

AMENDED IN ASSEMBLY JANUARY 23, 2020

AMENDED IN ASSEMBLY MARCH 28, 2019

AMENDED IN ASSEMBLY MARCH 12, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 648

Introduced by Assembly Member Nazarian

February 15, 2019

An act to add Section 1367.13 to the Health and Safety Code, to add Section 10127.6 to the Insurance Code, and to add Section 436 to the Labor Code, relating to wellness programs.

LEGISLATIVE COUNSEL'S DIGEST

AB 648, as amended, Nazarian. Wellness programs.

(1) Existing federal law, the federal Patient Protection and Affordable Care Act (PPACA), enacted various health care coverage market reforms that took effect January 1, 2014. Among other things, PPACA sets forth various requirements related to wellness programs, which encompass programs of health promotion or disease prevention.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care (department) and makes a willful violation of the act a crime. Existing law also provides for the regulation of various insurers by the Department of Insurance, headed by the Insurance Commissioner. ~~Existing law authorizes the director of the department and the commissioner to adopt regulations for purposes of implementing various provisions of law, as specified.~~

This bill would prohibit health care service plans and insurers from sharing any personal information or data collected through a wellness

program, *except as specified*, and would prohibit health care service plans or insurers from taking any adverse action, as defined, against an enrollee or member, or insured ~~(“individual”); (individual)~~, if the action of the health care service plans or insurers is in response to ~~a matter related to a wellness program, such as an individual’s election to not participate in a wellness program.~~ The bill would establish and impose upon health care service plans and insurers various requirements related to a wellness ~~programs; program~~, such as requiring a health care service plan or insurer to ~~provide an individual information post a written explanation that is reasonably likely to be understood by an individual on its internet website~~ concerning its policies and practices pertaining to wellness programs, as specified. The bill would require a health care service plan or insurer, for purposes of administering and operating a wellness program, to limit its collection, dissemination, retention, and use of any personal information of an individual to only information that is reasonably necessary to operate a wellness program, *except as specified*, and would extend various requirements, to the extent that they are applicable, to any entity that the health care service plan or insurer contracts with for purposes of administering or operating a wellness program on their behalf. The bill would authorize the commissioner to assess penalties on an insurer for any violation of these provisions, as specified. ~~The bill would authorize the director and commissioner to adopt regulations to conform to federal law in the event that the provisions conflict with federal law.~~

Because a willful violation of these requirements relative to health care service plans would be a crime, the bill would impose a state-mandated local program.

(2) Existing law establishes the Division of Labor Standards Enforcement, headed by the Labor Commissioner, within the Department of Industrial Relations, for the purpose of enforcing labor laws, including those relating to employer ~~retaliation, and makes a person who violates specified requirements guilty of a misdemeanor.~~ *retaliation.*

This bill would, among other things, prohibit an employer from requiring an employee to participate in a wellness program as a condition of employment and ~~would prohibit an employer~~ from taking any adverse action, as defined, against an employee if the action is in response to ~~a matter related to a wellness program, such as an employee’s election to not participate in a wellness program.~~ The bill would establish and impose upon an employer various requirements related to a wellness

program, such as requiring an employer to ~~provide an employee information~~ *post a written explanation that is reasonably likely to be understood by an employee on its internet website* concerning its policies and practices pertaining to a wellness program. The bill would require an employer, for purposes of administering and operating a wellness program, to limit its collection, dissemination, retention, and use of any personal information of an employee to only information that is reasonably necessary for the program's operation, *except as specified*, and would extend various requirements, to the extent that they are applicable, to any entity that the employer contracts with for purposes of administering or operating a wellness program on their behalf. The bill would grant an employee various rights in relation to a wellness program, such as obtaining a copy of the employee's records, including personal information that has been collected by the employer as part of a wellness program.

~~Because a willful violation of these requirements would be a crime, the bill would impose~~

The bill would make a violation of these requirements an infraction, thereby imposing a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be ~~known as, and may be cited as,~~
2 ~~the Making Wellness Programs Healthy for Consumers Act of~~
3 ~~2019; known, and may be cited, as the Wellness Program~~
4 ~~Protection Act.~~

5 SEC. 2. Section 1367.13 is added to the Health and Safety
6 Code, to read:

7 1367.13. (a) A health care service plan shall not do either of
8 the following:

9 (1) Retaliate or take any adverse action against an enrollee or
10 member if the health care service plan's action is in response to a
11 ~~matter related to a wellness program, such as an individual's~~

1 election to not participate in a wellness program or the data
2 collected through the wellness program about the enrollee or
3 member.

