

112TH CONGRESS
1ST SESSION

S. 174

To improve the health of Americans and reduce health care costs by reorienting the Nation's health care system toward prevention, wellness, and health promotion.

IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 5), 2011

Mr. HARKIN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To improve the health of Americans and reduce health care costs by reorienting the Nation's health care system toward prevention, wellness, and health promotion.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Healthy Lifestyles and Prevention America Act” or the
6 “HeLP America Act”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—HEALTHIER KIDS AND SCHOOLS

- Sec. 101. Nutrition and physical activity in child care quality improvement.
- Sec. 102. Access to local foods and school gardens at preschools and child care.
- Sec. 103. Fresh fruit and vegetable program.
- Sec. 104. Equal physical activity opportunities for students with disabilities.

TITLE II—HEALTHIER COMMUNITIES AND WORKPLACES

Subtitle A—Creating Healthier Communities

- Sec. 201. Technical assistance for the development of joint use agreements.
- Sec. 202. Community sports programs for individuals with disabilities.
- Sec. 203. Community gardens.
- Sec. 204. Physical activity guidelines for Americans.
- Sec. 205. Tobacco taxes parity.
- Sec. 206. Leveraging and coordinating federal resources for improved health.

Subtitle B—Incentives for a Healthier Workforce

- Sec. 211. Tax credit to employers for costs of implementing wellness programs.
- Sec. 212. Employer-provided off-premises athletic facilities.
- Sec. 213. Task force for the promotion of breastfeeding in the workplace.
- Sec. 214. Improving healthy eating and active living options in Federal workplaces.

TITLE III—RESPONSIBLE MARKETING AND CONSUMER AWARENESS

- Sec. 301. Guidelines for reduction in sodium content in certain foods.
- Sec. 302. Nutrition labeling for food products sold principally for use in restaurants or other retail food establishments.
- Sec. 303. Front-label food guidance systems.
- Sec. 304. Rulemaking authority for advertising to children.
- Sec. 305. Health literacy: research, coordination and dissemination.
- Sec. 306. Disallowance of deductions for advertising and marketing expenses relating to tobacco product use.
- Sec. 307. Incentives to reduce tobacco use.

TITLE IV—EXPANDED COVERAGE OF PREVENTIVE SERVICES

- Sec. 401. Required coverage of preventive services under the Medicaid program.
- Sec. 402. Coverage for comprehensive workplace wellness program and preventive services.
- Sec. 403. Health professional education and training in healthy eating.

TITLE V—RESEARCH

- Sec. 501. Grants for Body Mass Index data analysis.
- Sec. 502. National assessment of mental health needs.

1 **TITLE I—HEALTHIER KIDS AND**
 2 **SCHOOLS**

3 **SEC. 101. NUTRITION AND PHYSICAL ACTIVITY IN CHILD**
 4 **CARE QUALITY IMPROVEMENT.**

5 Section 658G of the Child Care and Development
 6 Block Grant Act of 1990 (42 U.S.C. 9858e) is amended—

7 (1) by striking “choice, and” and inserting
 8 “choice,”; and

9 (2) by inserting after “referral services)” the
 10 following: “, and the provision of resources to enable
 11 eligible child care providers to meet, exceed, or sus-
 12 tain success in meeting or exceeding Federal or
 13 State high-quality program standards relating to
 14 health, mental health, nutrition, physical activity,
 15 and physical development”.

16 **SEC. 102. ACCESS TO LOCAL FOODS AND SCHOOL GARDENS**
 17 **AT PRESCHOOLS AND CHILD CARE.**

18 Section 18(g) of the Richard B. Russell National
 19 School Lunch Act (42 U.S.C. 1769(g)) is amended—

20 (1) by redesignating paragraphs (1) through
 21 (4) as paragraphs (2) through (5), respectively;

22 (2) by inserting before paragraph (2) (as reded-
 23 icated by paragraph (1)) the following:

24 “(1) DEFINITIONS.—In this subsection:

1 “(A) CHILD CARE CENTER.—The term
2 ‘child care center’ means a child care center
3 participating in the program under section 17
4 (other than a child care center that solely par-
5 ticipates in the program under subsection (r) of
6 that section).

7 “(B) SPONSORING ORGANIZATION.—The
8 term ‘sponsoring organization’ means an insti-
9 tution described in subparagraphs (C), (D), or
10 (E) of section 17(a)(2).”;

11 (3) in paragraph (2) (as so redesignated)—

12 (A) in the paragraph heading, by striking
13 “**IN GENERAL**” and inserting “**ASSISTANCE**”;

14 (B) in the matter preceding subparagraph
15 (A), by inserting “, child care centers, spon-
16 soring organizations for home-based care,”
17 after “schools”; and

18 (C) in subparagraph (A), by inserting “,
19 child care centers, sponsoring organizations for
20 home-based care,” after “schools”;

21 (4) in paragraph (3) (as so redesignated), by
22 striking “paragraph (1)” and inserting “paragraph
23 (2)”; and

24 (5) in paragraph (4) (as so redesignated)—

25 (A) in subparagraph (A)(i)—

1 (i) in subclause (I), by striking “or”;

2 (ii) in subclause (II), by striking the

3 period at the end and inserting “; or”; and

4 (iii) by adding at the end the fol-
5 lowing:

6 “(III) a consortium of at least 2

7 child care centers or sponsoring orga-

8 nizations for home-based care with

9 hands-on vegetable gardening and nu-

10 trition education that is incorporated

11 into the curriculum for 1 or more age

12 groups at 2 or more eligible centers or

13 family child care homes supported by

14 sponsoring organizations for home-

15 based care.”; and

16 (B) in subparagraph (F), by striking

17 “paragraph (1)(H)” and inserting “paragraph

18 (2)(H)”.

19 **SEC. 103. FRESH FRUIT AND VEGETABLE PROGRAM.**

20 Section 19 of the Richard B. Russell National School

21 Lunch Act (42 U.S.C. 1769a) is amended—

22 (1) by striking subsections (c) and (d) and in-

23 serting the following:

24 “(c) SCHOOL PARTICIPATION.—

1 “(1) IN GENERAL.—Each State shall carry out
2 the program in each elementary school (as defined
3 in section 9101 of the Elementary and Secondary
4 Education Act of 1965 (20 U.S.C. 7801)) in the
5 State—

6 “(A) in which not less than 50 percent of
7 the students are eligible for free or reduced
8 price meals under this Act; and

9 “(B) that submits an application in ac-
10 cordance with paragraph (2).

11 “(2) APPLICATION.—

12 “(A) IN GENERAL.—An interested elemen-
13 tary school shall submit to the State an applica-
14 tion containing—

15 “(i) information pertaining to the per-
16 centage of students enrolled in the school
17 who are eligible for free or reduced price
18 school lunches under this Act;

19 “(ii) a certification of support for par-
20 ticipation in the program signed by the
21 school food manager, the school principal,
22 and the district superintendent (or equiva-
23 lent positions, as determined by the
24 school);

1 “(iii) a plan for implementation of the
2 program, including efforts to integrate ac-
3 tivities carried out under this section with
4 other efforts to promote sound health and
5 nutrition, reduce overweight and obesity,
6 or promote physical activity; and

7 “(iv) such other information as may
8 be requested by the Secretary.

9 “(B) PARTNERSHIPS.—Each State shall
10 encourage interested elementary schools to sub-
11 mit a plan for implementation of the program
12 that includes a partnership with 1 or more enti-
13 ties that will provide non-Federal resources (in-
14 cluding entities representing the fruit and vege-
15 table industry).”;

16 (2) by striking subsection (i) and inserting the
17 following:

18 “(i) FUNDING.—

19 “(1) IN GENERAL.—Out of any funds in the
20 Treasury not otherwise appropriated, the Secretary
21 of the Treasury shall transfer to the Secretary to
22 carry out this section such sums as are necessary,
23 to remain available until expended.

24 “(2) RECEIPT AND ACCEPTANCE.—The Sec-
25 retary shall be entitled to receive, shall accept, and

1 shall use to carry out this section the funds trans-
2 ferred under paragraph (1), without further appro-
3 priation.”; and

4 (3) by redesignating subsections (e) through (i)
5 as subsections (d) through (h), respectively.

6 **SEC. 104. EQUAL PHYSICAL ACTIVITY OPPORTUNITIES FOR**
7 **STUDENTS WITH DISABILITIES.**

8 (a) IN GENERAL.—Title V of the Rehabilitation Act
9 of 1973 (29 U.S.C. 791 et seq.) is amended by adding
10 at the end the following:

11 **“SEC. 511. EQUAL PHYSICAL ACTIVITY OPPORTUNITIES**
12 **FOR STUDENTS WITH DISABILITIES.**

13 “(a) IN GENERAL.—The Secretary shall promote
14 equal opportunities for students with disabilities to be in-
15 cluded and to participate in physical education and extra-
16 curricular athletics implemented in, or in conjunction
17 with, elementary schools, secondary schools, and institu-
18 tions of higher education, by ensuring the provision of ap-
19 propriate technical assistance and guidance for schools
20 and institutions described in this subsection and their per-
21 sonnel.

22 “(b) TECHNICAL ASSISTANCE AND GUIDANCE.—The
23 provision of technical assistance and guidance described
24 in subsection (a) shall include—

1 “(1) providing technical assistance to elemen-
2 tary schools, secondary schools, local educational
3 agencies, State educational agencies, and institutions
4 of higher education, regarding—

5 “(A) inclusion and participation of stu-
6 dents with disabilities, in a manner equal to
7 that of the other students, in physical education
8 opportunities (including classes), and extra-
9 curricular athletics opportunities, including
10 technical assistance on providing reasonable
11 modifications to policies, practices, and proce-
12 dures, and providing supports to ensure such
13 inclusion and participation;

14 “(B) provision of adaptive sports pro-
15 grams, in the physical education and extra-
16 curricular athletics opportunities, including pro-
17 grams with competitive sports leagues or com-
18 petitions, for students with disabilities; and

19 “(C) responsibilities of the schools, institu-
20 tions, and agencies involved under section 504,
21 the Americans with Disabilities Act of 1990 (42
22 U.S.C. 12101 et seq.), and any other applicable
23 Federal law to provide students with disabilities
24 equal access to extracurricular athletics;

1 “(2) facilitating information sharing among the
2 schools, institutions, and agencies, and students with
3 disabilities, on ways to provide inclusive opportuni-
4 ties in physical education and extracurricular ath-
5 letics for students with disabilities; and

6 “(3) monitoring the extent to which physical
7 education and extracurricular athletics opportunities
8 for students with disabilities are implemented in, or
9 in conjunction with, elementary schools, secondary
10 schools, and institutions of higher education.

11 “(c) DEFINITIONS.—In this section:

12 “(1) AGENCIES.—The terms ‘local educational
13 agency’ and ‘State educational agency’ have the
14 meanings given the terms in section 9101 of the Ele-
15 mentary and Secondary Education Act of 1965 (20
16 U.S.C. 7801).

17 “(2) SCHOOLS.—The terms ‘elementary school’,
18 ‘secondary school’, and ‘institution of higher edu-
19 cation’ mean an elementary school, secondary school,
20 or institution of higher education, respectively (as
21 defined in section 9101 of the Elementary and Sec-
22 ondary Education Act of 1965), that receives or has
23 1 or more students that receive, Federal financial
24 assistance.

25 “(3) STUDENT WITH A DISABILITY.—

1 “(A) IN GENERAL.—The term ‘student
2 with a disability’ means an individual who—

3 “(i) attends an elementary school, sec-
4 ondary school, or institution of higher edu-
5 cation; and

6 “(ii) who—

7 “(I) is eligible for, and receiving,
8 special education or related services
9 under part B of the Individuals with
10 Disabilities Education Act (20 U.S.C.
11 1411 et seq.); or

12 “(II) is an individual with a dis-
13 ability, for purposes of section 504 or
14 the Americans with Disabilities Act of
15 1990.

16 “(B) STUDENTS WITH DISABILITIES.—The
17 term ‘students with disabilities’ means more
18 than 1 student with a disability.”.

19 (b) TABLE OF CONTENTS.—The table of contents in
20 section 1(b) of the Rehabilitation Act of 1973 is amended
21 by inserting after the item relating to section 509 the fol-
22 lowing:

“Sec. 510. Establishment of standards for accessible medical diagnostic equip-
ment.

“Sec. 511. Equal physical activity opportunities for students with disabilities.”.

1 **TITLE II—HEALTHIER COMMU-**
2 **NITIES AND WORKPLACES**
3 **Subtitle A—Creating Healthier**
4 **Communities**

5 **SEC. 201. TECHNICAL ASSISTANCE FOR THE DEVELOP-**
6 **MENT OF JOINT USE AGREEMENTS.**

7 (a) IN GENERAL.—The Secretary of Health and
8 Human Services, acting through the Director of the Cen-
9 ters for Disease Control and Prevention and in coordina-
10 tion with the Secretary of Education and in consultation
11 with leading national experts and organizations advancing
12 healthy living in the school environment, shall develop and
13 disseminate guidelines and best practices, including model
14 documents, and provide technical assistance to elementary
15 and secondary schools to assist such schools with the de-
16 velopment of joint use agreements so as to address liabil-
17 ity, operational and management, and cost issues that may
18 otherwise impede the ability of community members to use
19 school facilities for recreational and nutritional purposes
20 during nonschool hours.

