S T A T E O F N E W Y O R K

6696

I N S E N A T E

February 28, 2014

Introduced by Sens. KLEIN, CARLUCCI, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to including certain respiratory diseases and obesity within disease management demonstration programs (Part A); to amend the public health law, in relation to the reduction of emphysema, chronic bronchitis and other chronic respiratory diseases in children (Part B); to amend the public health law, in relation to directing the health research science board to study respiratory diseases and obesity (Part C); to amend the public health law, in relation to breastfeeding of infants and the adolescent pregnancy nutrition counseling program (Part D); to amend the education law, in relation to screening for childhood obesity (Part E); to amend the education law, in relation to school lunch periods (Part F); and to amend the insurance law and the public health law, in relation to making actuarially appropriate reductions in health insurance premiums in return for an enrollee's or insured's participation in a qualified wellness program (Part G)

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act enacts into law major components of legislation which combat the incidence of adult and child obesity and respiratory diseases. Each component is wholly contained within a Part identified as Parts A through G. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

PART A

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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Section 1. Subdivisions 2 and 4 of section 2111 of the public health law, as added by section 21 of part C of chapter 58 of the laws of 2004, are amended to read as follows:

2. The department shall establish the criteria by which individuals will be identified as eligible for enrollment in the demonstration programs. Persons eligible for enrollment in the disease management demonstration program shall be limited to individuals who: receive medical assistance pursuant to title eleven of article five of the social services law and may be eligible for benefits pursuant to title 18 of the social security act (Medicare); are not enrolled in a Medicaid managed care plan, including individuals who are not required or not eligible to participate in Medicaid managed care programs pursuant to section three hundred sixty-four-j of the social services law; are diagnosed with chronic health problems as may be specified by the entity undertaking the demonstration program, including, but not limited to one or more of the following: congestive heart failure, chronic obstructive pulmonary disease, asthma, EMPHYSEMA, CHRONIC BRONCHITIS, OTHER CHRONIC RESPIRATORY DISEASES, diabetes, ADULT AND CHILDHOOD OBESITY, or other chronic health conditions as may be specified by the department; or have experienced or are likely to experience one or more hospitalizations or are otherwise expected to incur excessive costs and high utilization of health care services.

4. The demonstration program shall offer evidence-based services and interventions designed to ensure that the enrollees receive high quality, preventative and cost-effective care, aimed at reducing the necessity for hospitalization or emergency room care or at reducing lengths of stay when hospitalization is necessary. The demonstration program may include screening of eligible enrollees, developing an individualized care management plan for each enrollee and implementing that plan. Disease management demonstration programs that utilize information technology systems that allow for continuous application of evidence-based guidelines to medical assistance claims data and other available data to identify specific instances in which clinical interventions are justified and communicate indicated interventions to physicians, health care providers and/or patients, and monitor physician and health care provider response to such interventions, shall have the enrollees, or groups of enrollees, approved by the department for participation. The services provided by the demonstration program as part of the care management plan may include, but are not limited to, case management, social work, individualized health counselors, multi-behavioral goals plans, claims data management, health and self-care education, drug therapy management and oversight, personal emergency response systems and other monitoring technologies, SYSTEMATIC CHRONIC HEALTH CONDITIONS IDENTIFIED FOR MONITORING, telehealth services and similar services designed to improve the quality and cost-effectiveness of health care services.

S 2. This act shall take effect immediately.

PART B

Section 1. Section 2599-b of the public health law, as amended by section 88 of part B of chapter 58 of the laws of 2005, is amended to read as follows:

S 2599-b. Program development. 1. The program shall be designed to prevent and reduce the incidence and prevalence of obesity in children and adolescents, especially among populations with high rates of obesity and obesity-related health complications including, but not limited to,

diabetes, heart disease, cancer, osteoarthritis, asthma, EMPHYSEMA, CHRONIC BRONCHITIS, OTHER CHRONIC RESPIRATORY DISEASES and other conditions. The program shall use recommendations and goals of the United States departments of agriculture and health and human services, the surgeon general and centers for disease control AND PREVENTION in developing and implementing guidelines for nutrition education and physical activity projects as part of obesity prevention efforts. The content and implementation of the program shall stress the benefits of choosing a balanced, healthful diet from the many options available to consumers, without specifically targeting the elimination of any particular food group, food product or food-related industry.

2. The childhood obesity prevention program shall include, but not be limited to:

(a) developing media health promotion campaigns targeted to children and adolescents and their parents and caregivers that emphasize increasing consumption of low-calorie, high-nutrient foods, decreasing consumption of high-calorie, low-nutrient foods and increasing physical activity designed to prevent or reduce obesity;

(b) establishing school-based childhood obesity prevention nutrition education and physical activity programs including programs described in section twenty-five hundred ninety-nine-c of this article, as well as other programs with linkages to physical and health education courses, and which utilize the school health index of the National Center for Chronic Disease Prevention and Health Promotion or other recognized school health assessment PURSUANT TO ARTICLE NINETEEN OF THE EDUCATION LAW;

(c) establishing community-based childhood obesity prevention nutrition education and physical activity programs including programs which involve parents and caregivers, and which encourage communities, families, child care and other settings to provide safe and adequate space and time for physical activity and encourage a healthy diet, AND CAN BE IN COORDINATION WITH COUNTY COOPERATIVE EXTENSION PROGRAMS ESTABLISHED PURSUANT TO SECTION TWO HUNDRED TWENTY-FOUR-B OF THE COUNTY LAW;

(d) coordinating with the state education department, department of agriculture and markets, office of parks, recreation and historic preservation, office of temporary and disability assistance, office of children and family services and other federal, state and local agencies to incorporate strategies to prevent and reduce childhood obesity into government food assistance, health, education and recreation programs;

