

Health Promotion Program Legal Updates (March 15, 2017)

Barbara J. Zabawa, JD, MPH



Health Promotion Program
Legal Updates
MARCH 15, 2017

↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓

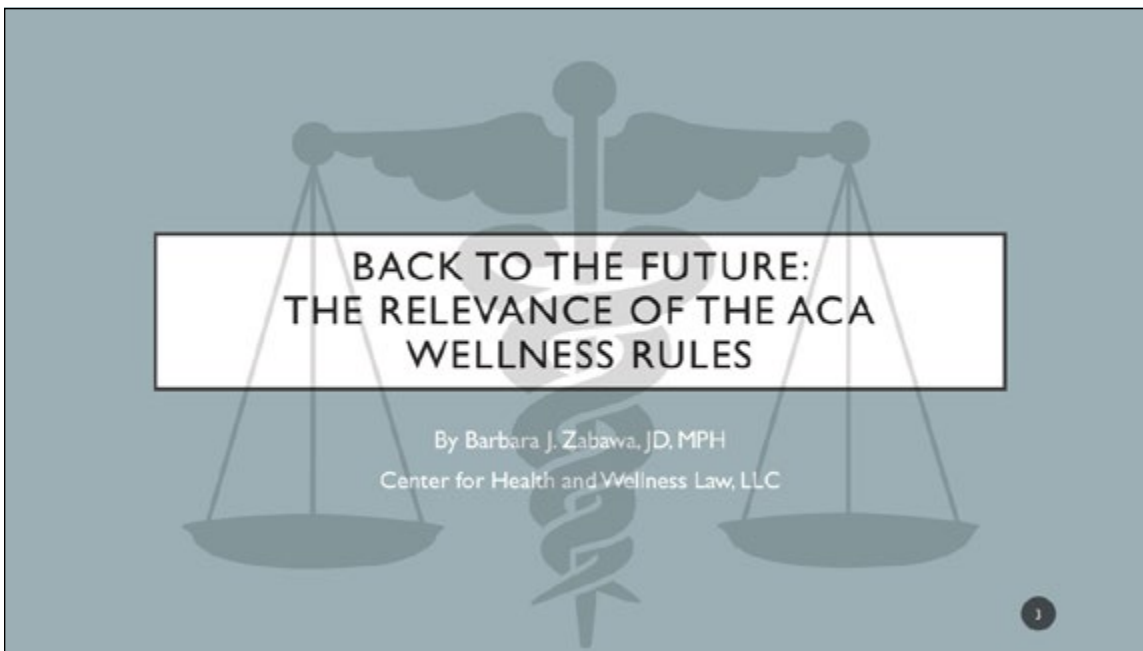
This session will be available to view again
starting **Wednesday, March 22, 2017**.

Log-in to **welcoa.org** with your Member
username and password. Visit the Webinars
section under Member Resources.

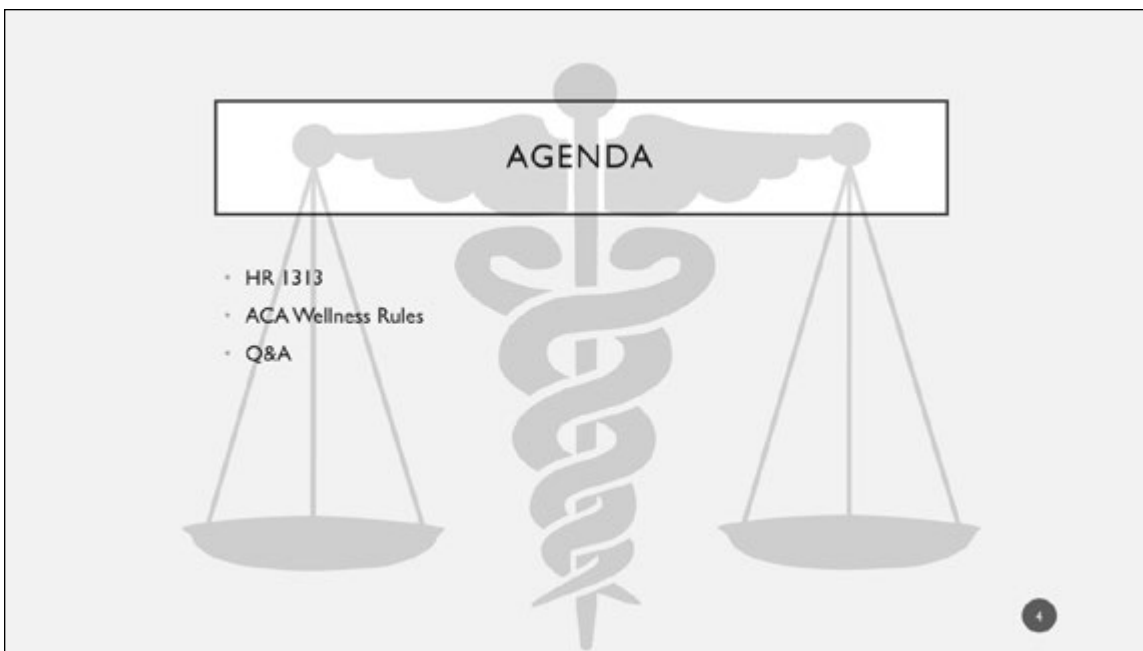
↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓

Health Promotion Program Legal Updates (March 15, 2017)

