

# STATE OF NEW YORK

10252

## IN ASSEMBLY

March 27, 2018

Introduced by M. of A. ORTIZ -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to in-utero exposure to tobacco smoke prevention and including certain respiratory diseases within disease management demonstration programs; and to amend the insurance law, in relation to health insurers' wellness programs

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The public health law is amended by adding a new article  
2 13-I to read as follows:

### ARTICLE 13-I

#### IN-UTERO EXPOSURE TO TOBACCO SMOKE PREVENTION

5 Section 1399-xx. In-utero tobacco exposure prevention.

6 1399-yy. Programs.

7 § 1399-xx. In-utero tobacco exposure prevention. 1. Appropriate  
8 healthcare providers and pregnancy programs shall be encouraged to  
9 distribute information on the adverse health effects of smoking during  
10 and after pregnancy for both firsthand and secondhand tobacco smoke.  
11 Such adverse effects to the infant include lower birth rates, higher  
12 incidence of asthma and obesity, and cognitive and developmental damage.

13 2. Appropriate healthcare providers shall be encouraged to monitor  
14 expectant mothers' smoking statuses and to offer to expectant mothers  
15 tailored services, counseling and discussion on the advantages to quit-  
16 ting tobacco smoking during and after their pregnancy.

17 § 1399-yy. Programs. The following programs shall be added to existing  
18 tobacco control programs for pregnant women or to other pregnancy  
19 related programs:

20 1. Carbon monoxide monitoring;

21 2. Referrals for smoking cessation for household members;

22 3. Ongoing support by counseling and educational materials; and

23 4. Financial incentives including, but not limited to, items such as  
24 diapers or other baby care products or coupons to encourage expectant  
25 mothers to quit smoking for two or more weeks.

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

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

4 2. The department shall establish the criteria by which individuals  
5 will be identified as eligible for enrollment in the demonstration  
6 programs. Persons eligible for enrollment in the disease management  
7 demonstration program shall be limited to individuals who: receive  
8 medical assistance pursuant to title eleven of article five of the  
9 social services law and may be eligible for benefits pursuant to title  
10 18 of the social security act (Medicare); are not enrolled in a Medicaid  
11 managed care plan, including individuals who are not required or not  
12 eligible to participate in Medicaid managed care programs pursuant to  
13 section three hundred sixty-four-j of the social services law; are diag-  
14 nosed with chronic health problems as may be specified by the entity  
15 undertaking the demonstration program, including, but not limited to one  
16 or more of the following: congestive heart failure, chronic obstructive  
17 pulmonary disease, asthma, emphysema, chronic bronchitis, other respir-  
18 atory diseases, diabetes or other chronic health conditions as may be  
19 specified by the department; or have experienced or are likely to expe-  
20 rience one or more hospitalizations or are otherwise expected to incur  
21 excessive costs and high utilization of health care services.

22 4. The demonstration program shall offer evidence-based services and  
23 interventions designed to ensure that the enrollees receive high quali-  
24 ty, preventative and cost-effective care, aimed at reducing the necessi-  
25 ty for hospitalization or emergency room care or at reducing lengths of  
26 stay when hospitalization is necessary. The demonstration program may  
27 include screening of eligible enrollees, developing an individualized  
28 care management plan for each enrollee and implementing that plan.  
29 Disease management demonstration programs that utilize information tech-  
30 nology systems that allow for continuous application of evidence-based  
31 guidelines to medical assistance claims data and other available data to  
32 identify specific instances in which clinical interventions are justi-  
33 fied and communicate indicated interventions to physicians, health care  
34 providers and/or patients, and monitor physician and health care provid-  
35 er response to such interventions, shall have the enrollees, or groups  
36 of enrollees, approved by the department for participation. The services  
37 provided by the demonstration program as part of the care management  
38 plan may include, but are not limited to, case management, social work,  
39 individualized health counselors, multi-behavioral goals plans, claims  
40 data management, health and self-care education, drug therapy management  
41 and oversight, personal emergency response systems and other monitoring  
42 technologies, systematic chronic health conditions identified for moni-  
43 toring, telehealth services and similar services designed to improve the  
44 quality and cost-effectiveness of health care services.

45 § 3. Subsections (a), (b) and (c) of section 3239 of the insurance  
46 law, subsection (a) as added by chapter 592 of the laws of 2008, and  
47 subsections (b) and (c) as amended by chapter 180 of the laws of 2016,  
48 are amended to read as follows:

49 (a) An insurer licensed to write accident and health insurance, a  
50 corporation organized pursuant to article forty-three of this chapter, a  
51 health maintenance organization certified pursuant to article forty-four  
52 of the public health law and a municipal cooperative health benefits  
53 plan may establish a wellness program in conjunction with its issuance  
54 of a group accident and health insurance policy or group subscriber  
55 contract. A "wellness program" is a program designed to promote health  
56 and prevent disease that may contain rewards and incentives for partic-

1 ipation. Participation in the wellness program shall be available to  
2 similarly-situated members of the group and shall be voluntary on the  
3 part of the member. The specific terms of the wellness program shall be  
4 set forth in the policy or contract, or in a separate document provided  
5 to insureds and members which shall be consistent with the provisions of  
6 this section.

7 (b) A wellness program may include, but is not limited to, the follow-  
8 ing programs or services:

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

10 (2) a smoking cessation program;

11 (3) a weight management program;

12 (4) a stress and/or hypertension management program;

13 (5) a worker injury prevention program;

14 (6) a nutrition education program;

15 (7) health or fitness incentive programs;

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

19 (9) a substance or alcohol abuse cessation program; [~~and~~]

20 (10) a program to manage and cope with chronic pain[~~+~~];

21 (11) assistance, financial or otherwise, provided to an employer for  
22 health promotion and disease prevention; and

23 (12) incentives for insureds or members to access preventive services,  
24 such as asthma, obesity and mammography screening.

25 (c)(1) A wellness program may use rewards and incentives for partic-  
26 ipation provided that where the group health insurance policy or  
27 subscriber contract is required to be community-rated, the rewards and  
28 incentives shall not include a discounted premium rate or a rebate or  
29 refund of premium.

30 (2) Permissible rewards and incentives may include:

31 (A) full or partial reimbursement of the cost of participating in  
32 smoking cessation, weight management, stress and/or hypertension, worker  
33 injury prevention, asthma mitigation or treatment, nutrition education,  
34 substance or alcohol abuse cessation, or chronic pain management and  
35 coping programs;

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

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

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

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

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

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

52 (4) A reward or incentive which involves a discounted premium rate or  
53 a rebate or refund of premium shall be based on actuarial demonstration  
54 that the wellness program can reasonably be expected to result in the  
55 overall good health and well being of the group.

1 § 4. This act shall take effect immediately, except that sections one  
2 and three of this act shall take effect on the one hundred eightieth day  
3 after this act shall have become a law. Provided, that effective imme-  
4 diately rules and regulations, and other measures necessary to implement  
5 the provisions of this act on its effective date may be promulgated or  
6 taken on or before such date.