

111TH CONGRESS  
1ST SESSION

# H. R. 3688

To encourage programs of health promotion or disease prevention.

---

## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 1, 2009

Mr. ARCURI (for himself, Mr. BUYER, Mr. CASTLE, Mr. POLIS of Colorado, Mr. DONNELLY of Indiana, and Mr. DEAL of Georgia) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and Labor 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

---

## A BILL

To encourage programs of health promotion or disease prevention.

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. PROGRAMS OF HEALTH PROMOTION OR DIS-**  
4 **EASE PREVENTION.**

5 (a) IN GENERAL.—Nothing in the Employee Retire-  
6 ment Income Security Act of 1974, the Internal Revenue  
7 Code of 1986, or the Public Health Service Act shall be  
8 applied, administered, or interpreted to prevent any pro-

1 vider or issuer of health insurance (including any em-  
2 ployer) from establishing premium discounts or rebates,  
3 or modifying copayments or deductibles, in the case of in-  
4 dividuals who adhere to, or participate in, a program of  
5 health promotion or disease prevention which meets the  
6 requirements of subsection (b).

7 (b) PROGRAMS OF HEALTH PROMOTION OR DISEASE  
8 PREVENTION TO WHICH SECTION APPLIES.—

9 (1) GENERAL PROVISIONS.—

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

17 (B) NO CONDITIONS BASED ON HEALTH  
18 STATUS FACTOR.—If none of the conditions for  
19 obtaining a premium discount or rebate or  
20 other reward for participation in a wellness pro-  
21 gram is based on an individual satisfying a  
22 standard that is related to a health status fac-  
23 tor, such wellness program shall not violate this  
24 section if participation in the program is made  
25 available to all similarly situated individuals

1 and the requirements of paragraph (2) are com-  
2 plied with.

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

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

1 (A) A program that reimburses all or part  
2 of the cost for memberships in a fitness center.

3 (B) A diagnostic testing program that pro-  
4 vides a reward for participation and does not  
5 base any part of the reward on outcomes.

6 (C) A program that encourages preventive  
7 care related to a health condition through the  
8 waiver of the copayment or deductible require-  
9 ment under an individual or group health plan  
10 for the costs of certain items or services related  
11 to a health condition (such as prenatal care or  
12 well-baby visits).

13 (D) A program that reimburses individuals  
14 for the costs of smoking cessation programs  
15 without regard to whether the individual quits  
16 smoking.

17 (E) A program that provides a reward to  
18 individuals for attending a periodic health edu-  
19 cation seminar.

20 (3) WELLNESS PROGRAMS SUBJECT TO RE-  
21 QUIREMENTS.—If any of the conditions for obtaining  
22 a premium discount, rebate, or reward under a  
23 wellness program as described in paragraph (1)(C)  
24 is based on an individual satisfying a standard that  
25 is related to a health status factor, the wellness pro-

1       gram shall not violate this section if the following re-  
2       quirements are complied with:

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

1 value of a benefit that would otherwise not be  
2 provided under the plan. The Secretaries of  
3 Labor, Health and Human Services, and the  
4 Treasury may increase the reward available  
5 under this subparagraph to up to 50 percent of  
6 the cost of coverage if the Secretaries determine  
7 that such an increase is appropriate.

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

20 (C) The plan shall give individuals eligible  
21 for the program the opportunity to qualify for  
22 the reward under the program at least once  
23 each year.

24 (D) The full reward under the wellness  
25 program shall be made available to all similarly

1           situated individuals. For such purpose, among  
2           other things:

3                   (i) The reward is not available to all  
4                   similarly situated individuals for a period  
5                   unless the wellness program allows—

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

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

21                          (ii) If reasonable under the cir-  
22                          cumstances, the plan or issuer may seek  
23                          verification, such as a statement from an  
24                          individual's physician, that a health status  
25                          factor makes it unreasonably difficult or

1 medically inadvisable for the individual to  
2 satisfy or attempt to satisfy the otherwise  
3 applicable standard.

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

14 (c) EXISTING PROGRAMS.—Nothing in this section  
15 shall prohibit a program of health promotion or disease  
16 prevention that was established prior to the date of enact-  
17 ment of this section and applied with all applicable regula-  
18 tions, and that is operating on such date, from continuing  
19 to be carried out for as long as such regulations remain  
20 in effect.

21 (d) REGULATIONS.—Nothing in this section shall be  
22 construed as prohibiting the Secretaries of Labor, Health  
23 and Human Services, or the Treasury from promulgating  
24 regulations in connection with this section.

○