Barbara J. Zabawa, JD, MPH



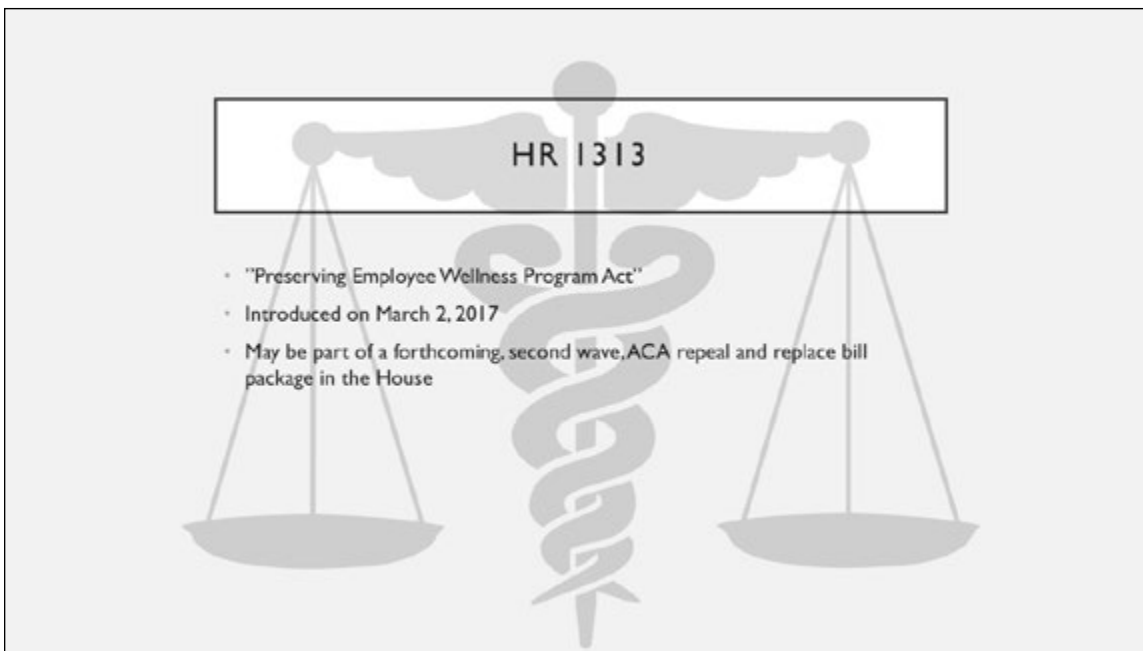
↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓



↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓

Health Promotion Program Legal Updates (March 15, 2017)

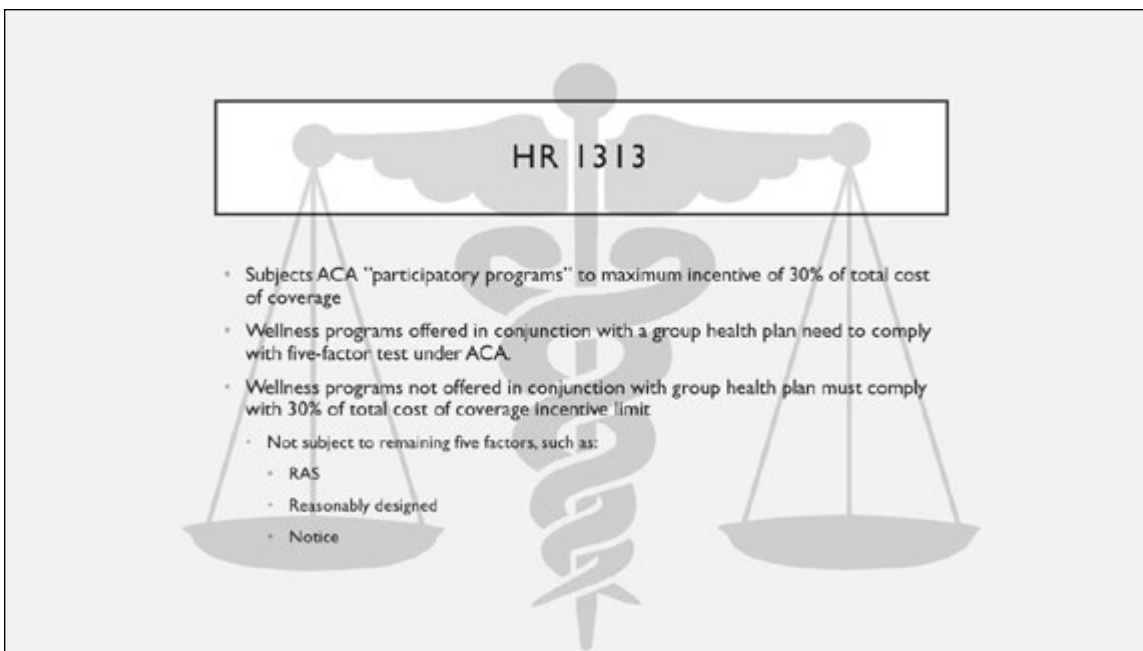
Barbara J. Zabawa, JD, MPH



HR 1313

- "Preserving Employee Wellness Program Act"
- Introduced on March 2, 2017
- May be part of a forthcoming, second wave, ACA repeal and replace bill package in the House

↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓



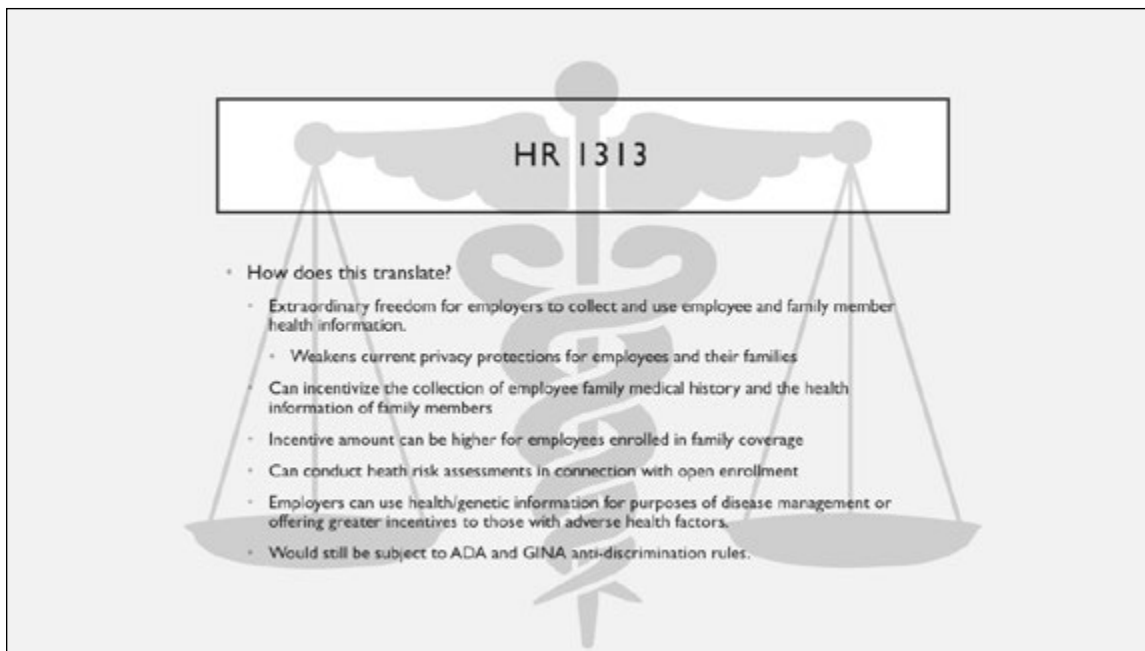
HR 1313

- Subjects ACA "participatory programs" to maximum incentive of 30% of total cost of coverage
- Wellness programs offered in conjunction with a group health plan need to comply with five-factor test under ACA.
- Wellness programs not offered in conjunction with group health plan must comply with 30% of total cost of coverage incentive limit
 - Not subject to remaining five factors, such as:
 - RAS
 - Reasonably designed
 - Notice

↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓

Health Promotion Program Legal Updates (March 15, 2017)

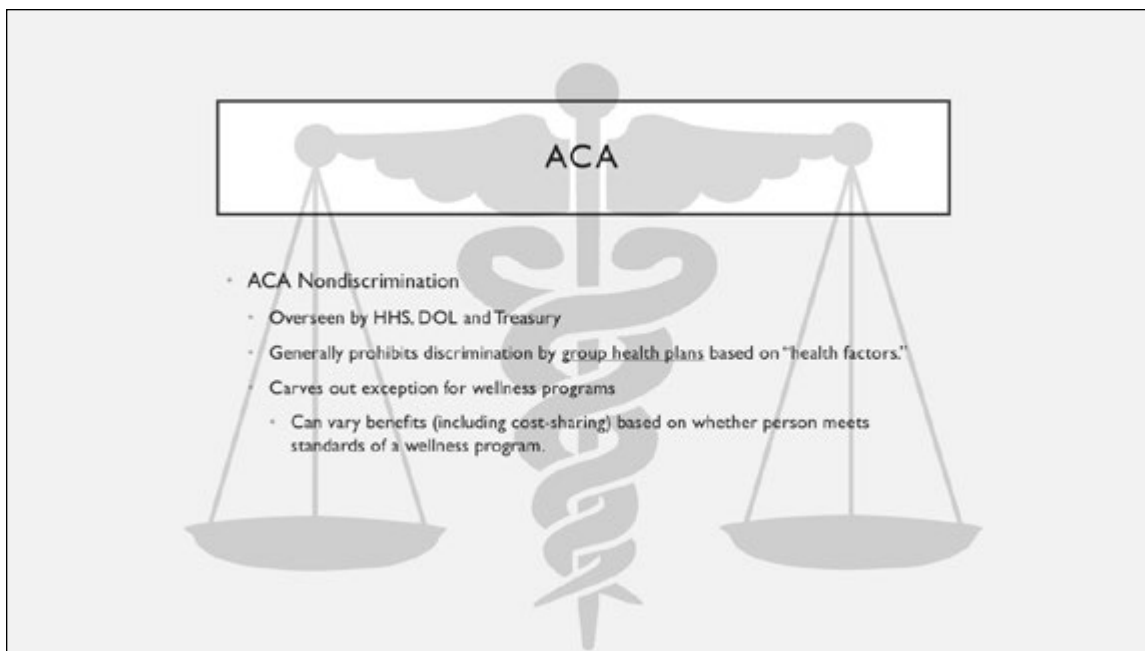
Barbara J. Zabawa, JD, MPH



HR 1313

- How does this translate?
 - Extraordinary freedom for employers to collect and use employee and family member health information.
 - Weakens current privacy protections for employees and their families
 - Can incentivize the collection of employee family medical history and the health information of family members
 - Incentive amount can be higher for employees enrolled in family coverage
 - Can conduct health risk assessments in connection with open enrollment
 - Employers can use health/genetic information for purposes of disease management or offering greater incentives to those with adverse health factors.
 - Would still be subject to ADA and GINA anti-discrimination rules.

↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓



ACA

- ACA Nondiscrimination
 - Overseen by HHS, DOL and Treasury
 - Generally prohibits discrimination by group health plans based on "health factors."
 - Carves out exception for wellness programs
 - Can vary benefits (including cost-sharing) based on whether person meets standards of a wellness program.

↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓

Health Promotion Program Legal Updates (March 15, 2017)

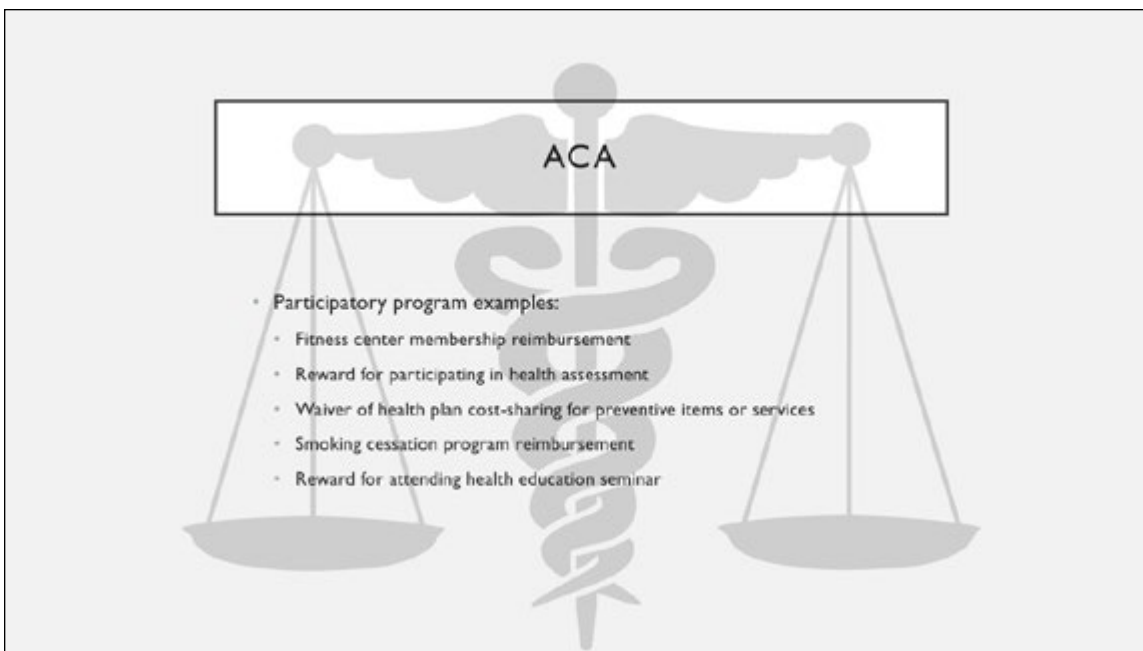
Barbara J. Zabawa, JD, MPH



ACA

- To qualify for wellness program exception, must meet certain conditions:
 - Participatory programs must only be offered to "similarly situated" individuals.
 - No limit on financial incentives.
 - Benign discrimination provision
 - Health-contingent programs must meet 5 factor test.

↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓



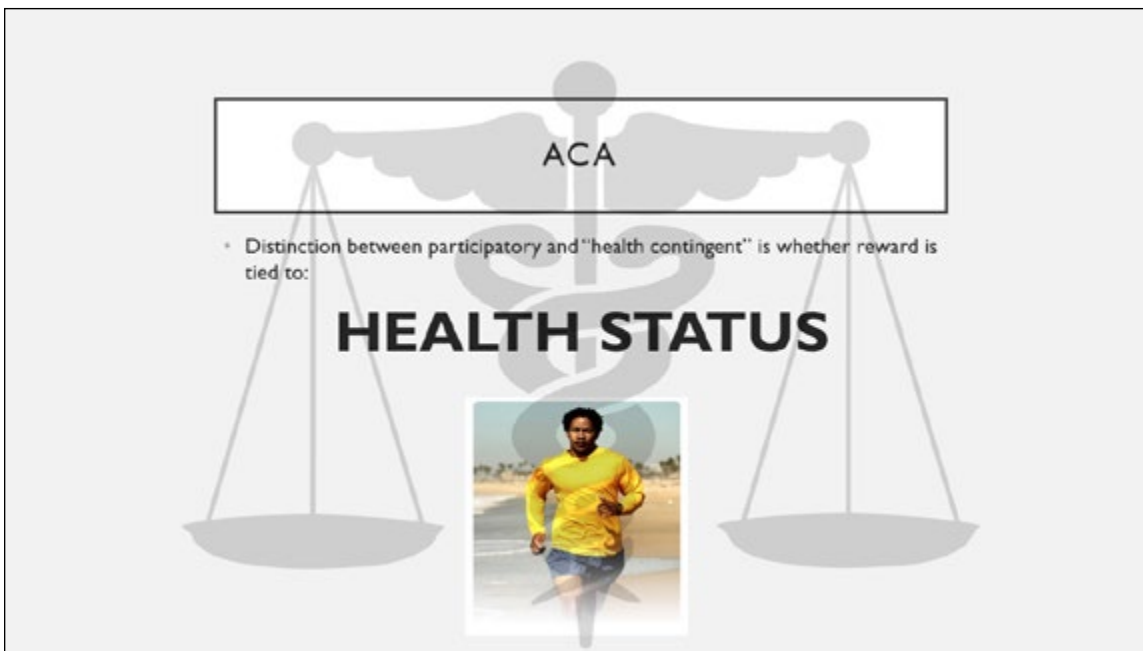
ACA

- Participatory program examples:
 - Fitness center membership reimbursement
 - Reward for participating in health assessment
 - Waiver of health plan cost-sharing for preventive items or services
 - Smoking cessation program reimbursement
 - Reward for attending health education seminar

↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓

Health Promotion Program Legal Updates (March 15, 2017)