(e) sponsoring periodic conferences or meetings to bring together experts in nutrition, exercise, public health, mental health, education, parenting, media, food marketing, food security, agriculture, community planning and other disciplines to examine societal-based solutions to the problem of childhood obesity and issue guidelines and recommendations for New York state policy and programs;

(f) developing training programs for medical and other health professionals to teach practical skills in nutrition and exercise education to children and their parents and caregivers; [and]

(g) developing screening programs in coordination with health care providers and institutions including but not limited to day care centers and schools for overweight and obesity for children aged two through eighteen years, using body mass index (BMI) appropriate for age and gender, and notification, in a manner protecting the confidentiality of such children and their families, of parents of BMI status, and explanation of the consequences of such status, including recommended actions parents may need to take and information about resources and referrals

available to families to enhance nutrition and physical activity to reduce and prevent obesity[.]; AND

(H) COORDINATING WITH THE EDUCATION DEPARTMENT, OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, OFFICE OF CHILDREN AND FAMILY SERVICES AND OTHER FEDERAL, STATE AND LOCAL AGENCIES TO INCORPORATE STRATEGIES TO CURTAIL THE INCIDENCE OF ASTHMA, CHRONIC BRONCHITIS AND OTHER CHRONIC RESPIRATORY DISEASES TO ENABLE ADULTS AND CHILDREN TO SAFELY INCREASE PHYSICAL ACTIVITY TO HELP CURB THE INCIDENCE OF OBESITY.

3. The department, IN COOPERATION WITH THE EDUCATION DEPARTMENT, shall periodically collect and analyze information from schools, health and nutrition programs and other sources to determine the prevalence of childhood obesity in New York state, and to evaluate, to the extent possible, the effectiveness of the childhood obesity prevention program.

S 2. The opening paragraph of section 2599-c of the public health law, as amended by section 88 of part B of chapter 58 of the laws of 2005, is amended to read as follows:

The commissioner, IN COOPERATION WITH THE COMMISSIONERS OF EDUCATION AND AGRICULTURE AND MARKETS, AND COUNTY BOARDS OF COOPERATIVE EXTENSION, shall encourage the establishment of school-based childhood obesity prevention and physical activity programs that promote:

S 3. This act shall take effect immediately.

PART C

Section 1. Paragraphs (a), (b) and (c) of subdivision 1 of section 2411 of the public health law, as amended by chapter 219 of the laws of 1997, are amended to read as follows:

(a) Survey state agencies, boards, programs and other state governmental entities to assess what, if any, relevant data has been or is being collected which may be of use to researchers engaged in breast, prostate or testicular cancer research, OR ADULT AND CHILDHOOD OBESITY, ASTHMA, CHRONIC BRONCHITIS OR OTHER CHRONIC RESPIRATORY DISEASE RESEARCH;

(b) Consistent with the survey conducted pursuant to paragraph (a) of this subdivision, compile a list of data collected by state agencies which may be of assistance to researchers engaged in breast, prostate or testicular cancer research as established in section twenty-four hundred twelve of this title, AND ADULT AND CHILDHOOD OBESITY, ASTHMA, CHRONIC BRONCHITIS OR OTHER CHRONIC RESPIRATORY DISEASE RESEARCH;

(c) Consult with the Centers for Disease Control and Prevention, the National Institutes of Health, the Federal Agency For Health Care Policy and Research, the National Academy of Sciences and other organizations or entities which may be involved in cancer research to solicit both information regarding breast, prostate and testicular cancer research projects, AND ADULT AND CHILDHOOD OBESITY, ASTHMA, CHRONIC BRONCHITIS OR OTHER CHRONIC RESPIRATORY DISEASE RESEARCH PROJECTS that are currently being conducted and recommendations for future research projects;

S 2. Subdivision 1 of section 2500 of the public health law, as amended by chapter 822 of the laws of 1987, is amended to read as follows:

1. The commissioner shall act in an advisory and supervisory capacity, in matters pertaining to the safeguarding of motherhood, the prevention of maternal, perinatal, infant and child mortality, the prevention of diseases, low birth weight, CHILDHOOD OBESITY, and defects of childhood and the promotion of maternal, prenatal and child health, including care in hospitals, and shall administer such services bearing on the health

of mothers and children for which funds are or shall hereafter be made available.

S 3. This act shall take effect immediately.

PART D

Section 1. Section 2505-a of the public health law, as added by chapter 292 of the laws of 2009, is amended to read as follows:

S 2505-a. Rights of breastfeeding mothers. 1. The principles enunciated in subdivision three of this section are declared to be the public policy of the state and a copy of such statement of rights shall be posted conspicuously in a public place in each maternal health care facility AND CHILD DAY CARE FACILITY. For purposes of this section, "maternal health care provider" means a physician, midwife, or other authorized practitioner attending a pregnant woman; and "maternal health care facility" includes hospitals and freestanding birthing centers providing perinatal services in accordance with article twenty-eight of this chapter and applicable regulations.

2. The commissioner shall make available to every maternal health care provider [and], maternal health care facility AND CHILD DAY CARE FACILITY, on the health department's website for the purpose of health care facilities to include such rights in the maternity information leaflet as described in section twenty-eight hundred three-j of this chapter, a copy of the statement of rights provided in subdivision three of this section in the top six languages other than English spoken in the state according to the latest available data from the U.S. Bureau of Census, and shall adopt any rules and regulations necessary to ensure that such patients are treated in accordance with the provisions of such statement.

