

**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).

