

# STATE OF NEW YORK

8019

## IN SENATE

January 5, 2024

Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the insurance law, in relation to wellness programs; and to amend a chapter of the laws of 2023 amending the insurance law relating to authorizing life insurers to establish wellness programs, as proposed in legislative bills numbers S. 5890-A and A. 2853-B, in relation to the effectiveness thereof

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 amended by a chapter  
2 of the laws of 2023 amending the insurance law relating to authorizing  
3 life insurers to establish wellness programs, as proposed in legislative  
4 bills numbers S. 5890-A and A. 2853-B, is amended to read as follows:

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

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

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ance, 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 [~~preventative~~] preventive care program, screenings (including biometric screenings), or chronic disease management program; and
- (12) a stress management program, including participation in a meditation[~~r~~] or 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~~] preventive 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, gift certificates, vouchers or discounts on products or services [~~that are intended to incite behavioral changes that improve the health or reduce the risk of death of the insured~~] 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[~~r~~] or 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;

(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 [~~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]~~ 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 ~~[must]~~ shall meet the requirements of 45 CFR Part 146.

(4) A reward or incentive ~~[which]~~ that involves a discounted premium rate or a rebate or refund of premium under ~~[a]~~ accident and health insurance ~~[policy]~~ 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. A ~~[reward or incentive that involves a discounted premium rate or rebate or refund of]~~ premium refund, discount, or policy value credit, or other increase in benefits or decrease in charges 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]~~ policies in connection with a wellness program shall be based on sound actuarial principles related to actual or reasonably anticipated experience. ~~[Data collected]~~

(d) Fair collection and use of personal information. (1) Nonpublic personal information, including health data, an insurer collects and shares in connection with a wellness program shall be subject to all state and federal privacy and security laws and regulations promulgated thereunder, including 11 NYCRR 420.

(2) Wellness program participants shall have the right to obtain a copy of their wellness program information and an opportunity to correct any inaccuracies.

(3) An insurer may contract with a third party for purposes of administering or operating a wellness program on such insurer's behalf provided that the insurer maintains a system of supervision to ensure compliance with this section, including procedures to take appropriate corrective action for any participant harmed by a violation of this section by the insurer directly or by any third party with whom the insurer contracts.

§ 2. Section 2 of a chapter of the laws of 2023 amending the insurance law relating to authorizing life insurers to establish wellness programs, as proposed in legislative bills numbers S. 5890-A and A. 2853-B, is amended to read as follows:

§ 2. This act shall take effect immediately and shall apply to policies issued, renewed, modified, or amended on or after such effective date.

§ 3. This act shall take effect immediately; provided, however, that section one of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2023 amending the insurance law relating to authorizing life insurers to establish wellness programs, as proposed in legislative bills numbers S. 5890-A and A. 2853-B, takes effect.