3. The statement of rights shall consist of the following:

"Breastfeeding Mothers' Bill of Rights"

Choosing the way you will feed your new baby is one of the important decisions you will make in preparing for your infant's arrival. Doctors agree that for most women breastfeeding is the safest and most healthy choice. It is your right to be informed about the benefits of breastfeeding and have your health care provider [and], maternal health care facility AND CHILD DAY CARE FACILITY encourage and support breastfeeding. You have the right to make your own choice about breastfeeding. Whether you choose to breastfeed or not you have the following basic rights regardless of your race, creed, national origin, sexual orientation, gender identity or expression, or source of payment for your health care. Maternal health care facilities have a responsibility to ensure that you understand these rights. They must provide this information clearly for you and must provide an interpreter if necessary. These rights may only be limited in cases where your health or the health of your baby requires it. If any of the following things are not medically right for you or your baby, you should be fully informed of the facts and be consulted.

(1) Before You Deliver, if you attend prenatal childbirth education classes provided by the maternal health care facility and all hospital clinics and diagnostic and treatment centers providing prenatal services in accordance with article 28 of the public health law you must receive the breastfeeding mothers' bill of rights. Each maternal health care facility shall provide the maternity information leaflet, including the Breastfeeding Mothers' Bill of Rights, in accordance with section twenty-eight hundred three-i of this chapter to each patient or to the

appointed personal representative at the time of prebooking or time of admission to a maternal health care facility. Each maternal health care provider shall give a copy of the Breastfeeding Mothers' Bill of Rights to each patient at or prior to the medically appropriate time.

You have the right to complete information about the benefits of breastfeeding for yourself and your baby. This will help you make an informed choice on how to feed your baby.

You have the right to receive information that is free of commercial interests and includes:

* How breastfeeding benefits you and your baby nutritionally, medically and emotionally;

* How to prepare yourself for breastfeeding;

* How to understand some of the problems you may face and how to solve them.

(2) In The Maternal Health Care Facility:

* You have the right to have your baby stay with you right after birth whether you deliver vaginally or by cesarean section. You have the right to begin breastfeeding within one hour after birth.

* You have the right to have someone trained to help you in breastfeeding give you information and help you when you need it.

* You have the right to have your baby not receive any bottle feeding or pacifiers.

* You have the right to know about and refuse any drugs that may dry up your milk.

* You have the right to have your baby in your room with you 24 hours a day.

* You have the right to breastfeed your baby at any time day or night.

* You have the right to know if your doctor or your baby's pediatrician is advising against breastfeeding before any feeding decisions are made.

* You have the right to have a sign on your baby's crib clearly stating that your baby is breastfeeding and that no bottle feeding of any type is to be offered.

* You have the right to receive full information about how you are doing with breastfeeding and get help on how to improve.

* You have the right to breastfeed your baby in the neonatal intensive care unit. If nursing is not possible, every attempt will be made to have your baby receive your pumped or expressed milk.

* If you, or your baby, are re-hospitalized in a maternal care facility after the initial delivery stay, the hospital will make every effort to continue to support breastfeeding, to provide hospital grade electric pumps and rooming in facilities.

* You have the right to have help from someone specially trained in breastfeeding support and expressing breast milk if your baby has special needs.

* You have the right to have a family member or friend receive breastfeeding information from a staff member if you request it.

(3) When You Leave The Maternal Health Care Facility:

* You have the right to printed breastfeeding information free of commercial material.

* You have the right, unless specifically requested by you, and available at the facility, to be discharged from the facility without discharge packs containing infant formula, or formula coupons unless ordered by your baby's health care provider.

* You have the right to get information about breastfeeding resources in your community including information on availability of breastfeeding consultants, support groups and breast pumps.

* You have the right to have the facility give you information to help choose a medical provider for your baby and understand the importance of a follow-up appointment.

* You have the right to receive information about safely collecting and storing your breast milk.

* You have the right to breastfeed your baby in any location, public or private, where you are otherwise authorized to be. Complaints can be directed to the New York State Division of Human Rights.

* YOU HAVE A RIGHT TO BREASTFEED YOUR BABY AT YOUR PLACE OF EMPLOYMENT OR CHILD DAY CARE CENTER IN AN ENVIRONMENT THAT DOES NOT DISCOURAGE BREASTFEEDING OR THE PROVISION OF BREAST MILK.

All the above are your rights. If the maternal health care facility does not honor these rights you can seek help by contacting the New York state department of health or by contacting the hospital complaint hotline or via email.

4. The commissioner shall make regulations reasonably necessary to implement this section.

S 2. Section 2505 of the public health law, as added by chapter 479 of the laws of 1980, is amended to read as follows:

S 2505. Human breast milk; collection, storage and distribution; general powers of the commissioner. The commissioner is hereby empowered to:

(a) adopt regulations and guidelines including, but not limited to donor standards, methods of collection, and standards for storage, and distribution of human breast milk;

(b) conduct educational activities to inform the public and health care providers of the availability of human breast milk for infants determined to require such milk and to inform potential donors of the opportunities for proper donation;

(c) CONDUCT EDUCATIONAL ACTIVITIES TO ENCOURAGE AND FACILITATE EMPLOYERS AND CHILD DAY CARE CENTERS TO ESTABLISH ENVIRONMENTS THAT DO NOT DISCOURAGE BREASTFEEDING AND THE PROVISION OF BREAST MILK. SUCH ENVIRONMENTS MAY INCLUDE SANITARY LOCATIONS FOR BREASTFEEDING AND REFRIGERATORS TO ASSIST IN BREASTFEEDING AND FEEDING BABIES WITH EXPRESSED BREAST MILK; AND

(D) establish rules and regulations to effectuate the provisions of this section.

