

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1313
OFFERED BY MR. BYRNE

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Preserving Employee
3 Wellness Programs Act”.

4 SEC. 2. FINDINGS.

5 Congress finds that—

6 (1) Congress has a strong tradition of pro-
7 tecting and preserving employee workplace wellness
8 programs, including programs that utilize a health
9 risk assessment, biometric screening, or other re-
10 sources to inform and empower employees in making
11 healthier lifestyle choices;

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

16 (3) in enacting the Patient Protection and Af-
17 fordable Care Act (Public Law 111–148), Congress
18 intended that employers would be permitted to im-

1 plement health promotion and prevention programs
2 that provide incentives, rewards, rebates, surcharges,
3 penalties, or other inducements related to wellness
4 programs, including rewards of up to 50 percent off
5 of insurance premiums for employees participating
6 in programs designed to encourage healthier lifestyle
7 choices; and

8 (4) Congress has struck an appropriate balance
9 among employees, health care providers, and
10 wellness plan sponsors to protect individual privacy
11 and confidentiality in a wellness program which is
12 designed to improve health outcomes.

13 **SEC. 3. NONDISCRIMINATORY WORKPLACE WELLNESS**
14 **PROGRAMS.**

15 (a) UNIFORMITY ACROSS FEDERAL AGENCIES.—

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

18 (A) IN GENERAL.—Notwithstanding any
19 other provision of law, a workplace wellness
20 program and any program of health promotion
21 or disease prevention offered by an employer in
22 conjunction with an employer-sponsored health
23 plan that complies with section 2705(j) of the
24 Public Health Service Act (42 U.S.C. 300gg–
25 4(j)) (and any regulations promulgated with re-

1 spect to such section by the Secretary of Labor,
2 the Secretary of Health and Human Services,
3 or the Secretary of the Treasury) shall be con-
4 sidered to be in compliance with the following
5 provisions (to the extent such programs are
6 subject to the Acts described in such provi-
7 sions):

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

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

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

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

1 (2) OTHER PROGRAMS OFFERING MORE FAVOR-
2 ABLE TREATMENT FOR ADVERSE HEALTH FAC-
3 TORS.—Notwithstanding any other provision of law,
4 a workplace wellness program and a program of
5 health promotion or disease prevention offered by an
6 employer that provides for more favorable treatment
7 of individuals with adverse health factors as de-
8 scribed in section 146.121(g) of title 45, Code of
9 Federal Regulations (or any successor regulations)
10 shall be considered to be in compliance with—

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

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

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

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

22 (A) IN GENERAL.—Notwithstanding any
23 other provision of law, a workplace wellness
24 program and any program of health promotion
25 or disease prevention offered by an employer

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

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

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

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

18 (B) LIMITATION ON REWARDS.—The re-
19 quirement referenced in subparagraph (A) is
20 that any reward provided or offered by a pro-
21 gram described in such subparagraph shall be
22 less than or equal to the maximum reward
23 amounts provided for by section 2705(j)(3)(A)
24 of the Public Health Service Act (42 U.S.C.
25 300gg-4(j)(3)(A)), and any regulations promul-

1 gated with respect to such section by the Sec-
2 retary of Labor, the Secretary of Health and
3 Human Services, or the Secretary of the Treas-
4 ury.

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

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

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