4 (2) Share any personal information or data collected through a
5 wellness program.

6 (b) (1) (A) A health care service plan that collects personal
7 information of an enrollee or member as part of its administration
8 and operation of a wellness program shall ensure compliance with
9 state and federal privacy laws, including, but not limited to, the
10 Confidentiality of Medical Information Act (Part 2.6 (commencing
11 with Section 56) of Division 1 of the Civil Code), and the federal
12 Health Insurance Portability and Accountability Act of 1996
13 (Public Law 104-191).

14 (B) A health care service plan shall ~~provide an enrollee or~~
15 ~~member a written explanation, in clear and easily understandable~~
16 ~~language, post a written explanation that is reasonably likely to~~
17 ~~be understood by an enrollee or member on its internet website~~
18 about the basis of the wellness program, a description about the
19 data collection process and which data will be collected through
20 the wellness program, policies and practices pertaining to the
21 wellness program, and the rights of the enrollee or member
22 concerning the wellness program under federal and state laws and
23 regulations.

24 (2) (A) Notwithstanding any other law, for purposes of
25 administering and operating a wellness program, a health care
26 service plan shall limit its collection, dissemination, retention, and
27 use of any personal information of an enrollee or member to only
28 information that is reasonably necessary to operate the wellness
29 program.

30 (B) If an enrollee or member terminates their participation in a
31 wellness program, or upon the conclusion of a wellness program,
32 the health care service plan shall destroy any personal information
33 received or collected through the wellness program, and shall order
34 the destruction of this material.

35 (c) With respect to a wellness program, an enrollee or member
36 has the right to do both of the following:

37 (1) Obtain a copy of their records, including personal
38 information that has been collected by the health care service plan,
39 in a format accessible to the individual.

1 (2) Challenge the completeness and accuracy of any records,
2 including personal information or data, related to the enrollee or
3 member that has been collected by a health care service plan.

4 (d) A person who willfully violates any provision of this section
5 shall be subject to the enforcement procedures set forth under
6 Article 8 (commencing with Section 1390), and any other sanctions
7 and penalties permitted by law.

8 ~~(e) (1) If this section conflicts with federal law, the director~~
9 ~~may adopt regulations to conform to federal law.~~

10 ~~(2)~~

11 (e) The provisions of this section are severable. If any provision
12 of this section or its application is held invalid, that invalidity shall
13 not affect other provisions or applications that can be given effect
14 without the invalid provision or application.

15 (f) The requirements described in this section shall apply, to the
16 extent that they are applicable, to any entity that the health care
17 service plan contracts with for purposes of administering or
18 operating a wellness program on the health care service plan's
19 behalf.

20 (g) A health care service plan shall not share any personal
21 information about the enrollee or member that is collected through
22 a wellness program with the enrollee's or member's employer.

23 (h) *Notwithstanding paragraph (2) of subdivision (b), a health*
24 *care service plan may retain publicly available information or*
25 *deidentified and aggregated information that is collected through*
26 *a wellness program if this data would be used for the purpose of*
27 *conducting bona fide research relating to health care utilization*
28 *and outcomes.*

29 (i) *Notwithstanding paragraph (2) of subdivision (a), a health*
30 *care service plan may share data that is collected through a*
31 *wellness program with a third party if the data is either publicly*
32 *available information or deidentified and aggregated information,*
33 *and the data would be used for the purpose of conducting bona*
34 *fide research relating to health care utilization and outcomes.*

35 (j) *The provisions of this section do not apply to either of the*
36 *following:*

37 (1) *Any wellness program for licensed health care professionals*
38 *administered or operated by a professional association or its*
39 *affiliates or subsidiaries.*

(2) *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.*

(k) *This section does not limit or restrict the disclosure of any personal information by a health care service plan if otherwise required by law.*

~~(h)~~

(l) For purposes of this section, the following definitions apply:

(1) “Administration and operation of a wellness program” means, but is not limited to, the use of personal information when reasonably necessary and proportionate to achieve one of the following purposes:

(A) Detecting and responding to security incidents arising from a wellness program and protecting against malicious, deceptive, fraudulent, or illegal activity related to a wellness program.