Barbara J. Zabawa, JD, MPH



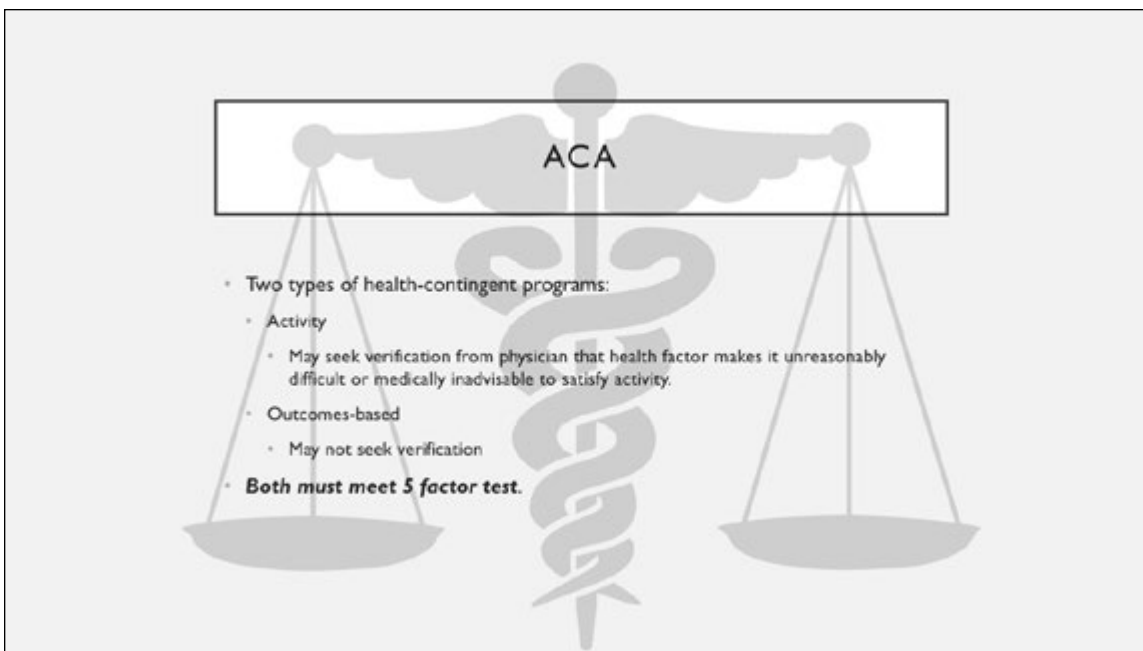
ACA

- Distinction between participatory and "health contingent" is whether reward is tied to:

HEALTH STATUS



↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓



ACA

- Two types of health-contingent programs:
 - Activity
 - May seek verification from physician that health factor makes it unreasonably difficult or medically inadvisable to satisfy activity.
 - Outcomes-based
 - May not seek verification
 - **Both must meet 5 factor test.**

↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓

Health Promotion Program Legal Updates (March 15, 2017)

Barbara J. Zabawa, JD, MPH

ACA

• Examples of Activity-Only:



↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓

ACA

• Examples of Outcomes-based:



BMI CATEGORIES:
Below 18.5=underweight
18.5-24.9=normal
25.0-29.9=overweight
Above 30.0=obese

↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓

Health Promotion Program Legal Updates (March 15, 2017)

Barbara J. Zabawa, JD, MPH



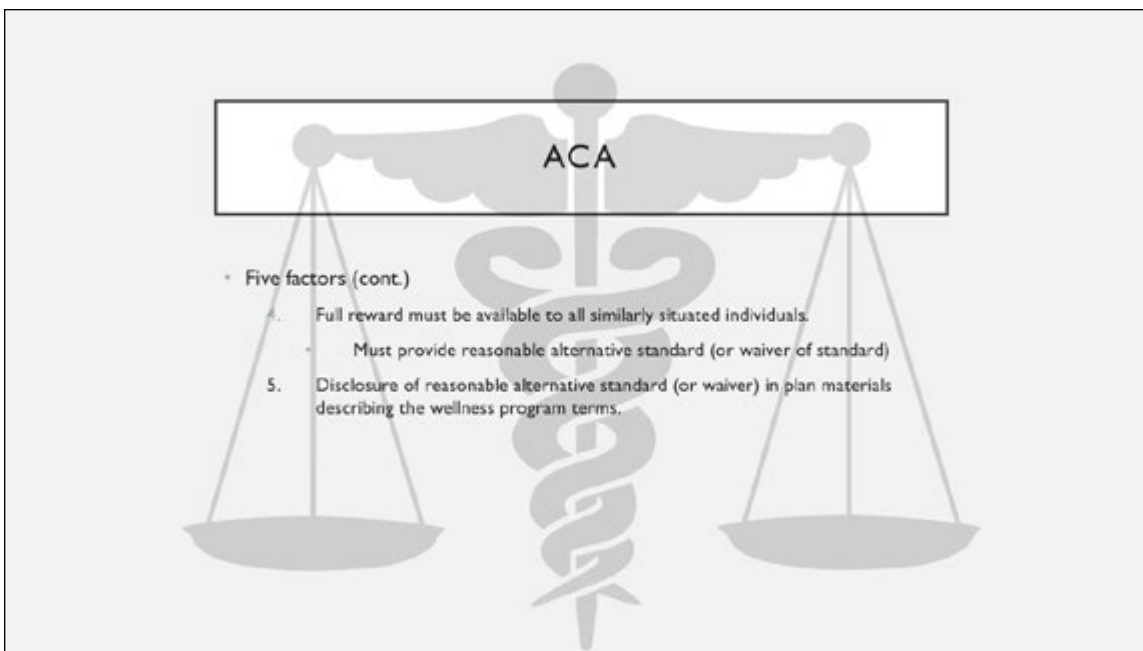
ACA

- Five factors:
 1. Qualify for the reward at least once/year.
 2. Total reward may not exceed 30% (50% for tobacco prevention programs) of total cost of coverage.
 3. Reasonable design to promote health or prevent disease.

