

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 09-0350.01 Christy Chase

HOUSE BILL 09-1012

HOUSE SPONSORSHIP

Rice and Stephens, Curry, Massey, Swalm

SENATE SPONSORSHIP

Mitchell and Newell,

House Committees

Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING INCENTIVES PROVIDED BY HEALTH INSURANCE CARRIERS**
102 **TO ENCOURAGE VOLUNTARY PARTICIPATION IN PROGRAMS TO**
103 **PROMOTE HEALTH.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Authorizes carriers providing individual and group health coverage plans in this state to offer incentives for covered persons and groups to participate in wellness and prevention programs (programs). Permits those incentives to include premium discounts or rebates; modifications to copayment, deductible, or coinsurance amounts; or a combination of those incentives.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

HOUSE
3rd Reading Unamended
February 2, 2009

HOUSE
Amended 2nd Reading
January 28, 2009

Allows carriers to determine the types of programs and incentives to offer as long as:

- ! Participation in the programs is voluntary and is not a condition of coverage;
- ! Nonparticipation cannot be penalized; and
- ! The participant is not required to achieve a certain outcome in order to receive the incentive.

Allows the board of directors of the CoverColorado program or carriers providing health benefit plans to CoverColorado participants to also offer the incentives.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Part 1 of article 16 of title 10, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 **10-16-136. Wellness and prevention programs - individual and**
6 **group health coverage plans - voluntary participation - incentives or**
7 **rewards - definitions - legislative declaration.** (1) THE GENERAL
8 ASSEMBLY HEREBY FINDS AND DECLARES THAT:

9 (a) WITH THE RISING COSTS OF HEALTH CARE COVERAGE, IT IS
10 IMPORTANT TO FIND INNOVATIVE WAYS TO REDUCE COSTS AND MAKE
11 HEALTH COVERAGE MORE AFFORDABLE FOR INDIVIDUALS AND EMPLOYER
12 GROUPS;

13 (b) WHEN INDIVIDUALS COVERED UNDER A HEALTH COVERAGE
14 PLAN LEAD HEALTHY LIFESTYLES AND ENGAGE IN WELLNESS AND DISEASE
15 PREVENTION ACTIVITIES, THEIR NEED FOR HEALTH CARE AND THE COSTS
16 OF THEIR HEALTH CARE ARE REDUCED, AND THE ENTITY PROVIDING THEIR
17 HEALTH CARE COVERAGE BENEFITS FROM REDUCED UTILIZATION RATES
18 AND COSTS;

19 (c) CARRIERS SHOULD BE AFFORDED THE ABILITY TO DEVELOP
20 INNOVATIVE AND FLEXIBLE WAYS TO ENCOURAGE COVERED PERSONS

1 UNDER THEIR HEALTH COVERAGE PLANS TO ENGAGE IN ACTIVITIES THAT
2 PROMOTE THEIR OVERALL HEALTH AND PREVENT OR REDUCE THE IMPACTS
3 OF DISEASE; AND

4 (d) IT IS THEREFORE IMPORTANT TO ALLOW CARRIERS TO PROVIDE
5 INCENTIVES OR REWARDS, INCLUDING PREMIUM DISCOUNTS AND REDUCED
6 OUT-OF-POCKET COSTS FOR HEALTH CARE SERVICES, TO ENCOURAGE
7 COVERED PERSONS TO PARTICIPATE IN WELLNESS AND PREVENTION
8 PROGRAMS.

