

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

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

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

Health and Human Services

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.

SENATE
Am ended 2nd Reading
March 9, 2009

HOUSE
3rd Reading Unamended
February 2, 2009

HOUSE
Am ended 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 **small group health coverage plans - voluntary participation -**
7 **incentives or rewards - definitions - legislative declaration.** (1) THE
8 GENERAL 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 SMALL
12 EMPLOYER 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) AND SUBJECT
10 TO SUBSECTION (3) OF THIS SECTION, A CARRIER OFFERING AN INDIVIDUAL
11 HEALTH COVERAGE PLAN OR A SMALL GROUP PLAN IN THIS STATE MAY
12 OFFER INCENTIVES OR REWARDS TO ENCOURAGE THE INDIVIDUAL OR
13 SMALL GROUP AND OTHER COVERED PERSONS UNDER THE PLAN TO
14 PARTICIPATE IN WELLNESS AND PREVENTION PROGRAMS. FOR PURPOSES
15 OF SMALL GROUP _____ PLANS, THE INCENTIVES OR REWARDS MAY BE
16 APPLIED TO THE ENTIRE SMALL GROUP OR TO INDIVIDUALS IN THE SMALL
17 GROUP BASED ON THEIR PARTICIPATION IN WELLNESS AND PREVENTION
18 PROGRAMS. A CARRIER OFFERING SUCH INCENTIVES OR REWARDS SHALL
19 IMPLEMENT ADEQUATE MEASURES TO ENSURE THAT THE PRIVACY OF
20 INDIVIDUALS IN THE GROUP IS MAINTAINED AND THAT INDIVIDUALLY
21 IDENTIFIABLE HEALTH INFORMATION IS NOT SHARED OR MADE AVAILABLE
22 TO AN INDIVIDUAL'S EMPLOYER OR ANY OTHER PERSON NOT OTHERWISE
23 ALLOWED ACCESS TO THE INFORMATION UNDER THE FEDERAL "HEALTH
24 INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", AS
25 AMENDED. A CARRIER SHALL NOT DISCLOSE TO ANY THIRD PARTY,
26 INCLUDING A COVERED PERSON'S EMPLOYER, ANY INFORMATION OBTAINED
27 FROM OR ABOUT A COVERED PERSON IN CONNECTION WITH THE COVERED

1 PERSON'S PARTICIPATION IN A WELLNESS AND PREVENTION PROGRAM THAT
2 IS REASONABLY ATTRIBUTABLE TO THE COVERED PERSON, UNLESS THE
3 COVERED PERSON CONSENTS TO DISCLOSURE OF SUCH INFORMATION.

4 (b) CARRIERS MAY DETERMINE THE TYPES OF WELLNESS AND
5 PREVENTION PROGRAMS TO OFFER TO INDIVIDUALS AND SMALL GROUPS
6 AND THE INCENTIVES OR REWARDS ALLOWED UNDER THE HEALTH
7 COVERAGE PLAN OR SMALL GROUP PLAN. THE INCENTIVES OR REWARDS
8 MAY INCLUDE, BUT ARE NOT LIMITED TO, PREMIUM DISCOUNTS OR
9 REBATES; MODIFICATIONS TO COPAYMENT, DEDUCTIBLE, OR COINSURANCE
10 AMOUNTS; OR A COMBINATION OF THESE INCENTIVES OR REWARDS. AN
11 INCENTIVE OR REWARD OFFERED BY A CARRIER FOR PARTICIPATION IN
12 WELLNESS AND PREVENTION PROGRAMS SHALL BE REASONABLY RELATED
13 TO THE PROGRAM AND TIED TO PARTICIPATION IN THE PROGRAM RATHER
14 THAN PARTICULAR OUTCOMES OR RESULTS FROM SUCH PARTICIPATION.

