

# STATE OF NEW YORK

2853--A

2023-2024 Regular Sessions

## IN ASSEMBLY

January 27, 2023

Introduced by M. of A. MEEKS, CLARK, LUPARDO, STECK -- read once and referred to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to authorizing life insurers to establish wellness programs

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

1 Section 1. Section 3239 of the insurance law, as added by chapter 592  
2 of the laws of 2008 and subsections (b) and (c) as amended by chapter  
3 180 of the laws of 2016, is amended to read as follows:  
4 § 3239. Wellness programs. (a) An insurer licensed to write life  
5 insurance may establish a wellness program in conjunction with its issu-  
6 ance of life insurance policies and an insurer licensed to write acci-  
7 dent and health insurance, a corporation organized pursuant to article  
8 forty-three of this chapter, a health maintenance organization certified  
9 pursuant to article forty-four of the public health law and a municipal  
10 cooperative health benefits plan may establish a wellness program in  
11 conjunction with its issuance of a group accident and health insurance  
12 policy or group subscriber contract. A "wellness program" is a program  
13 designed to promote health [~~and~~], longevity or prevent disease that may  
14 contain rewards and incentives for participation. Participation in the  
15 wellness program shall be available to similarly-situated members of the  
16 group or with regard to life insurance, to all insureds within the same  
17 class in a manner that is not unfairly discriminatory and shall be  
18 voluntary on the part of the member or insured. With regard to life  
19 insurance, an insurer is prohibited from increasing premiums or charges  
20 stated in the policy as a result of participation or non-participation  
21 in the program. The terms of the wellness program shall be set forth in  
22 the policy or contract.

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

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

- 3 (1) the use of a health risk assessment tool;
- 4 (2) a smoking cessation program;
- 5 (3) a weight management program;
- 6 (4) a stress and/or hypertension management program;
- 7 (5) a worker injury prevention program;
- 8 (6) a nutrition education program;
- 9 (7) health or fitness incentive programs;

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

13 (9) a substance or alcohol abuse cessation program; ~~and~~

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

15 (11) a preventative care, screenings, or chronic disease management  
16 program; and

17 (12) a meditation, sleep improvement or similar program or service.

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

23 (2) Permissible rewards and incentives may include:

24 (A) full or partial reimbursement of the cost of participating in  
25 smoking cessation, weight management, stress and/or hypertension, worker  
26 injury prevention, nutrition education, substance or alcohol abuse  
27 cessation, preventative care programs, or screenings, chronic disease  
28 management programs, or chronic pain management and coping programs;

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

31 (C) (1) the waiver or reduction of copayments, coinsurance and deduct-  
32 ibles for preventive services covered under the group health insurance  
33 policy or subscriber contract;

34 (2) a premium refund, discount or policy value credit under a life  
35 insurance policy;

36 (D) monetary rewards in the form of gift cards ~~[or]~~, gift certif-  
37 icates, ~~[so long as the recipient of the reward is encouraged to use the~~  
38 ~~reward for a product or a service that promotes good health, such as~~  
39 ~~healthy cook books, over the counter vitamins or exercise equipment]~~  
40 vouchers or discounts on products or services that are intended to  
41 incent behavioral changes that improve the health or reduce the risk of  
42 death of the insured;

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

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

51 (G) full or partial reimbursement of the cost of a wearable device and  
52 any associated subscription membership that can be used to track phys-  
53 ical activity or biometric data, and which incents behavioral changes to  
54 improve the health or reduce the risk of death of the insured; and

55 (H) full or partial reimbursement of biometric screenings.

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

4 (4) A reward or incentive which involves a discounted premium rate or  
5 a rebate or refund of premium under a health insurance policy shall be  
6 based on actuarial demonstration that the wellness program can reason-  
7 ably be expected to result in the overall good health and well being of  
8 the group. A reward or incentive that involves a discounted premium rate  
9 or rebate or refund of premium under a life insurance policy shall be  
10 actuarially supported by data and research that such incentives or  
11 rewards, in the aggregate, are directed to sharing the benefit of  
12 improving expected mortality risk experience. Data collected in  
13 connection with a wellness program shall be subject to all state and  
14 federal privacy and security laws.

15 § 2. This act shall take effect immediately.