9 (2) (a) CONSISTENT WITH SECTION 10-16-107 (6), THE FEDERAL
10 "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996",
11 AS AMENDED, AND THE FEDERAL REGULATIONS IMPLEMENTING SUCH ACT,
12 AND SUBJECT TO SUBSECTION (3) OF THIS SECTION, A CARRIER OFFERING
13 AN INDIVIDUAL OR GROUP HEALTH COVERAGE PLAN IN THIS STATE MAY
14 OFFER INCENTIVES OR REWARDS TO ENCOURAGE THE INDIVIDUAL OR
15 GROUP AND OTHER COVERED PERSONS UNDER THE PLAN TO PARTICIPATE
16 IN WELLNESS AND PREVENTION PROGRAMS. FOR PURPOSES OF GROUP
17 HEALTH COVERAGE PLANS, THE INCENTIVES OR REWARDS MAY BE APPLIED
18 TO THE ENTIRE GROUP OR TO INDIVIDUALS IN THE GROUP BASED ON THEIR
19 PARTICIPATION IN WELLNESS AND PREVENTION PROGRAMS. A CARRIER
20 OFFERING SUCH INCENTIVES OR REWARDS SHALL IMPLEMENT ADEQUATE
21 MEASURES TO ENSURE THAT THE PRIVACY OF INDIVIDUALS IN THE GROUP
22 IS MAINTAINED AND THAT PRIVATE HEALTH INFORMATION IS NOT SHARED
23 OR MADE AVAILABLE TO AN INDIVIDUAL'S EMPLOYER OR ANY OTHER
24 PERSON NOT OTHERWISE ALLOWED ACCESS TO THE INFORMATION UNDER
25 THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY
26 ACT OF 1996", AS AMENDED.

27 (b) CARRIERS MAY DETERMINE THE TYPES OF WELLNESS AND

1 PREVENTION PROGRAMS TO OFFER TO INDIVIDUALS AND GROUPS AND THE
2 INCENTIVES OR REWARDS ALLOWED UNDER THE HEALTH COVERAGE PLAN.
3 THE INCENTIVES OR REWARDS MAY INCLUDE PREMIUM DISCOUNTS OR
4 REBATES; MODIFICATIONS TO COPAYMENT, DEDUCTIBLE, OR COINSURANCE
5 AMOUNTS; OR A COMBINATION OF THESE INCENTIVES OR REWARDS. AN
6 INCENTIVE OR REWARD OFFERED BY A CARRIER FOR PARTICIPATION IN
7 WELLNESS AND PREVENTION PROGRAMS SHALL BE REASONABLY RELATED
8 TO THE PROGRAM AND TIED TO PARTICIPATION IN THE PROGRAM RATHER
9 THAN PARTICULAR OUTCOMES OR RESULTS FROM SUCH PARTICIPATION.

10 (3) A CARRIER OFFERING INCENTIVES OR REWARDS PURSUANT TO
11 THIS SECTION SHALL ENSURE THAT:

12 (a) PARTICIPATION IN A WELLNESS AND PREVENTION PROGRAM IS
13 NOT A CONDITION OF COVERAGE UNDER THE HEALTH COVERAGE PLAN;

14 (b) INCENTIVES OR REWARDS ARE UNIFORMLY APPLIED BASED ON
15 THE WELLNESS AND PREVENTION PROGRAM, AND NOT BASED ON THE SIZE
16 OR COMPOSITION OF THE GROUP PARTICIPATING IN THE PROGRAM, AND
17 THAT THERE IS A REASONABLE JUSTIFICATION FOR THE AMOUNT,
18 FREQUENCY, AND NATURE OF THE INCENTIVES OR REWARDS;

19 (c) PARTICIPATION IN A WELLNESS AND PREVENTION PROGRAM IS
20 VOLUNTARY AND THAT A PENALTY MAY NOT BE IMPOSED ON A COVERED
21 PERSON OR GROUP FOR NOT PARTICIPATING IN A WELLNESS AND
22 PREVENTION PROGRAM;

23 (d) A COVERED PERSON OR GROUP IS NOT REQUIRED TO ACHIEVE
24 ANY SPECIFIC OUTCOME IN ORDER TO RECEIVE THE INCENTIVE OR REWARD
25 FOR PARTICIPATION IN A WELLNESS AND PREVENTION PROGRAM; AND

26 (e) THE CARRIER DOES NOT MARKET THE WELLNESS AND
27 PREVENTION PROGRAM IN A MANNER THAT REASONABLY COULD BE

1 CONSTRUED AS PROVIDING AN INCENTIVE OR REWARD PRIMARILY FOR THE
2 PURPOSE OF INDUCING INDIVIDUALS OR GROUPS TO PURCHASE THE
3 CARRIER'S HEALTH COVERAGE PLAN.