15 (c) A CARRIER SHALL NOT OFFER OR SELL IN THIS STATE AN
16 INDIVIDUAL OR GROUP HEALTH COVERAGE PLAN THAT INCLUDES A
17 WELLNESS AND PREVENTION PROGRAM, OR AN INCENTIVE OR REWARD FOR
18 PARTICIPATION IN A WELLNESS AND PREVENTION PROGRAM, THAT
19 VIOLATES THE FEDERAL "HEALTH INSURANCE PORTABILITY AND
20 ACCOUNTABILITY ACT OF 1996", AS AMENDED, AND THE FEDERAL
21 REGULATIONS IMPLEMENTING SUCH ACT.

22 (d) ANY WELLNESS AND PREVENTION PROGRAM, OR AN INCENTIVE
23 OR REWARD FOR PARTICIPATION IN SUCH PROGRAM, OFFERED BY A
24 CARRIER PURSUANT TO THIS SECTION SHALL COMPLY WITH THE FEDERAL
25 "AMERICANS WITH DISABILITIES ACT OF 1990", AS AMENDED, 42 U.S.C.
26 SEC. 12101 ET SEQ., AND PARTS 3 THROUGH 8 OF ARTICLE 34 OF TITLE 24,
27 C.R.S.

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

3 (a) PARTICIPATION IN A WELLNESS AND PREVENTION PROGRAM IS
4 NOT A CONDITION OF COVERAGE UNDER THE HEALTH COVERAGE PLAN OR
5 SMALL GROUP PLAN;

6 (b) INCENTIVES OR REWARDS ARE UNIFORMLY APPLIED BASED ON
7 THE WELLNESS AND PREVENTION PROGRAM, AND NOT BASED ON THE SIZE
8 OR COMPOSITION OF THE SMALL GROUP PARTICIPATING IN THE PROGRAM,
9 AND THAT THERE IS A REASONABLE JUSTIFICATION FOR THE AMOUNT,
10 FREQUENCY, AND NATURE OF THE INCENTIVES OR REWARDS;

11 (c) PARTICIPATION IN A WELLNESS AND PREVENTION PROGRAM IS
12 VOLUNTARY AND THAT A PENALTY MAY NOT BE IMPOSED ON A COVERED
13 PERSON OR SMALL GROUP FOR NOT PARTICIPATING IN A WELLNESS AND
14 PREVENTION PROGRAM;

15 (d) A COVERED PERSON OR SMALL GROUP IS NOT REQUIRED TO
16 ACHIEVE ANY SPECIFIC OUTCOME IN ORDER TO RECEIVE THE INCENTIVE OR
17 REWARD FOR PARTICIPATION IN A WELLNESS AND PREVENTION PROGRAM;
18 AND

19 (e) THE CARRIER DOES NOT MARKET THE WELLNESS AND
20 PREVENTION PROGRAM IN A MANNER THAT REASONABLY COULD BE
21 CONSTRUED AS PROVIDING AN INCENTIVE OR REWARD PRIMARILY FOR THE
22 PURPOSE OF INDUCING INDIVIDUALS OR SMALL GROUPS TO PURCHASE THE
23 CARRIER'S HEALTH COVERAGE PLAN.

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

1 (5) (a) THE DIVISION OF INSURANCE SHALL DETERMINE WHICH
2 CARRIERS ARE OFFERING WELLNESS AND PREVENTION PROGRAMS IN
3 COLORADO AND COLLECT THE FOLLOWING INFORMATION FROM THOSE
4 CARRIERS:

5 (I) THE TYPES OF WELLNESS AND PREVENTION PROGRAMS
6 OFFERED;

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

9 ==
10 (III) THE TOTAL NUMBER OF SMALL GROUPS IN THE SMALL GROUP
11 MARKET PARTICIPATING IN PROGRAMS OFFERED BY THE CARRIER; AND

12 (IV) THE NUMBER OF INDIVIDUALS INSURED THROUGH AN
13 INDIVIDUAL HEALTH COVERAGE PLAN THAT ARE PARTICIPATING IN
14 PROGRAMS OFFERED BY THE CARRIER.

