Under House bill, you could be penalized for refusing genetic tests
Critics say the measure rolls back worker protections

The House Committee on Education and the Workforce on Wednesday voted 22-17 to approve a bill (HR 1313) that would make it easier for employers to collect workers' genetic information as part of a workplace wellness program.

The vote fell along party lines, with Republicans voting to approve the measure and Democrats voting against it.

Background on workplace wellness programs

Employers under current federal law face barriers to obtaining workers' genetic information.

The 2008 Genetic Information Nondiscrimination Act (GINA) prohibits health insurers and employers from discriminating against employees based on their genetic information. The law includes an exception that allows employees to provide their genetic information to insurers and their employers as part of a voluntary workplace wellness program. Under GINA, employee participation in such a program must be completely voluntary, meaning employees neither receive incentives nor face penalties for choosing whether to provide their genetic information under the program.

However, the Affordable Care Act gave employers offering wellness programs more flexibility. Under rules issued by the Equal Employment Opportunity Commission under former President Barack Obama, such programs are considered voluntary as long as financial incentives are limited to no more than 30 percent of the total cost of an employee's individual health plan. However, even with the 30 percent cap, those incentives can amount to thousands of dollars, STAT News reports. AARP has challenged the EEOC rules in court.

Writing in the "Incidental Economist," Nicholas Bagely, an assistant professor of law at the University of Michigan Law School, said "Congress has never fully resolved the tension between federal antidiscrimination law," such as GINA, and new wellness program regulations. According to Bagley, HR 1313 seeks to address those tensions.

HR 1313 details

HR 1313, called the Preserving Employee Wellness Programs Act, would change federal law so that GINA and other protections would not apply when employees' genetic information is used as part of a workplace wellness program, STAT News reports. The bill would permit employers to impose penalties of up to 30 percent of employees' health insurance costs if they choose not to disclose their genetic information as part of an employee wellness program that complies with the ACA.

In addition, the bill would allow employers to offer employees incentives under wellness programs equaling up to 30 percent of the cost of family coverage, the New York Times reports. Currently, employers may only offer incentives equaling up to 30 percent of the cost of an individual health plan.
According to the *Times*, the bill also would weaken the Equal Opportunities Commission's role in overseeing workplace wellness programs. Instead, employers would be governed by rules issued by different federal agencies, the *Times* reports.

**Comments**

The committee in a [statement](#) said the bill would give employers "the legal certainty they need to offer employee wellness plans, helping to promote a healthy workforce and lower health care costs."

Some industry stakeholders have expressed similar support. For instance, Kathryn Wilber, a senior official at the **American Benefits Council**, which represents employers, said HR 1313 aims "to streamline the regulatory scheme" related to workplace wellness programs. She added that companies are committed to protecting individuals' privacy and take that responsibility "very, very seriously."

However, other stakeholders have criticized the measure.

For example, a group of nearly 70 organizations representing consumer, health, and medical advocacy groups in a [letter](#) sent to the committee last week wrote that **HR 1313 would undermine basic privacy protections included in GINA and the Americans With Disabilities Act (ADA)**. They wrote, "Workplace wellness programs are fully able to encourage healthy behaviors within the current legal framework: they need not collect and retain private genetic and medical information to be effective."

Organizations that signed the letter included:

- AARP;
- The [American Academy of Pediatrics](#);
- [March of Dimes](#); and
- The [National Women's Law Center](#).

Jennifer Mathis, director of policy and legal advocacy at the **Bazelon Center for Mental Health Law**, said HR 131 would "pretty much eviscerat[e]" protections included in GINA and the ADA.

Separately, Derek Scholes—director of science policy at the **American Society of Human Genetics**, which also sent a [letter](#) to the committee opposing the bill—said HR 1313 would permit employers to make employees choose "between affordable health insurance and protecting one's genetic privacy."

Bagley wrote that under the bill "the AARP lawsuit would be deader than a doornail," adding, "Employers could effectively compel their employees to answer questions about their disabilities."

**Next steps**

Other House committees are reviewing HR 131. The Senate has not yet considered the measure. According to *STAT News*, lawmakers are expected to seek to add HR 1313 into broader legislation that would make changes to parts of the ACA that do not affect federal spending (Sun, "To Your Health," Washington Post, 3/11; Begley, *STAT News*, 3/10; Abelson, *New York Times*, 3/10; AARP et al., Industry [letter](#), 3/7; Bagley, "Incidental Economist," 3/13)