4 (4) NOTHING IN THIS SECTION SHALL PROHIBIT A CARRIER FROM
5 OFFERING INCENTIVES TO COVERED PERSONS FOR ADHERENCE TO
6 PROGRAMS OF HEALTH PROMOTION AND DISEASE PREVENTION IF
7 OTHERWISE ALLOWED BY STATE OR FEDERAL LAW.

8 (5) (a) THE DIVISION OF INSURANCE SHALL DETERMINE WHICH
9 CARRIERS ARE OFFERING WELLNESS AND PREVENTION PROGRAMS IN
10 COLORADO AND COLLECT THE FOLLOWING INFORMATION FROM THOSE
11 CARRIERS:

12 (I) THE TYPES OF WELLNESS AND PREVENTION PROGRAMS
13 OFFERED;

14 (II) THE TYPES AND NATURE OF INCENTIVES OR REWARDS THE
15 CARRIER PROVIDES FOR PARTICIPATION;

16 (III) THE CARRIER'S AVERAGE COST PER MEMBER PER MONTH FOR
17 FOR PROVIDING WELLNESS AND PREVENTION PROGRAMS;

18 (IV) THE TOTAL NUMBER OF GROUPS IN THE SMALL GROUP
19 MARKET PARTICIPATING IN PROGRAMS OFFERED BY THE CARRIER; AND

20 (V) THE NUMBER OF INDIVIDUALS INSURED THROUGH AN
21 INDIVIDUAL HEALTH COVERAGE PLAN THAT ARE PARTICIPATING IN
22 PROGRAMS OFFERED BY THE CARRIER.

23 (b) THE DIVISION SHALL DETERMINE THE PERCENTAGE OF
24 CARRIERS ISSUING INDIVIDUAL OR GROUP HEALTH COVERAGE PLANS IN
25 THE STATE THAT OFFER WELLNESS AND PREVENTION PROGRAMS AND
26 SHALL PROVIDE THAT INFORMATION AND THE INFORMATION COLLECTED
27 PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (4) TO THE HEALTH

1 CARE TASK FORCE CREATED IN SECTION 10-16-221.

2 (6) AS USED IN THIS SECTION:

3 (a) "CARRIER" SHALL HAVE THE SAME MEANING AS SET FORTH IN
4 SECTION 10-16-102 AND SHALL INCLUDE COVERCOLORADO, ESTABLISHED
5 IN SECTION 10-8-504, AND ANY CARRIER OFFERING A HEALTH BENEFIT
6 PLAN TO PARTICIPANTS IN COVERCOLORADO.

7 (b) "WELLNESS AND PREVENTION PROGRAM" MEANS A PROGRAM
8 DESIGNED TO PROMOTE HEALTH OR PREVENT DISEASE AND MAY INCLUDE,
9 WITHOUT LIMITATION, THE FOLLOWING:

10 (I) HEALTH SCREENINGS;

11 (II) MENTAL HEALTH AND SUBSTANCE ABUSE SCREENINGS AND
12 PREVENTION;

13 (III) INTERNET, TELEPHONIC, LIVE COACHING, OR
14 CONSULTATION-BASED WELLNESS PROGRAMS;

15 (IV) EDUCATION AND TRAINING ABOUT DIETARY HABITS;

16 (V) ONLINE AND IN-PERSON SEMINARS OR PODCASTS ON HEALTH
17 AND WELLNESS TOPICS, WELLNESS HANDOUTS, A WELLNESS LIBRARY,
18 VIDEOS, OR NEWSLETTERS, AND A WELLNESS INTRANET SITE;

19 (VI) WELLNESS PROGRAMS GEARED SPECIFICALLY FOR CHILDREN,
20 TEENS, OR SPECIAL POPULATIONS;

