STATE OF NEW YORK

2760

2017-2018 Regular Sessions

IN SENATE

January 17, 2017

Introduced by Sens. KLEIN, ADDABBO, ALCANTARA, CARLUCCI, COMRIE, HANNON, PARKER, SAVINO, STAVISKY -- 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 regulating the use of artificial trans fats and requiring food service facilities to post or provide nutritional information on the food products served (Part A); to amend the public health law, in relation to in-utero exposure to tobacco smoke prevention (Part B); to amend the public health law, in relation to including certain respiratory diseases and obesity within disease management demonstration programs (Part C); to amend the public health law, in relation to the reduction of obesity in children (Part D); to amend the public health law, in relation to the collection and reporting of obesity data (Part E); to amend the public health law, in relation to directing the health research science board to study respiratory diseases and obesity, and childhood obesity prevention and screening (Part F); to amend the education law, in relation to the use of inhalers and nebulizers (Part G); to amend the real property law, in relation to residential rental property smoking policies (Part H); to amend the state finance law, in relation to establishing the obesity and respiratory disease research and education fund (Part I); to amend the social services law, in relation to child day care facilities (Part J); to amend the education law, in relation to use of school facilities by not-for-profit and charitable organizations for after-school programs (Part K); to amend the education law, in relation to screening for childhood obesity and promotion of the availability of certain foods and beverages in schools (Part L); to amend the education law, in relation to instruction in good health and reducing the incidence of obesity (Part M); to amend the public buildings law, in relation to bicycle access to public office buildings (Part N); to amend the agriculture and markets law and the education law, in relation to authorizing school districts and institutions of higher education to donate excess food to local voluntary food assistance programs (Part O); and to amend the insurance law and the public health law, in relation to making actuarially appropriate

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

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reductions in health insurance premiums in return for an enrollee's or insured's participation in a qualified wellness program (Part P)

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

Section 1. Short title. This act shall be known and may be cited as the "omnibus obesity and respiratory illness reduction act".

§ 2. This act enacts into law major components of legislation which combat the incidence of adult and child obesity and respiratory diseases, and encourage the production and consumption of fresh fruits and vegetables. Each component is wholly contained within a Part identified as Parts A through P. 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 four of this act sets forth the general effective date of this act.

PART A

Section 1. Subdivision 1 of section 206 of the public health law is amended by adding two new paragraphs (w) and (x) to read as follows:

(w) (i) By rule or regulation, may require food service establishments including, but not limited to restaurants, dining rooms, delis, bakeries, elementary and secondary schools, hospitals, mobile food service vehicles and carts, and child care facilities, that prepare, sell or serve food for immediate consumption by the general public, to restrict the use of artificial trans fat in the preparation of such food. For the purposes of this paragraph, the term "artificial trans fat" means any food that is labeled, and which lists as an ingredient or contains vegetable shortening, margarine or any kind of partially hydrogenated vegetable oil; provided, however, that any food with a nutritional fact label or other documentation from a manufacturer list stating a trans fat content of less than .5 grams per serving shall not be deemed to contain artificial trans fat. Such rules and regulations shall not apply to any food served directly to the general public in the manufacturer's original sealed package. Furthermore, such rules and regulations shall not apply to any food service establishment or mobile food commissary that is subject to any local law, ordinance, code or rule that regulates the use or disclosure of artificial trans fats by food service establishments.

(ii) The commissioner may establish a voluntary artificial trans fat reduction program. Such program may consist of, but shall not be limited to, the following components: (A) a public information dissemination program to inform the public of the health risks associated with the overconsumption of artificial trans fats, and (B) suggested food preparation methods that can be followed by food service establishments and the general public to reduce or eliminate the use of artificial trans fats.

(x) (i) For purposes of this paragraph, the following definitions shall apply:

(A) "Food service facility" means a food service establishment, as defined in the state sanitary code, that operates under common ownership or control with at least twenty-five other food service establishments with the same name in the state that offer for sale substantially the same menu items, or operates as a franchised outlet of a parent company with at least twenty-five other franchised outlets with the same name in the state that offer for sale substantially the same menu items.

(B) "Nutritional information" may include the following, per standard menu item, as that item is usually prepared and offered for sale:

(I) Total number of calories.

(II) Total number of grams of carbohydrates.

(III) Total number of grams of saturated fat.

(IV) Total number of milligrams of sodium.

(C) "Point of sale" means the location where a customer places an order.

(D) In calculating nutritional information, a food service facility may use any reasonable means recognized by the federal food and drug administration to determine nutritional information for a standard menu item, as usually prepared and offered for sale including, but not limited to, nutrient databases and laboratory analyses.

(ii)(A) by rule or regulation, may require every food service facility to disclose the nutritional information required by clause (B) of this subparagraph.

