STATE OF NEW YORK

4435

2023-2024 Regular Sessions

IN SENATE

February 8, 2023

Introduced by Sen. FERNANDEZ -- read twice and ordered printed, and when printed to be committed 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 identifi-

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

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cation 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 article; and

(3) the monitoring of the progress of each covered person to track his or her adherence to such wellness program and to provide assistance and moral support to such covered person to assist him or her 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, subsection (a) 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, are amended to read as follows:

(a) 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 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 and shall be voluntary on the part of the member. 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.

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

(12) 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, 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) the waiver or reduction of copayments, coinsurance and deductibles for preventive services covered under the group policy or subscriber contract;

(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;

(E) full or partial reimbursement of the cost of participating in a stress management program or activity; and

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

(3) Where the reward involves a group member's meeting a specified standard based on a health condition, the wellness program 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 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 thirty-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**.

§ 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 identifi-

cation 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 his or her adherence to such wellness program and to provide assistance and moral support to such covered person to assist him or her 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 his or her adherence to such wellness program and to provide assistance and moral support to such covered person to assist him or her 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 indi-

viduals 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 his or her adherence to such wellness program and to provide assistance and moral support to such covered person to assist him or her 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 his or her adherence to such wellness program and to provide assistance and moral support to such covered person to assist him or her 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.