Consumer Reports supports legislation that assures transparency and fairness in the marketplace. We therefore advocate for reasonable guardrails around wellness programs so consumers who choose to participate in wellness programs are not misled about how their data will be used and so their personal data is not abused by companies involved in wellness programs.

**Information collected by wellness programs includes:**
- Medical history
- Cholesterol levels
- Blood pressure
- Reported stress
- Plans to become pregnant
- Family circumstances, such as separation or divorce
- Body mass index (BMI)
- Smoking status
- Eating habits
- Exercise habits

**Why this bill is needed:**

Laws that apply to wellness programs at all apply unevenly depending on the structure and operator of the wellness program, leaving critical gaps in consumer protections for wellness program enrollees.

Enrollee data can be misused. Wellness programs can conduct extensive and invasive research into enrollees’ health background, which can then be shared with other companies. Program data can also be mined for marketing purposes, used in insurance underwriting, and harnessed by employers to determine which employees are at risk of costly/serious illness or pregnancy.

Wellness programs overextend employer control over employees’ data. Nearly 20% of large employers, and 10% of small employers, who offered health insurance in 2019 collected data from their employees’ wearable devices. Employers can access data from fitness devices provided to employees for wellness programs, without permission from the employee that wears the device. This type of worker surveillance goes beyond the original purpose for which the data was collected (to promote individual health).

**Wellness programs may be a one-sided deal.** Evidence shows that wellness programs are generally unsuccessful at improving participants’ wellness, making the trade-off for compromising privacy more of a one-sided deal. Further, where incentives to enroll effectively make joining compulsory, enrollees find themselves in a hard place between complying with an experimental wellness program and keeping their personal information private.

A7329 and S7262’s common sense privacy protection for consumers that enroll in wellness programs:

- Protects workers’ privacy.
- Protects insurance enrollees’ privacy.
- Ensures that consumers know their rights before they sign up to give up their data.
- Makes sure that consumers that want to participate in wellness programs can, without giving up their right to privacy.
- Makes sure that consumers that do not want to participate in wellness programs are not penalized.

Contact your New York lawmaker to support this bill to protect consumer privacy.

Notes on back

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2 AARP comments supra at 21. Citing S. Pettypiece, Wellness Programs at work May Not be As Private As You Think, Bloomberg Business (December 16, 2014).


5 Kaiser Family Foundation, 2019 Employer Health Benefits Survey, (September 25, 2019).