(B) a food service facility, by rule or regulation, may be required to disclose the nutritional information in a clear and conspicuous manner at the point of sale prior to or during the placement of an order.

§ 2. This act shall take effect one year 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 completed on or before such date.

PART B

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

ARTICLE 13-I

IN-UTERO EXPOSURE TO TOBACCO SMOKE PREVENTION

Section 1399-xx. In-utero exposure prevention.

1399-yy. Programs.

§ 1399-xx. In-utero exposure prevention. 1. Every health care provider, health care insurer and pregnancy program is encouraged to distribute information on the adverse effects of smoking during pregnancy for both firsthand and secondhand smoke. Such adverse effects to the infant include lower birth rates, higher incidence of asthma and obesity, and cognitive and developmental damage.

2. Every health care provider shall monitor expectant mothers' smoking statuses and offer continuous tailored discussion of quitting smoking with expectant mothers during their prenatal care.

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

1. Carbon monoxide monitoring;

2. Depression, social support and domestic violence screening and referrals;

3. Referrals for smoking cessation for household members;

4. Ongoing support by counseling and educational materials; and

5. Financial incentives such as diaper coupons for quitting for more than four weeks.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law. Provided, that effective immediately the commissioner of health is authorized and directed to promulgate any and all rules and regulations, and take any other measures necessary to implement the provisions of this act on its effective date.

PART C

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, **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.

§ 2. This act shall take effect immediately.

PART D

Section 1. Paragraphs (a) and (g) of subdivision 2 of section 2599-b of the public health law, as amended by section 1 of part A of chapter 469 of the laws of 2015, are amended to read as follows:

(a) developing media health promotion campaigns**, in coordination with the public information provided pursuant to section twenty-five hundred-l of this article,** 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;

education to children and their parents and caregivers; [~~and~~]

(g) developing screening programs**, in accordance with section twenty-five hundred-l of this article,** 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

§ 2. This act shall take effect immediately.

PART E

Section 1. Section 263 of the public health law, as added by chapter 538 of the laws of 2002, is amended to read as follows:

§ 263. Department authorized to study obesity - report. 1. The department is authorized to sample and collect data on individual cases where obesity is being actively treated **and data collected pursuant to section twenty-five hundred-l of this chapter,** and to analyze such data in order to evaluate the impact of treating obesity. Such data collection and analysis shall include the following:

a. The effectiveness of existing methods for treating or preventing obesity;

b. The effectiveness of alternate methods for treating or preventing obesity;

c. The fiscal impact of treating or preventing obesity;

d. The compliance and cooperation of patients with various methods of treating or preventing obesity; or

e. The reduction in serious medical problems associated with diabetes that results from treating or preventing obesity.

2. The department is authorized to fund the research authorized in subdivision one of this section **and section twenty-five hundred-l of this chapter** from gifts, grants, and donations from individuals, private organizations, foundations, or any governmental unit; except that no gift, grant, or donation may be accepted by the department if it is subject to conditions that are inconsistent with this title or any other laws of this state. The department shall have the power to direct the disposition of any such gift, grant, or donation for the purposes of this title.

3. After completion of the research authorized in subdivision one of this section, the department shall submit a report and supporting mate-

rials to the governor and the legislature by June first of the following year **and update such report every three years**.

§ 2. This act shall take effect immediately.

PART F

Section 1. Paragraphs (a), (b) and (c) of subdivision 1 of section 2411 of the public health law, as amended by section 5 of part A of chapter 60 of the laws of 2014, 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 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 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 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;

§ 2. The public health law is amended by adding a new section 2500-l to read as follows:

§ 2500-l. Childhood obesity prevention and screening. 1. Legislative declaration. The legislature hereby finds, determines and declares that obesity, particularly childhood obesity, is a serious medical problem and that the high incidence of such condition needs to be curtailed to improve the overall health of the general public and to help reduce the cost of providing health care in this state. Provided further, that the legislature hereby reaffirms the legislative intent contained in section two hundred sixty-one of this chapter concerning obesity.

2. The commissioner may establish, for use by pediatric primary care providers and hospitals, best practice protocols for the early screening, identification and treatment of children who have low birth weights or may become susceptible to contracting asthma or manifest to have childhood obesity conditions. Such protocols shall incorporate standards and guidelines established by the American Academy of Pediatricians, the federal department of agriculture, the federal department of health and human services, the surgeon general, and the centers for disease control and prevention.

3. The department, in order to support quality care in all hospitals with obstetric services and for all pediatric primary care providers, is authorized to provide non-patient specific information for all births at each affiliate hospital in each regional perinatal center's network to the regional perinatal center and the affiliate, except that such information shall include zip code and a unique identifier, such as medical record number.

4. The information when received by the department shall be used solely for the purpose of improving quality of care and shall not be subject

to release under article six of the public officers law, and where applicable, shall be subject to the confidentiality provisions of section twenty-eight hundred five-m of this chapter, except that the release of birth certificate information shall be subject to section forty-one hundred seventy-four of this chapter.

