April 19, 2016

To the Members of the House Ways and Means Committee
Subcommittee on Health

Re: H.R.1189 – Preserving Employee Wellness Programs Act

Honorable Sir/Madam:

My name is Darliene Howell and I am the Chair of the Board of Directors for the National Association to Advance Fat Acceptance (NAAFA). The NAAFA Board of Directors is writing to you in the interest of our membership regarding House Bill H.R. 1189 – Preserving Employee Wellness Programs Act**.** We are asking the Subcommittee to vote against the passing of this Bill.

NAAFA is a non-profit civil rights organization dedicated to ending size discrimination in all of its forms. We advocate for size diversity and NAAFA's goal is to help build a society in which people of every size are accepted with dignity and equality in all aspects of life.

NAAFA objects to the findings contained within this Bill for the reasons outlined below.

- BMI is a poor predictor of current and future health
- Weight loss is not a means to "improved health"
- Employee Wellness Programs have not proven to save money for employers and cost shifts any savings to the most vulnerable and lower paid employees
- Premium-based financial incentives do not promote weight loss but weight cycling
- Privacy and health information confidentiality (including the collection of genetic information) will be used by management in making employment decisions that will discriminate against their fat employees
- NAAFA believes that it is absolutely necessary to provide an alternative to those that may choose to not disclose their personal information

We would also like to offer a best practice solution to these concerns through a program that entails a Health At Every Size (HAES) approach to wellness.

The findings within this Bill include:
SEC. 2. FINDINGS.

(1) Congress has a strong tradition of protecting and preserving employee workplace wellness programs, including programs that utilize a health risk assessment, biometric

screening, or other resources to inform and empower employees in making healthier lifestyle choices;

With regard to Section. 2. Findings. (1):
A main focus of "health promotion programs" is reduction of body mass index (BMI)/weight loss in obesity prevention. NAAFA agrees with researchers that have determined:

- On an individual level, BMI is a poor predictor of body fat percentage[i]
- BMI is a poor predictor of morbidity and mortality—illness and death[ii]
- Using BMI as a proxy for health resulted in misdiagnosing 51 % of the healthy people in the United States as unhealthy[iii]

(2) health promotion and prevention programs are a means to reduce the burden of chronic illness, improve health, and limit the growth of health care costs;

With regard to Section. 2. Findings. (2):

NAAFA also objects to the promotion of weight loss as a means to "improved health". In the 2013 study, *Long-term effects of dieting: Is Weight Loss Related to Health?*, researchers uncovered no clear relationship between weight loss and health outcomes, calling into question whether weight change per se had any causal role in the few effects of the diets.[iv]

According to the 2015 study, "*Employers Should Disband Employee Weight Control Programs*", the authors found that no corporate weight control program has ever reported savings or even sustained weight loss using valid metrics across a sizable population for 2 years or more, accounting for dropouts and nonparticipants. Further, these programs can harm morale and even the health of the employees themselves. The authors go even further in saying that they believe that corporations should disband or significantly reconfigure weight-oriented wellness programs, and that the Affordable Care Act should be amended to require such programs to conform to accepted guidelines for harm avoidance.[v]

The 2013 study, *Wellness Incentives In The Workplace: Cost Savings Through Cost Shifting To Unhealthy Workers*, states "Recognizing the risk that unhealthy employees might be punished rather than helped by such programs, the [Affordable Care] act also forbids health-based discrimination." Additionally, it finds: "Although there may be other valid reasons, beyond lowering costs, to institute workplace wellness programs, we found little evidence that such programs can easily save costs through health improvement without being discriminatory. Our evidence suggests that savings to employers may come from cost shifting, with the most vulnerable employees—those from lower socioeconomic strata with the most

health risks—probably bearing greater costs that in effect subsidize their healthier colleagues."[vi]

(3) in enacting the Patient Protection and Affordable Care Act (Public Law 111–148), Congress intended that employers would be permitted to implement health promotion and prevention programs that provide incentives, rewards, rebates, surcharges, penalties, or other inducements related to wellness programs, including rewards of up to 50 percent off of insurance premiums for employees participating in programs designed to encourage healthier lifestyle choices; and

With regard to Section. 2. Findings. (3):
In "*Premium-Based Financial Incentives Did Not Promote Workplace Weight Loss In A 2013–15 Study*", three different types of incentive programs were studied and did not show any significant changes.[vii]

In the November, 2014, HealthAffairsBlog, "*Workplace Wellness Produces No Savings*", the authors' analysis of studies found that "…there is no clinical evidence to support the conclusion that three pillars of workplace wellness—annual workplace screenings and/or annual checkups for all employees (and sometimes spouses), and incentivized weight loss—are cost-effective."[viii]

At the 2016 annual meeting of the Endocrine Society, Joanna Huang, PharmD, reported on a study that has shown that "Most patients who lose modest or moderate amounts of weight experience periods of both gain and loss within 2 years." Examination of weight-loss patterns in over 177,000 people has revealed that, regardless of the initial 6-month weight loss, after 2 years the majority of patients become "cyclers," with periods of weight gain and loss rather than maintenance of the initial weight loss.[ix]

NAAFA believes that participation in wellness programs must not render the cost of health insurance unaffordable to employees. According to a 2002 study, obese workers overall suffered a wage penalty in the range of 1.4% to 4.5% for doing the same work as their thinner counterparts. The penalty for obese women ranged from 2.3% to 6.2% vs. a range of 0.7% to 2.6% for men.[x] Increasing the employee's portion of health insurance places an undue burden on employees that are already being paid less than their thinner coworkers.