21 (b) DEFINITION.—In this section, the term “joint use
22 agreement” means a formal agreement between an ele-
23 mentary or secondary school and another entity relating
24 to the use of the school’s facilities, equipment, or property,
25 including recreational and food services facilities, equip-

1 ment, and property, by individuals other than the school's
2 students or staff.

3 **SEC. 202. COMMUNITY SPORTS PROGRAMS FOR INDIVID-**
4 **UALS WITH DISABILITIES.**

5 Part P of title III of the Public Health Service Act
6 (42 U.S.C. 280g et seq.) is amended by adding at the end
7 the following:

8 **“SEC. 399V-5. COMMUNITY SPORTS PROGRAMS FOR INDI-**
9 **VIDUALS WITH DISABILITIES.**

10 “(a) IN GENERAL.—

11 “(1) INDIVIDUAL WITH A DISABILITY DE-
12 FINED.—For purposes of this section, the term ‘in-
13 dividual with a disability’ means any person who has
14 a disability as defined in section 3 of the Americans
15 with Disabilities Act of 1990 (42 U.S.C. 12102).

16 “(2) INDIVIDUAL WITH A PHYSICAL DIS-
17 ABILITY.—The term ‘individual with a physical dis-
18 ability’ means an individual with a disability that
19 has a physical or visual disability.

20 “(3) COMMUNITY SPORTS GRANTS PROGRAM.—

21 The Secretary, in collaboration with the National
22 Advisory Committee on Community Sports Pro-
23 grams for Individuals with Disabilities, may award
24 grants on a competitive basis to public and nonprofit
25 private entities to implement community-based,

1 sports and athletic programs for individuals with
2 disabilities, including youth with disabilities.

3 “(b) APPLICATION.—To be eligible to receive a grant
4 under this section, a public or nonprofit private entity
5 shall submit to the Secretary an application at such time,
6 in such manner, and containing such agreements, assur-
7 ances, and information as the Secretary determines to be
8 necessary to carry out this section.

9 “(c) AUTHORIZED ACTIVITIES.—Amounts awarded
10 under a grant under subsection (a) shall be used for—

11 “(1) community-based sports programs,
12 leagues, or competitions in individual or team sports
13 for individuals with physical disabilities;

14 “(2) regional sports programs or competitions
15 in individual or team sports for individuals with
16 physical disabilities;

17 “(3) the development of competitive team and
18 individual sports programs for individuals with dis-
19 abilities at the high school and collegiate level; or

20 “(4) the development of mentoring programs to
21 encourage participation in sports programs for indi-
22 viduals with disabilities, including individuals with
23 recently acquired disabilities.

24 “(d) PRIORITIES.—

1 “(1) ADVISORY COMMITTEE.—The Secretary
2 shall establish a National Advisory Committee on
3 Community Sports Programs for Individuals with
4 Disabilities that shall—

5 “(A) establish priorities for the implemen-
6 tation of this section;

7 “(B) review grant proposals;

8 “(C) make recommendations for distribu-
9 tion of the available appropriated funds to spe-
10 cific applicants; and

11 “(D) annually evaluate the progress of pro-
12 grams carried out under this section in imple-
13 menting such priorities.

14 “(2) REPRESENTATION.—The Advisory Com-
15 mittee established under paragraph (1) shall include
16 representatives of—

17 “(A) the Department of Health and
18 Human Services Office on Disability;

19 “(B) the United States Surgeon General;

20 “(C) the Centers for Disease Control and
21 Prevention;

22 “(D) disabled sports organizations;

23 “(E) organizations that represent the in-
24 terests of individuals with disabilities; and

1 “(F) individuals with disabilities (including
2 athletes with physical disabilities) or their fam-
3 ily members.

4 “(e) DISSEMINATION OF INFORMATION.—The Sec-
5 retary shall disseminate information about the availability
6 of grants under this section in a manner that is designed
7 to reach public entities and nonprofit private organizations
8 that are dedicated to providing outreach, advocacy, or
9 independent living services to individuals with disabilities.

10 “(f) TECHNICAL ASSISTANCE.—The Secretary, in
11 conjunction with the United States Olympic Committee
12 and disabled sports organizations, shall establish a tech-
13 nical assistance center to provide training, support, and
14 information to grantees under this section on establishing
15 and operating community sports programs for individuals
16 with disabilities.

17 “(g) REPORT TO CONGRESS.—Not later than 180
18 days after the date of the enactment of this section, and
19 annually thereafter, the Secretary shall submit to Con-
20 gress a report summarizing activities, findings, outcomes,
21 and recommendations resulting from the grant projects
22 funded under this section during the year for which the
23 report is being prepared.

24 “(h) AUTHORIZATION OF APPROPRIATIONS.—

1 “(1) IN GENERAL.—To carry out this section,
2 there are authorized to be appropriated such sums
3 as may be necessary.

4 “(2) LIMITATION.—Not to exceed 10 percent of
5 the amount appropriated in each fiscal year shall be
6 used to carry out activities under subsection
7 (c)(4).”.

8 **SEC. 203. COMMUNITY GARDENS.**

9 Subtitle D of title X of the Food, Conservation, and
10 Energy Act of 2008 (Public Law 110–246; 122 Stat.
11 2109) is amended by adding at the end the following:

12 **“SEC. 10405. COMMUNITY GARDEN GRANT PROGRAM.**

13 “(a) DEFINITIONS.—In this section:

14 “(1) ELIGIBLE ENTITY.—The term ‘eligible en-
15 tity’ means—

16 “(A) a nonprofit organization; or

17 “(B) a unit of general local government, or
18 tribal government, located on tribal land or in
19 a low-income community.

20 “(2) LOW-INCOME COMMUNITY.—The term
21 ‘low-income community’ means—

22 “(A) a community in which not less than
23 50 percent of children are eligible for free or re-
24 duced priced meals under the Richard B. Rus-

1 sell National School Lunch Act (42 U.S.C.
2 1751 et seq.); or

3 “(B) any other community determined by
4 the Secretary to be low-income for purposes of
5 this section.

6 “(3) UNIT OF GENERAL LOCAL GOVERN-
7 MENT.—The term ‘unit of general local government’
8 has the meaning given the term in section 102 of the
9 Housing and Community Development Act of 1974
10 (42 U.S.C. 5302).

11 “(b) PROGRAM ESTABLISHED.—Using such amounts
12 as are appropriated to carry out this section, the Secretary
13 shall award grants to eligible entities to expand, establish,
14 or maintain community gardens.

15 “(c) APPLICATION.—To be considered for a grant
16 under this section, an eligible entity shall submit to the
17 Secretary an application at such time, in such manner,
18 and containing such information as the Secretary may re-
19 quire, including—

20 “(1) an assurance that priority for hiring for
21 jobs created by the expansion, establishment, or
22 maintenance of a community garden funded with a
23 grant received under this section will be given to in-
24 dividuals who reside in the community in which the
25 garden is located; and

1 “(2) a demonstration that the eligible entity is
2 committed to providing non-Federal financial or in-
3 kind support (such as providing a water supply) for
4 the community garden for which the entity receives
5 funds under this section.”.

6 **SEC. 204. PHYSICAL ACTIVITY GUIDELINES FOR AMERI-**
7 **CANS.**

8 (a) REPORT.—

9 (1) IN GENERAL.—At least every 5 years, the
10 Secretary of Health and Human Services (in this
11 Act referred to as the “Secretary”) shall publish a
12 report entitled “Physical Activity Guidelines for
13 Americans”. Each such report shall contain physical
14 activity information and guidelines for the general
15 public, and shall be promoted by each Federal agen-
16 cy in carrying out any Federal health program.

17 (2) BASIS OF GUIDELINES.—The information
18 and guidelines contained in each report required
19 under paragraph (1) shall be based on the prepon-
20 derance of the scientific and medical knowledge
21 which is current at the time the report is prepared,
22 and shall include guidelines for identified population
23 subgroups, including children, if the preponderance
24 of scientific and medical knowledge indicates those

1 subgroups require different levels of physical activ-
2 ity.

3 (b) APPROVAL BY SECRETARY.—

4 (1) REVIEW.—Any Federal agency that pro-
5 poses to issue any physical activity guidance for the
6 general population or identified population sub-
7 groups shall submit the text of such guidance to the
8 Secretary for a 60-day review period.

9 (2) BASIS OF REVIEW.—

10 (A) IN GENERAL.—During the 60-day re-
11 view period established in paragraph (1), the
12 Secretary shall review and approve or dis-
13 approve such guidance to assure that the guid-
14 ance either is consistent with the “Physical Ac-
15 tivity Guidelines for Americans” or that the
16 guidance is based on medical or new scientific
17 knowledge which is determined to be valid by
18 the Secretary. If after such 60-day review pe-
19 riod the Secretary has not notified the pro-
20 posing agency that such guidance has been dis-
21 approved, then such guidance may be issued by
22 the agency. If the Secretary disapproves such
23 guidance, it shall be returned to the agency. If
24 the Secretary finds that such guidance is incon-
25 sistent with the “Physical Activity Guidelines

1 for Americans” and so notifies the proposing
2 agency, such agency shall follow the procedures
3 set forth in this subsection before disseminating
4 such proposal to the public in final form. If
5 after such 60-day period, the Secretary dis-
6 approves such guidance as inconsistent with the
7 “Physical Activity Guidelines for Americans”
8 the proposing agency shall—

9 (i) publish a notice in the Federal
10 Register of the availability of the full text
11 of the proposal and the preamble of such
12 proposal which shall explain the basis and
13 purpose for the proposed physical activity
14 guidance;

15 (ii) provide in such notice for a public
16 comment period of 30 days; and

17 (iii) make available for public inspec-
18 tion and copying during normal business
19 hours any comment received by the agency
20 during such comment period.

21 (B) REVIEW OF COMMENTS.—After review
22 of comments received during the comment pe-
23 riod, the Secretary may approve for dissemina-
24 tion by the proposing agency a final version of
25 such physical activity guidance along with an

1 explanation of the basis and purpose for the
2 final guidance which addresses significant and
3 substantive comments as determined by the
4 proposing agency.

5 (C) ANNOUNCEMENT.—Any such final
6 physical activity guidance to be disseminated
7 under subparagraph (B) shall be announced in
8 a notice published in the Federal Register, be-
9 fore public dissemination along with an address
10 where copies may be obtained.

11 (D) NOTIFICATION OF DISAPPROVAL.—If
12 after the 30-day period for comment as pro-
13 vided under subparagraph (A)(ii), the Secretary
14 disapproves a proposed physical activity guid-
15 ance, the Secretary shall notify the Federal
16 agency submitting such guidance of such dis-
17 approval, and such guidance may not be issued,
18 except as provided in subparagraph (E).

19 (E) REVIEW OF DISAPPROVAL.—If a pro-
20 posed physical activity guidance is disapproved
21 by the Secretary under subparagraph (D), the
22 Federal agency proposing such guidance may,
23 within 15 days after receiving notification of
24 such disapproval under subparagraph (D), re-
25 quest the Secretary to review such disapproval.

1 Within 15 days after receiving a request for
2 such a review, the Secretary shall conduct such
3 review. If, pursuant to such review, the Sec-
4 retary approves such proposed physical activity
5 guidance, such guidance may be issued by the
6 Federal agency.

7 (3) DEFINITIONS.—In this subsection:

8 (A) The term “physical activity guidance
9 for the general population” does not include
10 any rule or regulation issued by a Federal agen-
11 cy.

12 (B) The term “identified population sub-
13 groups” shall include, but not be limited to,
14 groups based on factors such as age, sex, race,
15 or physical disability.

16 (c) EXISTING AUTHORITY NOT AFFECTED.—This
17 section does not place any limitations on—

18 (1) the conduct or support of any scientific or
19 medical research by any Federal agency; or

20 (2) the presentation of any scientific or medical
21 findings or the exchange or review of scientific or
22 medical information by any Federal agency.

23 **SEC. 205. TOBACCO TAXES PARITY.**

24 (a) INCREASE IN EXCISE TAX ON SMALL CIGA-
25 RETTES AND SMALL CIGARS.—

1 (1) Section 5701(a)(1) of the Internal Revenue
2 Code of 1986 is amended by striking “\$50.33” and
3 inserting “\$77.83”.

4 (2) Section 5701(b)(1) of the Internal Revenue
5 Code of 1986 is amended by striking “\$50.33” and
6 inserting “\$77.83”

7 (b) TAX PARITY FOR PIPE TOBACCO AND ROLL-
8 YOUR-OWN TOBACCO.—

9 (1) Section 5701(f) of the Internal Revenue
10 Code of 1986 is amended by striking “\$2.8311
11 cents” and inserting “\$38.32”.