(B) Executing functions of a wellness program for the benefit of the enrollee or member.

(C) Undertaking internal research for technological development and demonstration related to a wellness program.

(D) Undertaking activities to verify or maintain the quality or safety of a service or device that is owned by, manufactured by, manufactured for, or controlled by the health care service plan, or to improve, upgrade, or enhance the service or device that is owned by, manufactured by, manufactured for, or controlled by the health care service plan related to a wellness program.

(2) “Collects,” “collected,” or “collection” means buying, renting, gathering, obtaining, receiving, or accessing, by any means, any personal information pertaining to an enrollee or member. This includes information that the health care service plan receives from an enrollee or member either directly or indirectly, such as through observation of the enrollee or member.

~~(3) “Personal information” means information that identifies or could reasonably be linked, directly or indirectly, with either an enrollee or member or their household.~~

~~(A) “Personal information” includes, but is not limited to, an enrollee’s or member’s past, present, or future physical or mental health condition, common identifiers, including a name, address, birth date, social security number, or any other identification number, and protected health information.~~

1 ~~(B) (i) “Personal information” excludes any publicly available~~
2 ~~information, and excludes any deidentified or aggregate~~
3 ~~information about an enrollee or member.~~

4 ~~(ii) “Publicly available information” means information that is~~
5 ~~lawfully made available pursuant to federal and state law.~~

6 ~~(iii) For purposes of this section, the deidentification of personal~~
7 ~~information shall meet the requirements set forth in Section~~
8 ~~164.514 of Title 45 of the Code of Federal Regulations.~~

9 ~~(4) “Protected health information” has the same definition as~~
10 ~~in Section 160.103 of Title 45 of the Code of Federal Regulations.~~

11 ~~(3) “Personal information” shall have the same meaning as~~
12 ~~defined in subdivision (o) of Section 1798.140 of the Civil Code.~~

13 ~~(5)~~

14 ~~(4) “Retaliatory” or “adverse action” means, but is not limited~~
15 ~~to, an adverse action taken by a health care service plan against~~
16 ~~an enrollee or member, including increasing a premium, if the~~
17 ~~health care service plan’s action is in response to a matter related~~
18 ~~to a wellness program, such as an enrollee or member’s election~~
19 ~~to not participate in a wellness program or the data collected~~
20 ~~through the wellness program about an enrollee or member.~~

21 ~~(5) “Wellness program” means a health care service plan-based~~
22 ~~program aimed at promoting health-related behaviors and disease~~
23 ~~prevention. A wellness program excludes care coordination by or~~
24 ~~between health care providers in the practice of medicine.~~

25 SEC. 3. Section 10127.6 is added to the Insurance Code, to
26 read:

27 10127.6. (a) An insurer shall not do either of the following:

28 (1) Retaliate or take any adverse action against an insured if the
29 insurer’s action is in response to ~~a matter related to a wellness~~
30 ~~program, such as~~ an insured’s election to not participate in a
31 wellness program or the data collected through the wellness
32 program about the insured.

33 (2) Share any personal information or data collected through a
34 wellness program.

35 (b) (1) (A) An insurer that collects personal information of an
36 insured as part of its administration and operation of a wellness
37 program shall ensure compliance with state and federal privacy
38 laws.

39 (B) An insurer shall ~~provide an insured a written explanation,~~
40 ~~in clear and easily understandable language, post a written~~

1 *explanation that is reasonably likely to be understood by an insured*
2 *on its internet website* about the basis of the wellness program, a
3 description about the data collection process and which data will
4 be collected through the wellness program, policies and practices
5 pertaining to the wellness program, and the insured's rights
6 concerning the wellness program under federal and state laws and
7 regulations.

8 (2) (A) Notwithstanding any other law, for purposes of
9 administering and operating a wellness program, an insurer shall
10 limit its collection, dissemination, retention, and use of any
11 personal information of an employee to only information that is
12 reasonably necessary to operate the wellness program.

13 (B) If an insured terminates their participation in a wellness
14 program, or upon the conclusion of a wellness program, the insurer
15 shall destroy any personal information received or collected
16 through the wellness program, and shall order the destruction of
17 this material.

