

~~SUBCOMMITTEE ON ENERGY AND ENVIRONMENT~~ -- 111TH CONGRESS
ROLL CALL VOTE #

BILL: H.R. 3200, the "America's Affordable Health Choices Act of 2009".

AMENDMENT: Amendment by Rep. ~~Buyer~~ *Buyer*

DISPOSITION: **FAILED/AGREED TO**, by a roll call vote of ~~24~~ yeas to ~~37~~ nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		✓		Mr. Barton	✓		
Mr. Dingell		✓		Mr. Hall	✓		
Mr. Markey		✓		Mr. Upton	✓		
Mr. Boucher		✓		Mr. Stearns	✓		
Mr. Pallone		✓		Mr. Deal	✓		
Mr. Gordon		✓		Mr. Whitfield	✓		
Mr. Rush		✓		Mr. Shimkus	✓		
Ms. Eshoo		✓		Mr. Shadegg	✓		
Mr. Stupak		✓		Mr. Blunt	✓		
Mr. Engel		✓		Mr. Buyer	✓		
Mr. Green		✓		Mr. Radanovich	✓		
Ms. DeGette		✓		Mr. Pitts	✓		
Ms. Capps		✓		Ms. Bono Mack	✓		
Mr. Doyle		✓		Mr. Walden	✓		
Ms. Harman		✓		Mr. Terry	✓		
Ms. Schakowsky		✓		Mr. Rogers	✓		
Mr. Gonzalez				Ms. Myrick	✓		
Mr. Inslee		✓		Mr. Sullivan	✓		
Ms. Baldwin		✓		Mr. Murphy (PA)	✓		
Mr. Ross		✓		Mr. Burgess	✓		
Mr. Weiner		✓		Ms. Blackburn	✓		
Mr. Matheson		✓		Mr. Gingrey	✓		
Mr. Butterfield		✓		Mr. Scalise	✓		
Mr. Melancon		✓					
Mr. Barrow		✓					
Mr. Hill		✓					
Ms. Matsui		✓					
Ms. Christensen		✓					
Ms. Castor		✓					
Mr. Sarbanes		✓					
Mr. Murphy (CT)		✓					
Mr. Space		✓					
Mr. McNerney	✓						
Ms. Sutton		✓					
Mr. Braley		✓					
Mr. Welch		✓					

AMENDMENT

OFFERED BY MR. BUYER OF INDIANA

At the end of title V of division C, add the following:

1 **Subtitle F—Programs of Health**
2 **Promotion or Disease Prevention**

3 **SEC. 2551. PROGRAMS OF HEALTH PROMOTION OR DIS-**
4 **EASE PREVENTION.**

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

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

15 (1) GENERAL PROVISIONS.—

16 (A) GENERAL RULE.—For purposes of
17 paragraph (2)(B), a program of health pro-
18 motion or disease prevention (referred to in this
19 subsection as a “wellness program”) shall be a
20 program that is designed to promote health or

1 prevent disease that meets the applicable re-
2 quirements 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.

