STATE OF NEW YORK

5890--A

Cal. No. 631

2023-2024 Regular Sessions

IN SENATE

March 21, 2023

Introduced by Sens. BRESLIN, FERNANDEZ, GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

Section 1. Section 3239 of the insurance law, 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, is amended to read as follows:

§ 3239. Wellness programs. (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 [~~and~~]**, longevity or** 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 **or with regard to life insurance, to all insureds within the same class in a manner that is not unfairly discriminatory** 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**

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

LBD07895-04-3

in the program. The terms of the wellness program shall be set forth in the policy or contract.

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

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

(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, nutrition education, substance or alcohol abuse cessation, preventative care programs, or 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 [~~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~~] vouchers or discounts on products or services that are intended to incent behavioral changes that improve the health or reduce the risk of death of the insured;

(E) full or partial reimbursement of the cost of participating in a stress management program or activity, including participation in a meditation, sleep improvement or similar program or service, 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; [~~and~~]

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

(G) full or partial reimbursement of the cost of a wearable device and any associated subscription membership that can be used to track phys-

ical activity or biometric data, and which incents behavioral changes to improve the health or reduce the risk of death of the insured; and

(H) full or partial reimbursement of biometric screenings.

(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** 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 **under a health insurance policy** 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. **A reward or incentive that involves a discounted premium rate or rebate or refund of premium under a life insurance policy shall be actuarially supported by data and research that such incentives or rewards, in the aggregate, are directed to sharing the benefit of improving expected mortality risk experience. Data collected in connection with a wellness program shall be subject to all state and federal privacy and security laws.**

§ 2. This act shall take effect immediately.