5. The commissioner may release information collected through the statewide perinatal data system, pursuant to section twenty-five hundred-h of this title and corresponding information related to asthma, childhood obesity or underweight babies to his or her designees, including persons or entities under contract with the department to review quality of care issues, as related to the provisions of this section, and to conduct quality improvement initiatives as needed to monitor, evaluate and improve patient care and outcomes. Such designee or person or entity under contract with the department to review quality of care issues shall maintain the confidentiality of all such information and shall use it only to improve quality of care, as approved by the department, and to implement the provisions of title five of article two of this chapter, as added by chapter five hundred thirty-eight of the laws of two thousand two.

6. The department may produce and distribute educational materials on childhood obesity and asthma risks and precautions. Such materials may be made available to child care centers, pediatricians and nursery, elementary and secondary schools for distribution to persons in parental relation to children, and to hospitals, birthing centers and other appropriate health care providers for distribution to maternity patients. In addition, such materials may be provided to health care professionals engaged in the care and treatment of children for distribution to such children and persons in parental relation. The department may also provide information on childhood obesity and asthma risks and precautions on the department's internet website. No provision of this subdivision shall be deemed to prohibit the utilization and distribution of educational materials relating thereto produced by any public, private or governmental entity, in lieu of the department's production of such materials.

7. The department shall periodically review available data on obesity and asthma in children and update the information on childhood obesity and asthma risks and precautionary measures provided in its educational materials and on its internet website, as appropriate.

§ 3. This act shall take effect immediately.

PART G

Section 1. The education law is amended by adding a new section 923 to read as follows:

§ 923. Use of nebulizer. 1. Every school district and board of cooperative educational services in this state may maintain one or more nebulizers in the office of the school nurse or in a similar accessible location.

2. The commissioner, in consultation with the commissioner of health, may promulgate regulations for the administration of asthma medication through the use of a nebulizer by the school nurse or person authorized by regulation. The regulations may include:

a. a requirement that each certified nurse or other person authorized to administer asthma medication in schools receive training in airway management and in the use of nebulizers and inhalers consistent with nationally recognized standards; and

b. a requirement that each pupil authorized to use asthma medication pursuant to section nine hundred sixteen of this article or a nebulizer have an asthma treatment plan prepared by the physician of the pupil, which identify, at a minimum, asthma triggers, the treatment plan, and such other elements as shall be determined by the regents.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that effective immediately the commissioner of education is authorized to promulgate rules and regulations necessary for the implementation of this act on such effective date.

PART H

Section 1. The real property law is amended by adding a new section 235-h to read as follows:

§ 235-h. Residential rental property smoking policies. Every rental agreement for a dwelling unit, in a multiple dwelling building with twenty or more units, shall include a disclosure of the smoking policy for the premises on which the dwelling unit is located. The disclosure must state whether smoking is prohibited on the premises, allowed on the entire premises or allowed in limited areas on the premises. If the smoking policy allows smoking in limited areas on the premises, the disclosure must identify the areas on the premises where smoking is allowed.

§ 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.

PART I

Section 1. The state finance law is amended by adding a new section 91-g to read as follows:

§ 91-g. Obesity and respiratory disease research and education fund. 1. There is hereby established in the joint custody of the commissioner of taxation and finance and the comptroller, a special fund to be known as the "obesity and respiratory disease research and education fund".

2. Such fund shall consist of all revenue received pursuant to an appropriation thereto, and all other moneys appropriated, credited or transferred thereto from any other fund or source pursuant to law. Nothing in this section shall be deemed to prevent the state from receiving grants, gifts or bequests for the purposes of the fund and depositing them into the fund according to law.

3. Monies of the fund shall be expended only for adult and childhood obesity, asthma, chronic bronchitis or other chronic respiratory disease research and educational projects conducted pursuant to sections twenty-four hundred eleven, twenty-five hundred and twenty-five hundred-l of the public health law.

4. Monies shall be payable from the fund on the audit and warrant of the comptroller on vouchers approved or certified by the commissioner of health.

§ 2. This act shall take effect immediately.

PART J

Section 1. Paragraph (a) of subdivision 2-a of section 390 of the social services law, as added by chapter 416 of the laws of 2000, is amended to read as follows:

(a) The office of children and family services shall promulgate regulations which establish minimum quality program requirements for licensed and registered child day care homes, programs and facilities. Such requirements shall include but not be limited to (i) the need for age appropriate activities, materials and equipment to promote cognitive, educational, social, cultural, physical, emotional, language and recreational development of children in care in a safe, healthy and caring environment (ii) principles of childhood development (iii) appropriate staff/child ratios for family day care homes, group family day care homes, school age day care programs and day care centers, provided however that such staff/child ratios shall not be less stringent than applicable staff/child ratios as set forth in part four hundred fourteen, four hundred sixteen, four hundred seventeen or four hundred eighteen of title eighteen of the New York code of rules and regulations as of January first, two thousand (iv) appropriate levels of supervision of children in care (v) **appropriate levels of physical activity and nutritional offerings to encourage healthy eating and living habits to help lower the incidence of childhood obesity (vi)** minimum standards for sanitation, health, infection control, nutrition, buildings and equipment, safety, security procedures, first aid, fire prevention, fire safety, evacuation plans and drills, prevention of child abuse and maltreatment, staff qualifications and training, record keeping, and child behavior management.

