

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 638

(Senator Garagiola, *et al.*)

Finance

Health and Government Operations

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Health Insurance - Bona Fide Wellness Programs - Incentives

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This bill authorizes a carrier to provide reasonable incentives to an insured, subscriber, or member for participation in a bona fide wellness program under specified circumstances and clarifies that it is not discrimination or a rebate for a carrier to provide such incentives if the incentives are provided as specified.

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Fiscal Summary

**State Effect:** Minimal special fund revenue increase for the Maryland Insurance Administration (MIA) from the \$125 rate and form filing fee in FY 2010. Review of form filings can be handled with existing MIA budgeted resources.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The definition of “bona fide wellness program” is expanded to include programs designed to promote health or prevent and control injury, but no longer includes promoting healthy lifestyle choices. “Health factor” means health status, medical condition, claims experience, receipt of health care, medical history, evidence of insurability, or disability. “Incentive” means a discount of a premium or contribution, a waiver of all or part of a cost-sharing mechanism, the absence of a surcharge, the value of a benefit that would otherwise not be provided, or a specified rebate. The definition of “wellness benefit” in the small group health insurance market is also altered to conform to the provisions of the bill.

A carrier may not make participation in a bona fide wellness program a condition of coverage. Participation must be voluntary, and a penalty may not be imposed on an insured, subscriber, or member for nonparticipation. A carrier may not market the bona fide wellness program solely as an incentive or inducement to purchase coverage from the carrier. A bona fide wellness program may not condition an incentive on an individual satisfying a standard related to a health factor except as specified.

Incentives may be based on an individual satisfying a standard related to a health factor if (1) all incentives for participation do not exceed 20% of the cost of specified coverage under the plan; (2) the program is reasonably designed to promote health or prevent disease; (3) the program gives individuals the opportunity to qualify for the incentive at least annually; (4) the program is available to all similarly situated individuals; and (5) individuals are provided a reasonable alternative standard or a waiver of the standard.

A bona fide wellness program must be construed to be reasonably designed to promote health or prevent disease if the program (1) has a reasonable chance of improving the health of or preventing disease in participating individuals; (2) is not overly burdensome; (3) is not a subterfuge for discriminating based on a health factor; and (4) is not highly suspect in the method chosen to promote health or prevent disease.

A carrier must provide a reasonable alternative standard or a waiver of the standard for any individual for whom it is unreasonably difficult due to a medical condition or medically inadvisable to attempt to satisfy the otherwise applicable standard. A carrier may seek verification that a health factor makes it unreasonably difficult or medically inadvisable to satisfy or attempt to satisfy the otherwise applicable standard. A carrier must disclose the availability of a reasonable alternative standard or waiver. A denial by a carrier of a request for an alternative standard or waiver of a standard constitutes an adverse decision.

The Insurance Commissioner may request a review of a carrier's bona fide wellness program by an independent review organization to determine if the program meets the bill's requirements. The expense of the review must be paid by the carrier.

**Current Law:** Carriers may not make or allow unfair discrimination between individuals of the same class and of essentially the same hazard (1) in the amount of premium, policy fees, or rates charged for a policy or contract of health insurance; (2) in the benefits payable under a policy or contract of health insurance; or (3) 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 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.

Chapter 591 of 2007 specifies that it is not discrimination or a rebate for a 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.

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.

The federal Health Insurance Portability and Accountability Act (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 is based on satisfying a standard related to a specific health factor (*i.e.*, quitting smoking).

HIPAA regulations 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 generally must be limited to 20% of the cost of employee-only coverage under the plan (or 20% of the cost of coverage if any dependents are enrolled);
- 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.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 610 is designated as a cross file; however, it is not identical.

**Information Source(s):** Carroll and Montgomery counties, Department of Budget and Management, Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

**Fiscal Note History:** First Reader - February 26, 2009  
ncs/mwc Revised - Senate Third Reader - April 6, 2009  
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