S 3. Subdivision 2 of section 2515 of the public health law, as added by section 20 of part A of chapter 58 of the laws of 2008, is amended to read as follows:

2. "Services for eligible adolescents" means those services, including but not limited to: vocational and educational counseling, job skills training, family life and parenting education, life skills development, coordination, case management, primary preventive health care, PREGNANCY AND CHILD NUTRITION COUNSELING FOR EXPECTANT MOTHERS TO CURB THE INCIDENCE OF CHILDHOOD OBESITY, family planning, social and recreational programs, child care, outreach and advocacy, follow-up on service utilization, crisis intervention, and efforts to stimulate community interest and involvement.

S 4. Paragraph (c) of subdivision 2 of section 2515-a of the public health law, as added by section 20 of part A of chapter 58 of the laws of 2008, is amended to read as follows:

(c) serve a geographic area where the incidence of infant mortality, LOW BIRTH WEIGHT INFANTS, CHILDHOOD OBESITY and the prevalence of low-income families are high and where the availability or accessibility of services for eligible adolescents is low;

S 5. Subdivision (b) of section 2522 of the public health law, as amended by chapter 484 of the laws of 2009, is amended and a new subdivision (e-1) is added to read as follows:

(b) promotion of community awareness of the benefits TO THE MOTHER AND CHILD of preconception health and early and continuous prenatal care;

(E-1) HEALTH AND NUTRITIONAL EDUCATION AND SERVICES FOR BOTH PARENTS, REGARDING CHILDHOOD AND ADULT OBESITY AND ASTHMA, AND THE PREVENTION OR MITIGATION THEREOF;

S 6. This act shall take effect immediately.

PART E

Section 1. Section 901 of the education law, as amended by chapter 477 of the laws of 2004, subdivision 1 as amended by section 57 of part A-1 of chapter 58 of the laws of 2006, is amended to read as follows:

S 901. School health services to be provided. 1. School health services, as defined in subdivision two of this section, shall be provided by each school district for all students attending the public schools in this state, except in the city school district of the city of New York, as provided in this article. School health services shall include the services of a registered professional nurse, if one is employed, and shall also include such services as may be rendered as provided in this article in examining students for the existence of disease or disability, OR MAY INCLUDE SERVICES RELATED TO EXAMINING FOR CHILDHOOD OBESITY BASED UPON THE CALCULATION OF EACH STUDENT'S BODY MASS INDEX AND WEIGHT STATUS CATEGORY PURSUANT TO SECTION NINE HUNDRED FOUR OF THIS ARTICLE, and in testing the eyes and ears of such students.

2. School health services for the purposes of this article shall mean the several procedures, including, but not limited to, medical examinations, dental inspection and/or screening, scoliosis screening, vision screening [and], audiometer tests, AND CHILDHOOD OBESITY AS MEASURED BY BODY MASS INDEX AND WEIGHT STATUS CATEGORY, designed to determine the health status of the child; to inform parents or other persons in parental relation to the child, pupils and teachers of the individual child's health condition subject to federal and state confidentiality laws; to guide parents, children and teachers in procedures for preventing and correcting defects [and], diseases AND CHILDHOOD OBESITY CONDITIONS; to instruct the school personnel in procedures to take in case of accident or illness; to survey and make necessary recommendations concerning the health and safety aspects of school facilities and the provision of health information.

S 2. Subdivisions 4 and 5 of section 918 of the education law, as added by chapter 493 of the laws of 2004, are amended to read as follows:

4. The committee is encouraged to study AND MAKE RECOMMENDATIONS ON all facets of the current nutritional policies of the district including, but not limited to, the goals of the district to promote health and proper nutrition, REDUCE THE INCIDENCE OF CHILDHOOD OBESITY, vending machine sales, menu criteria, educational curriculum teaching healthy nutrition, AND educational information provided to parents or guardians regarding healthy nutrition and the health risks associated with obesity, ASTHMA, CHRONIC BRONCHITIS AND OTHER CHRONIC RESPIRATORY DISEASES.

PROVIDED, FURTHER, THE COMMITTEE MAY PROVIDE INFORMATION TO PERSONS IN PARENTAL RELATION ON opportunities offered to parents or guardians to encourage healthier eating habits to students, and the education provided to teachers and other staff as to the importance of healthy nutrition AND ABOUT THE DANGERS OF CHILDHOOD OBESITY. In addition the committee shall consider recommendations and practices of other districts and nutrition studies.

5. The committee is encouraged to report periodically to the district regarding practices that will educate teachers, parents or guardians and children about healthy nutrition and raise awareness of the dangers of CHILDHOOD obesity, ASTHMA, CHRONIC BRONCHITIS AND OTHER CHRONIC RESPIRATORY DISEASES. The committee is encouraged also to provide any parent teacher associations in the district with such findings and recommendations.

S 3. This act shall take effect two years after it shall have become a law.

PART F

Section 1. Section 813 of the education law, as added by chapter 296 of the laws of 1994, is amended to read as follows:

S 813. School lunch period; scheduling. Each school shall schedule a reasonable time DURING EACH SCHOOL DAY for each full day pupil attending pre-kindergarten through grade twelve WITH AMPLE TIME to consume lunch AND TO ENGAGE IN PHYSICAL EXERCISE OR RECREATION.

S 2. This act shall take effect immediately.