21 (VII) CORPORATE HEALTH FAIRS THAT MAY COMBINE HEALTH
22 SCREENINGS WITH EDUCATIONAL OPPORTUNITIES, INCLUDING ACCESS TO
23 INFORMATION ON LEADING A HEALTHY LIFESTYLE AND TO NUTRITIONAL
24 COUNSELING;

25 (VIII) STRESS MANAGEMENT PROGRAMS;

26 (IX) EMPLOYEE ASSISTANCE PROGRAMS FOR EMPLOYEES AND
27 THEIR FAMILIES;

- 1 (X) DISEASE MANAGEMENT;
- 2 (XI) DIABETES CARE PROGRAMS;
- 3 (XII) TOBACCO CESSATION PROGRAMS;
- 4 (XIII) PRESCRIPTION DRUG OR CARRIER-APPROVED
- 5 NONPRESCRIPTION DIETARY SUPPLEMENT USE THAT AIDS IN OVERALL
- 6 HEALTH AND WELLNESS OR PREVENTS DISEASE;
- 7 (XIV) NURSE-ON-CALL PROGRAMS; OR
- 8 (XV) ON-SITE OR EXTERNAL HEALTH CLUB OR FITNESS CENTER
- 9 MEMBERSHIPS OR FACILITIES.

10 SECTION 2. 10-16-107 (6), Colorado Revised Statutes, is
11 amended to read:

12 **10-16-107. Rate regulation - rules - approval of policy forms**
13 **- benefit certificates - evidences of coverage - benefits ratio -**
14 **disclosures on treatment of intractable pain.** (6) A carrier offering a
15 group health benefit plan may not require any individual (as a condition
16 of enrollment or continued enrollment under the plan) to pay a premium
17 or contribution that is greater than such premium or contribution for a
18 similarly situated individual enrolled in the plan on the basis of any health
19 status-related factor in relation to the individual or to an individual
20 enrolled under the plan as a dependent of the individual. This prohibition
21 shall not be construed to restrict the amount that an employer may be
22 charged for coverage under a group health benefit plan or to prevent a
23 carrier from establishing premium discounts or rebates or modifying
24 otherwise applicable copayments, COINSURANCE, or deductibles in return
25 for adherence to programs of health promotion and disease prevention if
26 otherwise allowed by STATE OR FEDERAL law OR FOR PARTICIPATION IN A
27 WELLNESS AND PREVENTION PROGRAM PURSUANT TO SECTION 10-16-136.

1 **SECTION 3.** Part 5 of article 8 of title 10, Colorado Revised
2 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
3 read:

4 **10-8-514.5. Incentives or rewards for participation in wellness**
5 **and prevention programs.** NOTWITHSTANDING ANY PROVISION OF THIS
6 PART 5 TO THE CONTRARY AND CONSISTENT WITH SECTION 10-16-136, THE
7 BOARD OR A CARRIER PROVIDING HEALTH BENEFIT PLANS TO PARTICIPANTS
8 MAY OFFER INCENTIVES OR REWARDS TO PARTICIPANTS FOR
9 PARTICIPATION IN A WELLNESS AND PREVENTION PROGRAM.

10 **SECTION 4. Act subject to petition - effective date -**
11 **applicability.** (1) This act shall take effect January 1, 2010.

12 (2) However, if a referendum petition is filed against this act or
13 an item, section, or part of this act during the 90-day period after final
14 adjournment of the general assembly that is allowed for submitting a
15 referendum petition pursuant to article V, section 1 (3) of the state
16 constitution, then the act, item, section, or part, shall not take effect unless
17 approved by the people at a biennial regular general election and shall
18 take effect on the date specified in subsection (1) or on the date of the
19 official declaration of the vote thereon by proclamation of the governor,
20 whichever is later.

21 (3) The provisions of this act shall apply to health coverage plans
22 issued or renewed on or after the applicable effective date of this act.