STATE OF NEW YORK

1485

2019-2020 Regular Sessions

IN ASSEMBLY

January 15, 2019

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:

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 tobacco exposure prevention.

1399-yy. Programs.

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

2. Appropriate healthcare providers shall be encouraged to monitor expectant mothers' smoking statuses and to offer to expectant mothers tailored services, counseling and discussion on the advantages to quitting tobacco smoking during and after their pregnancy.

§ 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. Referrals for smoking cessation for household members;

3. Ongoing support by counseling and educational materials; and

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

LBD05828-01-9

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

§ 2. 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 respiratory diseases,** diabetes 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.

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

(a) An insurer licensed to write accident and health insurance, a corporation organized pursuant to article forty-three of this chapter, a health maintenance organization certified pursuant to article forty-four of the public health law and a municipal cooperative health benefits plan may establish a wellness program in conjunction with its issuance

of a group accident and health insurance policy or group subscriber contract. A "wellness program" is a program designed to promote health and prevent disease that may contain rewards and incentives for participation. Participation in the wellness program shall be available to similarly-situated members of the group and shall be voluntary on the part of the member. The **specific** terms of the wellness program shall be set forth in the policy or contract**, or in a separate document provided to insureds and members which shall be consistent with the provisions of this section**.

(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;

(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[~~.~~]**;**

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

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

(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.

(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, **asthma mitigation or treatment,** 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.

§ 4. This act shall take effect immediately, except that sections one and three of this act shall take effect on the one hundred eightieth day after this act shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such date.