12 (2) Section 5701(g) of the Internal Revenue
13 Code of 1986 is amended by striking “\$24.78” and
14 inserting “\$38.32”.

15 (c) CLARIFICATION OF DEFINITION OF SMALL CI-
16 GARS.—Paragraphs (1) and (2) of section 5701(a) of the
17 Internal Revenue Code of 1986 are each amended by
18 striking “three pounds per thousand” and inserting “four
19 and one-half pounds per thousand”.

20 (d) CLARIFICATION OF DEFINITION OF CIGA-
21 RETTE.—Paragraph (2) of section 5702(b) of the Internal
22 Revenue Code of 1986 is amended by insert before the
23 final period the following: “, which includes any roll for
24 smoking containing tobacco that weighs no more than four
25 and a half pounds per thousand, unless it is wrapped in

1 whole tobacco leaf and does not have a cellulose acetate
2 or other cigarette-style filter”.

3 (e) TAX PARITY FOR SMOKELESS TOBACCO.—

4 (1) Section 5701(e) of the Internal Revenue
5 Code of 1986 is amended—

6 (A) in paragraph (1), by striking “\$1.51”
7 and inserting “\$20.75”;

8 (B) in paragraph (2), by striking “50.33
9 cents” and inserting “\$8.30”; and

10 (C) by adding at the end the following:

11 “(3) SMOKELESS TOBACCO SOLD IN DISCRETE
12 SINGLE-USE UNITS.—On discrete single-use units,
13 \$77.83 per each 1,000 single-use units.”.

14 (2) Section 5702(m) of the Internal Revenue
15 Code of 1986 is amended—

16 (A) in paragraph (1), “or chewing to-
17 bacco” and inserting “chewing tobacco, discrete
18 single-use unit”;

19 (B) in paragraphs (2) and (3), by inserting
20 “that is not a discrete single-use unit” before
21 the period in each such paragraph;

22 (C) by adding at the end the following:

23 “(4) DISCRETE SINGLE-USE UNIT.—The term
24 ‘discrete single-use unit’ means any product con-
25 taining tobacco that—

1 “(A) is intended or expected to be con-
2 sumed without being combusted; and

3 “(B) is in the form of a lozenge, tablet,
4 pill, pouch, dissolvable strip, or other discrete
5 single-use or single-dose unit.”.

6 (f) CLARIFYING OTHER TOBACCO TAX DEFINI-
7 TIONS.—

8 (1) TOBACCO PRODUCT DEFINITION.—Section
9 5702(c) of the Internal Revenue Code of 1986 is
10 amended by inserting before the period the fol-
11 lowing: “, and any other product containing tobacco
12 that is intended or expected to be consumed”.

13 (2) CIGARETTE PAPER DEFINITION.—Section
14 5702(e) of the Internal Revenue Code of 1986 is
15 amended by striking “except tobacco,” and inserting
16 “or cigar”.

17 (3) CIGARETTE TUBE DEFINITION.—Section
18 5702(f) of the Internal Revenue Code of 1986 is
19 amended by inserting before the period “or cigars”.

20 (4) IMPORTER DEFINITION.—Section 5702(k)
21 of the Internal Revenue Code of 1986 is amended by
22 inserting “or any other tobacco product” after “ci-
23 gars or cigarettes”.

24 (g) FLOOR STOCKS TAXES.—

1 (1) IMPOSITION OF TAX.—On tobacco products
2 manufactured in or imported into the United States
3 which are removed before any tax increase date and
4 held on such date for sale by any person, there is
5 hereby imposed a tax in an amount equal to the ex-
6 cess of—

7 (A) the tax which would be imposed under
8 section 5701 of the Internal Revenue Code of
9 1986 on the article if the article had been re-
10 moved on such date, over

11 (B) the prior tax (if any) imposed under
12 section 5701 of such Code on such article.

13 (2) CREDIT AGAINST TAX.—Each person shall
14 be allowed as a credit against the taxes imposed by
15 paragraph (1) an amount equal to \$500. Such credit
16 shall not exceed the amount of taxes imposed by
17 paragraph (1) on such date for which such person
18 is liable.

19 (3) LIABILITY FOR TAX AND METHOD OF PAY-
20 MENT.—

21 (A) LIABILITY FOR TAX.—A person hold-
22 ing tobacco products on any tax increase date
23 to which any tax imposed by paragraph (1) ap-
24 plies shall be liable for such tax.

1 (B) METHOD OF PAYMENT.—The tax im-
2 posed by paragraph (1) shall be paid in such
3 manner as the Secretary shall prescribe by reg-
4 ulations.

5 (C) TIME FOR PAYMENT.—The tax im-
6 posed by paragraph (1) shall be paid on or be-
7 fore the date that is 120 days after the effective
8 date of the tax rate increase.

9 (4) ARTICLES IN FOREIGN TRADE ZONES.—
10 Notwithstanding the Act of June 18, 1934 (com-
11 monly known as the Foreign Trade Zone Act, 48
12 Stat. 998, 19 U.S.C. 81a et seq.) or any other provi-
13 sion of law, any article which is located in a foreign
14 trade zone on any tax increase date shall be subject
15 to the tax imposed by paragraph (1) if—

16 (A) internal revenue taxes have been deter-
17 mined, or customs duties liquidated, with re-
18 spect to such article before such date pursuant
19 to a request made under the 1st proviso of sec-
20 tion 3(a) of such Act, or

21 (B) such article is held on such date under
22 the supervision of an officer of the United
23 States Customs and Border Protection of the
24 Department of Homeland Security pursuant to
25 the 2d proviso of such section 3(a).

1 (5) DEFINITIONS.—For purposes of this sub-
2 section—

3 (A) IN GENERAL.—Any term used in this
4 subsection which is also used in section 5702 of
5 such Code shall have the same meaning as such
6 term has in such section.

7 (B) TAX INCREASE DATE.—The term “tax
8 increase date” means the effective date of any
9 increase in any tobacco product excise tax rate
10 pursuant to the amendments made by this sec-
11 tion.

12 (C) SECRETARY.—The term “Secretary”
13 means the Secretary of the Treasury or the
14 Secretary’s delegate.

15 (6) CONTROLLED GROUPS.—Rules similar to
16 the rules of section 5061(e)(3) of such Code shall
17 apply for purposes of this subsection.

18 (7) OTHER LAWS APPLICABLE.—All provisions
19 of law, including penalties, applicable with respect to
20 the taxes imposed by section 5701 of such Code
21 shall, insofar as applicable and not inconsistent with
22 the provisions of this subsection, apply to the floor
23 stocks taxes imposed by paragraph (1), to the same
24 extent as if such taxes were imposed by such section
25 5701. The Secretary may treat any person who bore

1 the ultimate burden of the tax imposed by para-
2 graph (1) as the person to whom a credit or refund
3 under such provisions may be allowed or made.

4 (h) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to articles removed (as defined in
6 section 5702(j) of the Internal Revenue Code of 1986)
7 after December 31, 2010.

8 **SEC. 206. LEVERAGING AND COORDINATING FEDERAL RE-**
9 **SOURCES FOR IMPROVED HEALTH.**

10 (a) HEALTH IMPACTS OF NON-HEALTH LEGISLA-
11 TION.—

12 (1) IN GENERAL.—Not later than 6 months
13 after the date of enactment of this Act, the National
14 Prevention, Health Promotion and Public Health
15 Council, shall enter into a contract with the Institute
16 of Medicine of the National Academy of Sciences for
17 the conduct of a study to assess the potential health
18 impacts of major non-health related legislation that
19 is likely to be considered by Congress within a year
20 of completion of the study. Such study shall identify
21 the ways in which such legislation involved is likely
22 to impact the health of Americans and shall contain
23 recommendations to Congress on ways to maximize
24 the positive health impacts and minimize the nega-
25 tive health impacts.

1 (2) TIMING.—The timing of the study under
2 paragraph (1) shall be provide for in a manner that
3 ensures that the results of the study will be available
4 at least 3 months prior to the consideration of the
5 legislation involved by Congress.

6 (3) GUIDELINES.—To the extent practicable,
7 the Council under paragraph (1) shall ensure that
8 the study conducted under this subsection complies
9 with the consensus guidelines on how to carry out a
10 health impact assessment, including stakeholder en-
11 gagement guidelines, such as the HIA of the Amer-
12 icas Practice Guidelines and guidelines promulgated
13 by the World Health Organization and other con-
14 sensus bodies.

15 (4) REPORT.—Upon completion of the study
16 under this subsection, the Institute of Medicine shall
17 submit to the Council under paragraph (1), and
18 make available to the general public, a report that—

19 (A) summarizes the direct, indirect, and
20 cumulative health impacts identified in the as-
21 sessment; and

22 (B) contains recommendations for how to
23 maximize positive health impacts and minimize
24 negative health impacts of the legislation in-
25 volved.

1 (5) TYPE OF LEGISLATION.—For purposes of
2 this subsection, the term “non-health related legisla-
3 tion” shall have the meaning given such term by the
4 Council under paragraph (1), and shall include legis-
5 lation that is likely to have impacts on the health of
6 Americans where such impacts are not likely to be
7 considered by Congress to the extent required by
8 their scope without the conduct of an assessment
9 under this subsection. Examples of major non-health
10 related legislation that could be the subject of the
11 study include reauthorizations of the Safe, Account-
12 able, Flexible, Efficient Transportation Equity Act:
13 A Legacy for Users (SAFETEA–LU; Public Law
14 109–59), the Food, Conservation, and Energy Act of
15 2008 (Public Law 110–246), and the Elementary
16 and Secondary Education Act of 1965 (20 U.S.C.
17 6301 et seq.).

18 (b) IMPROVING HEALTH IMPACTS OF FEDERAL
19 AGENCY ACTIVITIES.—

20 (1) IN GENERAL.—The Secretary, acting
21 through the Director of the Centers for Disease
22 Control and Prevention and in coordination with the
23 National Prevention, Health Promotion and Public
24 Health Council, shall detail employees of the Depart-
25 ment of Health and Human Services to policy and

1 program planning offices of other Federal depart-
2 ments and agencies, including the Department of
3 Transportation, the Department of Housing and
4 Urban Development, the Department of Agriculture,
5 the Department of Education, and the Department
6 of the Interior, in order to assist those departments
7 and agencies to consider the impacts of their activi-
8 ties on the health of the populations served and to
9 assist with the integration of health goals into the
10 activities of the departments and agencies, as appro-
11 priate.

12 (2) DUTIES.—Employees detailed under para-
13 graph (1) shall assist with assessments of the poten-
14 tial impacts of the programs and activities of the de-
15 partment or agency involved on the health and well-
16 being of the populations served, the development of
17 metrics and performance standards that can be in-
18 corporated, as appropriate, into the activities, per-
19 formance measurements, and grant and contract
20 standards of the department or agency, and the de-
21 velopment of the report detailed in paragraph (3).

22 (3) REPORTS.—Not later than 1 year after the
23 date of enactment of this Act, and annually there-
24 after, each department and agency with a detailee
25 under this section shall submit to the National Pre-

1 vention, Health Promotion and Public Health Coun-
2 cil, the Committee on Health, Education, Labor, and
3 Pensions of the Senate and the Committee on En-
4 ergy and Commerce of the House of Representatives
5 a report detailing the health impacts of the depart-
6 ment or agency’s activities and any plans to improve
7 those impacts.

8 **Subtitle B—Incentives for a**
9 **Healthier Workforce**

10 **SEC. 211. TAX CREDIT TO EMPLOYERS FOR COSTS OF IM-**
11 **PLEMENTING WELLNESS PROGRAMS.**

12 (a) IN GENERAL.—Subpart D of part IV of sub-
13 chapter A of chapter 1 of the Internal Revenue Code of
14 1986 is amended by adding at the end the following:

15 **“SEC. 45S. WELLNESS PROGRAM CREDIT.**

16 “(a) ALLOWANCE OF CREDIT.—

17 “(1) IN GENERAL.—For purposes of section 38,
18 the wellness program credit determined under this
19 section for any taxable year during the credit period
20 with respect to an employer is an amount equal to
21 50 percent of the costs paid or incurred by the em-
22 ployer in connection with a qualified wellness pro-
23 gram during the taxable year.

1 “(2) LIMITATION.—The amount of credit al-
2 lowed under paragraph (1) for any taxable year shall
3 not exceed the sum of—

4 “(A) the product of \$200 and the number
5 of employees of the employer not in excess of
6 200 employees, plus

7 “(B) the product of \$100 and the number
8 of employees of the employer in excess of 200
9 employees.

10 “(b) QUALIFIED WELLNESS PROGRAM.—For pur-
11 poses of this section—

12 “(1) QUALIFIED WELLNESS PROGRAM.—The
13 term ‘qualified wellness program’ means a program
14 which—

15 “(A) consists of any 3 of the wellness pro-
16 gram components described in subsection (c),
17 and

18 “(B) which is certified by the Secretary of
19 Health and Human Services, in consultation
20 with the Secretary of the Treasury and Sec-
21 retary of Labor, as a qualified wellness program
22 under this section.