§ 2. Section 390-a of the social services law is amended by adding a new subdivision 6 to read as follows:

6. No family day care home, group family day care home, school age child care program or child day care center shall discourage activities related to breast feeding a child or feeding a child who is fed with expressed breast milk.

§ 3. This act shall take effect on the first of January next succeeding the date on which 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 completed on or before such date.

PART K

Section 1. Subdivision 1 of section 414 of the education law is amended by adding a new paragraph (l) to read as follows:

(l) For bona fide after-school programs operated by a not-for-profit or charitable organization. Such programs shall present some form of educational instruction or academic material, or promote physical education.

§ 2. Subdivision 2 of section 414 of the education law, as amended by chapter 513 of the laws of 2005, is amended to read as follows:

2. The trustees or board of education shall determine the terms and conditions for such use which may include rental at least in an amount sufficient to cover all resulting expenses for the purposes of paragraphs (a), (b), (c), (d), (e), (g), (i), (j) and (k) of subdivision one of this section. **For the purposes of paragraph (1) of subdivision one of this section, the trustees or board of education may provide that either no fee or a minimal fee be imposed upon the not-for-profit or charitable organization.** Any such use, pursuant to [~~paragraphs~~] **paragraph** (a), (c), (d), (h) [~~and~~]**,** (j) **or (l)** of subdivision one of this section, shall not allow the exclusion of any district child solely because said child is

not attending a district school or not attending the district school which is sponsoring such use or on which grounds the use is to occur.

§ 3. Subdivision 27 of section 2590-h of the education law, as amended by chapter 345 of the laws of 2009, is amended to read as follows:

27. Promulgate regulations, in conjunction with each community superintendent, establishing a plan for providing access to school facilities in each community school district, when not in use for school purposes, in accordance with the provisions of section four hundred fourteen of this chapter. Such plan shall set forth a reasonable system of fees not to exceed the actual costs and specify that no part of any fee shall directly or indirectly benefit or be deposited into an account which inures to the benefit of the custodians or custodial engineers. **Notwithstanding any other provision of law, rule or regulation to the contrary, such plan may provide that either no fee or a minimal fee shall be charged for the use of school facilities by a not-for-profit or charitable organization. The use of such facilities shall only be for bona fide after-school programs that present some form of educational instruction or academic material, or promote physical education.**

§ 4. Subdivision 27 of section 2590-h of the education law, as amended by chapter 720 of the laws of 1996, is amended to read as follows:

27. Develop, in conjunction with each community superintendent, a plan for providing access to school facilities in each community school district, when not in use for school purposes, in accordance with the provisions of section four hundred fourteen of this chapter. Such plan shall set forth a reasonable system of fees not to exceed the actual costs and specify that no part of any fee shall directly or indirectly benefit or be deposited into an account which inures to the benefit of the custodians or custodial engineers. **Notwithstanding any other provision of law, rule or regulation to the contrary, such plan may provide that either no fee or a minimal fee shall be charged for the use of school facilities by a not-for-profit or charitable organization. The use of such facilities shall only be for bona fide after-school programs that present some form of educational instruction or academic material, or promote physical education.**

§ 5. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided that the amendments to subdivision 27 of section 2590-h of the education law, made by section three of this act, shall be subject to the expiration and reversion of such section, pursuant to subdivision 12 of section 17 of chapter 345 of the laws of 2009, as amended, when upon such date the provisions of section four of this act shall take effect.

PART L

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:

§ 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.

§ 2. Subdivisions 1, 3 and 4 of section 903 of the education law, subdivision 1 as amended by chapter 376 of the laws of 2015, subdivisions 3 and 4 as amended by chapter 281 of the laws of 2007, and paragraph a of subdivision 3 as amended by section 28 of part A of chapter 58 of the laws of 2008, are amended to read as follows:

1. A health certificate shall be furnished by each student in the public schools upon his or her entrance in such schools and upon his or her entry into the grades prescribed by the commissioner in regulations, provided that such regulations shall require such certificates at least twice during the elementary grades and twice in the secondary grades. An examination and health history of any child may be required by the local school authorities at any time in their discretion to promote the educational interests of such child. Each certificate shall be signed by a duly licensed physician, physician assistant, or nurse practitioner, who is authorized by law to practice in this state, and consistent with subdivision three of section six thousand nine hundred two of this chapter, or by a duly licensed physician, physician assistant, or nurse practitioner, who is authorized to practice in the jurisdiction in which the examination was given, provided that the commissioner has determined that such jurisdiction has standards of licensure and practice comparable to those of New York. Each such certificate shall describe the condition of the student when the examination was made, which shall not be more than twelve months prior to the commencement of the school year in which the examination is required, and shall state whether such student is in a fit condition of health to permit his or her attendance at the public schools. **The examination may include a diabetes risk analysis and, if necessary, children with risk factors for type 1 diabetes, or risk factors associated with type 2 diabetes such as obesity, a family history of type 2 diabetes, or any other factors consistent with increased risk shall be tested for diabetes.** Each such certificate shall also state the student's body mass index (BMI) and weight status category. For purposes of this section, BMI is computed as the weight in kilograms divided by the square of height in meters or the weight in pounds divided by the square of height in inches multiplied by a conversion factor of 703. Weight status categories for children and adolescents shall be as defined by the commissioner of health. In all school districts such physician, physician assistant or nurse practitioner shall determine whether a one-time test for sickle cell anemia is neces-

sary or desirable and he or she shall conduct such a test and the certificate shall state the results.

3. a. Within thirty days after the student's entrance in such schools or grades, the health certificate shall be submitted to the principal or his or her designee and shall be filed in the student's cumulative health record. If such student does not present a health certificate as required in this section, unless he or she has been accommodated on religious grounds, the principal or the principal's designee shall cause a notice to be sent to the parents or person in parental relationship to such student that if the required health certificate is not furnished within thirty days from the date of such notice, an examination will be made of such student, as provided in this article. Each school and school district [~~chosen as part of an appropriate sampling methodology~~] shall participate in surveys directed by the commissioner of health pursuant to the public health law in relation to students' BMI and weight status categories as reported on the school health certificate and which shall be subject to audit by the commissioner of health. Such surveys shall contain the information required pursuant to subdivision one of this section in relation to students' BMI and weight status categories in aggregate. Parents or other persons in parental relation to a student may refuse to have the student's BMI and weight status category included in such survey. Each school and school district shall provide the commissioner of health with any information, records and reports he or she may require for the purpose of such audit. The BMI and weight status survey and audit as described in this subdivision shall be conducted consistent with confidentiality requirements imposed by federal law.

b. Within thirty days after the student's entrance in such schools or grades, the dental health certificate, if obtained, shall be filed in the student's cumulative health record.

4. Notwithstanding the provisions of subdivisions one, two and three of this section, no examinations for a health certificate or health history shall be required or dental certificate requested, and no screening examinations for sickle cell anemia **or childhood obesity** shall be required where a student or the parent or person in parental relation to such student objects thereto on the grounds that such examinations or health history conflict with their genuine and sincere religious beliefs.

§ 3. Subdivision 1 of section 904 of the education law, as amended by section 12 of part B of chapter 58 of the laws of 2007, is amended to read as follows:

1. Each principal of a public school, or his or her designee, shall report to the director of school health services having jurisdiction over such school, the names of all students who have not furnished health certificates as provided in section nine hundred three of this article, or who are children with disabilities, as defined by article eighty-nine of this chapter, and the director of school health services shall cause such students to be separately and carefully examined and tested to ascertain whether any student has defective sight or hearing, or any other physical disability which may tend to prevent him or her from receiving the full benefit of school work, or from requiring a modification of such work to prevent injury to the student or from receiving the best educational results. Each examination shall also include a calculation of the student's body mass index (BMI) and weight status category. For purposes of this section, BMI is computed as the weight in kilograms divided by the square of height in meters or the

weight in pounds divided by the square of height in inches multiplied by a conversion factor of 703. Weight status categories for children and adolescents shall be as defined by the commissioner of health. In all school districts, such physician, physician assistant or nurse practitioner shall determine whether a one-time test for sickle cell anemia is necessary or desirable and he or she shall conduct such tests and the certificate shall state the results. If it should be ascertained, upon such test or examination, that any of such students have defective sight or hearing[~~,~~] or other physical disability, including sickle cell anemia, as above described, **or are obese,** the principal or his or her designee shall notify the parents of, or other persons in parental relation to, the child as to the existence of such disability. If the parents or other persons in parental relation are unable or unwilling to provide the necessary relief and treatment for such students, such fact shall be reported by the principal or his or her designee to the director of school health services, whose duty it shall be to provide relief for such students. Each school and school district [~~chosen as part of an appropriate sampling methodology~~] shall participate in surveys directed by the commissioner of health pursuant to the public health law in relation to students' BMI and weight status categories as determined by the examination conducted pursuant to this section and which shall be subject to audit by the commissioner of health. Such surveys shall contain the information required pursuant to this subdivision in relation to students' BMI and weight status categories in aggregate. [~~Parents or other persons in parental relation to a student may refuse to have the student's BMI and weight status category included in such survey.~~] Each school and school district shall provide the commissioner of health with any information, records and reports he or she may require for the purpose of such audit. The BMI and weight status survey and audit as described in this section shall be conducted consistent with confidentiality requirements imposed by federal law. [~~Data collection for such surveys shall commence on a voluntary basis at the beginning of the two thousand seven academic school year, and by all schools chosen as part of the sampling methodology at the beginning of the two thousand eight academic school year.~~] The department shall also utilize the collected data to develop a report of child obesity and obesity related diseases.

