114TH CONGRESS
1ST SESSION

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) 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 EMPLOYEE WELLNESS PROGRAMS.

(a) Offering of Program Rewards.—

(1) In general.—Notwithstanding any other provision of law, workplace wellness programs, or programs of health promotion or disease prevention 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)), shall not violate the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) or titles I or II of the Genetic Information Nondiscrimination Act of 2008 (Public Law 110-233) because such program provides any amount or type of reward (as provided for in section 2705(j)(3)(A) of the Public Health Service Act (42 U.S.C. 300gg-4(j)(3)(A))) to program participants if such program complies with such section 2705(j) (or any regulations promulgated with respect to such section by the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of the Treasury).

(2) Application of subsection.—With respect to workplace wellness programs, or programs of health promotion or disease prevention offered by an employer or in conjunction with an employer-
sponsored health plan, described in section 2705(j)(1)(B) or section 2705(j)(2) of the Public Health Service Act (42 U.S.C. 300gg-4(j)(1)(B) or (j)(2)), this subsection shall apply if the reward with respect to such programs is less than or equal to the maximum reward amounts provided for by section 2705(j)(3)(A) of such Act (42 U.S.C. 300gg-4(j)(3)(A)) (or any regulations promulgated with respect to such section by the Secretary of Labor, the Secretary of Health and Human Services, and 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 participating in workplace wellness programs, or programs of health promotion or disease prevention 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 titles I or title II of the Genetic Information Nondiscrimination Act of 2008 (Public Law 110-233). For purposes of the preceding sentence, the terms “family members” and “manifestation” shall have the
meanings given such terms for purposes of titles I or II of the Genetic Information Nondiscrimination Act (Public Law 110-233), or the amendments made by such titles, as appropriate.

(c) RULES OF CONSTRUCTION.—

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

(2) RELATING TO EMPLOYER DEADLINES.—Nothing in the regulations referred to in subsection (a) shall be construed to prevent an employer that is offering a wellness program to an employee from establishing a deadline of up to 180 days for employees to request and complete a reasonable alternative standard (or waiver of the otherwise applicable standard). 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))) (or any regulations promulgated with respect to such 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.