This slide features a background with a large, faint caduceus symbol. At the top, the letters 'ACA' are enclosed in a rectangular box. Below this, a list of five factors is presented, with the first three factors visible on this slide. The text is centered and easy to read.

↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓

Empty rectangular box for notes.



ACA

- Five factors (cont.)
 4. Full reward must be available to all similarly situated individuals.
 - Must provide reasonable alternative standard (or waiver of standard)
 5. Disclosure of reasonable alternative standard (or waiver) in plan materials describing the wellness program terms.

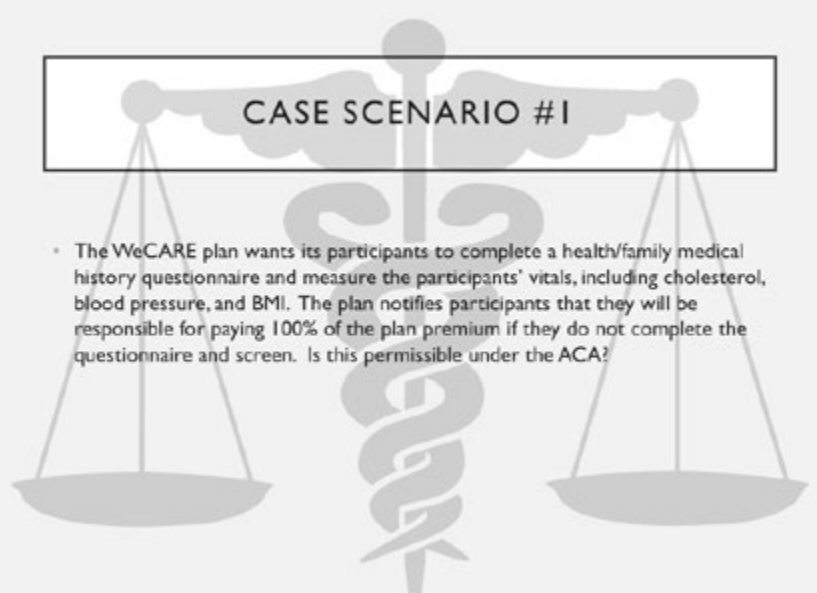
This slide continues the list of five factors from the previous slide. It features the same background with a large, faint caduceus symbol and the 'ACA' title in a box at the top. The text is centered and easy to read.

↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓

Empty rectangular box for notes.

Health Promotion Program Legal Updates (March 15, 2017)

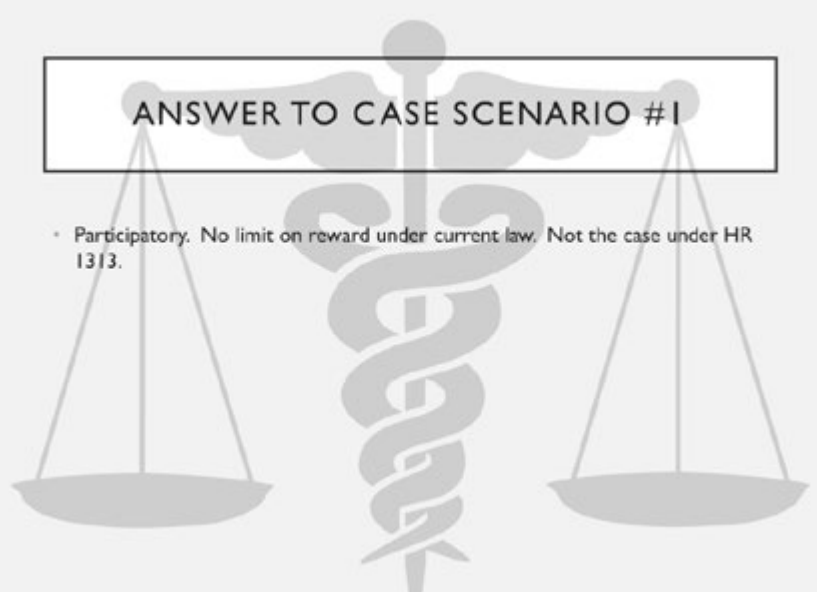
Barbara J. Zabawa, JD, MPH



CASE SCENARIO #1

- The WeCARE plan wants its participants to complete a health/family medical history questionnaire and measure the participants' vitals, including cholesterol, blood pressure, and BMI. The plan notifies participants that they will be responsible for paying 100% of the plan premium if they do not complete the questionnaire and screen. Is this permissible under the ACA?

↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓



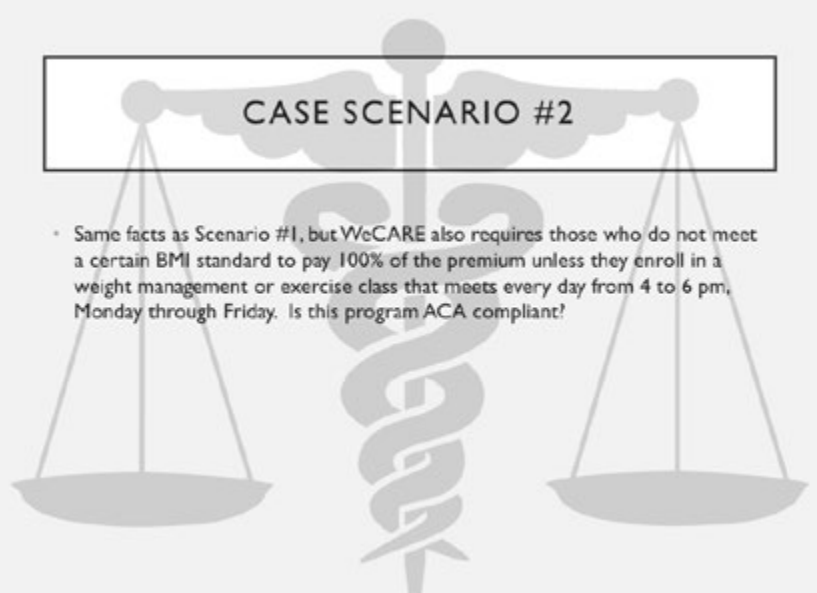
ANSWER TO CASE SCENARIO #1

- Participatory. No limit on reward under current law. Not the case under HR 1313.

↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓

Health Promotion Program Legal Updates (March 15, 2017)

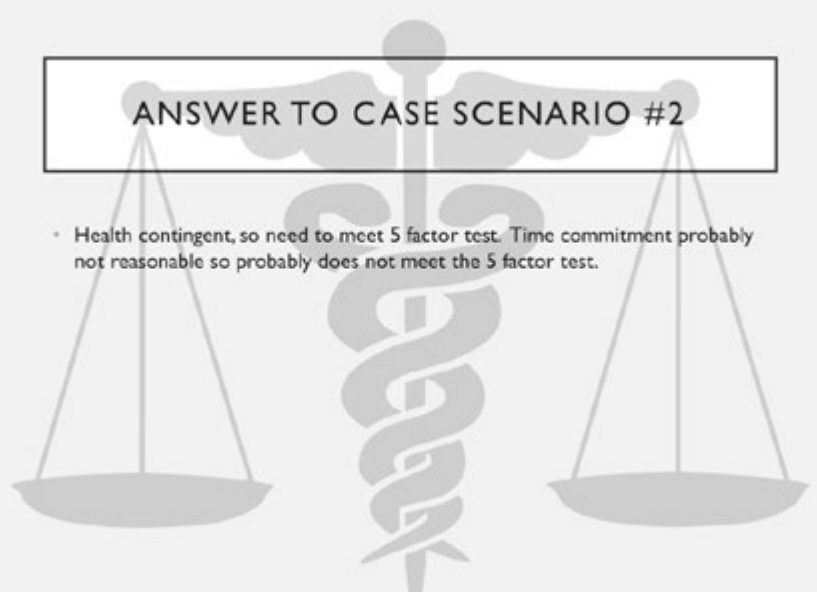
Barbara J. Zabawa, JD, MPH



CASE SCENARIO #2

- Same facts as Scenario #1, but WeCARE also requires those who do not meet a certain BMI standard to pay 100% of the premium unless they enroll in a weight management or exercise class that meets every day from 4 to 6 pm, Monday through Friday. Is this program ACA compliant?

↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓



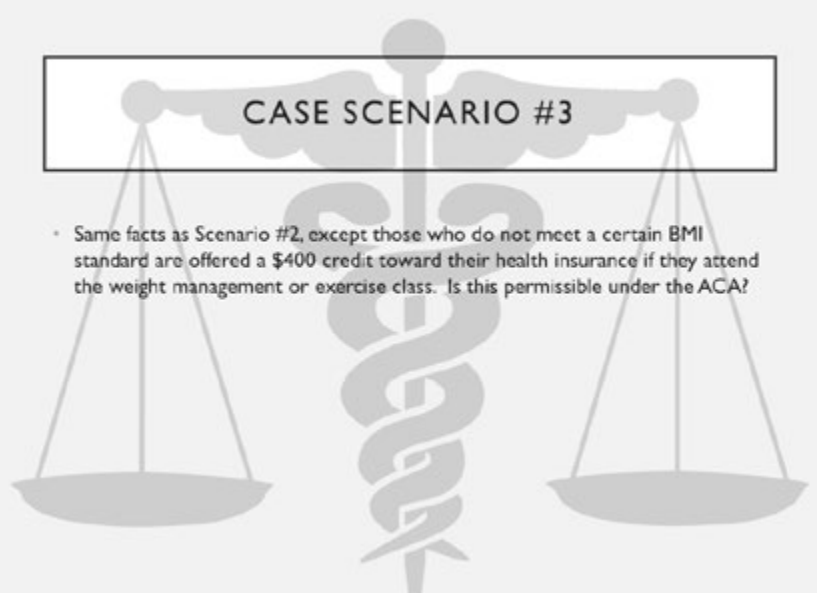
ANSWER TO CASE SCENARIO #2

- Health contingent, so need to meet 5 factor test. Time commitment probably not reasonable so probably does not meet the 5 factor test.

↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓

Health Promotion Program Legal Updates (March 15, 2017)