PART G

Section 1. Section 3231 of the insurance law, as added by chapter 501 of the laws of 1992, is amended by adding a new subsection (c-1) to read as follows:

(C-1) SUBJECT TO THE APPROVAL OF THE SUPERINTENDENT, AN INSURER OR HEALTH MAINTENANCE ORGANIZATION ISSUING AN INDIVIDUAL OR GROUP HEALTH INSURANCE POLICY PURSUANT TO THIS SECTION MAY PROVIDE FOR AN ACTUARIALLY APPROPRIATE REDUCTION IN PREMIUM RATES OR OTHER BENEFITS OR ENHANCEMENTS APPROVED BY THE SUPERINTENDENT TO ENCOURAGE AN ENROLLEE'S OR INSURED'S ACTIVE PARTICIPATION IN A QUALIFIED WELLNESS PROGRAM. A QUALIFIED WELLNESS PROGRAM CAN BE A RISK MANAGEMENT SYSTEM THAT IDENTIFIES AT-RISK POPULATIONS OR ANY OTHER SYSTEMATIC PROGRAM OR COURSE OF MEDICAL CONDUCT WHICH HELPS TO PROMOTE PHYSICAL AND MENTAL FITNESS, HEALTH AND WELL-BEING, HELPS TO PREVENT OR MITIGATE THE CONDITIONS OF ACUTE OR CHRONIC SICKNESS, DISEASE OR PAIN, OR WHICH MINIMIZES ADVERSE HEALTH CONSEQUENCES DUE TO LIFESTYLE. SUCH A WELLNESS PROGRAM MAY HAVE SOME OR ALL OF THE FOLLOWING ELEMENTS TO ADVANCE THE PHYSICAL HEALTH AND MENTAL WELL-BEING OF ITS PARTICIPANTS:

(1) AN EDUCATION PROGRAM TO INCREASE THE AWARENESS OF AND DISSEMINATION OF INFORMATION ABOUT PURSUING HEALTHIER LIFESTYLES, AND WHICH WARNS ABOUT RISKS OF PURSUING ENVIRONMENTAL OR BEHAVIORAL ACTIVITIES THAT ARE DETRIMENTAL TO HUMAN HEALTH. IN ADDITION, INFORMATION ON THE AVAILABILITY OF HEALTH SCREENING TESTS TO ASSIST IN THE EARLY IDENTIFICATION AND TREATMENT OF DISEASES SUCH AS CANCER, HEART DISEASE, HYPERTENSION, DIABETES, ASTHMA, OBESITY OR OTHER ADVERSE HEALTH AFFLICTIONS;

(2) A PROGRAM THAT ENCOURAGES BEHAVIORAL PRACTICES THAT EITHER ENCOURAGES HEALTHY LIVING ACTIVITIES OR DISCOURAGES UNHEALTHY LIVING ACTIVITIES. SUCH ACTIVITIES OR PRACTICES MAY INCLUDE WELLNESS PROGRAMS, AS

PROVIDED UNDER SECTION THREE THOUSAND TWO HUNDRED THIRTY-NINE OF THIS ARTICLE; AND

(3) THE MONITORING OF THE PROGRESS OF EACH COVERED PERSON TO TRACK HIS OR HER ADHERENCE TO SUCH WELLNESS PROGRAM AND TO PROVIDE ASSISTANCE AND MORAL SUPPORT TO SUCH COVERED PERSON TO ASSIST HIM OR HER TO ATTAIN THE GOALS OF THE COVERED PERSON'S WELLNESS PROGRAM.

SUCH WELLNESS PROGRAM SHALL DEMONSTRATE ACTUARIALLY THAT IT ENCOURAGES THE GENERAL GOOD HEALTH AND WELL-BEING OF THE COVERED POPULATION. THE INSURER OR HEALTH MAINTENANCE ORGANIZATION SHALL NOT REQUIRE SPECIFIC OUTCOMES AS A RESULT OF AN ENROLLEE'S OR INSURED'S ADHERENCE TO THE APPROVED WELLNESS PROGRAM.

S 2. Subsections (b) and (c) of section 3239 of the insurance law, as added by chapter 592 of the laws of 2008, paragraphs 6 and 7 of subsection (b) and subparagraphs (C) and (D) of paragraph 2 of subsection (c) as amended, and paragraph 8 of subsection (b) and subparagraphs (E) and (F) of paragraph 2 of subsection (c) as added by chapter 519 of the laws of 2013, are amended to read as follows:

(b) A wellness program may include, but is not limited to, the following programs or services:

(1) the use of a health risk assessment tool;

(2) a smoking cessation program;

(3) a weight management program;

(4) a stress AND/OR HYPERTENSION management program;

(5) a worker injury prevention program;

(6) a nutrition education program;

(7) health or fitness incentive programs; [and]

(8) a coordinated weight management, nutrition, stress management and physical fitness program to combat the high incidence of adult and childhood obesity, asthma and other chronic respiratory conditions[.];

(9) A SUBSTANCE OR ALCOHOL ABUSE CESSATION PROGRAM; AND

(10) A PROGRAM TO MANAGE AND COPE WITH CHRONIC PAIN.

(c)(1) A wellness program may use rewards and incentives for participation provided that where the group health insurance policy or subscriber contract is required to be community-rated, the rewards and incentives shall not include a discounted premium rate or a rebate or refund of premium, EXCEPT AS PROVIDED IN SECTION THREE THOUSAND TWO HUNDRED THIRTY-ONE OF THIS ARTICLE, OR SECTION FOUR THOUSAND TWO HUNDRED THIRTY-FIVE, FOUR THOUSAND THREE HUNDRED SEVENTEEN OR FOUR THOUSAND THREE HUNDRED TWENTY-SIX OF THIS CHAPTER, OR SECTION FORTY-FOUR HUNDRED FIVE OF THE PUBLIC HEALTH LAW.

(2) Permissible rewards and incentives MAY include:

(A) full or partial reimbursement of the cost of participating in smoking cessation [or], weight management, STRESS AND/OR HYPERTENSION, WORKER INJURY PREVENTION, NUTRITION EDUCATION, SUBSTANCE OR ALCOHOL ABUSE CESSATION, OR CHRONIC PAIN MANAGEMENT AND COPING programs;

(B) full or partial reimbursement of the cost of membership in a health club or fitness center;

(C) the waiver or reduction of copayments, coinsurance and deductibles for preventive services covered under the group policy or subscriber contract;

(D) monetary rewards in the form of gift cards or gift certificates, so long as the recipient of the reward is encouraged to use the reward for a product or a service that promotes good health, such as healthy cook books, over the counter vitamins or exercise equipment;

(E) full or partial reimbursement of the cost of participating in a stress management program or activity; and

(F) full or partial reimbursement of the cost of participating in a health or fitness program.