23 “(2) PROGRAMS MUST BE CONSISTENT WITH
24 RESEARCH AND BEST PRACTICES.—

1 “(A) IN GENERAL.—The Secretary of
2 Health and Human Services shall not certify a
3 program as a qualified wellness program unless
4 the program—

5 “(i) is consistent with evidence-based
6 research and best practices, as identified
7 by persons with expertise in employer
8 health promotion and wellness programs,

9 “(ii) includes multiple, evidence-based
10 strategies which are based on the existing
11 and emerging research and careful sci-
12 entific reviews, including the Guide to
13 Community Preventive Services, the Guide
14 to Clinical Preventive Services, and the
15 National Registry for Effective Programs,
16 and

17 “(iii) includes strategies which focus
18 on employee populations with a dispropor-
19 tionate burden of health problems.

20 “(B) PERIODIC UPDATING AND REVIEW.—
21 The Secretary of Health and Human Services
22 shall establish procedures for periodic review
23 and recertifications of programs under this sub-
24 section. Such procedures shall require revisions
25 of programs if necessary to ensure compliance

1 with the requirements of this section and re-
2 quire updating of the programs to the extent
3 the Secretary, in consultation with the Sec-
4 retary of the Treasury and the Secretary of
5 Labor, determines necessary to reflect new sci-
6 entific findings.

7 “(3) HEALTH LITERACY.—The Secretary of
8 Health and Human Services shall, as part of the
9 certification process, encourage employers to make
10 the programs culturally competent and to meet the
11 health literacy needs of the employees covered by the
12 programs.

13 “(c) WELLNESS PROGRAM COMPONENTS.—For pur-
14 poses of this section, the wellness program components de-
15 scribed in this subsection are the following:

16 “(1) HEALTH AWARENESS COMPONENT.—A
17 health awareness component which provides for the
18 following:

19 “(A) HEALTH EDUCATION.—The dissemi-
20 nation of health information which addresses
21 the specific needs and health risks of employees.

22 “(B) HEALTH SCREENINGS.—The oppor-
23 tunity for periodic screenings for health prob-
24 lems and referrals for appropriate follow up
25 measures.

1 “(2) EMPLOYEE ENGAGEMENT COMPONENT.—
2 An employee engagement component which provides
3 for—

4 “(A) the establishment of a committee to
5 actively engage employees in worksite wellness
6 programs through worksite assessments and
7 program planning, delivery, evaluation, and im-
8 provement efforts, and

9 “(B) the tracking of employee participa-
10 tion.

11 “(3) BEHAVIORAL CHANGE COMPONENT.—A
12 behavioral change component which provides for al-
13 tering employee lifestyles to encourage healthy living
14 through counseling, seminars, on-line programs, or
15 self-help materials which provide technical assistance
16 and problem solving skills. Such component may in-
17 clude programs relating to—

18 “(A) tobacco use,

19 “(B) overweight and obesity,

20 “(C) stress management,

21 “(D) physical activity,

22 “(E) nutrition,

23 “(F) substance abuse,

24 “(G) depression, and

1 “(H) mental health promotion (including
2 anxiety).

3 “(4) SUPPORTIVE ENVIRONMENT COMPO-
4 NENT.—A supportive environment component which
5 includes the following:

6 “(A) ON-SITE POLICIES.—Policies and
7 services at the worksite which promote a
8 healthy lifestyle, including policies relating to—

9 “(i) tobacco use at the worksite,

10 “(ii) the nutrition of food available at
11 the worksite through cafeterias and vend-
12 ing options,

13 “(iii) minimizing stress and promoting
14 positive mental health in the workplace,

15 “(iv) where applicable, accessible and
16 attractive stairs, and

17 “(v) the encouragement of physical
18 activity before, during, and after work
19 hours.

20 “(B) PARTICIPATION INCENTIVES.—

21 “(i) IN GENERAL.—Qualified incentive
22 benefits for each employee who participates
23 in the health screenings described in para-
24 graph (1)(B) or the behavioral change pro-
25 grams described in paragraph (3).

1 “(ii) QUALIFIED INCENTIVE BEN-
2 EFIT.—For purposes of clause (i), the
3 term ‘qualified incentive benefit’ means
4 any benefit which is approved by the Sec-
5 retary of Health and Human Services, in
6 consultation with the Secretary of the
7 Treasury and the Secretary of Labor. Such
8 benefit may include an adjustment in
9 health insurance premiums or co-pays.

10 “(C) EMPLOYEE INPUT.—The opportunity
11 for employees to participate in the management
12 of any qualified wellness program to which this
13 section applies.

14 “(d) PARTICIPATION REQUIREMENT.—

15 “(1) IN GENERAL.—No credit shall be allowed
16 under subsection (a) unless the Secretary of Health
17 and Human Services, in consultation with the Sec-
18 retary of the Treasury and Secretary of Labor, as
19 a part of any certification described in subsection
20 (b), that each wellness program component of the
21 qualified wellness program applies to all qualified
22 employees of the employer. The Secretary of Health
23 and Human Services shall prescribe rules under
24 which an employer shall not be treated as failing to
25 meet the requirements of this subsection merely be-

1 cause the employer provides specialized programs for
2 employees with specific health needs or unusual em-
3 ployment requirements or provides a pilot program
4 to test new wellness strategies.

5 “(2) QUALIFIED EMPLOYEE.—For purposes of
6 paragraph (1), the term ‘qualified employee’ means
7 an employee who works an average of not less than
8 25 hours per week during the taxable year.

9 “(e) OTHER DEFINITIONS AND SPECIAL RULES.—
10 For purposes of this section—

11 “(1) EMPLOYEE AND EMPLOYER.—

12 “(A) PARTNERS AND PARTNERSHIPS.—
13 The term ‘employee’ includes a partner and the
14 term ‘employer’ includes a partnership.

15 “(B) CERTAIN RULES TO APPLY.—Rules
16 similar to the rules of section 52 shall apply.

17 “(2) CERTAIN COSTS NOT INCLUDED.—Costs
18 paid or incurred by an employer for food or health
19 insurance shall not be taken into account under sub-
20 section (a).

21 “(3) NO CREDIT WHERE GRANT AWARDED.—
22 No credit shall be allowable under subsection (a)
23 with respect to any qualified wellness program of
24 any taxpayer (other than an eligible employer de-
25 scribed in subsection (f)(2)(A)) who receives a grant

1 provided by the United States, a State, or a political
2 subdivision of a State for use in connection with
3 such program. The Secretary shall prescribe rules
4 providing for the waiver of this paragraph with re-
5 spect to any grant which does not constitute a sig-
6 nificant portion of the funding for the qualified
7 wellness program.

8 “(4) CREDIT PERIOD.—

9 “(A) IN GENERAL.—The term ‘credit pe-
10 riod’ means the period of 10 consecutive taxable
11 years beginning with the taxable year in which
12 the qualified wellness program is first certified
13 under this section.

14 “(B) SPECIAL RULE FOR EXISTING PRO-
15 GRAMS.—In the case of an employer (or prede-
16 cessor) which operates a wellness program for
17 its employees on the date of the enactment of
18 this section, subparagraph (A) shall be applied
19 by substituting ‘3 consecutive taxable years’ for
20 ‘10 consecutive taxable years’. The Secretary
21 shall prescribe rules under which this sub-
22 section shall not apply if an employer is re-
23 quired to make substantial modifications in the
24 existing wellness program in order to qualify

1 such program for certification as a qualified
2 wellness program.

3 “(C) CONTROLLED GROUPS.—For pur-
4 poses of this paragraph, all persons treated as
5 a single employer under subsection (b), (c),
6 (m), or (o) of section 414 shall be treated as a
7 single employer.

8 “(f) PORTION OF CREDIT MADE REFUNDABLE.—

9 “(1) IN GENERAL.—In the case of an eligible
10 employer of an employee, the aggregate credits al-
11 lowed to a taxpayer under subpart C shall be in-
12 creased by the lesser of—

13 “(A) the credit which would be allowed
14 under this section without regard to this sub-
15 section and the limitation under section 38(e),
16 or

17 “(B) the amount by which the aggregate
18 amount of credits allowed by this subpart (de-
19 termined without regard to this subsection)
20 would increase if the limitation imposed by sec-
21 tion 38(e) for any taxable year were increased
22 by the amount of employer payroll taxes im-
23 posed on the taxpayer during the calendar year
24 in which the taxable year begins.

1 The amount of the credit allowed under this sub-
2 section shall not be treated as a credit allowed under
3 this subpart and shall reduce the amount of the
4 credit otherwise allowable under subsection (a) with-
5 out regard to section 38(c).

6 “(2) ELIGIBLE EMPLOYER.—For purposes of
7 this subsection, the term ‘eligible employer’ means
8 an employer which is—

9 “(A) a State or political subdivision there-
10 of, the District of Columbia, a possession of the
11 United States, or an agency or instrumentality
12 of any of the foregoing, or

13 “(B) any organization described in section
14 501(c) of the Internal Revenue Code of 1986
15 which is exempt from taxation under section
16 501(a) of such Code.

17 “(3) EMPLOYER PAYROLL TAXES.—For pur-
18 poses of this subsection—

19 “(A) IN GENERAL.—The term ‘employer
20 payroll taxes’ means the taxes imposed by—

21 “(i) section 3111(b), and

22 “(ii) sections 3211(a) and 3221(a)
23 (determined at a rate equal to the rate
24 under section 3111(b)).

1 “(B) SPECIAL RULE.—A rule similar to
2 the rule of section 24(d)(2)(C) shall apply for
3 purposes of subparagraph (A).

4 “(g) TERMINATION.—This section shall not apply to
5 any amount paid or incurred after December 31, 2017.”.

6 (b) TREATMENT AS GENERAL BUSINESS CREDIT.—
7 Subsection (b) of section 38 of the Internal Revenue Code
8 of 1986 is amended by striking “plus” at the end of para-
9 graph (35), by striking the period at the end of paragraph
10 (36) and inserting “, plus”, and by adding at the end the
11 following:

12 “(37) the wellness program credit determined
13 under section 45S.”.

14 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C of
15 the Internal Revenue Code of 1986 is amended by adding
16 at the end the following new subsection:

17 “(j) WELLNESS PROGRAM CREDIT.—

18 “(1) IN GENERAL.—No deduction shall be al-
19 lowed for that portion of the costs paid or incurred
20 for a qualified wellness program (within the meaning
21 of section 45S) allowable as a deduction for the tax-
22 able year which is equal to the amount of the credit
23 allowable for the taxable year under section 45S.

24 “(2) SIMILAR RULE WHERE TAXPAYER CAP-
25 ITALIZES RATHER THAN DEDUCTS EXPENSES.—If—

1 “(A) the amount of the credit determined
2 for the taxable year under section 45S, exceeds

3 “(B) the amount allowable as a deduction
4 for such taxable year for a qualified wellness
5 program,

6 the amount chargeable to capital account for the
7 taxable year for such expenses shall be reduced by
8 the amount of such excess.

9 “(3) CONTROLLED GROUPS.—In the case of a
10 corporation which is a member of a controlled group
11 of corporations (within the meaning of section
12 41(f)(5)) or a trade or business which is treated as
13 being under common control with other trades or
14 business (within the meaning of section
15 41(f)(1)(B)), this subsection shall be applied under
16 rules prescribed by the Secretary similar to the rules
17 applicable under subparagraphs (A) and (B) of sec-
18 tion 41(f)(1).”.

19 (d) CLERICAL AMENDMENT.—The table of sections
20 for subpart D of part IV of subchapter A of chapter 1
21 of the Internal Revenue Code of 1986 is amended by add-
22 ing at the end the following:

 “Sec. 45S. Wellness program credit.”.

23 (e) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to taxable years beginning after
25 the date of enactment of this Act.

1 (f) OUTREACH.—

2 (1) IN GENERAL.—The Secretary of the Treas-
3 ury, in conjunction with the Director of the Centers
4 for Disease Control and members of the business
5 community, shall institute an outreach program to
6 inform businesses about the availability of the
7 wellness program credit under section 45S of the In-
8 ternal Revenue Code of 1986 as well as to educate
9 businesses on how to develop programs according to
10 recognized and promising practices and on how to
11 measure the success of implemented programs.

12 (2) AUTHORIZATION OF APPROPRIATIONS.—
13 There are authorized to be appropriated such sums
14 as are necessary to carry out the outreach program
15 described in paragraph (1).

16 **SEC. 212. EMPLOYER-PROVIDED OFF-PREMISES ATHLETIC**
17 **FACILITIES.**

18 (a) TREATMENT AS FRINGE BENEFIT.—Subpara-
19 graph (A) of section 132(j)(4) of the Internal Revenue
20 Code of 1986 is amended to read as follows:

21 “(A) IN GENERAL.—Gross income shall
22 not include—

23 “(i) the value of any on-premises ath-
24 letic facility provided by an employer to its
25 employees, and

1 “(ii) so much of the fees, dues, or
2 membership expenses paid by an employer
3 to an athletic or fitness facility described
4 in subparagraph (C) on behalf of its em-
5 ployees as does not exceed \$900 per em-
6 ployee per year.”.

