

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

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 09-0350.01 Christy Chase

**HOUSE BILL 09-1012**

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**HOUSE SPONSORSHIP**

**Rice and Stephens,** Curry, Massey, Swalm

**SENATE SPONSORSHIP**

**Mitchell and Newell,**

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**House Committees**

Business Affairs and Labor

**Senate Committees**

Health and Human Services

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**A BILL FOR AN ACT**

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

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**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.

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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.

26 (b) CARRIERS MAY DETERMINE THE TYPES OF WELLNESS AND  
27 PREVENTION PROGRAMS TO OFFER TO INDIVIDUALS AND SMALL GROUPS

1 AND THE INCENTIVES OR REWARDS ALLOWED UNDER THE HEALTH  
2 COVERAGE PLAN OR SMALL GROUP PLAN. THE INCENTIVES OR REWARDS  
3 MAY INCLUDE, BUT ARE NOT LIMITED TO, 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 (c) A CARRIER SHALL NOT OFFER OR SELL IN THIS STATE AN  
11 INDIVIDUAL OR GROUP HEALTH COVERAGE PLAN THAT INCLUDES A  
12 WELLNESS AND PREVENTION PROGRAM, OR AN INCENTIVE OR REWARD FOR  
13 PARTICIPATION IN A WELLNESS AND PREVENTION PROGRAM, THAT  
14 VIOLATES THE FEDERAL "HEALTH INSURANCE PORTABILITY AND  
15 ACCOUNTABILITY ACT OF 1996", AS AMENDED, AND THE FEDERAL  
16 REGULATIONS IMPLEMENTING SUCH ACT.

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

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

25 (a) PARTICIPATION IN A WELLNESS AND PREVENTION PROGRAM IS  
26 NOT A CONDITION OF COVERAGE UNDER THE HEALTH COVERAGE PLAN OR  
27 SMALL GROUP PLAN;

1 (b) INCENTIVES OR REWARDS ARE UNIFORMLY APPLIED BASED ON  
2 THE WELLNESS AND PREVENTION PROGRAM, AND NOT BASED ON THE SIZE  
3 OR COMPOSITION OF THE SMALL GROUP PARTICIPATING IN THE PROGRAM,  
4 AND THAT THERE IS A REASONABLE JUSTIFICATION FOR THE AMOUNT,  
5 FREQUENCY, AND NATURE OF THE INCENTIVES OR REWARDS;

6 (c) PARTICIPATION IN A WELLNESS AND PREVENTION PROGRAM IS  
7 VOLUNTARY AND THAT A PENALTY MAY NOT BE IMPOSED ON A COVERED  
8 PERSON OR SMALL GROUP FOR NOT PARTICIPATING IN A WELLNESS AND  
9 PREVENTION PROGRAM;

10 (d) A COVERED PERSON OR SMALL GROUP IS NOT REQUIRED TO  
11 ACHIEVE ANY SPECIFIC OUTCOME IN ORDER TO RECEIVE THE INCENTIVE OR  
12 REWARD FOR PARTICIPATION IN A WELLNESS AND PREVENTION PROGRAM;  
13 AND

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

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

23 (5) (a) THE DIVISION OF INSURANCE SHALL DETERMINE WHICH  
24 CARRIERS ARE OFFERING WELLNESS AND PREVENTION PROGRAMS IN  
25 COLORADO AND COLLECT THE FOLLOWING INFORMATION FROM THOSE  
26 CARRIERS:

27 (I) THE TYPES OF WELLNESS AND PREVENTION PROGRAMS

1 OFFERED;  
2 (II) THE TYPES AND NATURE OF INCENTIVES OR REWARDS THE  
3 CARRIER PROVIDES FOR PARTICIPATION;

4 ==  
5 (III) THE TOTAL NUMBER OF SMALL GROUPS IN THE SMALL GROUP  
6 MARKET PARTICIPATING IN PROGRAMS OFFERED BY THE CARRIER; AND

7 (IV) THE NUMBER OF INDIVIDUALS INSURED THROUGH AN  
8 INDIVIDUAL HEALTH COVERAGE PLAN THAT ARE PARTICIPATING IN  
9 PROGRAMS OFFERED BY THE CARRIER.

