

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 714

(Senator Astle)

Finance

Health and Government Operations

**Health Insurance - Prohibited Discrimination and Rebates - Incentives for
Participation in Wellness Programs and Other Exceptions**

This bill provides that it is not discrimination or a rebate for a health insurer, nonprofit health service plan, HMO, or dental plan organization (carrier) to provide reasonable incentives to an individual who is an insured, subscriber, or member for participation in a bona fide wellness program offered by the carrier. A bona fide wellness program is a program designed to prevent or detect disease or illness, reduce or avoid poor clinical outcomes, prevent complications from medical conditions, or promote healthy behaviors and lifestyle choices.

Fiscal Summary

State Effect: To the extent carriers provide incentives for participation in wellness programs and members subsequently participate, health care-related expenditures in the State could decrease.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: A carrier may not make participation in a wellness program a condition of coverage or impose a penalty on an insured, subscriber, or member for nonparticipation. Insureds, subscribers, or members may not be required to achieve any specific outcome in order to receive an incentive for participation in a wellness program.

Any incentive offered for participation must be reasonably related to the program and may not have a value that exceeds any limit established in regulations adopted by the Maryland Insurance Commissioner.

Current Law: Carriers may not make or allow unfair discrimination between individuals of the same class and of essentially the same hazard:

- in the amount of premium, policy fees, or rates charged for a policy or contract of health insurance;
- in the benefits payable under a policy or contract of health insurance; or
- in any of the terms or conditions of a policy or contract of health insurance.

Carriers may not pay, allow, give, or offer to pay, allow or give directly or indirectly as an inducement to insurance a rebate of premiums or any valuable consideration or other inducement not specified in the contract. Violation of these prohibitions is considered an unfair method of competition and an unfair and deceptive act or practice in the business of insurance.

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) includes nondiscrimination provisions that generally prohibit differential deductibles, copayments, or other cost-sharing for similar individuals in group health plans. However, plans generally may offer wellness programs provided that the program is offered to all similarly situated individuals and no reward is given or none of the conditions for obtaining a reward are based on satisfying a standard related to a specific health factor (*i.e.*, quitting smoking).

Federal regulations effective for plan years beginning on or after July 1, 2007 allow a wellness program reward to be based on an individual satisfying a standard related to a health factor if the reward meets the following requirements:

- the total reward for all the plan's wellness programs that require satisfaction of a standard related to a health factor must be limited to 20% of the cost of employee-only coverage under the plan;
- the program must be reasonably designed to promote health and prevent disease;
- the program must give individuals eligible to participate the opportunity to qualify for the reward at least once per year;
- the reward must be available to all similarly situated individuals; and
- the plan must disclose in all materials describing the terms of the program the availability of a reasonable alternative standard (or the possibility of a waiver of the initial standard).

Background: In an effort to stem increasing health insurance and medical costs, many employers offer health insurance premium discounts to enrollees who participate in wellness programs. In 1998, the U.S. Department of Labor estimated that premium discounts associated with wellness programs ranged from \$60 to \$500 and averaged \$240 per participant. Wellness programs include such things as smoking cessation, weight management, stress management, nutrition education, and prenatal education.

Other states have enacted legislation to provide wellness incentives. In 2006, Michigan enacted legislation requiring health insurance carriers to provide premium rebates to group health plans in which a majority of employees or members enroll and maintain participation in group wellness programs. The rebates apply to the individual policies of those who participate in the wellness programs. In 2004, New Hampshire authorized insurers in the small group and individual market to use a rating factor to discount premium rates for plans, giving monetary incentives for participants in wellness or disease management programs.

Additional Information

Prior Introductions: None.

Cross File: HB 157 (Delegate Morhaim) – Health and Government Operations.

Information Source(s): *Employee Benefits in Medium and Large Private Establishments* (January 1998), U.S. Department of Labor (Employee Benefits Security Administration); National Conference of State Legislatures; Department of Health and Mental Hygiene; CareFirst Blue Cross/Blue Shield; Maryland Insurance Administration; Department of Legislative Services

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