



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

March 8, 2017

Representative Virginia Foxx  
Chairwoman  
Committee on Education and Workforce  
2262 Rayburn House Office Building  
Washington, DC 20515

Representative Bobby Scott  
Ranking Member  
Committee on Education and Workforce  
1201 Longworth House Office Building  
Washington, DC 20515

Re: Opposition to H.R. 1313, Preserving Employee Wellness Programs Act

Dear Chairwoman Foxx and Ranking Member Scott:

The undersigned members and allies of the Consortium of Citizens with Disabilities (CCD) write to express our opposition to H.R. 1313, the Preserving Employee Wellness Programs Act posted on the Committee's website. CCD is the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society.

H.R. 1313 would largely eliminate the protections that Congress provided with respect to employer-sponsored wellness programs in the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA). It would allow employers to use tremendous financial penalties to force employees to disclose personal health information unrelated to their jobs, as well as their families' health information, as part of employee wellness programs. Further, it would apply the ADA's "safe harbor" defense (designed to protect insurance underwriting) to insulate conduct of workplace wellness programs even though such programs have little to do with underwriting, and even though recent regulations have clarified that the "safe harbor" defense does not protect workplace wellness programs.

The bill would also make it harder for employees to exercise their right under the Affordable Care Act (ACA) to a "reasonable alternative standard" when a health condition would make it unreasonably difficult or medically inadvisable for the employee to meet a wellness program health standard tied to financial rewards or penalties.

The protections of the ADA and GINA are critically important to employees with disabilities. Four federal agencies—the Department of Labor, the Department of Health and Human Services,

the Treasury Department, and the Equal Employment Opportunity Commission—have already issued regulations taking into account the interests of employers, wellness plans, and employees with disabilities. Those regulations already permit employees to be penalized thousands of dollars for exercising their rights under the ADA and GINA to decline to disclose their own and their spouses' disability-related information to an employer.

Rather than “clarify rules relating to nondiscriminatory employer wellness programs,” this bill would overturn or limit protections set forth in the rules promulgated by those four agencies. Moreover, those four agencies all specified that the ADA and GINA provide additional protections beyond those in the ACA's non-discrimination requirements for wellness programs; yet this bill aims to eliminate virtually any additional protections under the ADA and GINA. This effort to erase needed protections for employees with disabilities or genetic markers or conditions in workplace wellness programs is particularly troubling in light of mounting evidence that these programs have little effectiveness.

Congress should not permit employee protections under the ADA and GINA to be eroded even further. People with disabilities already have employment rates far below those of the general population. Congress should be encouraging strategies to increase employment of people with disabilities, not penalizing employees for having disabilities or for choosing to keep their health and genetic information private. Decimating the hard-won and necessary employment protections that they currently have is unacceptable. We strongly urge that the Committee not move this legislation.

Sincerely,

American Association of People with Disabilities  
American Association on Health and Disability  
American Civil Liberties Union  
American Diabetes Association  
American Foundation for the Blind  
The Arc of the United States  
Association of University Centers on Disabilities  
Autistic Self Advocacy Network  
Bazelon Center for Mental Health Law  
Brain Injury Association of America  
Disability Rights Education and Defense Fund  
Epilepsy Foundation  
Institute for Educational Leadership  
Justice in Aging  
National Alliance on Mental Illness  
National Association of Councils on Developmental Disabilities  
National Council on Independent Living  
National Disability Rights Network  
Paralyzed Veterans of America  
TASH

Allies of CCD:

Leadership Conference for Civil and Human Rights  
Genetic Alliance  
NAACP  
Center for Democracy and Technology  
Academy for Eating Disorders  
American Society for Metabolic and Bariatric Surgery  
BingeBehavior.com  
Binge Eating Disorder Association  
DC Advocacy Partners  
Disability Power and Pride  
Lakeshore Foundation  
National Workrights Institute  
Obesity Action Coalition  
Obesity Medicine Association  
The Obesity Society