

Union Calendar No. 341

115TH CONGRESS
1ST SESSION

H. R. 1313

[Report No. 115–459, Part I]

To clarify rules relating to nondiscriminatory workplace wellness programs.

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

DECEMBER 11, 2017

Additional sponsors: Ms. STEFANIK, Mr. MITCHELL, Mr. MESSER, and Mr. GARRETT

DECEMBER 11, 2017

Reported from the Committee on Education and the Workforce with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

DECEMBER 11, 2017

The Committees on Energy and Commerce and Ways and Means discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on March 2, 2017]

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 protecting*
9 *and preserving employee workplace wellness pro-*
10 *grams, including programs that utilize a health risk*
11 *assessment, biometric screening, or other resources to*
12 *inform and empower employees in making healthier*
13 *lifestyle choices;*

14 *(2) health promotion and prevention programs*
15 *are a means to reduce the burden of chronic illness,*
16 *improve health, and limit the growth of health care*
17 *costs;*

18 *(3) in enacting the Patient Protection and Af-*
19 *fordable Care Act (Public Law 111–148), Congress in-*
20 *tended that employers would be permitted to imple-*
21 *ment health promotion and prevention programs that*
22 *provide incentives, rewards, rebates, surcharges, pen-*
23 *alties, or other inducements related to wellness pro-*
24 *grams, including rewards of up to 50 percent off of*
25 *insurance premiums for employees participating in*

1 *programs designed to encourage healthier lifestyle*
2 *choices; and*

3 *(4) Congress has struck an appropriate balance*
4 *among employees, health care providers, and wellness*
5 *plan sponsors to protect individual privacy and con-*
6 *fidentiality in a wellness program which is designed*
7 *to improve health outcomes.*

8 **SEC. 3. NONDISCRIMINATORY WORKPLACE WELLNESS PRO-**
9 **GRAMS.**

10 *(a) UNIFORMITY ACROSS FEDERAL AGENCIES.—*

11 *(1) PROGRAMS OFFERED IN CONJUNCTION WITH*
12 *AN EMPLOYER-SPONSORED HEALTH PLAN.—*

13 *(A) IN GENERAL.—Notwithstanding any*
14 *other provision of law, a workplace wellness pro-*
15 *gram and any program of health promotion or*
16 *disease prevention offered by an employer in*
17 *conjunction with an employer-sponsored health*
18 *plan that complies with section 2705(j) of the*
19 *Public Health Service Act (42 U.S.C. 300gg-*
20 *4(j)) (and any regulations promulgated with re-*
21 *spect to such section by the Secretary of Labor,*
22 *the Secretary of Health and Human Services, or*
23 *the Secretary of the Treasury) shall be considered*
24 *to be in compliance with the following provisions*

1 *(to the extent such programs are subject to the*
2 *Acts described in such provisions):*

3 *(i) the acceptable examinations and in-*
4 *quiries set forth in section 102(d)(4)(B) of*
5 *the Americans with Disabilities Act of 1990*
6 *(42 U.S.C. 12112(d)(4)(B));*

7 *(ii) section 2705(d) of the Public*
8 *Health Service Act (42 U.S.C. 300gg-4(d));*
9 *and*

10 *(iii) section 202(b)(2) of the Genetic*
11 *Information Nondiscrimination Act of 2008*
12 *(42 U.S.C. 2000ff-1(b)(2)).*

13 *(B) SAFE HARBOR.—Notwithstanding any*
14 *other provision of law, section 501(c)(2) of the*
15 *Americans with Disabilities Act of 1990 (42*
16 *U.S.C. 12201(c)(2)) shall apply to any work-*
17 *place wellness program or program of health*
18 *promotion or disease prevention offered by an*
19 *employer in conjunction with an employer-spon-*
20 *sored health plan.*

21 *(2) OTHER PROGRAMS OFFERING MORE FAVOR-*
22 *ABLE TREATMENT FOR ADVERSE HEALTH FACTORS.—*
23 *Notwithstanding any other provision of law, a work-*
24 *place wellness program and a program of health pro-*
25 *motion or disease prevention offered by an employer*

1 *that provides for more favorable treatment of individ-*
2 *uals with adverse health factors as described in sec-*
3 *tion 146.121(g) of title 45, Code of Federal Regula-*
4 *tions (or any successor regulations) shall be consid-*
5 *ered to be in compliance with—*

