

JAN 24 2013

A BILL FOR AN ACT

RELATING TO VOLUNTARY WELLNESS PROGRAMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that as healthcare
2 insurers, employers, and medicaid programs expand the reach and
3 approach of wellness programs for participants as a means to
4 control costs and promote health, there has been a significant
5 increase in incentive-based wellness programs employing
6 mandatory requirements and conditions on participants with
7 punitive results, and it has become apparent that protections
8 are needed.

9 The federal Patient Protection and Affordable Care Act and
10 the Hawaii Prepaid Health Care Act sought to encourage and
11 extend healthcare coverage to individuals who may have
12 difficulty otherwise obtaining coverage, but mandatory wellness
13 programs and programs with punitive consequences may discourage
14 such increased participation, especially among vulnerable
15 populations. Voluntary wellness programs that encourage and
16 motivate healthy behavior have been most successful and are
17 consistent with the goals of the Patient Protection and
18 Affordable Care Act and the Hawaii Prepaid Health Care Act to



1 encourage and extend healthcare coverage. Research has not
2 shown that mandatory wellness programs requiring participation
3 are any more successful, though they can lead to serious
4 negative consequences for participants. As stated in the
5 recently-issued Joint Consensus Statement of the Joint Committee
6 of the Health Enhancement Research Organization, American
7 College of Occupational and Environmental Medicine, American
8 Cancer Society and American Cancer Society Cancer Action
9 Network, American Diabetes Association, and American Heart
10 Association, "The fundamental goal of any wellness program
11 should be to provide opportunities for individuals to improve
12 their health and wellness. A wellness program should not be
13 used in a way that threatens an employee's ability to maintain
14 health insurance because any resulting decrease in access to
15 care would be in direct conflict with the primary objective of
16 improving employee health."

17 The purpose of this Act is to establish protections for
18 participants of health benefit plans by adding a new part to the
19 patients' bill of rights.

20 SECTION 2. Chapter 432E, Hawaii Revised Statutes, is
21 amended by adding a new part to be appropriately designated and
22 to read as follows:



1 **"PART . WELLNESS PROGRAMS**

2 **§432E- Definitions.** As used in this part:

3 "Healthcare insurers" means health carriers, including
4 companies or organizations that provide or sell a health benefit
5 plan and the Hawaii employer-union health benefits trust fund.

6 "Participants" means consumers of health benefit plans and
7 their dependents, employees receiving healthcare coverage or
8 insurance through an employer and their dependents, and medicaid
9 beneficiaries.

10 "Wellness program" means a program designed to promote
11 health and prevent disease that may contain rewards and
12 incentives for participation and includes programs offered by
13 healthcare insurers, employers, and medicaid programs.

14 **§432E- Ability to offer participatory wellness programs.**

15 Healthcare insurers, employers, and medicaid programs may offer
16 participatory wellness programs to their respective participants
17 subject to the restrictions of this part.

18 **§432E- Participation in wellness program. (a)**

19 Participation in a wellness program shall be voluntary on the
20 part of the participant and shall be available to all similarly-
21 situated participants of the insurer, employer, or medicaid
22 program plan. When offered by an insurer, the terms of the



1 wellness program shall be set forth in the plan's policy or
2 contract.

3 (b) A wellness program may include but is not limited to
4 the following 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 management program;
- 9 (5) A worker injury prevention program;
- 10 (6) A nutrition education or healthy food program; and
- 11 (7) Health or fitness incentive programs.

12 (c) A wellness program may use rewards and incentives for
13 participation that do not contradict voluntary participation, as
14 follows:

- 15 (1) Permissible rewards and incentives shall include:
 - 16 (A) Full or partial reimbursement of the cost of
 - 17 participating in smoking cessation or weight
 - 18 management programs;
 - 19 (B) Full or partial reimbursement of the cost of
 - 20 membership in a health club or fitness center or
 - 21 goal-orientated fitness training program; and



1 (C) Monetary rewards in the form of gift cards or
2 gift certificates, so long as the recipient of
3 the reward is encouraged to use the reward for a
4 product or a service that promotes good health,
5 such as healthy cook books or foods, over the
6 counter vitamins, exercise equipment, or payment
7 of entry or training fees for exercise classes,
8 athletic events, and competitions; and

9 (2) Non-permissible rewards and incentives shall include:

10 (A) A discount in the participant's health benefit
11 plan cost or premium rate;

12 (B) A rebate or refund of premium to participants;

13 (C) Conditions for eligibility for health benefit
14 plan coverage or suspension or termination of
15 existing coverage;

16 (D) Adverse employment actions;

17 (E) Bonuses based on percentage or number of plan
18 participants voluntarily participating in a
19 wellness program; and

20 (F) Adjustments to employee compensation, rate of
21 pay, or salary adjustment based on individual
22 participation in a wellness program.



1 §432E- Confidentiality of information due to
2 participation in a wellness program. (a) Any personal health
3 information, including biometrics or health histories, obtained
4 due to participation in a wellness program shall be protected
5 health information for the purposes of this chapter, and shall
6 be protected in compliance with the Health Insurance Portability
7 and Accountability Act of 1996. A participant in any wellness
8 program that utilizes a health risk assessment or other personal
9 health information shall have the option of choosing a health
10 care professional for obtaining and assessing personal health
11 information.

12 (b) Personal health information shall not be shared with a
13 participant's employer or prospective employer. Any other
14 information obtained due to participation in a wellness program
15 shall not be shared with a participant's employer or prospective
16 employer except to verify eligibility for rewards or incentives
17 offered by the participant's employer.

18 (c) Any personal health information obtained due to
19 participation in a wellness program shall not be shared with a
20 participant's health insurance provider, except as voluntarily
21 authorized by written permission and direction of the
22 participant."



1 SECTION 3. This Act shall take effect upon its approval.

2

INTRODUCED BY: 



S.B. NO. 1264

Report Title:

Wellness Programs; Participants

Description:

Allows healthcare insurers, employers, and medicaid programs to offer voluntary wellness programs. Establishes what a wellness program may and may not use as rewards or incentives for participation in a wellness program. Protects confidentiality of participants in a wellness program.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

