satisfying
20 a standard that is related to a health status factor
21 (or if such a wellness program does not provide such
22 a reward), the wellness program shall not violate
23 this section if participation in the program is made
24 available to all similarly situated individuals. The
25 following programs shall not have to comply with the

1 requirements of paragraph (3) if participation in the
2 program is made available to all similarly situated
3 individuals:

4 “(A) A program that reimburses all or
5 part of the cost for memberships in a fitness
6 center.

7 “(B) A diagnostic testing program that
8 provides a reward for participation and does
9 not base any part of the reward on outcomes.

10 “(C) A program that encourages preven-
11 tive care related to a health condition through
12 the waiver of the copayment or deductible re-
13 quirement under an individual or group health
14 plan for the costs of certain items or services
15 related to a health condition (such as prenatal
16 care or well-baby visits).

17 “(D) A program that reimburses individ-
18 uals for the costs of smoking cessation pro-
19 grams without regard to whether the individual
20 quits smoking.

21 “(E) A program that provides a reward to
22 individuals for attending a periodic health edu-
23 cation seminar.

24 “(3) WELLNESS PROGRAMS SUBJECT TO RE-
25 QUIREMENTS.—If any of the conditions for obtaining

1 a premium discount, rebate, or reward under a
2 wellness program as described in paragraph (1)(C)
3 is based on an individual satisfying a standard that
4 is related to a health status factor, the wellness pro-
5 gram shall not violate this section if the following re-
6 quirements are complied with:

7 “(A) The reward for the wellness program,
8 together with the reward for other wellness pro-
9 grams with respect to the plan that requires
10 satisfaction of a standard related to a health
11 status factor, shall not exceed 30 percent of the
12 cost of employee-only coverage under the plan.
13 If, in addition to employees or individuals, any
14 class of dependents (such as spouses or spouses
15 and dependent children) may participate fully
16 in the wellness program, such reward shall not
17 exceed 30 percent of the cost of the coverage in
18 which an employee or individual and any de-
19 pendents are enrolled. For purposes of this
20 paragraph, the cost of coverage shall be deter-
21 mined based on the total amount of employer
22 and employee contributions for the benefit
23 package under which the employee is (or the
24 employee and any dependents are) receiving
25 coverage. A reward may be in the form of a dis-

1 count or rebate of a premium or contribution,
2 a waiver of all or part of a cost-sharing mecha-
3 nism (such as deductibles, copayments, or coin-
4 surance), the absence of a surcharge, or the
5 value of a benefit that would otherwise not be
6 provided under the plan. The Secretaries of
7 Labor, Health and Human Services, and the
8 Treasury may increase the reward available
9 under this subparagraph to up to 50 percent of
10 the cost of coverage if the Secretaries determine
11 that such an increase is appropriate.

12 “(B) The wellness program shall be rea-
13 sonably designed to promote health or prevent
14 disease. A program complies with the preceding
15 sentence if the program has a reasonable
16 chance of improving the health of, or preventing
17 disease in, participating individuals and it is
18 not overly burdensome, is not a subterfuge for
19 discriminating based on a health status factor,
20 and is not highly suspect in the method chosen
21 to promote health or prevent disease. The plan
22 or issuer shall evaluate the program’s reason-
23 ableness at least once per year.

24 “(C) The plan shall give individuals eligible
25 for the program the opportunity to qualify for

1 the reward under the program at least once
2 each year.

3 “(D) The full reward under the wellness
4 program shall be made available to all similarly
5 situated individuals. For such purpose, among
6 other things:

7 “(i) The reward is not available to all
8 similarly situated individuals for a period
9 unless the wellness program allows—

10 “(I) for a reasonable alternative
11 standard (or waiver of the otherwise
12 applicable standard) for obtaining the
13 reward for any individual for whom,
14 for that period, it is unreasonably dif-
15 ficult due to a medical condition to
16 satisfy the otherwise applicable stand-
17 ard; and

18 “(II) for a reasonable alternative
19 standard (or waiver of the otherwise
20 applicable standard) for obtaining the
21 reward for any individual for whom,
22 for that period, it is medically inadvis-
23 able to attempt to satisfy the other-
24 wise applicable standard.

1 “(ii) If reasonable under the cir-
2 cumstances, the plan or issuer may seek
3 verification, such as a statement from an
4 individual’s physician, that a health status
5 factor makes it unreasonably difficult or
6 medically inadvisable for the individual to
7 satisfy or attempt to satisfy the otherwise
8 applicable standard.

9 “(E) The plan or issuer involved shall dis-
10 close in all plan materials describing the terms
11 of the wellness program the availability of a
12 reasonable alternative standard (or the possi-
13 bility of waiver of the otherwise applicable
14 standard) required under subparagraph (D). If
15 plan materials disclose that such a program is
16 available, without describing its terms, the dis-
17 closure under this subparagraph shall not be re-
18 quired.

19 “(4) EXISTING PROGRAMS.—Nothing in this
20 section shall prohibit a program of health promotion
21 or disease prevention that was established prior to
22 the date of enactment of this subsection and applied
23 with all applicable regulations, and that is operating
24 on such date, from continuing to be carried out for
25 as long as such regulations remain in effect.

1 “(5) REGULATIONS.—Nothing in this section
2 shall be construed as prohibiting the Secretaries of
3 Labor, Health and Human Services, or the Treasury
4 from promulgating regulations in connection with
5 this section.”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to plan years occurring on or after
8 the date of the enactment of this Act.

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