18 (c) With respect to a wellness program, an insured has the right
19 to do both of the following:

20 (1) Obtain a copy of the insured's records, including personal
21 information that has been collected by the insurer, in a format
22 accessible to the insured.

23 (2) Challenge the completeness and accuracy of any records,
24 including personal information or data, related to the insured that
25 has been collected by the insurer.

26 (d) (1) In addition to any other remedy permitted by law, the
27 commissioner may assess the administrative penalties specified
28 in this section against an insurer for a violation of this section.

29 (2) An insurer that violates this section is liable for an
30 administrative penalty of not more than two thousand five hundred
31 dollars (\$2,500) for the first violation and not more than five
32 thousand dollars (\$5,000) for each subsequent violation.

33 (3) An insurer that violates this section with a frequency that
34 indicates a general business practice or commits a knowing
35 violation of that section is liable for an administrative penalty of
36 not less than fifteen thousand dollars (\$15,000) and not more than
37 one hundred thousand dollars (\$100,000) for each violation.

38 ~~(e) (1) If this section conflicts with federal law, the~~
39 ~~commissioner may adopt regulations to conform to federal law.~~

40 (2)

1 (e) The provisions of this section are severable. If any provision
2 of this section or its application is held invalid, that invalidity shall
3 not affect other provisions or applications that can be given effect
4 without the invalid provision or application.

5 (f) The requirements described in this section shall apply, to the
6 extent that they are applicable, to any entity that the insurer
7 contracts with for purposes of administering or operating a wellness
8 program on the insurer's behalf.

9 (g) An insurer shall not share any personal information about
10 the insured that is collected through a wellness program with the
11 insured's employer.

12 (h) *Notwithstanding paragraph (2) of subdivision (b), an insurer*
13 *may retain publicly available information or deidentified and*
14 *aggregated information that is collected through a wellness*
15 *program if this data would be used for the purpose of conducting*
16 *bona fide research relating to health care utilization and outcomes.*

17 (i) *Notwithstanding paragraph (2) of subdivision (a), an insurer*
18 *may share data that is collected through a wellness program with*
19 *a third party if the data is either publicly available information or*
20 *deidentified and aggregated information, and the data would be*
21 *used for the purpose of conducting bona fide research relating to*
22 *health care utilization and outcomes.*

23 (j) *The provisions of this section do not apply to either of the*
24 *following:*

25 (1) *Any wellness program for licensed health care professionals*
26 *administered or operated by a professional association or its*
27 *affiliates or subsidiaries.*

28 (2) *The personal information or data collected by a professional*
29 *association or its affiliates or subsidiaries in relation to, or in*
30 *support of, the administration or operation of a wellness program*
31 *for licensed health care professionals.*

32 (k) *This section does not limit or restrict the disclosure of any*
33 *personal information by an insurer if otherwise required by law.*

34 ~~(h)~~

35 (l) For purposes of this section, the following definitions apply:

36 (1) "Administration and operation of a wellness program"
37 means, but is not limited to, the use of personal information when
38 reasonably necessary and proportionate to achieve one of the
39 following purposes:

1 (A) Detecting and responding to security incidents arising from
2 a wellness program and protecting against malicious, deceptive,
3 fraudulent, or illegal activity related to a wellness program.

4 (B) Executing functions of a wellness program for the benefit
5 of the insured.

6 (C) Undertaking internal research for technological development
7 and demonstration related to a wellness program.

8 (D) Undertaking activities to verify or maintain the quality or
9 safety of a service or device that is owned by, manufactured by,
10 manufactured for, or controlled by the insurer, or to improve,
11 upgrade, or enhance the service or device that is owned by,
12 manufactured by, manufactured for, or controlled by the insurer
13 related to a wellness program.

14 (2) “Collects,” “collected,” or “collection” means buying,
15 renting, gathering, obtaining, receiving, or accessing, by any means,
16 any personal information pertaining to an insured. This includes
17 information that the insurer receives from an insured either directly
18 or indirectly, such as through the observation of an insured’s
19 behavior.