(3) Where the reward involves a group member's meeting a specified standard based on a health condition, the wellness program must meet the requirements of 45 CFR Part 146.

(4) A reward or incentive which involves a discounted premium rate or a rebate or refund of premium shall be based on actuarial demonstration that the wellness program can reasonably be expected to result in the overall good health and well being of the group AS PROVIDED IN SECTION THREE THOUSAND TWO HUNDRED THIRTY-ONE OF THIS ARTICLE, SECTIONS FOUR THOUSAND TWO HUNDRED THIRTY-FIVE, FOUR THOUSAND THREE HUNDRED SEVENTEEN AND FOUR THOUSAND THREE HUNDRED TWENTY-SIX OF THIS CHAPTER, AND SECTION FORTY-FOUR HUNDRED FIVE OF THE PUBLIC HEALTH LAW.

S 3. Subsection (h) of section 4235 of the insurance law is amended by adding a new paragraph 5 to read as follows:

(5) EACH INSURER DOING BUSINESS IN THIS STATE, WHEN FILING WITH THE SUPERINTENDENT ITS SCHEDULES OF PREMIUM RATES, RULES AND CLASSIFICATION OF RISKS FOR USE IN CONNECTION WITH THE ISSUANCE OF ITS POLICIES OF GROUP ACCIDENT, GROUP HEALTH OR GROUP ACCIDENT AND HEALTH INSURANCE, MAY PROVIDE FOR AN ACTUARIALLY APPROPRIATE REDUCTION IN PREMIUM RATES OR OTHER BENEFITS OR ENHANCEMENTS APPROVED BY THE SUPERINTENDENT TO ENCOURAGE AN ENROLLEE'S OR INSURED'S ACTIVE PARTICIPATION IN A QUALIFIED WELLNESS PROGRAM. A QUALIFIED WELLNESS PROGRAM CAN BE A RISK MANAGEMENT SYSTEM THAT IDENTIFIES AT-RISK POPULATIONS OR ANY OTHER SYSTEMATIC PROGRAM OR COURSE OF MEDICAL CONDUCT WHICH HELPS TO PROMOTE PHYSICAL AND MENTAL FITNESS, HEALTH AND WELL-BEING, HELPS TO PREVENT OR MITIGATE THE CONDITIONS OF ACUTE OR CHRONIC SICKNESS, DISEASE OR PAIN, OR WHICH MINIMIZES ADVERSE HEALTH CONSEQUENCES DUE TO LIFESTYLE. SUCH A WELLNESS PROGRAM MAY HAVE SOME OR ALL OF THE FOLLOWING ELEMENTS TO ADVANCE THE PHYSICAL HEALTH AND MENTAL WELL-BEING OF ITS PARTICIPANTS:

(A) AN EDUCATION PROGRAM TO INCREASE THE AWARENESS OF AND DISSEMINATION OF INFORMATION ABOUT PURSUING HEALTHIER LIFESTYLES, AND WHICH WARNS ABOUT RISKS OF PURSUING ENVIRONMENTAL OR BEHAVIORAL ACTIVITIES THAT ARE DETRIMENTAL TO HUMAN HEALTH. IN ADDITION, INFORMATION ON THE AVAILABILITY OF HEALTH SCREENING TESTS TO ASSIST IN THE EARLY IDENTIFICATION AND TREATMENT OF DISEASES SUCH AS CANCER, HEART DISEASE, HYPERTENSION, DIABETES, ASTHMA, OBESITY OR OTHER ADVERSE HEALTH AFFLICTIONS;

(B) A PROGRAM THAT ENCOURAGES BEHAVIORAL PRACTICES THAT EITHER ENCOURAGES HEALTHY LIVING ACTIVITIES OR DISCOURAGES UNHEALTHY LIVING ACTIVITIES. SUCH ACTIVITIES OR PRACTICES MAY INCLUDE WELLNESS PROGRAMS, AS PROVIDED UNDER SECTION THREE THOUSAND TWO HUNDRED THIRTY-NINE OF THIS CHAPTER; AND

(C) THE MONITORING OF THE PROGRESS OF EACH COVERED PERSON TO TRACK HIS OR HER ADHERENCE TO SUCH WELLNESS PROGRAM AND TO PROVIDE ASSISTANCE AND MORAL SUPPORT TO SUCH COVERED PERSON TO ASSIST HIM OR HER TO ATTAIN THE GOALS OF THE COVERED PERSON'S WELLNESS PROGRAM.

SUCH WELLNESS PROGRAM SHALL DEMONSTRATE ACTUARIALLY THAT IT ENCOURAGES THE GENERAL GOOD HEALTH AND WELL-BEING OF THE COVERED POPULATION. THE INSURER OR HEALTH MAINTENANCE ORGANIZATION SHALL NOT REQUIRE SPECIFIC OUTCOMES AS A RESULT OF AN ENROLLEE'S OR INSURED'S ADHERENCE TO THE APPROVED WELLNESS PROGRAM.

