

Thurs 7/30  
10:26 am  
A

**AMENDMENT**

**OFFERED BY MR. BUYER OF INDIANA**

At the end of subtitle D of title I of division A, add the following:

1 **SEC. 138. PROGRAMS OF HEALTH PROMOTION OR DISEASE**  
2 **PREVENTION.**

3 (a) **IN GENERAL.**—Nothing in this Act (or any  
4 amendment made by this Act) shall be applied, adminis-  
5 tered, or interpreted to prevent any provider or issuer of  
6 health insurance (including any employer) from estab-  
7 lishing premium discounts or rebates, or modifying copay-  
8 ments or deductibles, in the case of individuals who adhere  
9 to, or participate in, a program of health promotion or  
10 disease prevention which meets the requirements of sub-  
11 section (b).

12 (b) **PROGRAMS OF HEALTH PROMOTION OR DISEASE**  
13 **PREVENTION TO WHICH SECTION APPLIES.**—

14 (1) **GENERAL PROVISIONS.**—

15 (A) **GENERAL RULE.**—For purposes of  
16 subsection (a), a program of health promotion  
17 or disease prevention (referred to in this sub-  
18 section as a “wellness program”) shall be a pro-  
19 gram that is designed to promote health or pre-

1           vent disease that meets the applicable require-  
2           ments of this subsection.

3                   (B) NO CONDITIONS BASED ON HEALTH  
4           STATUS FACTOR.—If none of the conditions for  
5           obtaining a premium discount or rebate or  
6           other reward for participation in a wellness pro-  
7           gram is based on an individual satisfying a  
8           standard that is related to a health status fac-  
9           tor, such wellness program shall not violate this  
10          section if participation in the program is made  
11          available to all similarly situated individuals  
12          and the requirements of paragraph (2) are com-  
13          plied with.

14                   (C) CONDITIONS BASED ON HEALTH STA-  
15          TUS FACTOR.—If any of the conditions for ob-  
16          taining a premium discount or rebate or other  
17          reward for participation in a wellness program  
18          is based on an individual satisfying a standard  
19          that is related to a health status factor, such  
20          wellness program shall not violate this section if  
21          the requirements of paragraph (3) are complied  
22          with.

23                   (2) WELLNESS PROGRAMS NOT SUBJECT TO  
24          REQUIREMENTS.—If none of the conditions for ob-  
25          taining a premium discount or rebate or other re-

1       ward under a wellness program as described in para-  
2       graph (1)(B) are based on an individual satisfying  
3       a standard that is related to a health status factor  
4       (or if such a wellness program does not provide such  
5       a reward), the wellness program shall not violate  
6       this section if participation in the program is made  
7       available to all similarly situated individuals. The  
8       following programs shall not have to comply with the  
9       requirements of paragraph (3) if participation in the  
10      program is made available to all similarly situated  
11      individuals:

12               (A) A program that reimburses all or part  
13               of the cost for memberships in a fitness center.

14               (B) A diagnostic testing program that pro-  
15               vides a reward for participation and does not  
16               base any part of the reward on outcomes.

17               (C) A program that encourages preventive  
18               care related to a health condition through the  
19               waiver of the copayment or deductible require-  
20               ment under an individual or group health plan  
21               for the costs of certain items or services related  
22               to a health condition (such as prenatal care or  
23               well-baby visits).

24               (D) A program that reimburses individuals  
25               for the costs of smoking cessation programs

1 without regard to whether the individual quits  
2 smoking.

3 (E) A program that provides a reward to  
4 individuals for attending a periodic health edu-  
5 cation seminar.

