

(Without Reference to File)

ASSEMBLY THIRD READING

AB 648 (Nazarian)

As Amended January 23, 2020

Majority vote

**SUMMARY:**

Establishes the Wellness Program Protection Act, and imposes various requirements related to wellness programs on health care services plans (health plans)/insurers/employers, including prohibitions to retaliate against an enrollee/insured/member/employee if the health plan/insurer/employer's action is in response to an individual's election not to participate in a wellness program; and, to share any personal information or data collected through a wellness program.

**Major Provisions**

Excludes any wellness program for licensed health care professionals administered or operated by a professional association or its affiliates or subsidiaries or the personal information or data collected by a professional association or its affiliates or subsidiaries in relation to, or in support of, the administration or operation of a wellness program for licensed health care professionals. Defines wellness program as a health plan/insurer/employer program aimed at promoting health-related behaviors and disease prevention, but also excludes care coordination by or between health care providers in the practice of medicine.

**COMMENTS:**

*Wellness programs.* According to the United States Centers for Medicare & Medicaid Services, implementing and expanding employer wellness programs may offer the opportunity to not only improve the health of Americans, but also help control health care spending. The Patient Protection and Affordable Care Act (ACA) creates new incentives and builds on existing wellness program policies to promote employer wellness programs and encourage opportunities to support healthier workplaces.

According to a 2015 *Health Affairs* article, federal policy makers have long seen both the promise and perils of employer wellness incentives. When Congress prohibited group health plans from discriminating based on health factors under federal privacy law, it created an exception for programs of health promotion and disease prevention. When regulators (the federal Departments of Health and Human Services, Labor, and Treasury) promulgated a final rule implementing this provision, they imposed a limit on wellness incentives tied to health factors of 20% of the total cost of coverage, a level thought to avoid "rewards or penalties so large as to deny coverage or create too heavy a penalty" on individuals not meeting the requisite standards. The ACA offered support for the development and expansion of health incentives in a variety of ways, including to lift the ceiling on health-contingent wellness incentives to 30% (close to \$1,800 annually for an average employee-only plan) and to invite regulators to increase the ceiling to 50%, if appropriate.

According to an article from Case Western Reserve University (Case article), "The Dubious Empirical and Legal Foundations of Workplace Wellness Programs," wellness programs come in

two forms. First, participatory wellness programs offer employees a financial incentive based only on their participation and employees might receive a reward, for instance, if they fill out a health assessment or attend a smoking-cessation class. The reward can take a variety of forms, such as a premium discount or rebate. Alternatively, employees might be penalized for failing to participate. Health-contingent wellness programs require employees to achieve health related targets in order to receive the financial incentive. Employees might, for example, have to visit the gym a certain number of times each month or keep their blood pressure under control. On their face, participatory wellness programs treat all employees alike. Health-contingent programs, however, discriminate among employees based on factors related to their health, and creates a potential conflict with laws that aim to prevent employers from discriminating against their sickest employees in the provision of health insurance.

Additionally, according to the Case article noted above, most of the numerous studies on the efficacy of employer-based wellness programs suffer from serious methodological shortcomings and some are promotional materials pulled together at the wellness industry's behest. However, the Case study notes that good studies do exist and, when considered together, they paint a reasonably consistent picture of wellness programs' performances, or lack thereof. According to the Case study, wellness programs aimed at improving employee lifestyles yield little, if any, savings. Programs that focus on managing employees' chronic diseases, however, hold substantially more promise.

**According to the Author:**

Wellness programs are promoted as a way to support healthy behaviors and improve health outcomes for participants. However, many come with unspoken tradeoffs as they require participants to give up their personal data, including sensitive personal health information, in exchange for unsupported promises of wellness. For many enrollees, the type of surveillance that comes with a wellness program may seem like more than they signed up for. This bill will protect wellness program participants' privacy by establishing clear requirements around fair collection and use of data; prohibit discrimination related to wellness programs; and, require transparency for candidates to make informed decisions when participating in wellness programs. As the popularity of health-related technology and programs increases, so does sensitivity to privacy concerns. According to the author, it is absolutely necessary to create standards for wellness programs to ensure consumer protections.

**Arguments in Support:**

Consumer Reports (CR), a sponsor of this bill, writes that this bill will ensure that privacy protections exist and are sufficient to protect all enrollees of wellness programs. CR also states that this bill will also protect program enrollees against misuse and sharing of their personal data and will curb the reach of employer and insurer control over employees' and enrollees' data. CR contends that this bill will empower individuals to make more informed decisions to join or not to join a wellness program, and ensure that those who do participate can do so without giving up their right to privacy and without suffering discrimination or penalty based on participation.

**Arguments in Opposition:**

The California Chamber of Commerce (CCC) and other organizations, in a previous version of this bill, contend that this bill creates significant liability for employers and imposes requirements which would likely end voluntary workplace Wellness Programs that benefit employees and contribute to a healthy workforce. The CCC states that employee wellness

programs are generally provided as an additional voluntary benefit or perk for working for the employer and their goal is to encourage healthy lifestyles.

**FISCAL COMMENTS:**

According to the Assembly Appropriations Committee, costs to the Department of Managed Health Care of \$60,000 in fiscal year 2019-20, \$140,000 in 2020-21 and around \$16,000 in 2021-22 and ongoing. Costs to the Department of Industrial Relations in the range of \$100,000 to \$450,000 annually in the Department of Labor Standards Enforcement Retaliation Claims Investigation unit.

**VOTES:****ASM HEALTH: 10-3-2**

**YES:** Wood, Aguiar-Curry, Bonta, Carrillo, Limón, McCarty, Nazarian, Ramos, Rodriguez, Santiago

**NO:** Bigelow, Flora, Waldron

**ABS, ABST OR NV:** Mayes, Burke

**ASM LABOR AND EMPLOYMENT: 6-1-0**

**YES:** Kalra, Carrillo, Diep, Gonzalez, Jones-Sawyer, Luz Rivas

**NO:** Flora

**ASM APPROPRIATIONS: 12-5-1**

**YES:** Gonzalez, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Gabriel, Eduardo Garcia, Petrie-Norris, Quirk, Robert Rivas

**NO:** Bigelow, Brough, Megan Dahle, Diep, Fong

**ABS, ABST OR NV:** Maienschein

**UPDATED:**

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