§ 4. Section 912 of the education law, as amended by chapter 477 of the laws of 2004, is amended to read as follows:

§ 912. Health and welfare services to all children. The voters and/or trustees or board of education of every school district shall, upon request of the authorities of a school other than public, provide resident children who attend such school with any or all of the health and welfare services and facilities which are made available by such voters and/or trustees or board of education to or for children attending the public schools of the district. Such services may include, but are not limited to all services performed by a physician, physician assistant, dentist, dental hygienist, registered professional nurse, nurse practitioner, school psychologist, school social worker or school speech therapist, and may also include dental prophylaxis, vision and hearing screening examinations, **childhood obesity screening,** the taking of medical histories and the administration of health screening tests, the maintenance of cumulative health records and the administration of emergency care programs for ill or injured students. Any such services or facilities shall be so provided notwithstanding any provision of any charter or other provision of law inconsistent herewith. Where children

residing in one school district attend a school other than public located in another school district, the school authorities of the district of residence shall contract with the school authorities of the district where such nonpublic school is located, for the provision of such health and welfare services and facilities to such children by the school district where such nonpublic school is located, for a consideration to be agreed upon between the school authorities of such districts, subject to the approval of the qualified voters of the district of residence when required under the provisions of this chapter. Every such contract shall be in writing and in the form prescribed by the commissioner, and before such contract is executed the same shall be submitted for approval to the superintendent of schools having jurisdiction over such district of residence and such contract shall not become effective until approved by such superintendent.

§ 5. 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.

§ 6. This act shall take effect two years after it shall have become a law.

PART M

Section 1. Subdivisions 1 and 5 of section 803 of the education law, as amended by chapter 118 of the laws of 1957, are amended to read as follows:

1. All pupils above the age of eight years in all elementary and secondary schools, shall receive as part of the prescribed courses of instruction therein such physical education under the direction of the commissioner [~~**of education**~~] as the regents may determine. Such courses shall be designed to aid in the well-rounded education of pupils and in the development of character, citizenship, **overall** physical fitness, **good** health [~~**and**~~]**,** the worthy use of leisure **and the reduction in the incidence of childhood obesity**. Pupils above such age attending the

public schools shall be required to attend upon such prescribed courses of instruction.

5. **(a)** It shall be the duty of the regents to adopt rules determining the subjects to be included in courses of physical education provided for in this section, the period of instruction in each of such courses, the qualifications of teachers, and the attendance upon such courses of instruction.

(b) Notwithstanding any other provision of this section, the regents may provide in its rules that the physical education instruction requirement for all students enrolled in elementary and secondary school grades shall, where feasible, include daily physical exercise or activity, including students with disabling conditions and those in alternative education programs. The regents may include in its rules that students enrolled in such elementary and secondary schools shall participate in physical education, exercise or activity for a minimum of one hundred twenty minutes during each school week. The regents may provide for a two-year phase-in schedule for daily physical education in elementary schools in its rules.

§ 2. The section heading and subdivision 1 of section 804 of the education law, the section heading as amended by chapter 401 of the laws of 1998 and subdivision 1 as added by chapter 982 of the laws of 1977, are amended and a new subdivision 3-b is added to read as follows:

Health education regarding alcohol, drugs, tobacco abuse**, the reduction in the incidence of obesity** and the prevention and detection of certain cancers. 1. All schools shall include, as an integral part of health**, science or physical** education, instruction so as to discourage the misuse and abuse of alcohol, tobacco[~~,~~] and other drugs**, to reduce the incidence of obesity,** and promote attitudes and behavior that enhance health, well being, and human dignity.

3-b. Instruction regarding the long term health risks associated with obesity and methods of preventing and reducing the incidence of obesity, including good nutrition and regular exercise. Such instruction may be an integral part of required health, science, or physical education courses.

§ 3. The section heading and subdivision 1 of section 804 of the education law, as amended by chapter 390 of the laws of 2016, are amended to read as follows:

Health education regarding mental health, alcohol, drugs, tobacco abuse**, the reduction in the incidence of obesity** and the prevention and detection of certain cancers. 1. All schools under the jurisdiction of the department shall ensure that their health**, science or physical** education programs recognize the multiple dimensions of health by including mental health and the relation of physical and mental health so as to enhance student understanding, attitudes and behaviors that promote health, well-being and human dignity.