7 (b) ATHLETIC FACILITIES DESCRIBED.—Paragraph
8 (4) of section 132(j) of the Internal Revenue Code of 1986
9 is amended by adding at the end the following new sub-
10 paragraph:

11 “(C) CERTAIN ATHLETIC OR FITNESS FA-
12 CILITIES DESCRIBED.—For purposes of sub-
13 paragraph (A)(ii), an athletic or fitness facility
14 described in this subparagraph is a facility—

15 “(i) which provides instruction in a
16 program of physical exercise, offers facili-
17 ties for the preservation, maintenance, en-
18 couragement, or development of physical
19 fitness, or is the site of such a program of
20 a State or local government,

21 “(ii) which is not a private club owned
22 and operated by its members,

23 “(iii) which does not offer golf, hunt-
24 ing, sailing, or riding facilities,

1 “(iv) whose health or fitness facility is
2 not incidental to its overall function and
3 purpose, and

4 “(v) which is fully compliant with the
5 State of jurisdiction and Federal anti-dis-
6 crimination laws.”.

7 (c) EXCLUSION APPLIES TO HIGHLY COMPENSATED
8 EMPLOYEES ONLY IF NO DISCRIMINATION.—Section
9 132(j)(1) of the Internal Revenue Code of 1986 is amend-
10 ed—

11 (1) by striking “Paragraphs (1) and (2) of sub-
12 section (a)” and inserting “Subsections (a)(1),
13 (a)(2), and (j)(4)”, and

14 (2) by striking the heading thereof through
15 “APPLY” and inserting “CERTAIN EXCLUSIONS
16 APPLY”.

17 (d) EMPLOYER DEDUCTION FOR DUES TO CERTAIN
18 ATHLETIC FACILITIES.—

19 (1) IN GENERAL.—Paragraph (3) of section
20 274(a) of the Internal Revenue Code of 1986 is
21 amended by adding at the end the following new
22 sentence: “The preceding sentence shall not apply to
23 so much of the fees, dues, or membership expenses
24 paid to athletic or fitness facilities (within the mean-

1 ing of section 132(j)(4)(C)) as does not exceed \$900
2 per employee per year.”.

3 (2) CONFORMING AMENDMENT.—The last sen-
4 tence of section 274(e)(4) of such Code is amended
5 by inserting “the first sentence of” before “sub-
6 section (a)(3)”.

7 (e) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years beginning after
9 the date of the enactment of this Act.

10 **SEC. 213. TASK FORCE FOR THE PROMOTION OF**
11 **BREASTFEEDING IN THE WORKPLACE.**

12 (a) ESTABLISHMENT.—The Secretary of Health and
13 Human Services and the Secretary of Labor, or their des-
14 ignees, shall convene a task force for the purpose of pro-
15 moting breastfeeding among working mothers (referred to
16 in this section as the “Task Force”).

17 (b) MEMBERSHIP.—The Task Force shall be com-
18 posed of members who are—

19 (1) expert staff from the Department of Labor
20 with expertise in workforce issues;

21 (2) expert staff from the Department of Health
22 and Human Services with expertise in the areas of
23 breastfeeding and breastfeeding promotion;

24 (3) members of the United States Breastfeeding
25 Committee;

1 (4) expert staff from the Department of Agri-
2 culture; and

3 (5) appointed by the Secretary of Health and
4 Human Services and the Secretary of Labor, includ-
5 ing—

6 (A) working mothers who have experience
7 in working and breastfeeding; and

8 (B) representatives of the human resource
9 departments of both large and small employers
10 that have successfully promoted breastfeeding
11 and breastmilk pumping support at work.

12 (c) PERIOD OF APPOINTMENT; VACANCIES.—Mem-
13 bers shall be appointed for the life of the Task Force. Any
14 vacancy in the Task Force shall not affects its powers,
15 but shall be filled in the same manner as the original ap-
16 pointment.

17 (d) CHAIR.—The Task Force shall be chaired jointly
18 by the Secretary of Health and Human Services and the
19 Secretary of Labor, or their designees.

20 (e) DUTIES OF THE TASK FORCE.—

21 (1) EXAMINATION.—Consistent with the De-
22 partment of Health and Human Services Blueprint
23 for Action on Breastfeeding (2000), the Task Force
24 shall examine the following issues:

1 (A) The challenges that mothers face with
2 continuing breastfeeding when the mothers re-
3 turn to work after giving birth.

4 (B) The challenges that employers face in
5 accommodating mothers who seek to continue
6 to breastfeed or to express milk when the moth-
7 ers re-enter the workforce, including different
8 challenges that mothers of varying socio-eco-
9 nomic status and in different professions may
10 face.

11 (C) The benefits that accrue to mothers,
12 babies, and to employers when mothers are able
13 to continue to breastfeed or to express
14 breastmilk at work after the mothers have re-
15 entered the workforce.

16 (D) Federal and State statutes that may
17 have the effect of reducing breastfeeding and
18 breastfeeding retention rates among working
19 mothers.

20 (2) REPORTS.—

21 (A) IN GENERAL.—Not later than 1 year
22 after the date of enactment of this section, the
23 Task Force shall issue a public report with rec-
24 ommendations on the following:

1 (i) Steps that can be taken to promote
2 breastfeeding among working mothers and
3 to remove barriers to breastfeeding among
4 working mothers.

5 (ii) Potential ways in which the Fed-
6 eral Government can work with employers
7 to promote breastfeeding among working
8 mothers.

9 (iii) Areas in which changes to exist-
10 ing Federal, State, or local laws would
11 likely have the effect of making it easier
12 for working mothers to breastfeed or would
13 remove impediments to breastfeeding that
14 currently exist in such laws.

15 (iv) Whether or not increased rates of
16 breastfeeding among working mothers
17 would likely have the result of reducing
18 health care costs among such mothers and
19 their children, and, in particular, whether
20 increased rates of breastfeeding would be
21 likely to result in lower Federal expendi-
22 tures on health care for such mothers and
23 their children.

24 (v) Areas in which the Federal Gov-
25 ernment, through increased efforts by Fed-

1 eral agencies, or changes to existing Fed-
2 eral law, can and should increase the Fed-
3 eral Government's efforts to promote
4 breastfeeding among working mothers.

5 (B) COPY TO CONGRESS.—Upon comple-
6 tion of the report described in subparagraph
7 (A), the Task Force shall submit a copy of the
8 report to the Committee on Health, Education,
9 Labor, and Pensions of the Senate, the Com-
10 mittee on Appropriations of the Senate, the
11 Committee on Education and the Workforce of
12 the House of Representatives, and the Com-
13 mittee on Appropriations of the House of Rep-
14 resentatives.

15 (f) POWERS OF THE TASK FORCE.—

16 (1) HEARINGS.—The Task Force may hold
17 such hearings, sit and act at such times and places,
18 take such testimony, and receive such evidence as
19 the Task Force considers advisable to carry out this
20 section.

21 (2) INFORMATION FROM FEDERAL AGENCIES.—

22 The Task Force may secure directly from any Fed-
23 eral department or agency such information as the
24 Task Force considers necessary to carry out this
25 section. Upon request of the Chair of the Task

1 Force, the head of such department or agency shall
 2 furnish such information to the Task Force.

3 (3) POSTAL SERVICES.—The Task Force may
 4 use the United States mails in the same manner and
 5 under the same conditions as other departments and
 6 agencies of the Federal Government.

7 (4) DONATIONS.—The Task Force may accept,
 8 use, and dispose of donations of services or property.

9 (g) OPERATING EXPENSES.—The operating expenses
 10 of the Task Force, including travel expenses for members
 11 of the Task Force, shall be paid for from the general oper-
 12 ating expenses funds of the Secretary of Health and
 13 Human Services and the Secretary of Labor.

14 **SEC. 214. IMPROVING HEALTHY EATING AND ACTIVE LIV-**
 15 **ING OPTIONS IN FEDERAL WORKPLACES.**

16 (a) MENU LABELING IN FEDERAL FOOD ESTAB-
 17 LISHMENTS.—

18 (1) IN GENERAL.—

19 (A) EXECUTIVE AND JUDICIAL BUILD-
 20 INGS.—Section 403(q) of the Federal Food,
 21 Drug, and Cosmetic Act (21 U.S.C. 343(q)) is
 22 amended by adding at the end the following:

23 “(6)(A) The requirements of subparagraph (5)(H)
 24 shall apply—

1 “(i) to a restaurant or similar retail food estab-
2 lishment located in a Federal building in the same
3 manner as such subparagraph applies to a res-
4 taurant or similar retail food establishment that is
5 part of a chain with 20 or more locations, as de-
6 scribed in subparagraph (5)(H)(i); and

7 “(ii) to a person that operates a vending ma-
8 chine located in a Federal building in the same man-
9 ner as such subparagraph applies to a person who
10 is engaged in the business of owning or operating 20
11 or more vending machines, as described in subpara-
12 graph (5)(H)(viii).

13 “(B) In this subparagraph, the term ‘Federal build-
14 ing’ means a building that is—

15 “(i) under the control of the Federal agency (as
16 defined in section 102 of title 40, United States
17 Code);

18 “(ii) owned by the Federal Government; and

19 “(iii) located in a State, the District of Colum-
20 bia, Puerto Rico, or a territory or possession of the
21 United States.”.

22 (B) APPLICABILITY.—The requirement in
23 the amendment made by paragraph (1) shall
24 apply to restaurants or similar retail food es-
25 tablishments and vending machines located in a

1 Federal building beginning 12 months after the
2 date of enactment of this Act.

3 (2) CONGRESSIONAL BUILDINGS.—The Archi-
4 tect of the Capitol, in coordination with the Com-
5 mittee on Rules and Administration of the Senate
6 and the Committee on House Administration of the
7 House of Representatives, shall establish a program
8 to apply the requirements of section 403(q)(5)(H) of
9 the Federal Food, Drug, and Cosmetic Act (21
10 U.S.C. 343(q)(5)(H)) (as amended by paragraph
11 (1)) to—

12 (A) food that is served in restaurants or
13 other similar retail food establishments that are
14 located in Congressional buildings and installa-
15 tions;

16 (B) food that is sold through vending ma-
17 chines that are operated in Congressional build-
18 ings and installations; and

19 (C) food that is served to individuals with-
20 in Congressional buildings and installations
21 pursuant to a contract with a private entity.

22 (b) NUTRITIONAL STANDARDS FOR FOOD IN FED-
23 ERAL BUILDINGS.—

24 (1) EXECUTIVE AND JUDICIAL BUILDINGS.—
25 Subchapter V of chapter 5 of subtitle I of title 40,

1 United States Code, is amended by adding at the
2 end the following:

3 **“SEC. 594. NUTRITIONAL STANDARDS FOR FOOD IN FED-**
4 **ERAL BUILDINGS.**

5 “(a) IN GENERAL.—The Administrator of General
6 Services, in consultation with the Secretary of Health and
7 Human Services, shall establish, by regulation, nutritional
8 standards for all food products provided at Federal build-
9 ings and installations (including food products provided by
10 contractors or vending machines).

11 “(b) USE OF AMOUNTS.—Amounts appropriated to
12 an executive agency for installation, repair, and mainte-
13 nance, generally, may be used to achieve compliance with
14 the regulations promulgated pursuant to this section.

15 “(c) LIABILITY.—Nothing in this section increases or
16 enlarges the tort liability of the Federal Government for
17 any injury to an individual or damage to property.”.

18 (2) CONGRESSIONAL BUILDINGS.—The Archi-
19 tect of the Capitol, in coordination with the Com-
20 mittee on Rules and Administration of the Senate
21 and the Committee on House Administration of the
22 House of Representatives shall establish nutritional
23 standards for all food products provided at Congres-
24 sional buildings and installations (including food

1 products provided by contractors or vending ma-
 2 chines).

3 (c) ENCOURAGEMENT OF USE OF STAIRS.—

4 (1) EXECUTIVE AND JUDICIAL BUILDINGS.—

5 Subchapter V of chapter 5 of subtitle I of title 40,
 6 United States Code, as amended by subsection (b),
 7 is further amended by adding at the end the fol-
 8 lowing:

9 **“SEC. 595. ENCOURAGEMENT OF USE OF STAIRS.**

10 “(a) IN GENERAL.—Each Federal agency shall in-
 11 stall point-of-decision prompts encouraging individuals to
 12 use stairs wherever practicable at each relevant building
 13 and installation that is—

14 “(1) under the control of the Federal agency;

15 “(2) owned by the Federal Government; and

16 “(3) located in a State, the District of Colum-
 17 bia, Puerto Rico, or a territory or possession of the
 18 United States.

19 “(b) REIMBURSEMENT.—Subsection (a) may be car-
 20 ried out by—

21 “(1) reimbursement to a State or political sub-
 22 division of a State, the District of Columbia, Puerto
 23 Rico, or a territory or possession of the United
 24 States; or

25 “(2) a means other than reimbursement.

1 “(c) REGULATIONS.—Subsection (a) shall be carried
2 out in accordance with such regulations as the Adminis-
3 trator of General Services may promulgate, with the ap-
4 proval of the Director of the Office of Management and
5 Budget.