S 4. Section 4317 of the insurance law is amended by adding a new subsection (c-1) to read as follows:

(C-1) SUBJECT TO THE APPROVAL OF THE SUPERINTENDENT, AN INSURER OR HEALTH MAINTENANCE ORGANIZATION ISSUING AN INDIVIDUAL OR GROUP HEALTH INSURANCE CONTRACT PURSUANT TO THIS SECTION MAY PROVIDE FOR AN ACTUARI-

ALLY APPROPRIATE REDUCTION IN PREMIUM RATES OR OTHER BENEFITS OR ENHANCEMENTS APPROVED BY THE SUPERINTENDENT TO ENCOURAGE AN ENROLLEE'S OR INSURED'S ACTIVE PARTICIPATION IN A QUALIFIED WELLNESS PROGRAM. A QUALIFIED WELLNESS PROGRAM CAN BE A RISK MANAGEMENT SYSTEM THAT IDENTIFIES AT-RISK POPULATIONS OR ANY OTHER SYSTEMATIC PROGRAM OR COURSE OF MEDICAL CONDUCT WHICH HELPS TO PROMOTE PHYSICAL AND MENTAL FITNESS, HEALTH AND WELL-BEING, HELPS TO PREVENT OR MITIGATE THE CONDITIONS OF ACUTE OR CHRONIC SICKNESS, DISEASE OR PAIN, OR WHICH MINIMIZES ADVERSE HEALTH CONSEQUENCES DUE TO LIFESTYLE. SUCH A WELLNESS PROGRAM MAY HAVE SOME OR ALL OF THE FOLLOWING ELEMENTS TO ADVANCE THE PHYSICAL HEALTH AND MENTAL WELL-BEING OF ITS PARTICIPANTS:

(1) AN EDUCATION PROGRAM TO INCREASE THE AWARENESS OF AND DISSEMINATION OF INFORMATION ABOUT PURSUING HEALTHIER LIFESTYLES, AND WHICH WARNS ABOUT RISKS OF PURSUING ENVIRONMENTAL OR BEHAVIORAL ACTIVITIES THAT ARE DETRIMENTAL TO HUMAN HEALTH. IN ADDITION, INFORMATION ON THE AVAILABILITY OF HEALTH SCREENING TESTS TO ASSIST IN THE EARLY IDENTIFICATION AND TREATMENT OF DISEASES SUCH AS CANCER, HEART DISEASE, HYPERTENSION, DIABETES, ASTHMA, OBESITY OR OTHER ADVERSE HEALTH AFFLICTIONS;

(2) A PROGRAM THAT ENCOURAGES BEHAVIORAL PRACTICES THAT EITHER ENCOURAGES HEALTHY LIVING ACTIVITIES OR DISCOURAGES UNHEALTHY LIVING ACTIVITIES. SUCH ACTIVITIES OR PRACTICES MAY INCLUDE WELLNESS PROGRAMS, AS PROVIDED UNDER SECTION THREE THOUSAND TWO HUNDRED THIRTY-NINE OF THIS CHAPTER; AND

(3) THE MONITORING OF THE PROGRESS OF EACH COVERED PERSON TO TRACK HIS OR HER ADHERENCE TO SUCH WELLNESS PROGRAM AND TO PROVIDE ASSISTANCE AND MORAL SUPPORT TO SUCH COVERED PERSON TO ASSIST HIM OR HER TO ATTAIN THE GOALS OF THE COVERED PERSON'S WELLNESS PROGRAM.

SUCH WELLNESS PROGRAM SHALL DEMONSTRATE ACTUARIALLY THAT IT ENCOURAGES THE GENERAL GOOD HEALTH AND WELL-BEING OF THE COVERED POPULATION. THE INSURER OR HEALTH MAINTENANCE ORGANIZATION SHALL NOT REQUIRE SPECIFIC OUTCOMES AS A RESULT OF AN ENROLLEE'S OR INSURED'S ADHERENCE TO THE APPROVED WELLNESS PROGRAM.

S 5. Subsection (m) of section 4326 of the insurance law is amended by adding a new paragraph 4 to read as follows:

(4) APPROVAL OF THE SUPERINTENDENT, AN INSURER OR HEALTH MAINTENANCE ORGANIZATION ISSUING A CONTRACT FOR QUALIFYING SMALL EMPLOYERS OR INDIVIDUALS PURSUANT TO THIS SECTION MAY PROVIDE FOR AN ACTUARIALLY APPROPRIATE REDUCTION IN PREMIUM RATES OR OTHER BENEFITS OR ENHANCEMENTS APPROVED BY THE SUPERINTENDENT TO ENCOURAGE AN ENROLLEE'S OR INSURED'S ACTIVE PARTICIPATION IN A QUALIFIED WELLNESS PROGRAM. A QUALIFIED WELLNESS PROGRAM CAN BE A RISK MANAGEMENT SYSTEM THAT IDENTIFIES AT-RISK POPULATIONS OR ANY OTHER SYSTEMATIC PROGRAM OR COURSE OF MEDICAL CONDUCT WHICH HELPS TO PROMOTE PHYSICAL AND MENTAL FITNESS, HEALTH AND WELL-BEING, HELPS TO PREVENT OR MITIGATE THE CONDITIONS OF ACUTE OR CHRONIC SICKNESS, DISEASE OR PAIN, OR WHICH MINIMIZES ADVERSE HEALTH CONSEQUENCES DUE TO LIFESTYLE. SUCH A WELLNESS PROGRAM MAY HAVE SOME OR ALL OF THE FOLLOWING ELEMENTS TO ADVANCE THE PHYSICAL HEALTH AND MENTAL WELL-BEING OF ITS PARTICIPANTS:

(1) AN EDUCATION PROGRAM TO INCREASE THE AWARENESS OF AND DISSEMINATION OF INFORMATION ABOUT PURSUING HEALTHIER LIFESTYLES, AND WHICH WARNS ABOUT RISKS OF PURSUING ENVIRONMENTAL OR BEHAVIORAL ACTIVITIES THAT ARE DETRIMENTAL TO HUMAN HEALTH. IN ADDITION, INFORMATION ON THE AVAILABILITY OF HEALTH SCREENING TESTS TO ASSIST IN THE EARLY IDENTIFICATION AND TREATMENT OF DISEASES SUCH AS CANCER, HEART DISEASE, HYPERTENSION, DIABETES, ASTHMA, OBESITY OR OTHER ADVERSE HEALTH AFFLICTIONS;