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

17 (6) AS USED IN THIS SECTION:

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

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

25 (I) HEALTH SCREENINGS;

26 (II) MENTAL HEALTH AND SUBSTANCE ABUSE SCREENINGS AND  
27 PREVENTION;

1 (III) INTERNET, TELEPHONIC, LIVE COACHING, OR  
2 CONSULTATION-BASED WELLNESS PROGRAMS;

3 (IV) EDUCATION AND TRAINING ABOUT DIETARY HABITS;

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

7 (VI) WELLNESS PROGRAMS GEARED SPECIFICALLY FOR CHILDREN,  
8 TEENS, OR SPECIAL POPULATIONS;

9 (VII) CORPORATE HEALTH FAIRS THAT MAY COMBINE HEALTH  
10 SCREENINGS WITH EDUCATIONAL OPPORTUNITIES, INCLUDING ACCESS TO  
11 INFORMATION ON LEADING A HEALTHY LIFESTYLE AND TO NUTRITIONAL  
12 COUNSELING;

13 (VIII) STRESS MANAGEMENT PROGRAMS;

14 (IX) EMPLOYEE ASSISTANCE PROGRAMS FOR EMPLOYEES AND  
15 THEIR FAMILIES;

16 (X) DISEASE MANAGEMENT;

17 (XI) DIABETES CARE PROGRAMS;

18 (XII) TOBACCO CESSATION PROGRAMS;

19 (XIII) PRESCRIPTION DRUG OR CARRIER-APPROVED  
20 NONPRESCRIPTION DIETARY SUPPLEMENT USE THAT AIDS IN OVERALL  
21 HEALTH AND WELLNESS OR PREVENTS DISEASE;

22 (XIV) PATIENT-CENTERED MEDICAL HOME PROGRAMS;

23 (XV) NURSE-ON-CALL PROGRAMS; OR

24 (XVI) ON-SITE OR EXTERNAL HEALTH CLUB OR FITNESS CENTER  
25 MEMBERSHIPS OR FACILITIES.

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

1           **10-16-107. Rate regulation - rules - approval of policy forms**  
2   **- benefit certificates - evidences of coverage - benefits ratio -**  
3   **disclosures on treatment of intractable pain.** (6) A carrier offering a  
4   group health benefit plan may not require any individual (as a condition  
5   of enrollment or continued enrollment under the plan) to pay a premium  
6   or contribution that is greater than such premium or contribution for a  
7   similarly situated individual enrolled in the plan on the basis of any health  
8   status-related factor in relation to the individual or to an individual  
9   enrolled under the plan as a dependent of the individual. This prohibition  
10   shall not be construed to restrict the amount that an employer may be  
11   charged for coverage under a group health benefit plan or to prevent a  
12   carrier from establishing premium discounts or rebates or modifying  
13   otherwise applicable copayments, COINSURANCE, or deductibles in return  
14   for adherence to programs of health promotion and disease prevention if  
15   otherwise allowed by STATE OR FEDERAL law OR FOR PARTICIPATION IN A  
16   WELLNESS AND PREVENTION PROGRAM PURSUANT TO SECTION 10-16-136.

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

20           **10-8-514.5. Incentives or rewards for participation in wellness**  
21   **and prevention programs.** NOTWITHSTANDING ANY PROVISION OF THIS  
22   PART 5 TO THE CONTRARY AND CONSISTENT WITH SECTION 10-16-136, THE  
23   BOARD OR A CARRIER PROVIDING HEALTH BENEFIT PLANS TO PARTICIPANTS  
24   MAY OFFER INCENTIVES OR REWARDS TO PARTICIPANTS FOR  
25   PARTICIPATION IN A WELLNESS AND PREVENTION PROGRAM.

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



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

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