6 *(A) the acceptable examinations and inquir-*
7 *ies set forth in section 102(d)(4)(B) of the Amer-*
8 *icans with Disabilities Act of 1990 (42 U.S.C.*
9 *12112(d)(4)(B));*

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

12 *(C) section 202(b)(2) of the Genetic Infor-*
13 *mation Nondiscrimination Act of 2008 (42*
14 *U.S.C. 2000ff–1(b)(2)).*

15 *(3) PROGRAMS NOT OFFERED IN CONJUNCTION*
16 *WITH AN EMPLOYER-SPONSORED HEALTH PLAN.—*

17 *(A) IN GENERAL.—Notwithstanding any*
18 *other provision of law, a workplace wellness pro-*
19 *gram and any program of health promotion or*
20 *disease prevention offered by an employer that*
21 *are not offered in conjunction with an employer-*
22 *sponsored health plan that is not described in*
23 *section 2705(j) of the Public Health Service Act*
24 *(42 U.S.C. 300gg–4(j)) that meet the requirement*

1 *set forth in subparagraph (B) shall be considered*
2 *to be in compliance with—*

3 *(i) the acceptable examinations and in-*
4 *quiries as set forth in section 102(d)(4)(B)*
5 *of the Americans with Disabilities Act of*
6 *1990 (42 U.S.C. 12112(d)(4)(B));*

7 *(ii) section 2705(d) of the Public*
8 *Health Service Act (42 U.S.C. 300gg–4(d));*
9 *and*

10 *(iii) section 202(b)(2) of the Genetic*
11 *Information Nondiscrimination Act of 2008*
12 *(42 U.S.C. 2000ff–1(b)(2)).*

13 *(B) LIMITATION ON REWARDS.—The re-*
14 *quirement referenced in subparagraph (A) is*
15 *that any reward provided or offered by a pro-*
16 *gram described in such subparagraph shall be*
17 *less than or equal to the maximum reward*
18 *amounts provided for by section 2705(j)(3)(A) of*
19 *the Public Health Service Act (42 U.S.C. 300gg–*
20 *4(j)(3)(A)), and any regulations promulgated*
21 *with respect to such section by the Secretary of*
22 *Labor, the Secretary of Health and Human*
23 *Services, or the Secretary of the Treasury.*

24 *(b) COLLECTION OF INFORMATION.—Notwithstanding*
25 *any other provision of law, the collection of information*

1 *about the manifested disease or disorder of a family member*
2 *shall not be considered an unlawful acquisition of genetic*
3 *information with respect to another family member as part*
4 *of a workplace wellness program described in subsection (a)*
5 *offered by an employer (or in conjunction with an em-*
6 *ployer-sponsored health plan described in section 2705(j) of*
7 *the Public Health Service Act (42 U.S.C. 300gg-4(j))) and*
8 *shall not violate title I or title II of the Genetic Information*
9 *Nondiscrimination Act of 2008 (Public Law 110-233). For*
10 *purposes of the preceding sentence, the term “family*
11 *member” has the meaning given such term in section 201*
12 *of the Genetic Information Nondiscrimination Act (Public*
13 *Law 110-233).*

14 *(c) RULE OF CONSTRUCTION.—Nothing in subsection*
15 *(a)(1)(A) shall be construed to prevent an employer that*
16 *is offering a wellness program to an employee from requir-*
17 *ing such employee, within 45 days from the date the em-*
18 *ployee first has an opportunity to earn a reward, to request*
19 *a reasonable alternative standard (or waiver of the other-*
20 *wise applicable standard). Nothing in subsection (a)(1)(A)*
21 *shall be construed to prevent an employer from imposing*
22 *a reasonable time period, based upon all the facts and cir-*
23 *cumstances, during which the employee must complete the*
24 *reasonable alternative standard. Such a reasonable alter-*
25 *native standard (or waiver of the otherwise applicable*

1 *standard) is provided for in section 2705(j)(3)(D) of the*
2 *Public Health Service Act (42 U.S.C. 300 gg-4(j)(3)(D))*
3 *(and any regulations promulgated with respect to such sec-*
4 *tion by the Secretary of Labor, the Secretary of Health and*
5 *Human Services, or the Secretary of the Treasury).*

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