

114TH CONGRESS
1ST SESSION

S. _____

To clarify rules relating to nondiscriminatory employer wellness programs as such programs relate to premium discounts, rebates, or modifications to otherwise applicable cost sharing under group health plans.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To clarify rules relating to nondiscriminatory employer wellness programs as such programs relate to premium discounts, rebates, or modifications to otherwise applicable cost sharing under group health plans.

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—

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

7 (2) health promotion and prevention programs
8 are a means to reduce the burden of chronic illness,
9 improve health, and limit the growth of health care
10 costs;

11 (3) in enacting the Patient Protection and Af-
12 fordable Care Act (Public Law 111-148), Congress
13 intended that employers would be permitted to im-
14 plement health promotion and prevention programs
15 that provide incentives, rewards, rebates, surcharges,
16 penalties, or other inducements related to wellness
17 programs, including rewards of up to 50 percent off
18 of insurance premiums for employees participating
19 in programs designed to encourage healthier lifestyle
20 choices; and

21 (4) Congress has struck an appropriate balance
22 among employees, health care providers, and
23 wellness plan sponsors to protect individual privacy
24 and confidentiality in a wellness program which is
25 designed to improve health outcomes.

1 **SEC. 3. NONDISCRIMINATORY EMPLOYEE WELLNESS PRO-**
2 **GRAMS.**

3 (a) OFFERING OF PROGRAM REWARDS.—

4 (1) IN GENERAL.—Notwithstanding any other
5 provision of law, workplace wellness programs, or
6 programs of health promotion or disease prevention
7 offered by an employer or in conjunction with an
8 employer-sponsored health plan, described in section
9 2705(j) of the Public Health Service Act (42 U.S.C.
10 300gg-4(j)), shall not violate the Americans with
11 Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)
12 or titles I or II of the Genetic Information Non-
13 discrimination Act of 2008 (Public Law 110-233)
14 because such program provides any amount or type
15 of reward (as provided for in section 2705(j)(3)(A)
16 of the Public Health Service Act (42 U.S.C. 300 gg-
17 4(j)(3)(A))) to program participants if such program
18 complies with such section 2705(j) (or any regula-
19 tions promulgated with respect to such section by
20 the Secretary of Labor, the Secretary of Health and
21 Human Services, and the Secretary of the Treas-
22 ury).

23 (2) APPLICATION OF SUBSECTION.—With re-
24 spect to workplace wellness programs, or programs
25 of health promotion or disease prevention offered by
26 an employer or in conjunction with an employer-

1 sponsored health plan, described in section
2 2705(j)(1)(B) or section 2705(j)(2) of the Public
3 Health Service Act (42 U.S.C. 300gg-4(j)(1)(B) or
4 (j)(2)), this subsection shall apply if the reward with
5 respect to such programs is less than or equal to the
6 maximum reward amounts provided for by section
7 2705(j)(3)(A) of such Act (42 U.S.C. 300gg-
8 4(j)(3)(A)) (or any regulations promulgated with re-
9 spect to such section by the Secretary of Labor, the
10 Secretary of Health and Human Services, and the
11 Secretary of the Treasury).

12 (b) COLLECTION OF INFORMATION.—Notwith-
13 standing any other provision of law, the collection of infor-
14 mation about the manifested disease or disorder of a fam-
15 ily member shall not be considered an unlawful acquisition
16 of genetic information with respect to another family
17 member participating in workplace wellness programs, or
18 programs of health promotion or disease prevention of-
19 fered by an employer or in conjunction with an employer-
20 sponsored health plan, described in section 2705(j) of the
21 Public Health Service Act (42 U.S.C. 300gg-4(j)), and
22 shall not violate titles I or title II of the Genetic Informa-
23 tion Nondiscrimination Act of 2008 (Public Law 110-
24 233). For purposes of the preceding sentence, the terms
25 “family members” and “manifestation” shall have the

1 meanings given such terms for purposes of titles I or II
2 of the Genetic Information Nondiscrimination Act (Public
3 Law 110-233), or the amendments made by such titles,
4 as appropriate.

5 (c) RULES OF CONSTRUCTION.—

6 (1) RELATING TO THE ADA.—Nothing in this
7 Act shall be construed to limit or otherwise restrict
8 the application of section 501(c)(2) of the Americans
9 with Disabilities Act of 1990 (42 U.S.C.
10 12201(c)(2)) to any programs or arrangements de-
11 scribed in this Act.

12 (2) RELATING TO EMPLOYER DEADLINES.—
13 Nothing in the regulations referred to in subsection
14 (a) shall be construed to prevent an employer that
15 is offering a wellness program to an employee from
16 establishing a deadline of up to 180 days for em-
17 ployees to request and complete a reasonable alter-
18 native standard (or waiver of the otherwise applica-
19 ble standard). A reasonable alternative standard (or
20 waiver of the otherwise applicable standard) is pro-
21 vided for in section 2705(j)(3)(D) of the Public
22 Health Service Act (42 U.S.C. 300 gg-4(j)(3)(D)))
23 (or any regulations promulgated with respect to such
24 section by the Secretary of Labor, the Secretary of

1 Health and Human Services, and the Secretary of
2 the Treasury).

3 **SEC. 4. EFFECTIVE DATE.**

4 This Act shall take effect as if enacted on March 23,
5 2010, and shall apply to the Americans with Disabilities
6 Act of 1990 (42 U.S.C. 12101 et seq.) and the Genetic
7 Information Nondiscrimination Act of 2008 (Public Law
8 110-233), including the amendments made by such Acts.