§ 4. Subdivision 1 of section 804-a of the education law, as added by chapter 730 of the laws of 1986, is amended to read as follows:

1. Within the amounts appropriated, the commissioner is hereby authorized to establish a demonstration program and to distribute state funds to local school districts, boards of cooperative educational services and in certain instances community school districts, for the development, implementation, evaluation, validation, demonstration and replication of exemplary comprehensive health education programs to assist the public schools in developing curricula, training staff, and addressing local health education needs of students, parents, and staff. **Such programs shall serve the purpose of developing and enhancing**

pupils' health knowledge, skills, attitudes and behaviors, which is fundamental to improving their health status and academic performance, as well as reducing the incidence of adolescent pregnancy, alcohol abuse, tobacco abuse, truancy, suicide, substance abuse, obesity, asthma, other chronic respiratory diseases, and other problems of childhood and adolescence.

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

§ 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.

§ 6. This act shall take effect immediately, except that section three of this act shall take effect on the same date and in the same manner as chapter 390 of the laws of 2016 takes effect.

PART N

Section 1. Section 11 of the public buildings law, as added by chapter 819 of the laws of 1987 and subdivision 2 as amended by chapter 126 of the laws of 1988, is amended to read as follows:

§ 11. Pilot program of bicycle parking facilities. 1. Legislative finding. In recognition of the role which bicycles can serve as a valuable transportation mode with energy conservation, health, physical fitness and environmental benefits, it is hereby declared to be the policy of the state that provision for adequate and safe bicycle facilities including the use of present facilities for safe and secure bicycle parking and storage be included in the planning [~~and~~], development, construction or reconstruction of all state facilities.

2. (a) The commissioner of general services shall undertake a [~~pilot~~] program for the provision and promotion of safe and secure bicycle parking facilities at state office buildings for state employees and visitors at such buildings. The commissioner[~~, within one year of the enactment of this section,~~] of general services shall provide, at the principal office buildings under his or her superintendence at the Nelson A. Rockefeller Empire State Plaza in Albany[~~, New York~~], secure bicycle parking facilities for use by employees and visitors. Provided, further, that the commissioner of general services shall make an inventory of all existing bicycle parking and storage facilities at all state office buildings and office buildings in which the state leases or occupies space. Such inventory shall be made only of state owned or leased buildings or offices which have over fifty state employees located at such site or in which the visitation rate by the general public is over five hundred visitors, on average, each month. Such inventory of bicycle parking and storage facilities shall be completed within two years of the effective date of the chapter of the laws of two thousand sixteen which amended this section.

(b) The commissioner of general services is also authorized, within a reasonable period and where feasible, to provide suitable support facilities including clothing lockers, showers and changing facilities, and to charge a reasonable use fee.

(c) For the purpose of this section, the term "bicycle parking facility" means a device or enclosure, located within a building or installation, or conveniently adjacent thereto, that is easily accessible, clearly visible and so located as to minimize the danger of theft of bicycles. Such a device shall consist of a parking rack, locker, or

other device constructed to enable the frame and both wheels of a bicycle to be secured with ease by use of a padlock in a manner that will minimize the risk of theft, or an enclosure which limits access to the bicycles and is under observation by an attendant.

3. **Upon completion of a state office building bicycle parking and storage facilities inventory provided for in paragraph (a) of subdivision two of this section, the commissioner of general services shall develop a plan to expand bicycle parking and storage facilities to encourage the use of such facilities by state employees and the general public that patronize such facilities to conduct public business. Such plan shall be completed within eighteen months after finalization of the parking and storage facilities inventory. Such plan shall contain and address the following elements to encourage state employees and the general public to use bicycles more frequently at each state office building facility or leased premise:**

(a) The inventory of bicycle parking and storage facilities shall be ranked from highest to lowest based on the existing unfulfilled demand for such facilities at state office buildings. Such ranking shall also consider increased future demand or the potential for increased future demand of such parking and storage facilities;

(b) In urban settings, there shall be a plan to develop an ample supply of secure covered and uncovered off-street bicycle parking and storage or alternate indoor parking or storage for such bicycles;

(c) Adequate posting of such bicycle parking and storage facilities shall be provided for and placed around such state office building facility to encourage utilization of such parking and storage facilities by state employees and the general public;

(d) A marketing plan and community outreach effort shall provide for the dissemination of information to state employees, visitors to state office buildings, and to the general public to encourage individuals to use bicycles when traveling to such buildings or facilities; and

(e) The commissioner of general services shall include and address any other element in the plan as he or she deems appropriate.