6 “(d) USE OF AMOUNTS.—Amounts appropriated to
7 a Federal agency for installation, repair, and maintenance,
8 generally, shall be available to carry out this section.

9 “(e) LIABILITY.—Nothing in this section increases or
10 enlarges the tort liability of the Federal Government for
11 any injury to an individual or damage to property.”.

12 (2) CONGRESSIONAL BUILDINGS.—The Archi-
13 tect of the Capitol shall implement a program to in-
14 stall point-of-decision prompts encouraging individ-
15 uals to use stairs wherever practicable in Congres-
16 sional buildings and installations in the same man-
17 ner as established under section 595 of title 40,
18 United States Code (as added by paragraph (1)).

19 (d) ACCOMMODATIONS FOR BICYCLE COMMUTERS.—

20 (1) EXECUTIVE AND JUDICIAL FEDERAL
21 BUILDINGS.—Subchapter V of chapter 5 of subtitle
22 I of title 40, United States Code, as amended by
23 subsection (c), is further amended by adding at the
24 end the following:

1 **“SEC. 596. ACCOMMODATIONS FOR BICYCLE COMMUTERS.**

2 “(a) IN GENERAL.—Each Federal agency shall in-
3 stall and maintain a bicycle storage area and equipment
4 (such as a bicycle rack) and a shower for bicycle com-
5 muters at each relevant parking structure that is—

6 “(1) under the control of the Federal agency;

7 “(2) owned by the Federal Government; and

8 “(3) located in a State, the District of Colum-
9 bia, Puerto Rico, or a territory or possession of the
10 United States.

11 “(b) REIMBURSEMENT.—Subsection (a) may be car-
12 ried out by—

13 “(1) reimbursement to a State or political sub-
14 division of a State, the District of Columbia, Puerto
15 Rico, or a territory or possession of the United
16 States; or

17 “(2) a means other than reimbursement.

18 “(c) REGULATIONS.—Subsection (a) shall be carried
19 out in accordance with such regulations as the Adminis-
20 trator of General Services may promulgate, with the ap-
21 proval of the Director of the Office of Management and
22 Budget.

23 “(d) USE OF AMOUNTS.—Amounts appropriated to
24 a Federal agency for installation, repair, and maintenance,
25 generally, shall be available to carry out this section.

1 “(e) LIABILITY.—Nothing in this section increases or
2 enlarges the tort liability of the Federal Government for
3 any injury to an individual or damage to property.”.

4 (2) CONGRESSIONAL BUILDINGS.—The Archi-
5 tect of the Capitol, in coordination with the Sergeant
6 at Arms and Doorkeeper of the Senate, the Sergeant
7 at Arms of the House of Representatives, and the
8 United States Capitol Police, shall implement, within
9 their respective jurisdictions, a program to make ac-
10 commodations for bicycle commuters on the United
11 States Capitol complex in the same manner as estab-
12 lished under section 596 of title 40, United States
13 Code (as added by paragraph (1)).

14 **TITLE III—RESPONSIBLE MAR-**
15 **KETING AND CONSUMER**
16 **AWARENESS**

17 **SEC. 301. GUIDELINES FOR REDUCTION IN SODIUM CON-**
18 **TENT IN CERTAIN FOODS.**

19 (a) IN GENERAL.—Not later than 180 days after the
20 date of enactment of this Act, the Secretary of Health and
21 Human Services shall promulgate regulations establishing
22 guidelines for the reduction, over a 2 year period, in the
23 sodium content of processed food and restaurant food fol-
24 lowing, as appropriate, the recommendations made by the

1 Institute of Medicine report entitled “Strategies to Reduce
2 Sodium Intake in the United States”.

3 (b) DEFINITIONS.—For purposes of this section—

4 (1) the term “processed food” has the meaning
5 given such term in section 201(gg) of the Federal
6 Food, Drug, and Cosmetic Act (21 U.S.C. 321(gg));
7 and

8 (2) the term “restaurant food” means food sub-
9 ject to the requirements of section 403(q)(5)(H) of
10 the Federal Food, Drug, and Cosmetic Act (21
11 U.S.C. 343(q)(5)(H)).

12 **SEC. 302. NUTRITION LABELING FOR FOOD PRODUCTS**
13 **SOLD PRINCIPALLY FOR USE IN RES-**
14 **TAURANTS OR OTHER RETAIL FOOD ESTAB-**
15 **LISHMENTS.**

16 Section 403(q)(5) of the Federal Food, Drug, and
17 Cosmetic Act (21 U.S.C. 343(q)(5)) is amended by strik-
18 ing clause (G).

19 **SEC. 303. FRONT-LABEL FOOD GUIDANCE SYSTEMS.**

20 (a) IN GENERAL.—Not later than 6 months after the
21 date of enactment of this Act, the Secretary of Health and
22 Human Services (referred to in this section as the “Sec-
23 retary”) shall begin soliciting public comments regard-
24 ing—

1 (1) the use of retail front-label food guidance
2 systems to convey nutrition information to the public
3 using logos, symbols, signs, emblems, insignia, or
4 other graphic representations on the labeling of food
5 intended for human consumption that are intended
6 to provide simple, standardized, and understandable
7 nutrition information to the public in graphic form;

8 (2) appropriate nutrition standards by which a
9 retail front-label food guidance system may convey
10 the relative nutritional value of different foods in
11 simple graphic form; and

12 (3) whether American consumers would be bet-
13 ter served by establishing a single, standardized re-
14 tail front-label food guidance system regulated by
15 the Food and Drug Administration, or by allowing
16 individual food companies, trade associations, non-
17 profit organizations, and others to continue to de-
18 velop their own retail front-label food guidance sys-
19 tems.

20 (b) EFFECT ON NUTRITION FACTS PANEL.—In solie-
21 iting public comments under subsection (a), the Secretary
22 shall inform the public that any retail front-label food
23 guidance system is intended to supplement, not replace,
24 the Nutrition Facts Panel that appears on food labels pur-

1 suant to section 403(q) of the Federal Food, Drug, and
2 Cosmetic Act (21 U.S.C. 343(q)).

3 (c) PROPOSED REGULATION.—Not later than 12
4 months following the closure of the public comment solici-
5 tation period under subsection (a), the Secretary shall—

6 (1) publish a notice in the Federal Register
7 that summarizes the public comments and describes
8 the suggested retail front-label food guidance sys-
9 tems received through such solicitation; and

10 (2) publish proposed regulations that—

11 (A) establish a single, standardized retail
12 front-label food guidance system; or

13 (B) establish the conditions under which
14 individual food companies, trade associations,
15 nonprofit organizations, and other entities may
16 continue to develop their own retail front-label
17 food guidance systems.

18 **SEC. 304. RULEMAKING AUTHORITY FOR ADVERTISING TO**
19 **CHILDREN.**

20 (a) PURPOSE.—The purpose of this section is to re-
21 store the authority of the Federal Trade Commission to
22 issue regulations that restrict the marketing or advertising
23 of foods and beverages to children under the age of 18
24 years if the Federal Trade Commission determines that

1 there is evidence that consumption of certain foods and
2 beverages is detrimental to the health of children.

3 (b) AUTHORITY.—Section 18 of the Federal Trade
4 Commission Act (15 U.S.C. 57a) is amended—

5 (1) in subsection (a), by striking “Except as
6 provided in subsection (h), the” and inserting
7 “The”;

8 (2) by amending subsection (b) to read as fol-
9 lows:

10 “(b) PROCEDURE APPLICABLE.—When prescribing a
11 rule under subsection (a)(1)(B) of this section, the Com-
12 mission shall proceed in accordance with section 553 of
13 title 5 (without regard to any reference in such section
14 to sections 556 and 557 of such title).”;

15 (3) by striking subsections (c), (f), (h), (i), and
16 (j);

17 (4) by striking subsection (d) and inserting the
18 following:

19 “(c) When any rule under subsection (a)(1)(B) takes
20 effect a subsequent violation thereof shall constitute an
21 unfair or deceptive act or practice in violation of section
22 5(a)(1) of this Act, unless the Commission otherwise ex-
23 pressly provides in such rule.”;

24 (5) by redesignating subsections (e) and (g) as
25 subsections (d) and (e), respectively; and

1 (6) in subsection (d), as redesignated—

2 (A) in paragraph (1)(B), by striking “the
3 transcript required by subsection (c)(5),”;

4 (B) in paragraph (3), by striking “error)”
5 and all that follows through the period at the
6 end and inserting “error).”; and

7 (C) in paragraph (5), by striking subpara-
8 graph (C).

9 **SEC. 305. HEALTH LITERACY: RESEARCH, COORDINATION**
10 **AND DISSEMINATION.**

11 (a) IN GENERAL.—Part A of title IX of the Public
12 Health Service Act (42 U.S.C. 299 et seq.) is amended
13 by adding at the end the following:

14 **“SEC. 904. HEALTH LITERACY: RESEARCH, COORDINATION**
15 **AND DISSEMINATION.**

16 “(a) DEFINITION.—In this section, the term ‘health
17 literacy’ means a consumer’s ability to obtain, process,
18 and understand basic health information and services
19 needed to make appropriate health care decisions and the
20 adaptation of services to enhance a consumer’s under-
21 standing and navigation of applicable health care services.

22 “(b) HEALTH LITERACY PROGRAM.—

23 “(1) ESTABLISHMENT.—The Director shall es-
24 tablish within the Agency a program (referred to in
25 this section as the ‘program’) to strengthen health

1 literacy by improving measurement, research, devel-
2 opment, and information dissemination.

3 “(2) DUTIES.—In carrying out the program,
4 the Director shall—

5 “(A) gather health literacy resources from
6 public and private sources and make such re-
7 sources available to researchers, health care
8 providers, and the general public;

9 “(B) identify and fill research gaps relat-
10 ing to health literacy that have direct applica-
11 bility to—

12 “(i) prevention;

13 “(ii) self-management of chronic dis-
14 ease;

15 “(iii) quality improvement;

16 “(iv) the barriers to health literacy;

17 “(v) relationships between health lit-
18 eracy and health disparities, particularly
19 with respect to language and cultural com-
20 petency; and

21 “(vi) the utilization of information on
22 comparative effectiveness of health treat-
23 ments;

24 “(C) sponsor demonstration and evaluation
25 projects with respect to interventions and tools

1 designed to strengthen health literacy, including
2 projects focused on—

3 “(i) the provision of simplified, pa-
4 tient-centered written materials;

5 “(ii) technology-based communication
6 techniques;

7 “(iii) consumer navigation services;
8 and

9 “(iv) the training of health profes-
10 sional providers;

11 “(D) give preference to health literacy ini-
12 tiatives that—

13 “(i) focus on the particular needs of
14 vulnerable populations such as the elderly,
15 racial and ethnic minorities, children, indi-
16 viduals with limited English proficiency,
17 and individuals with disabilities; and

18 “(ii) partner with institutions in the
19 community such as schools, libraries, sen-
20 ior centers, literacy groups, recreation cen-
21 ters, early childhood education centers,
22 area health education centers, and public
23 assistance programs;

24 “(E) assist appropriate Federal agencies in
25 establishing specific objectives and strategies

1 for carrying out the program, in monitoring the
2 programs of such agencies, and incorporating
3 health literacy into research design, human sub-
4 jects protections, and informed consent in clin-
5 ical research;

6 “(F) seek to enter into implementation
7 partnerships with organizations and agencies,
8 including other agencies within the Department
9 of Health and Human Services, such as the
10 Centers for Medicare & Medicaid Services and
11 the Health Resources and Services Administra-
12 tion, the Office of the Surgeon General, the
13 Joint Commission on the Accreditation of
14 Healthcare Organizations, the Office of the Na-
15 tional Coordinator for Health Information
16 Technology, and the National Committee for
17 Quality Assurance, to promote the adoption of
18 interventions and tools developed under this
19 section, particularly in the training of health
20 professionals; and

21 “(G) coordinate with other agencies within
22 the Department of Health and Human Services
23 to collect data that monitors national trends in
24 health literacy by including relevant items in
25 surveys such as the Medical Expenditure Panel

1 Survey, the National Health Interview Survey,
2 and the National Hospital Discharge Survey.

3 “(3) REPORT.—The Agency for Healthcare Re-
4 search and Quality shall annually submit to Con-
5 gress a report that includes—

6 “(A) a comprehensive and detailed descrip-
7 tion of the operations, activities, financial condi-
8 tion, and accomplishments of the Agency in the
9 field of health literacy; and

10 “(B) a description of how plans for the op-
11 eration of the program for the succeeding fiscal
12 year will facilitate achievement of the goals of
13 the program.

14 “(4) AUTHORIZATION OF APPROPRIATIONS.—
15 There are authorized to be appropriated to carry out
16 this subsection such sums as may be necessary for
17 each of fiscal years 2012 through 2016.

18 “(c) STATE HEALTH LITERACY GRANTS.—

19 “(1) GRANTS.—The Director of the Agency
20 shall award grants to eligible entities to facilitate
21 State and community efforts to strengthen health
22 literacy.