6 (3) WELLNESS PROGRAMS SUBJECT TO RE-  
7 QUIREMENTS.—If any of the conditions for obtaining  
8 a premium discount, rebate, or reward under a  
9 wellness program as described in paragraph (1)(C)  
10 is based on an individual satisfying a standard that  
11 is related to a health status factor, the wellness pro-  
12 gram shall not violate this section if the following re-  
13 quirements are complied with:

14 (A) The reward for the wellness program,  
15 together with the reward for other wellness pro-  
16 grams with respect to the plan that requires  
17 satisfaction of a standard related to a health  
18 status factor, shall not exceed 50 percent of the  
19 cost of employee-only coverage under the plan.  
20 If, in addition to employees or individuals, any  
21 class of dependents (such as spouses or spouses  
22 and dependent children) may participate fully  
23 in the wellness program, such reward shall not  
24 exceed 50 percent of the cost of the coverage in  
25 which an employee or individual and any de-

1 dependents are enrolled. For purposes of this  
2 paragraph, the cost of coverage shall be deter-  
3 mined based on the total amount of employer  
4 and employee contributions for the benefit  
5 package under which the employee is (or the  
6 employee and any dependents are) receiving  
7 coverage. A reward may be in the form of a dis-  
8 count or rebate of a premium or contribution,  
9 a waiver of all or part of a cost-sharing mecha-  
10 nism (such as deductibles, copayments, or coin-  
11 surance), the absence of a surcharge, or the  
12 value of a benefit that would otherwise not be  
13 provided under the plan.

14 (B) The wellness program shall be reason-  
15 ably designed to promote health or prevent dis-  
16 ease. A program complies with the preceding  
17 sentence if the program has a reasonable  
18 chance of improving the health of, or preventing  
19 disease in, participating individuals and it is  
20 not overly burdensome, is not a subterfuge for  
21 discriminating based on a health status factor,  
22 and is not highly suspect in the method chosen  
23 to promote health or prevent disease. The plan  
24 or issuer shall evaluate the program's reason-  
25 ableness at least once per year.

1 (C) The plan shall give individuals eligible  
2 for the program the opportunity to qualify for  
3 the reward under the program at least once  
4 each year.

5 (D) The full reward under the wellness  
6 program shall be made available to all similarly  
7 situated individuals. For such purpose, among  
8 other things:

9 (i) The reward is not available to all  
10 similarly situated individuals for a period  
11 unless the wellness program allows—

12 (I) for a reasonable alternative  
13 standard (or waiver of the otherwise  
14 applicable standard) for obtaining the  
15 reward for any individual for whom,  
16 for that period, it is unreasonably dif-  
17 ficult due to a medical condition to  
18 satisfy the otherwise applicable stand-  
19 ard; and

20 (II) for a reasonable alternative  
21 standard (or waiver of the otherwise  
22 applicable standard) for obtaining the  
23 reward for any individual for whom,  
24 for that period, it is medically inadvis-

1           able to attempt to satisfy the other-  
2           wise applicable standard.

3           (ii) If reasonable under the cir-  
4           cumstances, the plan or issuer may seek  
5           verification, such as a statement from an  
6           individual's physician, that a health status  
7           factor makes it unreasonably difficult or  
8           medically inadvisable for the individual to  
9           satisfy or attempt to satisfy the otherwise  
10          applicable standard.

11          (E) The plan or issuer involved shall dis-  
12          close in all plan materials describing the terms  
13          of the wellness program the availability of a  
14          reasonable alternative standard (or the possi-  
15          bility of waiver of the otherwise applicable  
16          standard) required under subparagraph (D). If  
17          plan materials disclose that such a program is  
18          available, without describing its terms, the dis-  
19          closure under this subparagraph shall not be re-  
20          quired.

21          (c) EXISTING PROGRAMS.—Nothing in this section  
22          shall prohibit a program of health promotion or disease  
23          prevention that was established prior to the date of enact-  
24          ment of this section and applied with all applicable regula-  
25          tions, and that is operating on such date, from continuing

1 to be carried out for as long as such regulations remain  
2 in effect.

3 (d) REGULATIONS.—Nothing in this section shall be  
4 construed as prohibiting the Secretaries of Labor, Health  
5 and Human Services, or the Treasury from promulgating  
6 regulations in connection with this section.