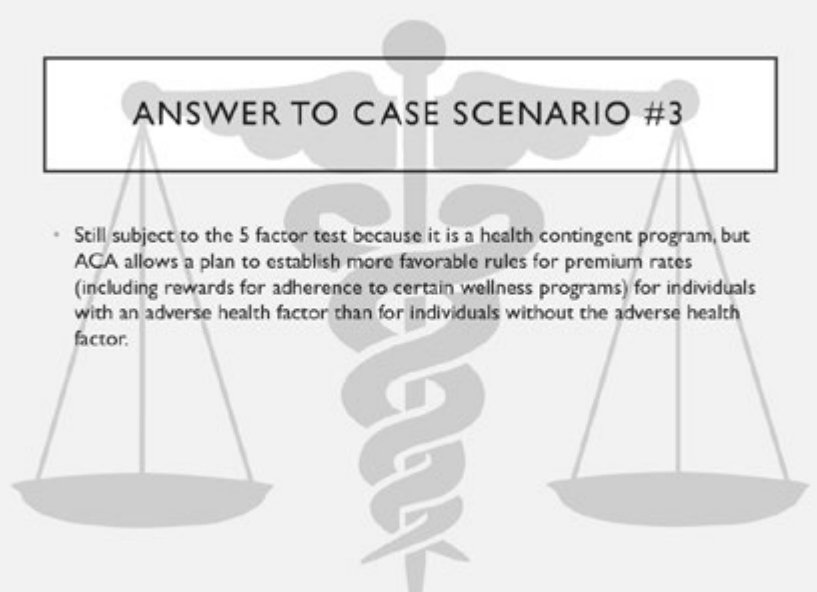
Barbara J. Zabawa, JD, MPH



CASE SCENARIO #3

- Same facts as Scenario #2, except those who do not meet a certain BMI standard are offered a \$400 credit toward their health insurance if they attend the weight management or exercise class. Is this permissible under the ACA?

↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓



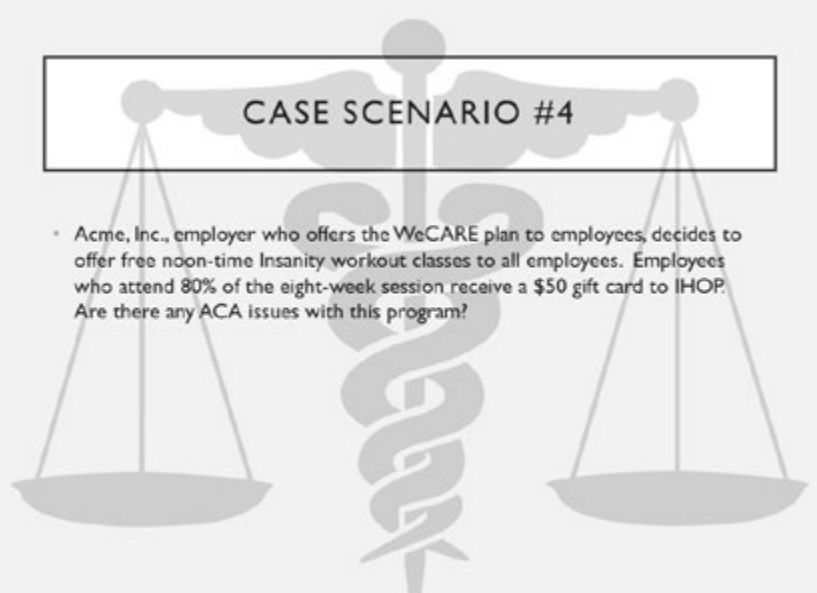
ANSWER TO CASE SCENARIO #3

- Still subject to the 5 factor test because it is a health contingent program, but ACA allows a plan to establish more favorable rules for premium rates (including rewards for adherence to certain wellness programs) for individuals with an adverse health factor than for individuals without the adverse health factor.

↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓

Health Promotion Program Legal Updates (March 15, 2017)

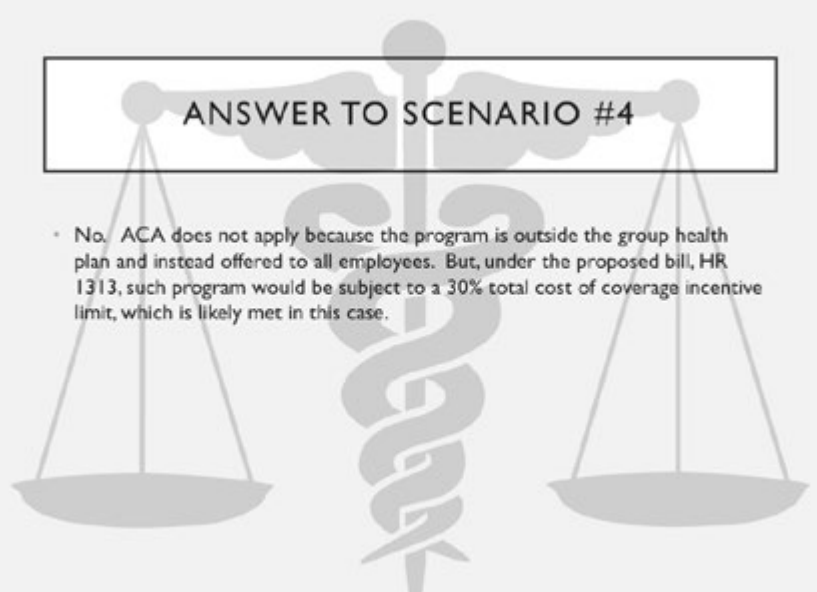
Barbara J. Zabawa, JD, MPH



CASE SCENARIO #4

- Acme, Inc., employer who offers the WeCARE plan to employees, decides to offer free noon-time Insanity workout classes to all employees. Employees who attend 80% of the eight-week session receive a \$50 gift card to IHOP. Are there any ACA issues with this program?

↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓



ANSWER TO SCENARIO #4

- No. ACA does not apply because the program is outside the group health plan and instead offered to all employees. But, under the proposed bill, HR 1313, such program would be subject to a 30% total cost of coverage incentive limit, which is likely met in this case.


↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓

Health Promotion Program Legal Updates (March 15, 2017)

Barbara J. Zabawa, JD, MPH

QUESTIONS?

- For more information, contact:
Barbara J. Zabawa, JD, MPH
The Center for Health and Wellness Law, LLC
Phone: 608-579-1267
Email: bazabawa@wellnesslaw.com

25

↓ NOTES: Using Acrobat Reader, you can now type out your notes in the space provided under each thumbnail slide. DON'T FORGET TO SAVE YOUR FILE! ↓