



**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