23 “(2) USE OF FUNDS.—An entity receiving a
24 grant under this subsection shall use amounts re-
25 ceived under such grant to—

1 “(A) support efforts to monitor and
2 strengthen health literacy within a State or
3 community;

4 “(B) assist public and private efforts in
5 the State or community in coordinating and de-
6 livering health literacy services;

7 “(C) encourage partnerships among State
8 and local governments, community organiza-
9 tions, non-profit entities, academic institutions,
10 and businesses to coordinate efforts to strength-
11 en health literacy;

12 “(D) provide technical and policy assist-
13 ance to State and local governments and service
14 providers; and

15 “(E) monitor and evaluate programs con-
16 ducted under this grant.

17 “(3) REPORT.—Not later than September 30 of
18 each fiscal year for which a grant is received by an
19 entity under this section, the entity shall submit to
20 the Director a report that describes the programs
21 supported by the grant and the results of monitoring
22 and evaluation of those programs.

23 “(4) AUTHORIZATION OF APPROPRIATIONS.—
24 There are authorized to be appropriated such sums

1 as may be necessary to carry out this subsection for
 2 each of fiscal years 2012 through 2016.”.

3 (b) INSTITUTE OF MEDICINE STUDY AND REPORT.—

4 (1) STUDY.—The Secretary of Health and
 5 Human Services shall seek to enter into a contract
 6 with the Institute of Medicine to conduct a study
 7 identifying opportunities within the Department of
 8 Health and Human Services to strengthen the
 9 health literacy of health care providers and health
 10 care consumers in accordance with the Patient Pro-
 11 tection and Affordable Care Act (Public Law 111–
 12 148).

13 (2) REPORT.—A contract entered into under
 14 paragraph (1) shall include a provision requiring the
 15 Institute of Medicine, not later than 1 year after the
 16 date of enactment of this Act, to submit a report
 17 concerning the results of the study conducted under
 18 paragraph (1) to the Secretary of Health and
 19 Human Services and the appropriate committees of
 20 Congress.”.

21 **SEC. 306. DISALLOWANCE OF DEDUCTIONS FOR ADVER-**
 22 **TISING AND MARKETING EXPENSES RELAT-**
 23 **ING TO TOBACCO PRODUCT USE.**

24 (a) IN GENERAL.—Part IX of subchapter B of chap-
 25 ter 1 of subtitle A of the Internal Revenue Code of 1986

1 (relating to items not deductible) is amended by adding
 2 at the end the following new section:

3 **“SEC. 280I. DISALLOWANCE OF DEDUCTION FOR ADVER-**
 4 **TISING AND MARKETING EXPENSES RELAT-**
 5 **ING TO TOBACCO PRODUCT USE.**

6 “No deduction shall be allowed under this chapter for
 7 expenses relating to advertising or marketing cigars, ciga-
 8 rettes, smokeless tobacco, pipe tobacco, or any other to-
 9 bacco product. For purposes of this section, any term used
 10 in this section which is also used in section 5702 shall
 11 have the same meaning given such term by section 5702.”.

12 (b) CONFORMING AMENDMENT.—The table of sec-
 13 tions for such part IX is amended by adding after the
 14 item relating to section 280H the following new item:

“Sec. 280I. Disallowance of deduction for tobacco advertising and marketing
 expenses.”.

15 (c) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply to taxable years beginning after
 17 the date of the enactment of this Act.

18 **SEC. 307. INCENTIVES TO REDUCE TOBACCO USE.**

19 (a) CHILD TOBACCO USE SURVEYS.—

20 (1) ANNUAL PERFORMANCE SURVEY.—

21 (A) IN GENERAL.—Not later than August
 22 31, 2012, and annually thereafter, the Sec-
 23 retary of Health and Human Services (referred
 24 to in this section as the “Secretary”) shall pub-

1 lish the results of an annual tobacco use survey,
2 to be carried out not later than 18 months after
3 the date of enactment of this Act and completed
4 on an annual basis thereafter, to determine—

5 (i) the percentage of all young individ-
6 uals who used tobacco products within the
7 30-day period prior to the conduct of the
8 survey involved; and

9 (ii) the percentage of young individ-
10 uals who identify each brand of each type
11 of tobacco product as the usual brand used
12 within such 30-day period.

13 (B) YOUNG INDIVIDUALS.—For the pur-
14 poses of this section, the term “young individ-
15 uals” means individuals who are under 18 years
16 of age.

17 (2) SIZE AND METHODOLOGY.—

18 (A) IN GENERAL.—The survey referred to
19 in paragraph (1) may be the National Survey
20 on Drug Use and Health or shall at least be
21 comparable in size and methodology to the
22 NSDUH that was completed in 2009 to meas-
23 ure the use of cigarettes (by brand) by youths
24 under 18 years of age within the 30-day period
25 prior to the conduct of the study.

1 (B) CONCLUSIVE ACCURATENESS.—A sur-
2 vey using the methodology described in sub-
3 paragraph (A) shall be deemed conclusively
4 proper, correct, and accurate for purposes of
5 this section.

6 (C) DEFINITION.—In this section, the
7 term “National Survey on Drug Use and
8 Health” or “NSDUH” means the annual na-
9 tionwide survey of randomly selected individ-
10 uals, aged 12 and older, conducted by the Sub-
11 stance Abuse and Mental Health Services Ad-
12 ministration.

13 (3) REDUCTION.—The Secretary, based on a
14 comparison of the results of the first annual tobacco
15 product survey referred to in paragraph (1) and the
16 most recent NSDUH referred to in paragraph
17 (2)(A) completed prior to the date of enactment of
18 this Act, shall determine the percentage reduction (if
19 any) in youth tobacco use for each manufacturer of
20 tobacco products.

21 (4) PARTICIPATION IN SURVEY.—Notwith-
22 standing any other provision of law, the Secretary
23 may conduct a survey under this subsection involv-
24 ing minors if the results of such survey with respect

1 to such minors are kept confidential and not dis-
2 closed.

3 (5) NONAPPLICABILITY.—Chapter 35 of title
4 44, United States Code, shall not apply to informa-
5 tion required for the purposes of carrying out this
6 section.

7 (b) TOBACCO USE REDUCTION GOAL AND NON-
8 COMPLIANCE.—

9 (1) GOAL.—It shall be the tobacco use reduc-
10 tion goal that youth tobacco use be reduced by at
11 least 5 percent or a level determined significantly
12 sufficient by the Secretary between the most recent
13 NSDUH referred to in subsection (a)(2)(A) and the
14 completion of the first annual cigarette survey (and
15 such subsequent surveys as compared to the pre-
16 vious year's survey) referred to in subsection (a)(1).

17 (2) NONCOMPLIANCE.—

18 (A) INDUSTRY-WIDE PENALTY.—If the
19 Secretary determines that the tobacco use re-
20 duction goal under paragraph (1) has not been
21 achieved, the Secretary shall, not later than
22 September 10, 2012, and September 10 of each
23 year thereafter, impose an industry-wide pen-
24 alty on the manufacturers of cigarettes in an

1 amount that is in the aggregate equal to
2 \$3,000,000,000.

3 (B) PAYMENT.—The industry-wide penalty
4 imposed under this subsection shall be paid by
5 each manufacturer based on the brand share
6 among youth ages 12–17 (as determined by the
7 survey described in subsection (a)(1)) as such
8 percentage relates to the total amount to be
9 paid by all manufacturers.

10 (C) FINAL DETERMINATION.—The deter-
11 mination of the Secretary as to the amount and
12 allocation of a surcharge under this section
13 shall be final and the manufacturer shall pay
14 such surcharge within 10 days of the date on
15 which the manufacturer is assessed. Such pay-
16 ment shall be retained by the Secretary pending
17 final judicial review of what, if any, change in
18 the surcharge is appropriate.

19 (D) LIMITATION.—With respect to ciga-
20 rettes, a manufacturer with a market share of
21 1 percent or less of youth tobacco use shall not
22 be liable for the payment of a surcharge under
23 this paragraph.

24 (E) USE OF AMOUNTS.—Amounts collected
25 under subparagraph (A) shall be deposited into

1 the Prevention and Public Health Fund estab-
2 lished under section 4002 of the Patient Protec-
3 tion and Affordable Care Act (42 U.S.C. 300u-
4 11). Such funds shall remain available for
5 transfer through September 30th of the fifth
6 fiscal year following their collection, subject to
7 the terms and conditions of such section 4002.

8 (3) PENALTIES NONDEDUCTIBLE.—The pay-
9 ment of penalties under this section shall not be con-
10 sidered to be an ordinary and necessary expense in
11 carrying on a trade or business for purposes of the
12 Internal Revenue Code of 1986 and shall not be de-
13 ductible.

14 (4) JUDICIAL REVIEW.—

15 (A) AFTER PAYMENT.—A manufacturer of
16 cigarettes may seek judicial review of any action
17 under this section only after the assessment in-
18 volved has been paid by the manufacturer to
19 the Department of the Treasury and only in the
20 United States District Court for the District of
21 Columbia.

22 (B) REVIEW BY ATTORNEY GENERAL.—
23 Prior to the filing of an action by a manufac-
24 turer seeking judicial review of an action under
25 this section, the manufacturer shall notify the

1 Attorney General of such intent to file and the
2 Attorney General shall have 30 days in which to
3 respond to the action.

4 (C) REVIEW.—The amount of any sur-
5 charge paid under this section shall be subject
6 to judicial review by the United States Court of
7 Appeals for the District of Columbia Circuit,
8 based on the arbitrary and capricious standard
9 of section 706 of title 5, United States Code.
10 Notwithstanding any other provision of law, no
11 court shall have the authority to stay any sur-
12 charge payment due to the Secretary under this
13 section pending judicial review until the Sec-
14 retary has made or failed to make a compliance
15 determination, as described under this section,
16 that has adversely affected the person seeking
17 the review.

18 (c) ENFORCEMENT.—

19 (1) INITIAL PENALTY.—There is hereby im-
20 posed an initial penalty on the failure of any manu-
21 facturer to make any payment required under this
22 section not later than a period determined sufficient
23 by the Secretary after the date on which such pay-
24 ment is due.

1 (2) AMOUNT OF PENALTY.—The amount of the
2 penalty imposed by paragraph (1) on any failure
3 with respect to a manufacturer shall be an amount
4 equal to 2 percent of the penalty owed under sub-
5 section (b) for each day during the noncompliance
6 period.

7 (3) NONCOMPLIANCE PERIOD.—For purposes of
8 this subsection, the term “noncompliance period”
9 means, with respect to any failure to make the sur-
10 charge payment required under this section, the pe-
11 riod—

12 (A) beginning on the due date for such
13 payment; and

14 (B) ending on the date on which such pay-
15 ment is paid in full.

16 (4) LIMITATIONS.—No penalty shall be imposed
17 by paragraph (1) on—

18 (A) any failure to make a surcharge pay-
19 ment under this section during any period for
20 which it is established to the satisfaction of the
21 Secretary that none of the persons responsible
22 for such failure knew or, exercising reasonable
23 diligence, would have known, that such failure
24 existed; or

1 (B) any manufacturer that produces less
 2 than 1 percent of cigarettes used by youth in
 3 that year (as determined by the annual survey).

4 **TITLE IV—EXPANDED COV-**
 5 **ERAGE OF PREVENTIVE**
 6 **SERVICES**

7 **SEC. 401. REQUIRED COVERAGE OF PREVENTIVE SERVICES**
 8 **UNDER THE MEDICAID PROGRAM.**

9 (a) MANDATORY COVERAGE.—Section 1905 of the
 10 Social Security Act (42 U.S.C. 1396d), as amended by
 11 section 4107(a)(1) of the Patient Protection and Afford-
 12 able Care Act (Public Law 111–148), is amended—

13 (1) in subsection (a)(4)—

14 (A) by striking “and” before “(D)”; and

15 (B) by inserting before the semicolon at
 16 the end the following new subparagraph: “; and

17 (E) preventive services described in subsection
 18 (ee);”; and

19 (2) by adding at the end the following new sub-
 20 section:

21 “(ee) PREVENTIVE SERVICES.—For purposes of sub-
 22 section (a)(4)(E), the preventives services described in this
 23 subsection are diagnostic, screening, preventive, and reha-
 24 bilitative services not otherwise described in subsection (a)
 25 or (r) that the Secretary determines are appropriate for

1 individuals entitled to medical assistance under this title,
2 including—

3 “(1) evidence-based services that are assigned a
4 grade of A or B by the United States Preventive
5 Services Task Force; and

6 “(2) with respect to an adult individual, ap-
7 proved vaccines recommended for routine use by the
8 Advisory Committee on Immunization Practices of
9 the Centers for Disease Control and Prevention.”.

10 (b) ELIMINATION OF COST-SHARING.—

11 (1) Subsections (a)(2)(D) and (b)(2)(D) of sec-
12 tion 1916 of the Social Security Act (42 U.S.C.
13 1396o) are each amended by inserting “preventive
14 services described in section 1905(ee),” after “emer-
15 gency services (as defined by the Secretary),”.