20 ~~(3) “Personal information” means information that identifies or~~
21 ~~could reasonably be linked, directly or indirectly, with either the~~
22 ~~insured or their household.~~

23 ~~(A) “Personal information” includes, but is not limited to, an~~
24 ~~insured’s past, present, or future physical or mental health~~
25 ~~condition, common identifiers, including a name, address, birth~~
26 ~~date, social security number, or any other identification number,~~
27 ~~and protected health information.~~

28 ~~(B) (i) “Personal information” excludes any publicly available~~
29 ~~information, and excludes any deidentified or aggregate~~
30 ~~information about an insured.~~

31 ~~(ii) “Publicly available information” means information that is~~
32 ~~lawfully made available pursuant to federal and state law.~~

33 ~~(iii) For purposes of this section, the deidentification of personal~~
34 ~~information shall meet the requirements set forth in Section~~
35 ~~164.514 of Title 45 of the Code of Federal Regulations.~~

36 ~~(4) “Protected health information” has the same definition as~~
37 ~~in Section 160.103 of Title 45 of the Code of Federal Regulations.~~

38 ~~(3) “Personal information” shall have the same meaning as~~
39 ~~defined in subdivision (o) of Section 1798.140 of the Civil Code.~~

40 ~~(5)~~

(4) “Retaliatory” or “adverse action” means, but is not limited to, an adverse action taken by an insurer against an insured, including increasing a premium on a policy, if the insurer’s action is in response to ~~a matter related to a wellness program, such as~~ an insured’s election to not participate in a wellness program or the data collected through the wellness program about an insured.

(5) *“Wellness program” means an insurer-based program aimed at promoting health-related behaviors and disease prevention. A wellness program excludes care coordination by or between health care providers in the practice of medicine.*

SEC. 4. Section 436 is added to the Labor Code, to read:

436. (a) (1) An employer shall not require an employee to participate in a wellness program as a condition of employment.

(2) An employer shall not retaliate or take any adverse action against an employee if the employer’s action is in response to ~~a matter related to a wellness program, such as~~ an employee’s election to not participate in a wellness program or the data collected through the wellness program about the employee.

(3) An employer shall not share any personal information or data collected through a wellness program.

(b) An employer that collects the personal information of an employee as part of the administration and operation of a wellness program shall ensure compliance with state and federal privacy laws.

(c) (1) An employer shall ~~provide an employee a written explanation, in clear and easily understandable language, post a written explanation that is reasonably likely to be understood by an employee on its internet website~~ about the basis of the wellness program, a description about the data collection process and which data will be collected through the wellness program, policies and practices pertaining to the wellness program, and the employee’s rights concerning the wellness program under federal and state laws and regulations.

(2) Notwithstanding any other law, for purposes of administering and operating a wellness program, an employer shall limit its collection, dissemination, retention, and use of any personal information of an employee to only information that is reasonably necessary to operate the wellness program.

(3) If an employee terminates their participation in a wellness program, or upon the conclusion of a wellness program, the

1 employer shall destroy any personal information received or
2 collected through the wellness program, and shall order the
3 destruction of this material.

4 (d) An employee has the right to do both of the following:

5 (1) Obtain a copy of the employee's records, including personal
6 information that has been collected by the employer, pertaining to
7 a wellness program, in a format accessible to the employee.

8 (2) Challenge the completeness and accuracy of any records,
9 including personal information or data, related to the employee
10 that has been collected by the employer as part of a wellness
11 program.

12 (e) Any person who believes that they have been discharged or
13 otherwise discriminated against in violation of this section may
14 file a complaint with the division within six months after the
15 occurrence of the violation pursuant to Section 98.7.

16 (f) ~~Any~~ *Notwithstanding Section 433, a person who violates*
17 *this section is guilty of a misdemeanor pursuant to Section 433.*
18 *an infraction.*

19 (g) (1) The requirements described in this section shall apply,
20 to the extent that they are applicable, to any entity that the employer
21 contracts with for purposes of administering or operating a wellness
22 program on the employer's behalf.

23 (2) The entity specified in paragraph (1) shall not share any
24 personal information about the employee that is collected through
25 a wellness program with the employer.

26 (h) The provisions of this section are severable. If any provision
27 of this section or its application is held invalid, that invalidity shall
28 not affect other provisions or applications that can be given effect
29 without the invalid provision or application.

