

STATE OF NEW YORK

8504

IN ASSEMBLY

January 4, 2024

Introduced by M. of A. MEEKS -- read once and referred to the Committee on Insurance

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.

LBD07895-06-4

1 ance, an insurer shall provide a prominent disclosure to an applicant at
2 or prior to the time of application that the program is not health
3 insurance and participants should not view the program as a substitute
4 for the purchase of health insurance.

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

7 (1) the use of a health risk assessment tool;

8 (2) a smoking cessation program;

9 (3) a weight management program;

10 (4) a stress and/or hypertension management program;

11 (5) a worker injury prevention program;

12 (6) a nutrition education program;

13 (7) health or fitness incentive programs;

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

17 (9) a substance or alcohol abuse cessation program;

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

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

21 (12) a stress management program, including participation in a medi-
22 tation[~~r~~] or sleep improvement [~~or similar~~] program [~~or service~~].

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

28 (2) Permissible rewards and incentives may include:

29 (A) full or partial reimbursement of the cost of participating in
30 smoking cessation, weight management, stress and/or hypertension, worker
31 injury prevention, nutrition education, substance or alcohol abuse
32 cessation, [~~preventative~~ preventive care programs, [~~or~~] screenings,
33 chronic disease management programs, or chronic pain management and
34 coping programs;

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

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

40 (2) a premium refund, discount, or policy value credit, or other
41 increase in benefits or decrease in charges under a life insurance poli-
42 cy;

43 (D) monetary rewards in the form of gift cards, gift certificates,
44 vouchers or discounts on products or services [~~that are intended to~~
45 ~~incent behavioral changes that improve the health or reduce the risk of~~
46 ~~death of the insured~~] in return for engaging in healthy behaviors;

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

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

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

1 ical activity or biometric data, and which incents behavioral changes to
2 improve ~~[the]~~ health or ~~[reduce the risk of death of the insured, and~~
3 ~~(H) full or partial reimbursement of biometric screenings]~~ mortality
4 risk.

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

9 (4) A reward or incentive ~~[which]~~ that involves a discounted premium
10 rate or a rebate or refund of premium under ~~[a]~~ accident and health
11 insurance ~~[policy]~~ policies shall be based on actuarial demonstration
12 that the wellness program can reasonably be expected to result in the
13 overall good health and well being of the group. A ~~[reward or incentive~~
14 ~~that involves a discounted premium rate or rebate or refund of]~~ premium
15 refund, discount, or policy value credit, or other increase in benefits
16 or decrease in charges under ~~[a]~~ life insurance ~~[policy shall be actuar-~~
17 ~~ially supported by data and research that such incentives or rewards, in~~
18 ~~the aggregate, are directed to sharing the benefit of improving expected~~
19 ~~mortality risk]~~ policies in connection with a wellness program shall be
20 based on sound actuarial principles related to actual or reasonably
21 anticipated experience. ~~[Data collected]~~

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

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

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

37 § 2. Section 2 of a chapter of the laws of 2023 amending the insurance
38 law relating to authorizing life insurers to establish wellness
39 programs, as proposed in legislative bills numbers S. 5890-A and A.
40 2853-B, is amended to read as follows:

41 § 2. This act shall take effect immediately and shall apply to poli-
42 cies issued, renewed, modified, or amended on or after such effective
43 date.

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