STATE OF NEW YORK

10430

IN ASSEMBLY

May 24, 2024

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Bichotte Hermelyn) -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law and the public health law, in relation to making actuarially appropriate reductions in health insurance premiums in return for an enrollee's or insured's participation in a qualified wellness program

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

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;

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

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(2) a program that encourages behavioral practices that either encourage healthy living activities or discourage 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 such person's adherence to such wellness program and to provide assistance and moral support to such covered person to assist them 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 (a), (b) and (c) of section 3239 of the insurance law, as amended by chapter 3 of the laws of 2024, are amended to read as follows:

(a) An insurer licensed to write life insurance may establish a wellness program in conjunction with its issuance of life insurance policies and 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, longevity or prevent disease that may contain rewards and incentives for participation. A "wellness program" shall not include limited benefits health insurance. Participation in the wellness program shall be available to similarly-situated members of the group or with regard to life insurance, to all insureds within the same class and equal expectation of life and shall be voluntary on the part of the member or insured. With regard to life insurance, an insurer is prohibited from increasing premiums or charges stated in the policy as a result of participation or non-participation in the program. 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. With regard to a wellness program established in connection with life insurance, an insurer shall provide a prominent disclosure to an applicant at or prior to the time of application that the program is not health insurance and participants should not view the program as a substitute for the purchase of health insurance.

(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;

(10) a program to manage and cope with chronic pain;

(11) a preventive care program, screenings (including biometric screenings), or chronic disease management program; [~~and~~]

(12) a stress management program, including participation in a meditation or sleep improvement program[~~.~~]**;**

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

(14) incentives for insureds or members to access preventive services, such as 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**, 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, preventive care programs, screenings, chronic disease management programs, 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) (1) the waiver or reduction of copayments, coinsurance and deductibles for preventive services covered under the group health insurance policy or subscriber contract;

(2) a premium refund, discount, or policy value credit, or other increase in benefits or decrease in charges under a life insurance policy;

(D) monetary rewards in the form of gift cards, gift certificates, vouchers or discounts on products or services in return for engaging in healthy behaviors;

(E) full or partial reimbursement of the cost of participating in a stress management program or activity, including participation in a meditation or sleep improvement program, provided that such program or activity shall be based on data and research that the program or service can be reasonably expected to result in overall good health, well being, or improved mortality risk;

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

(G) full or partial reimbursement of the cost of a wearable device and any associated subscription membership to track physical activity or biometric data, and which incents behavioral changes to improve health or mortality risk.

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

(4) A reward or incentive that involves a discounted premium rate or a rebate or refund of premium under accident and health insurance policies 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 thir-**

ty-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. A premium refund, discount, or policy value credit, or other increase in benefits or decrease in charges under life insurance policies in connection with a wellness program shall be based on sound actuarial principles related to actual or reasonably anticipated experience.

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

(5) Each insurer doing business in this state, when filing with the superintendent its schedules of premium rates, rules and classification of risks for use in connection with the issuance of its policies of group accident, group health or group accident and health insurance, may provide for an actuarially appropriate reduction in premium rates or other benefits or enhancements approved by the superintendent to encourage an enrollee's or insured's active participation in a qualified wellness program. A qualified wellness program can be a risk management system that identifies at-risk populations or any other systematic program or course of medical conduct which helps to promote physical and mental fitness, health and well-being, helps to prevent or mitigate the conditions of acute or chronic sickness, disease or pain, or which minimizes adverse health consequences due to lifestyle. Such a wellness program may have some or all of the following elements to advance the physical health and mental well-being of its participants:

(A) an education program to increase the awareness of and dissemination of information about pursuing healthier lifestyles, and which warns about risks of pursuing environmental or behavioral activities that are detrimental to human health. In addition, information on the availability of health screening tests to assist in the early identification and treatment of diseases such as cancer, heart disease, hypertension, diabetes, asthma, obesity or other adverse health afflictions;

(B) a program that encourages behavioral practices that either encourage healthy living activities or discourage unhealthy living activities. Such activities or practices may include wellness programs, as provided under section three thousand two hundred thirty-nine of this chapter;

(C) the monitoring of the progress of each covered person to track such person's adherence to such wellness program and to provide assistance and moral support to such covered person to assist them 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.

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

(c-1) Subject to the approval of the superintendent, an insurer or health maintenance organization issuing an individual or group health insurance contract pursuant to this section may provide for an 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 encourage healthy living activities or discourage 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 such person's adherence to such wellness program and to provide assistance and moral support to such covered person to assist them 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. 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:

(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 encourage healthy living activities or discourage 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 such person's adherence to such wellness program and to provide assist-

ance and moral support to such covered person to assist them 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. 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 encourage healthy living activities or discourage 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 such person's adherence to such wellness program and to provide assistance and moral support to such covered person to assist them 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;

§ 7. This act shall take effect on the one hundred eightieth day after it 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 effective date.