§ 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, longevity or prevent disease that may contain rewards and incentives for participation. A "wellness program" shall not include limited benefits health insurance. 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 and equal expectation of life 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 in the program. The terms of the wellness program shall be set forth in the policy or contract. With regard to a wellness program established in connection with life insurance, 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 preventive care program, screenings (including biometric screenings), or chronic disease management program; and

(12) a stress management program, including participation in a meditation or sleep improvement program.

(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, preventive care programs, 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 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 or sleep improvement program, 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 to track physical activity or biometric data, and which incents behavioral changes to improve health or 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 shall meet the requirements of 45 CFR Part 146.

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

(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.