(4) Congress has struck an appropriate balance among employees, health care providers, and wellness plan sponsors to protect individual privacy and confidentiality in a wellness program which is designed to improve health outcomes.

With regard to Section. 2. Findings. (4):

A February 16, 2016 article on nasdaq.com confirms that employee wellness firms and insurers are working with companies to mine health data to enable them to predict workers health needs and recommend treatments. Privacy experts worry that management could obtain this health information and use it in making workplace decisions.[xi]

Privacy and health data confidentiality is of utmost importance with the implementation of any Employee Wellness Program. NAAFA recently received a message from an individual sharing an experience that violated the privacy and confidentiality of an employee. This young woman works for a national corporation that mandates participation in an employee wellness program. The company began charging $10.00 per paycheck to their employees whose weight was not considered "normal". Recently, the employees were informed that this charge would be raised to $20.00 per paycheck and noted as a "BMI" charge. Instructions were given to the employees to go to their physician for a urine test to prove they are not smokers. If they did not go to their own physician, then a medical professional would test them at work. One day, the employees were informed that it was time for the testing. Anyone that did not have written proof from their physician were ushered into another room and weighed **BY THEIR SUPERVISOR**, not a medical professional, in front of the other employees. Not only did the supervisor weigh the young woman but she stated loudly, "**OH! I didn't know you weighed that much!!**" The young woman was mortified by this incident. Not only was it a violation of confidential health information since it was conducted by someone other than a medical professional, it was discriminatory and may have caused this young woman irreparable harm to her mental health and well-being.

This is one example of what could happen all over the country. If a national corporation is allowing this type of conduct, then it is most likely happening in smaller businesses that may not be able to afford to hire appropriate personnel to handle the administration of employee wellness programs.

SEC. 3. NONDISCRIMINATORY EMPLOYEE WELLNESS PROGRAMS.

(b) COLLECTION OF INFORMATION.—Notwithstanding any other provision of law, the collection of information about the manifested disease or disorder of a family member shall not be considered an unlawful acquisition of genetic information with respect to another family member participating in workplace wellness programs, or programs of health promotion or disease prevention offered by an employer or in conjunction with an employer-sponsored health plan, described in section 2705(j) of the Public Health Service Act (42 U.S.C. 300gg–4(j)), and shall not violate title I or title II of the Genetic Information Nondiscrimination Act of 2008 (Public Law 110–233). For purposes of the preceding sentence, the terms "family members" and "manifestation" shall have the meanings given such terms for purposes of

title I or II of the Genetic Information Nondiscrimination Act (Public Law 110–233), or the amendments made by such titles, as appropriate.

With regard to Section. 3. Nondiscriminatory Employee Wellness Programs. (b) Collection of Information:

Since employer wellness programs have expanded to include families of employees, collection of genetic information and assumptions based on genetic-related physical characteristics, such as body size, are of great concern to NAAFA.

Allowing employers access to private health and genetic information for employees' family members WILL most certainly influence their employment decisions; if not overtly, subconsciously, when considering the potential costs of absences. Extreme care needs to be taken when allowing employers access to this type of confidential information.

Alternative to Disclosing Health Information

With regard to the issue of an employee's or their spouse's choice for nondisclosure of current or past health information, NAAFA believes that it is absolutely necessary to provide an alternative to those that may choose to not disclose their personal information. The Genetic Information Nondiscrimination Act of 2008 (GINA) was created to protect individuals from genetic discrimination in health insurance and employment. This can be accomplished by allowing them to provide certification from a medical professional of their care and treatment.

BEST PRACTICES

From the 2013 *Report to Congress on Workplace Wellness*, "A wellness program is defined in section 2705(j)(1)(A) of the Public Health Service Act, as amended by the Affordable Care Act, as a program offered by an employer designed to **promote health** [emphasis added] or prevent disease."[xii]

Best practices to ensure that employer wellness programs are unbiased and, in fact, **promote health** need to be based on the evidence-based principles of Health at Every Size (HAES) in working to improve the physical, emotional and mental health of all employees and their families. These principles are aligned with the intent of the Affordable Care Act and NAAFA's mission.

A 2014 study of Mindfulness-Based Intuitive Eating concluded, "The study provides support for an intervention combining intuitive eating and mindfulness for treatment of problematic eating behaviors and body dissatisfaction…"[xiii]

Instead of focusing on weight or BMI as a measurement of health, the HAES approach removes weight from the equation and replaces it with a focus on overall well-being, which includes the full range of body shapes and sizes. For information on HAES principles, go to https://www.sizediversityandhealth.org/content.asp?id=152

Respectfully submitted:
NAAFA Board of Directors
Darliene Howell, Chair of the Board/Secretary
Peggy Howell, Vice-Chair/Public Relations Director
Tigress Osborn, Social Media Director

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