15 (b) THE DIVISION SHALL DETERMINE THE PERCENTAGE OF
16 CARRIERS ISSUING INDIVIDUAL HEALTH COVERAGE PLANS OR SMALL
17 GROUP PLANS IN THE STATE THAT OFFER WELLNESS AND PREVENTION
18 PROGRAMS AND SHALL PROVIDE THAT INFORMATION AND THE
19 INFORMATION COLLECTED PURSUANT TO PARAGRAPH (a) OF THIS
20 SUBSECTION (5) TO THE HEALTH CARE TASK FORCE CREATED IN SECTION
21 10-16-221.

22 (6) A SMALL EMPLOYER THAT MAKES AVAILABLE TO ITS
23 EMPLOYEES, THROUGH ITS SMALL GROUP PLAN, WELLNESS AND
24 PREVENTION PROGRAMS SHALL NOT MAKE PARTICIPATION OR DISCLOSURE
25 OF PARTICIPATION IN A WELLNESS AND PREVENTION PROGRAM A
26 CONDITION OF EMPLOYMENT WITH THE SMALL EMPLOYER.

27 (7) AS USED IN THIS SECTION:

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

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

8 (I) HEALTH SCREENINGS;

9 (II) MENTAL HEALTH AND SUBSTANCE ABUSE SCREENINGS AND
10 PREVENTION;

11 (III) INTERNET, TELEPHONIC, LIVE COACHING, OR
12 CONSULTATION-BASED WELLNESS PROGRAMS;

13 (IV) EDUCATION AND TRAINING ABOUT DIETARY HABITS;

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

17 (VI) WELLNESS PROGRAMS GEARED SPECIFICALLY FOR CHILDREN,
18 TEENS, OR SPECIAL POPULATIONS;

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

23 (VIII) STRESS MANAGEMENT PROGRAMS;

24 (IX) EMPLOYEE ASSISTANCE PROGRAMS FOR EMPLOYEES AND
25 THEIR FAMILIES;

26 (X) DISEASE MANAGEMENT;

27 (XI) DIABETES CARE PROGRAMS;

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

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

11 **10-16-107. Rate regulation - rules - approval of policy forms**
12 **- benefit certificates - evidences of coverage - benefits ratio -**
13 **disclosures on treatment of intractable pain.** (6) A carrier offering a
14 group health benefit plan may not require any individual (as a condition
15 of enrollment or continued enrollment under the plan) to pay a premium
16 or contribution that is greater than such premium or contribution for a
17 similarly situated individual enrolled in the plan on the basis of any health
18 status-related factor in relation to the individual or to an individual
19 enrolled under the plan as a dependent of the individual. This prohibition
20 shall not be construed to restrict the amount that an employer may be
21 charged for coverage under a group health benefit plan or to prevent a
22 carrier from establishing premium discounts or rebates or modifying
23 otherwise applicable copayments, COINSURANCE, or deductibles in return
24 for adherence to programs of health promotion and disease prevention if
25 otherwise allowed by STATE OR FEDERAL law OR FOR PARTICIPATION IN A
26 WELLNESS AND PREVENTION PROGRAM PURSUANT TO SECTION 10-16-136.

27 **SECTION 3.** Part 5 of article 8 of title 10, Colorado Revised

1 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
2 read:

3 **10-8-514.5. Incentives or rewards for participation in wellness**
4 **and prevention programs.** NOTWITHSTANDING ANY PROVISION OF THIS
5 PART 5 TO THE CONTRARY AND CONSISTENT WITH SECTION 10-16-136, THE
6 BOARD OR A CARRIER PROVIDING HEALTH BENEFIT PLANS TO PARTICIPANTS
7 MAY OFFER INCENTIVES OR REWARDS TO PARTICIPANTS FOR
8 PARTICIPATION IN A WELLNESS AND PREVENTION PROGRAM.

9 **SECTION 4. Effective date - applicability.** This act shall take
10 effect July 1, 2009, and shall apply to health coverage plans issued or
11 renewed on or after said date.

12 **SECTION 5. Safety clause.** The general assembly hereby finds,
13 determines, and declares that this act is necessary for the immediate
14 preservation of the public peace, health, and safety.