

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:

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

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

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

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

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

6 (2) a smoking cessation program;

7 (3) a weight management program;

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

9 (5) a worker injury prevention program;

10 (6) a nutrition education program;

11 (7) health or fitness incentive programs;

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

15 (9) a substance or alcohol abuse cessation program; ~~[and]~~

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

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

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

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

25 (2) Permissible rewards and incentives may include:

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

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

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

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

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

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

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

54 (G) full or partial reimbursement of the cost of a wearable device and
55 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.

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

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

18 § 2. This act shall take effect immediately.