H. R. 1313

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

A BILL

To clarify rules relating to nondiscriminatory workplace wellness programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS.

Congress finds that—

(1) Congress has a strong tradition of protecting and preserving employee workplace wellness
programs, including programs that utilize a health risk assessment, biometric screening, or other resources to inform and empower employees in making healthier lifestyle choices;

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

(3) in enacting the Patient Protection and Affordable Care Act (Public Law 111–148), Congress intended that employers would be permitted to implement health promotion and prevention programs that provide incentives, rewards, rebates, surcharges, penalties, or other inducements related to wellness programs, including rewards of up to 50 percent off of insurance premiums for employees participating in programs designed to encourage healthier lifestyle choices; and

(4) Congress has struck an appropriate balance among employees, health care providers, and wellness plan sponsors to protect individual privacy and confidentiality in a wellness program which is designed to improve health outcomes.
SEC. 3. NONDISCRIMINATORY WORKPLACE WELLNESS PROGRAMS.

(a) Uniformity Across Federal Agencies.—

(1) Programs offered in conjunction with an employer-sponsored health plan.—

(A) In general.—Notwithstanding any other provision of law, workplace wellness programs and programs of health promotion or disease prevention offered by an employer in conjunction with an employer-sponsored health plan that meet the requirements set forth in subparagraph (B) shall be considered to be in compliance with—

(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) Program requirements.—The requirements referenced in subparagraph (A) are that—
(i) the programs described in such subparagraph comply with section 2705(j) of the Public Health Service Act (42 U.S.C. 300gg–4(j));

(ii) any reward provided or offered by a program described in such subparagraph shall be less than or equal to the maximum reward amounts provided for by section 2705(j)(3)(A) of the Public Health Service Act (42 U.S.C. 300gg–4(j)(3)(A)), regardless of whether such programs are otherwise subject to such limitations; and

(iii) the programs described in such subparagraph comply with any regulations promulgated with respect to section 2705(j) of such Act by the Secretary of Labor, the Secretary of Health and Human Services, or the Secretary of the Treasury.

(C) 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 workplace wellness programs or programs of health promotion or disease prevention offered by an em-
ployer 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, workplace wellness programs and programs of health promotion or disease prevention offered by an employer that provide for more favorable treatment of individuals with adverse health factors as described in 45 CFR 146.121(g) (or any successor regulations) shall be considered to be in compliance with—

(A) 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));

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

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

(3) Programs not offered in conjunction with an employer-sponsored health plan.—

(A) In general.—Notwithstanding any other provision of law, workplace wellness programs and programs of health promotion or
disease prevention offered by an employer that
are not offered in conjunction with an em-
ployer-sponsored health plan that are not de-
scribed in section 2705(j) of the Public Health
Service Act (42 U.S.C. 300gg–4(j)) that meet the requirement set forth in subparagraph (B)
shall be considered to be in compliance with—

   (i) the acceptable examinations and
   inquiries as set forth in section
   102(d)(4)(B) of the Americans with Dis-
   abilities 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) LIMITATION ON REWARDS.—The re-
requirement referenced in subparagraph (A) is
that any reward provided or offered by a pro-
gram described in such subparagraph shall be
less than or equal to the maximum reward
amounts provided for by section 2705(j)(3)(A)
of the Public Health Service Act (42 U.S.C.
300gg–4(j)(3)(A)), and any regulations promulgated with respect to such section by the Secretary of Labor, the Secretary of Health and Human Services, or the Secretary of the Treasury.

(b) Collection of Information.—Notwithstanding any other provision of law, the collection of information about the manifested disease or disorder of a family member shall not be considered an unlawful acquisition of genetic information with respect to another family member as part of a workplace wellness program described in paragraph (1) or (2) offered by an employer (or in conjunction with an employer-sponsored health plan described in section 2705(j) of the Public Health Service Act (42 U.S.C. 300gg–4(j))) and shall not violate title I or title II of the Genetic Information Nondiscrimination Act of 2008 (Public Law 110–233). For purposes of the preceding sentence, the term “family member” has the meaning given such term in section 201 of the Genetic Information Nondiscrimination Act (Public Law 110–233).

(c) Rule of Construction.—Nothing in subsection (a)(1)(A) shall be construed to prevent an employer that is offering a wellness program to an employee from requiring such employee, within 45 days from the date the employee first has an opportunity to earn a re-
ward, to request a reasonable alternative standard (or waiver of the otherwise applicable standard). Nothing in subsection (a)(1)(A) shall be construed to prevent an employer from imposing a reasonable time period, based upon all the facts and circumstances, during which the employee must complete the reasonable alternative standard. Such a reasonable alternative standard (or waiver of the otherwise applicable standard) is provided for in section 2705(j)(3)(D) of the Public Health Service Act (42 U.S.C. 300 gg–4(j)(3)(D)) (and any regulations promulgated with respect to such section by the Secretary of Labor, the Secretary of Health and Human Services, or the Secretary of the Treasury).