

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*

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

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

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

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

(B) *SAFE HARBOR*.—Notwithstanding any other provision of law, section 501(c)(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201(c)(2)) shall apply to any workplace wellness program or program of health promotion or disease prevention offered by an employer in conjunction with an employer-sponsored health plan.

(2) *OTHER PROGRAMS OFFERING MORE FAVORABLE TREATMENT FOR ADVERSE HEALTH FACTORS*.—Notwithstanding any other provision of law, a workplace wellness program and a program of health promotion 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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