(2) A PROGRAM THAT ENCOURAGES BEHAVIORAL PRACTICES THAT EITHER ENCOURAGES HEALTHY LIVING ACTIVITIES OR DISCOURAGES UNHEALTHY LIVING ACTIVITIES. SUCH ACTIVITIES OR PRACTICES MAY INCLUDE WELLNESS PROGRAMS, AS PROVIDED UNDER SECTION THREE THOUSAND TWO HUNDRED THIRTY-NINE OF THIS CHAPTER; AND

(3) THE MONITORING OF THE PROGRESS OF EACH COVERED PERSON TO TRACK HIS OR HER ADHERENCE TO SUCH WELLNESS PROGRAM AND TO PROVIDE ASSISTANCE AND MORAL SUPPORT TO SUCH COVERED PERSON TO ASSIST HIM OR HER TO ATTAIN THE GOALS OF THE COVERED PERSON'S WELLNESS PROGRAM.

SUCH WELLNESS PROGRAM SHALL DEMONSTRATE ACTUARIALLY THAT IT ENCOURAGES THE GENERAL GOOD HEALTH AND WELL-BEING OF THE COVERED POPULATION. THE INSURER OR HEALTH MAINTENANCE ORGANIZATION SHALL NOT REQUIRE SPECIFIC OUTCOMES AS A RESULT OF AN ENROLLEE'S OR INSURED'S ADHERENCE TO THE APPROVED WELLNESS PROGRAM.

S 6. Section 4405 of the public health law is amended by adding a new subdivision 5-a to read as follows:

5-A. SUBJECT TO THE APPROVAL OF THE SUPERINTENDENT OF FINANCIAL SERVICES, THE POSSIBLE PROVIDING OF AN ACTUARIALLY APPROPRIATE REDUCTION IN PREMIUM RATES OR OTHER BENEFITS OR ENHANCEMENTS APPROVED BY THE SUPERINTENDENT OF FINANCIAL SERVICES TO ENCOURAGE AN ENROLLEE'S ACTIVE PARTICIPATION IN A QUALIFIED WELLNESS PROGRAM. A QUALIFIED WELLNESS PROGRAM CAN BE A RISK MANAGEMENT SYSTEM THAT IDENTIFIES AT-RISK POPULATIONS OR ANY OTHER SYSTEMATIC PROGRAM OR COURSE OF MEDICAL CONDUCT WHICH HELPS TO PROMOTE PHYSICAL AND MENTAL FITNESS, HEALTH AND WELL-BEING, HELPS TO PREVENT OR MITIGATE THE CONDITIONS OF ACUTE OR CHRONIC SICKNESS, DISEASE OR PAIN, OR WHICH MINIMIZES ADVERSE HEALTH CONSEQUENCES DUE TO LIFESTYLE. SUCH A WELLNESS PROGRAM MAY HAVE SOME OR ALL OF THE FOLLOWING ELEMENTS TO ADVANCE THE PHYSICAL HEALTH AND MENTAL WELL-BEING OF ITS PARTICIPANTS:

(1) AN EDUCATION PROGRAM TO INCREASE THE AWARENESS OF AND DISSEMINATION OF INFORMATION ABOUT PURSUING HEALTHIER LIFESTYLES, AND WHICH WARNS ABOUT RISKS OF PURSUING ENVIRONMENTAL OR BEHAVIORAL ACTIVITIES THAT ARE DETRIMENTAL TO HUMAN HEALTH. IN ADDITION, INFORMATION ON THE AVAILABILITY OF HEALTH SCREENING TESTS TO ASSIST IN THE EARLY IDENTIFICATION AND TREATMENT OF DISEASES SUCH AS CANCER, HEART DISEASE, HYPERTENSION, DIABETES, ASTHMA, OBESITY OR OTHER ADVERSE HEALTH AFFLICTIONS;

(2) A PROGRAM THAT ENCOURAGES BEHAVIORAL PRACTICES THAT EITHER ENCOURAGES HEALTHY LIVING ACTIVITIES OR DISCOURAGES UNHEALTHY LIVING ACTIVITIES. SUCH ACTIVITIES OR PRACTICES MAY INCLUDE WELLNESS PROGRAMS, AS PROVIDED UNDER SECTION THREE THOUSAND TWO HUNDRED THIRTY-NINE OF THE INSURANCE LAW; AND

(3) THE MONITORING OF THE PROGRESS OF EACH COVERED PERSON TO TRACK HIS OR HER ADHERENCE TO SUCH WELLNESS PROGRAM AND TO PROVIDE ASSISTANCE AND MORAL SUPPORT TO SUCH COVERED PERSON TO ASSIST HIM OR HER TO ATTAIN THE GOALS OF THE COVERED PERSON'S WELLNESS PROGRAM.

SUCH WELLNESS PROGRAM SHALL DEMONSTRATE ACTUARIALLY THAT IT ENCOURAGES THE GENERAL GOOD HEALTH AND WELL-BEING OF THE COVERED POPULATION. THE HEALTH MAINTENANCE ORGANIZATION SHALL NOT REQUIRE SPECIFIC OUTCOMES AS A RESULT OF AN ENROLLEE'S ADHERENCE TO THE APPROVED WELLNESS PROGRAM;

S 7. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided that, effective immediately any rules and regulations necessary to implement the provisions of this act on its effective date are authorized and directed to be added, amended and/or repealed on or before such date.

S 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of

competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 3. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through G of this act shall be as specifically set forth in the last section of such Parts.