16 (2) Section 1916A(a)(1) of such Act (42 U.S.C.
17 1396o–1(a)(1)) is amended by inserting “, preven-
18 tive services described in section 1905(ee),” after
19 “subsection (e)”.

20 (c) CONFORMING AMENDMENT.—Effective as if in-
21 cluded in the enactment of the Patient Protection and Af-
22 fordable Care Act (Public Law 111–148), the provisions
23 of, and amendments made by, section 4106 of such Act
24 are repealed.

1 (d) INTERVAL PERIOD FOR INCLUSION OF NEW REC-
2 COMMENDATIONS IN STATE PLANS.—With respect to a rec-
3 ommendation issued on or after the date of enactment of
4 this Act by an organization described in subsection (ee)
5 of section 1905 of the Social Security Act for a preventive
6 service included under such subsection, the Secretary of
7 Health and Human Services shall establish a minimum
8 interval period, which shall be not less than 12 months,
9 between the date on which the recommendation is issued
10 and the plan year for which a State plan for medical as-
11 sistance under title XIX of the Social Security Act shall
12 be required to include such preventive service.

13 (e) EFFECTIVE DATE.—

14 (1) IN GENERAL.—Except as provided in para-
15 graph (2), the amendments made by subsections (a)
16 and (b) take effect on the date of enactment of this
17 Act.

18 (2) EXTENSION OF EFFECTIVE DATE FOR
19 STATE LAW AMENDMENT.—In the case of a State
20 plan under title XIX of the Social Security Act (42
21 U.S.C. 1396 et seq.) which the Secretary of Health
22 and Human Services determines requires State legis-
23 lation or State regulation in order for the plan to
24 meet the additional requirements imposed by the
25 amendments made by subsections (a) and (b), the

1 State plan shall not be regarded as failing to comply
2 with the requirements of such title solely on the
3 basis of its failure to meet these additional require-
4 ments before the first day of the first calendar quar-
5 ter beginning after the close of the first regular ses-
6 sion of the State legislature that begins after the
7 date of enactment of this Act. For purposes of the
8 previous sentence, in the case of a State that has a
9 2-year legislative session, each year of the session is
10 considered to be a separate regular session of the
11 State legislature.

12 **SEC. 402. COVERAGE FOR COMPREHENSIVE WORKPLACE**
13 **WELLNESS PROGRAM AND PREVENTIVE**
14 **SERVICES.**

15 Section 8904(a) of title 5, United States Code, is
16 amended—

17 (1) in paragraph (1), by adding at the end the
18 following:

19 “(G) Comprehensive workplace wellness
20 program benefits that meet the requirements of
21 section 10408 of the Patient Protection and Af-
22 fordable Care Act (Public Law 111–148).

23 “(H) Preventive services benefits deemed
24 an ‘A’ or ‘B’ service by the United States Pre-
25 ventive Services Taskforce.

1 “(I) Immunizations that have in effect a
2 recommendation from the Advisory Committee
3 on Immunization Practices of the Centers for
4 Disease Control and Prevention with respect to
5 the individuals involved.

6 “(J) With respect to infants, children, and
7 adolescents, evidence-informed preventive care
8 and screenings provided for in the comprehen-
9 sive guidelines supported by the Health Re-
10 sources and Services Administration of the De-
11 partment of Health and Human Services.”; and
12 (2) in paragraph (2), by adding at the end the
13 following:

14 “(G) Comprehensive workplace wellness
15 program benefits that meet the requirements of
16 section 10408 of the Patient Protection and Af-
17 fordable Care Act (Public Law 111–148).

18 “(H) Preventive services benefits deemed
19 an ‘A’ or ‘B’ service by the United States Pre-
20 ventive Services Taskforce.

21 “(I) Immunizations that have in effect a
22 recommendation from the Advisory Committee
23 on Immunization Practices of the Centers for
24 Disease Control and Prevention with respect to
25 the individuals involved.

1 “(J) With respect to infants, children, and
2 adolescents, evidence-informed preventive care
3 and screenings provided for in the comprehen-
4 sive guidelines supported by the Health Re-
5 sources and Services Administration of the De-
6 partment of Health and Human Services.”.

7 **SEC. 403. HEALTH PROFESSIONAL EDUCATION AND TRAIN-**
8 **ING IN HEALTHY EATING.**

9 Part Q of title III of the Public Health Service Act
10 (42 U.S.C. 280h et seq.) is amended by striking section
11 399Z and inserting the following:

12 **“SEC. 399Z. HEALTH PROFESSIONAL EDUCATION AND**
13 **TRAINING IN HEALTHY EATING.**

14 “(a) IN GENERAL.—The Secretary, acting through
15 the Director of the Centers for Disease Control and Pre-
16 vention, in collaboration with the Administrator of the
17 Health Resources and Services Administration and the
18 heads of other agencies, and in consultation with appro-
19 priate health professional associations, shall develop and
20 carry out a program to educate and train health profes-
21 sionals in effective strategies to—

22 “(1) better identify patients at-risk of becoming
23 overweight or obese or developing an eating disorder;

24 “(2) detect overweight or obesity or eating dis-
25 orders among a diverse patient population;

1 “(3) counsel, refer, or treat patients with over-
2 weight or obesity or an eating disorder;

3 “(4) educate patients and the families of pa-
4 tients about effective strategies to establish healthy
5 eating habits and appropriate levels of physical ac-
6 tivity; and

7 “(5) assist in the creation and administration of
8 community-based overweight and obesity and eating
9 disorder prevention efforts.

10 “(b) EATING DISORDER.—In this section, the term
11 ‘eating disorder’ includes anorexia nervosa, bulimia
12 nervosa, binge eating disorder, and eating disorders not
13 otherwise specified, as defined in the fourth edition of the
14 Diagnostic and Statistical Manual of Mental Disorders or
15 any subsequent edition.

16 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated to carry out this section
18 such sums as may be necessary for each of the fiscal years
19 2012 through 2016.”.

20 **TITLE V—RESEARCH**

21 **SEC. 501. GRANTS FOR BODY MASS INDEX DATA ANALYSIS.**

22 (a) ESTABLISHMENT.—The Secretary of Health and
23 Human Services may make grants to not more than 20
24 eligible entities to analyze body mass index (hereinafter

1 in this section referred to as “BMI”) measurements of
2 children, ages 2 through 18.

3 (b) ELIGIBILITY.—An eligible entity for purposes of
4 this section is a State (including the District of Columbia,
5 the Commonwealth of Puerto Rico, and each territory of
6 the United States) that has a statewide immunization in-
7 formation system that—

8 (1) has the capacity to store basic demographic
9 information (including date of birth, gender, and ge-
10 ographic area of residence), height, weight, and im-
11 munization data for each resident of the State;

12 (2) is accessible to doctors, nurses, other li-
13 censed medical professionals, and officials of the rel-
14 evant department in the State charged with main-
15 taining health and immunization records; and

16 (3) has the capacity to integrate large amounts
17 of data for the analysis of BMI measurements.

18 (c) USE OF FUNDS.—A State that receives a grant
19 under this section shall use the grant for the following
20 purposes:

21 (1) Analyzing the effectiveness of obesity pre-
22 vention programs and wellness policies carried out in
23 the State.

1 (2) Purchasing new computers, computer equip-
2 ment, and software to upgrade computers to be used
3 for a statewide immunization information system.

4 (3) The hiring and employment of personnel to
5 maintain and analyze BMI data.

6 (4) The development and implementation of
7 training programs for medical professionals to aid
8 such professionals in taking BMI measurements and
9 discussing such measurements with patients.

10 (5) Providing information to parents and legal
11 guardians in accordance with subsection (e)(2).

12 (d) SELECTION CRITERIA.—In selecting recipients of
13 grants under this section, the Secretary shall give priority
14 to States in which a high percentage of public and private
15 health care providers submit data to a statewide immuni-
16 zation information system that—

17 (1) contains immunization data for not less
18 than 20 percent of the population of such State that
19 is under the age of 18; and

20 (2) includes data collected from men and
21 women who are of a wide variety of ages and who
22 reside in a wide variety of geographic areas in a
23 State (as determined by the Secretary).

24 (e) CONDITIONS.—As a condition of receiving a grant
25 under this section, a State shall—

1 (1) ensure that BMI measurements will be re-
2 corded for children ages 2 through 18—

3 (A) on an annual basis by a licensed physi-
4 cian, nurse, nurse practitioner, or physicians as-
5 sistant during an annual physical examination,
6 wellness visit, or similar visit with a physician;
7 and

8 (B) in accordance with data collection pro-
9 tocols published by the American Academy of
10 Pediatrics in the 2007 Expert Committee Rec-
11 ommendations; and

12 (2) for each child in the State for whom such
13 measurements indicate a BMI greater than the 95th
14 percentile for such child's age and gender, provide to
15 the parents or legal guardians of such child informa-
16 tion on how to lower BMI and information on State
17 and local obesity prevention programs.

18 (f) REPORTS.—

19 (1) REPORTS TO THE SECRETARY.—Not later
20 than 5 years after the receipt of a grant under this
21 section, the State receiving such grant shall submit
22 to the Secretary the following reports:

23 (A) A report containing an analysis of
24 BMI data collected using the grant, including—

1 (i) the differences in obesity trends by
2 gender, disability, geographic area (as de-
3 termined by the State), and socioeconomic
4 status within such State; and

5 (ii) the demographic groups and geo-
6 graphic areas most affected by obesity
7 within such State.

8 (B) A report containing an analysis of the
9 effectiveness of obesity prevention programs
10 and State wellness policies, including—

11 (i) an analysis of the success of such
12 programs and policies prior to the receipt
13 of the grant; and

14 (ii) a discussion of the means to de-
15 termine the most effective strategies to
16 combat obesity in the geographic areas
17 identified under subparagraph (A).

18 (2) REPORT TO CONGRESS AND CERTAIN EXEC-
19 UTIVE AGENCIES.—Not later than 1 year after the
20 Secretary receives all the reports required pursuant
21 to paragraph (1), the Secretary shall submit to the
22 Secretary of Education, the Secretary of Agriculture,
23 and to Congress a report that contains the following:

24 (A) An analysis of trends in childhood obe-
25 sity, including how such trends vary across re-

1 gions of the United States, and how such
2 trends vary by gender and socioeconomic status.

3 (B) A description of any programs that—

4 (i) the Secretary has determined sig-
5 nificantly lower childhood obesity rates for
6 certain geographic areas in the United
7 States, including urban, rural, and subur-
8 ban areas; and

9 (ii) the Secretary recommends to be
10 implemented by the States (including
11 States that did not receive a grant under
12 this section).

13 (g) AUTHORIZATION OF APPROPRIATIONS.—There is
14 authorized to be appropriated to the Secretary such sums
15 as may be necessary to carry out this section for each of
16 fiscal years 2012 through 2016.

17 **SEC. 502. NATIONAL ASSESSMENT OF MENTAL HEALTH**
18 **NEEDS.**

19 Title V of the Public Health Service Act (42 U.S.C.
20 290aa et seq.) is amended by inserting after section 506B
21 (42 U.S.C. 290aa–5b) the following:

22 **“SEC. 506C. NATIONAL ASSESSMENT OF MENTAL HEALTH**
23 **NEEDS.**

24 “(a) IN GENERAL.—The Secretary, acting through
25 the Administrator, and in consultation with the Centers

1 for Disease Control and Prevention and the Director of
2 the National Institutes of Health, shall establish and im-
3 plement public health monitoring measures to address the
4 mental and behavioral health status of the population of
5 the United States and other populations served by the Ad-
6 ministration, that include—

7 “(1) monitoring the mental health status of the
8 population, including the incidence and prevalence of
9 mental and behavioral health conditions across the
10 lifespan;

11 “(2) monitoring access to appropriate diag-
12 nostic and treatment services for mental and behav-
13 ioral health conditions, including trends in unmet
14 need for services;

15 “(3) monitoring mental and behavioral health
16 conditions as risk factors for obesity and chronic dis-
17 eases to the extent practicable;

18 “(4) enhancing existing public health moni-
19 toring systems by including measures assessing men-
20 tal and behavioral health status and associated risk
21 factors; and

22 “(5) to the extent practicable, monitoring the
23 immediate and long-term impact of disasters or cat-
24 astrophic events, whether natural or man-made on

1 the mental and behavioral health of affected popu-
2 lations.

3 “(b) DISTINGUISHING AMONG AGE GROUPS.—In de-
4 signing and implementing the measures described in sub-
5 section (a) the Secretary shall ensure that data collection
6 and reporting standards stratify data by age groups, in
7 particular, to the extent practicable, children under the
8 age of 5 years.

9 “(c) REPORT.—Not later than 1 year after the date
10 of enactment of this section, the Secretary shall submit
11 a report to Congress that describes the progress on the
12 implementation of the monitoring measures described in
13 subsection (a).

14 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
15 is authorized to be appropriated to carry out this section
16 such sums as may be necessary to carry out this section
17 for each of fiscal years 2012 through 2016.”.

○