4. In undertaking such [~~pilot~~] program, the office **of general services** shall: (a) Consult with and cooperate with (i) [~~the statewide bicycle advisory council, (ii)~~] the [~~New York state~~] department of transportation regional bicycle coordinator[~~, (iii)~~]**; (ii)** local bicycle planning groups[~~,~~]**;** and [~~(iv)~~] **(iii)** persons, organizations, and groups served by, interested in, or concerned with the area under study.

(b) Request and receive from any department, division, board, bureau, commission or other agency of the state or any political subdivision thereof or any public authority, any assistance and data as may be necessary to enable the office **of general services** to carry out its responsibilities under this section.

[~~(c) On or before the first day of January, nineteen hundred eighty-nine, a report shall be submitted to the governor and the legislature which shall include a determination of usage levels, a statement outlining first year progress and the elements of a statewide plan for the provision of such facilities.~~]

5. Nothing in this section shall be construed to require the state or the owner, lessee, manager or other person who is in control of a building governed by this section to provide space for stored bicycles at such building or brought into such building or to permit a bicycle to be parked in a manner that violates building or fire codes or any other applicable law, rule or code, or which otherwise impedes ingress or egress to such building.

6. There is hereby established a temporary bicycle commuting task force to examine the development of sheltered bicycle parking in public spaces.

(a) Such task force shall be comprised of nine members, including the commissioner of general services, the commissioner of transportation, the commissioner of motor vehicles, the commissioner of buildings of the city of New York and the commissioner of parks, recreation and historic preservation or a designee of any such commissioners. The remaining four members shall consist of a group of municipal planners, bicycle association representatives, building contractors and engineers. They shall be appointed as follows: one member shall be appointed by the temporary president of the senate; one member shall be appointed by the minority leader of the senate; one member shall be appointed by the speaker of the assembly; and one member shall be appointed by the minority leader of the assembly.

(b) The chair of the temporary bicycle commuting task force shall be the commissioner of general services. Members of the temporary bicycle commuting task force shall serve without compensation and shall meet when deemed necessary by the chair.

(c) Within eighteen months of the temporary bicycle commuting task force's establishment, such task force shall issue a report to the governor and the legislature. Such report shall include, but not be limited to (i) an assessment of the demand for sheltered bicycle parking in public spaces; (ii) an examination of the marketing and community outreach efforts needed to encourage the use of bicycles; (iii) recommendations on establishing partnerships with entities to develop sheltered bicycle storage and parking facilities in public spaces; and (iv) suggestions on expanding the office of general services to local municipal and private office buildings. Such report shall be posted on the website of each state agency that was a member of such task force within twenty days from its submission to the governor. The temporary bicycle commuting task force shall cease to exist three months after the issuance of its report.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.

PART O

Section 1. Section 16 of the agriculture and markets law is amended by adding a new subdivision 5-c to read as follows:

5-c. Cooperate with the commissioner of education, pursuant to subdivision thirty-two of section three hundred five of the education law, to develop guidelines for the voluntary implementation by school districts and institutions of higher education, as defined in subdivision eight of section two of the education law, of programs which encourage the donation of excess, unused, edible food from meals served at such educational facilities to local voluntary food assistance programs.

§ 2. Section 305 of the education law is amended by adding a new subdivision 32 to read as follows:

32. The commissioner, in consultation and cooperation with the commissioner of agriculture and markets, shall develop voluntary guidelines to encourage and facilitate the ability of school districts and institutions of higher education to donate excess, unused, edible food from meals served at such educational facilities to local voluntary food assistance programs including, but not limited to, community food

pantries, soup kitchens, and other community and not-for-profit organizations that distribute food to the poor and disadvantaged.

Such guidelines may include, but need not be limited to:

a. a methodology to provide information to educational institutions and local voluntary food assistance programs of the provisions of such guidelines;

b. a means by which educational institutions are provided with the names and addresses of all nearby local voluntary food assistance programs;

c. a means by which local voluntary food assistance programs are provided with the names and addresses of nearby educational institutions which serve meals upon their premises;

d. notification to educational institutions of their ability to elect to donate excess, unused, edible food to local voluntary food assistance programs; and

e. the provision of information and technical assistance on the manner of how to best donate excess food in a safe and sanitary manner.

The commissioner shall coordinate the implementation of such guidelines with the farm-to-school program and the New York Harvest For New York Kids Week program established pursuant to subdivision five-b of section sixteen of the agriculture and markets law.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.

PART P

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.

§ 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**.

§ 3. Subsection (c) of section 3239 of the insurance law, as amended by chapter 180 of the laws of 2016, is amended to read as follows:

(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, 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**.

§ 4. 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.

§ 5. 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 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.

§ 6. 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.

§ 7. 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;

§ 8. This act shall take effect on the one hundred eightieth day after it shall have become a law, except that section three of this act shall take effect on the same date and in the same manner as chapter 180 of the laws of 2016 takes effect; 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.

§ 3. 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.

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