



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 991

S.P. 336

In Senate, March 12, 2013

An Act To Promote Wellness and Prevention through Health Plans

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator WOODBURY of Cumberland.
Cosponsored by Senator: WHITTEMORE of Somerset, Representatives: MORRISON of South Portland, WALLACE of Dexter.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 24-A MRSA §4320-I** is enacted to read:

3 **§4320-I. Health plans promoting wellness and prevention**

4 **1. Heath plans authorized.** Beginning October 1, 2013, the superintendent shall
5 authorize pilot projects that allow a carrier to offer health plans in this State that include
6 premium credits and other incentives to encourage enrollees to participate in wellness and
7 prevention programs to the extent permitted under federal law and as provided in this
8 section.

9 **2. Rates.** A carrier offering incentives pursuant to this section shall ensure that the
10 carrier does not use wellness and prevention programs, or incentives under such
11 programs, to increase rates or premiums for any enrollees covered by the carrier's health
12 plans.

13 **3. Permissible incentives.** A carrier may allow incentives that include, but are not
14 limited to, premium discounts or rebates or modifications to copayments, deductibles or
15 coinsurance amounts or a combination of these incentives in accordance with this
16 subsection. The incentive for a wellness and prevention program, together with the
17 incentive for other wellness and prevention programs, that requires satisfaction of a
18 standard related to a health risk factor, must be reasonably related to the program and
19 may not exceed the allowable percentage of the cost of enrollee-only coverage under the
20 health plan as prescribed in federal regulations adopted under the federal Health
21 Insurance Portability and Accountability Act of 1996.

22 **4. Standards.** An incentive offered by a carrier for participation in a wellness and
23 prevention program must be reasonably related to the program and may be:

24 A. Tied only to participation in the program rather than particular outcomes or
25 results from such participation; or

26 B. Based on satisfaction of a standard related to a health risk factor. As used in this
27 section, "health risk factor" includes, without limitation, health behaviors such as
28 smoking, diet, alcohol consumption, exercise and exposure to ultraviolet radiation
29 that are known to be associated with increased early mortality and morbidity for a
30 number of conditions.

31 **5. Incentive based on health risk factor.** A carrier offering an incentive pursuant
32 to this section shall ensure that:

33 A. Participation in or satisfaction of a standard related to a health risk factor pursuant
34 to a wellness and prevention program is not a condition of coverage under the health
35 plan; and

36 B. Participation in a wellness and prevention program is voluntary and that a penalty
37 may not be imposed on an enrollee for not participating in a wellness and prevention
38 program or not satisfying a standard related to a health risk factor pursuant to the
39 program.

1 **6. Requirements for wellness and prevention programs.** An incentive may be
2 offered or provided by a carrier only pursuant to a wellness and prevention program that:

3 A. Is consistent with evidence-based research and best practices and accredited by a
4 nationally recognized nonprofit entity that accredits wellness programs;

5 B. Has a reasonable likelihood of improving the health of, or preventing disease in,
6 participating enrollees;

7 C. Contains culturally and linguistically appropriate programs and materials;

8 D. Is not overly burdensome, a subterfuge for discrimination based on a health factor
9 or highly suspect in the method chosen to promote health or prevent disease;

10 E. Gives enrollees eligible for the wellness and prevention program the opportunity
11 to qualify for the incentive under the program upon enrollment in the health plan and
12 at least once per year after enrollment;

13 F. Provides a reasonable alternative standard or waiver of the otherwise applicable
14 standard for obtaining the incentive for the period under paragraph E if it is
15 unreasonably difficult for the enrollee due to a medical condition to satisfy the
16 otherwise applicable standard or if it is medically inadvisable for the enrollee to
17 attempt to satisfy the otherwise applicable standard; and

18 G. Provides an incentive that is based on a program or activity that is scientifically
19 proven to improve health and that is not based on an enrollee's actual health status.

20 **7. Privacy.** A carrier offering a health plan as part of an authorized pilot project
21 shall implement adequate measures to ensure the privacy of enrollees in the health plan
22 and that individually identifiable health information is not shared or made available to an
23 enrollee's employer or any other person not otherwise allowed access to the information
24 under federal or state law. A carrier may not disclose to any 3rd party, including an
25 enrollee's employer, and the enrollee's employer may not disclose any information
26 obtained from or about an enrollee in connection with the enrollee's participation in a
27 wellness and prevention program that is reasonably attributable to the enrollee, unless the
28 enrollee consents in writing to disclosure of such information.

29 **8. Rules.** The superintendent shall establish by rule procedures and policies that
30 facilitate the implementation of a pilot project pursuant to this section, including, but not
31 limited to, a process for submitting a pilot project proposal, minimum requirements for
32 approval of a pilot project and any requirements for incentives. Rules adopted pursuant to
33 this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter
34 2-A and must be adopted no later than 90 days after the effective date of this subsection.

35 **9. Report.** Beginning in 2014, the superintendent shall report by March 1st annually
36 to the joint standing committee of the Legislature having jurisdiction over insurance and
37 financial services matters on the status of any pilot project approved by the
38 superintendent pursuant to this section.

39 **10. Evaluation.** During the First Regular Session of the 130th Legislature, the joint
40 standing committee of the Legislature having jurisdiction over insurance and financial
41 services matters shall conduct an evaluation of the effectiveness of any pilot project

1 approved by the superintendent pursuant to this section and make a determination
2 whether to continue, amend or repeal the authorization for the pilot project. The joint
3 standing committee of the Legislature having jurisdiction over insurance and financial
4 services matters may report out a bill based on the evaluation to the First Regular Session
5 of the 130th Legislature.

6 **11. Construction.** This section may not be construed to restrict or limit the right of
7 a carrier to engage in activities expressly permitted by this Title or to require a carrier to
8 obtain prior approval as a pilot project to engage in those activities.

9

SUMMARY

10 This bill provides authority to the Superintendent of Insurance, beginning October 1,
11 2013, to approve pilot projects allowing health insurance carriers to offer health plans that
12 include premium credits and other incentives to encourage enrollees to participate in
13 wellness and prevention programs.