30 (i) *Notwithstanding paragraphs (2) and (3) of subdivision (c),*
31 *an employer may retain publicly available information or*
32 *deidentified and aggregated information that is collected through*
33 *a wellness program if this data would be used for the purpose of*
34 *conducting bona fide research relating to health care utilization*
35 *and outcomes.*

36 (j) *Notwithstanding paragraph (3) of subdivision (a), an*
37 *employer may share data that is collected through a wellness*
38 *program with a third party if the data is either publicly available*
39 *information or deidentified and aggregated information, and the*

1 *data would be used for the purpose of conducting bona fide*
2 *research relating to health care utilization and outcomes.*

3 *(k) The provisions of this section do not apply to either of the*
4 *following:*

5 *(1) Any wellness program for licensed health care professionals*
6 *administered or operated by a professional association or its*
7 *affiliates or subsidiaries.*

8 *(2) The personal information or data collected by a professional*
9 *association or its affiliates or subsidiaries in relation to, or in*
10 *support of, the administration or operation of a wellness program*
11 *for licensed health care professionals.*

12 *(l) This section does not limit or restrict the disclosure of any*
13 *personal information by an employer if otherwise required by law.*

14 *(i)*

15 *(m) For purposes of this section, the following definitions apply:*

16 *(1) "Administration and operation of a wellness program"*
17 *means, but is not limited to, the use of personal information,*
18 *including health information, when reasonably necessary and*
19 *proportionate to achieve one of the following purposes:*

20 *(A) Detecting and responding to security incidents arising from*
21 *a wellness program and protecting against malicious, deceptive,*
22 *fraudulent, or illegal activity related to a wellness program.*

23 *(B) Executing functions of a wellness program for the benefit*
24 *of the employee.*

25 *(C) Undertaking internal research for technological development*
26 *and demonstration related to a wellness program.*

27 *(D) Undertaking activities to verify or maintain the quality or*
28 *safety of a service or device that is owned by, manufactured by,*
29 *manufactured for, or controlled by the employer, or to improve,*
30 *upgrade, or enhance the service or device that is owned by,*
31 *manufactured by, manufactured for, or controlled by the employer,*
32 *related to a wellness program.*

33 *(2) "Collects," "collected," or "collection" means buying,*
34 *renting, gathering, obtaining, receiving, or accessing, by any means,*
35 *any personal information, including health information, pertaining*
36 *to an employee. This includes information that the employer*
37 *receives either directly or indirectly, such as through observation*
38 *of the employee.*

39 *(3) "Employer" means either of the following:*

1 (A) Any person who directly employs 50 or more persons to
2 perform services for a wage or salary.

3 (B) The state and any political or civil subdivision of the state,
4 a county, or a city.

5 ~~(4) “Personal information” means information that identifies or~~
6 ~~could reasonably be linked, directly or indirectly, with either the~~
7 ~~employee or their household.~~

8 ~~(A) “Personal information” includes, but is not limited to, an~~
9 ~~employee’s past, present, or future physical or mental health~~
10 ~~condition, and common identifiers, including a name, address,~~
11 ~~birth date, social security number, or any other identification~~
12 ~~number.~~

13 ~~(B) (i) “Personal information” excludes any publicly available~~
14 ~~information, and excludes any deidentified or aggregate~~
15 ~~information about an employee.~~

16 ~~(ii) For purposes of this section, the deidentification of personal~~
17 ~~information shall meet the requirements set forth in Section~~
18 ~~164.514 of Title 45 of the Code of Federal Regulations.~~

19 ~~(5) “Publicly available information” means information that is~~
20 ~~lawfully made available pursuant to federal and state law.~~

21 ~~(4) “Personal information” shall have the same meaning as~~
22 ~~defined in subdivision (o) of Section 1798.140 of the Civil Code.~~

23 ~~(6)~~
24 (5) “Retaliatory” or “adverse action” means, but is not limited
25 to, an adverse employment action taken by an employer against
26 an employee, including termination, fine, or suspension, if an
27 employer’s action is in response to ~~a matter related to a wellness~~
28 ~~program, such as an employee’s election to not participate in a~~
29 ~~wellness program or the data collected through the wellness~~
30 ~~program about an employee.~~

31 (6) *“Wellness program” means an employer-based program*
32 *aimed at promoting health-related behaviors and disease*
33 *prevention. A wellness program excludes care coordination by or*
34 *between health care providers in the practice of medicine.*

35 SEC. 5. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

O