

**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. 09-1015.01 Christy Chase

HOUSE BILL 09-1338

HOUSE SPONSORSHIP

Casso,

SENATE SPONSORSHIP

Bacon,

House Committees

Business Affairs and Labor

Senate Committees

Business, Labor and Technology

A BILL FOR AN ACT

101 **CONCERNING MODIFICATIONS TO STATE INSURANCE LAWS TO COMPLY**
102 **WITH RECENTLY ENACTED FEDERAL LAWS.**

Bill Summary

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

Modifies state insurance laws as follows to comply with recent federal law enactments:

- ! Conforms state law with the federal "Genetic Information Nondiscrimination Act" by expanding the scope of protections to the use of all genetic information, rather than just information derived from genetic testing;
- ! Conforms state law with the federal "Children's Health

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
April 16, 2009

HOUSE
2nd Reading Unamended
April 15, 2009

Insurance Program Reauthorization Act of 2009" by specifying that a person who loses eligibility under the "Colorado Medical Assistance Act" or the children's basic health plan, or who becomes eligible for premium assistance under such act or plan, is eligible to enroll in his or her employer's group health plan;

! Conforms state law with the federal "Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008" by specifying that the mental illness mandate only applies to small group plans and that the state mental health disorder parity law applies to large group plans;

! Conforms state law with the federal "Michelle's Law" by prohibiting carriers from terminating dependent coverage for a child under 24 years of age who is enrolled in a post-secondary institution and who takes a medically necessary leave of absence from the institution before the earlier of one year after the first day of the medically necessary leave of absence, or the date the coverage would otherwise terminate under the terms of the plan or health insurance coverage.

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

2 **SECTION 1.** 10-3-1104.7 (1) (d), (2) (a), (3) (b), and (12) (a),
3 Colorado Revised Statutes, are amended to read:

4 **10-3-1104.7. Genetic testing - legislative declaration -**
5 **definitions - limitations on disclosure of information - liability.**

6 (1) The general assembly hereby finds and determines that recent
7 advances in genetic science have led to improvements in the diagnosis,
8 treatment, and understanding of a significant number of human diseases.

9 The general assembly further declares that:

10 (d) The intent of this ~~statute~~ SECTION is to prevent information
11 derived from genetic testing from being used to deny access to health care
12 insurance, group disability insurance or long-term care insurance
13 coverage.

14 (2) For the purposes of this section:

1 (a) "Entity" means any sickness and accident insurance company,
2 health maintenance organization, nonprofit hospital, medical-surgical and
3 health service corporation, or other entity that provides health care
4 insurance, group disability insurance or long-term care insurance
5 coverage and is subject to the jurisdiction of the commissioner of
6 insurance.

7 (3) (b) Any entity that receives information derived from genetic
8 testing may not seek, use, or keep the information for any nontherapeutic
9 purpose or for any underwriting purpose connected with the provision of
10 health care insurance, group disability insurance or long-term care
11 insurance coverage.

12 (12) Any individual who is injured by an entity's violation of this
13 section may recover in a court of competent jurisdiction the following
14 remedies:

15 (a) Equitable relief, which may include a retroactive order,
16 directing the entity to provide health insurance, group disability insurance
17 or long-term care insurance coverage, whichever is appropriate, to the
18 injured individual under the same terms and conditions as would have
19 applied had the violation not occurred; and

20 **SECTION 2.** Part 11 of article 3 of title 10, Colorado Revised
21 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
22 read:

23 **10-3-1104.6. Genetic information - limitations on disclosure of**
24 **information - liability - definitions - legislative declaration.** (1) THE
25 GENERAL ASSEMBLY HEREBY FINDS AND DETERMINES THAT RECENT
26 ADVANCES IN GENETIC SCIENCE HAVE LED TO IMPROVEMENTS IN THE
27 DIAGNOSIS, TREATMENT, AND UNDERSTANDING OF A SIGNIFICANT NUMBER

1 OF HUMAN DISEASES. THE GENERAL ASSEMBLY FURTHER DECLARES THAT:

2 (a) GENETIC INFORMATION IS THE UNIQUE PROPERTY OF THE
3 INDIVIDUAL TO WHOM THE INFORMATION PERTAINS;

4 (b) ANY INFORMATION CONCERNING AN INDIVIDUAL OBTAINED
5 THROUGH THE USE OF GENETIC SERVICES MAY BE SUBJECT TO ABUSES IF
6 DISCLOSED TO UNAUTHORIZED THIRD PARTIES WITHOUT THE WILLING
7 CONSENT OF THE INDIVIDUAL TO WHOM THE INFORMATION PERTAINS;

8 (c) TO PROTECT INDIVIDUAL PRIVACY AND TO PRESERVE
9 INDIVIDUAL AUTONOMY WITH REGARD TO THE INDIVIDUAL'S GENETIC
10 INFORMATION, IT IS APPROPRIATE TO LIMIT THE USE AND AVAILABILITY OF
11 GENETIC INFORMATION;

12 (d) THE INTENT OF THIS SECTION IS TO PREVENT GENETIC
13 INFORMATION FROM BEING USED TO DENY ACCESS TO HEALTH CARE
14 INSURANCE OR MEDICARE SUPPLEMENT INSURANCE COVERAGE.

15 (2) FOR THE PURPOSES OF THIS SECTION:

16 (a) "ENTITY" MEANS ANY SICKNESS AND ACCIDENT INSURANCE
17 COMPANY, HEALTH MAINTENANCE ORGANIZATION, NONPROFIT HOSPITAL,
18 MEDICAL-SURGICAL AND HEALTH SERVICE CORPORATION, OR OTHER
19 ENTITY THAT PROVIDES HEALTH CARE INSURANCE, OR MEDICARE
20 SUPPLEMENT INSURANCE COVERAGE AND IS SUBJECT TO THE JURISDICTION
21 OF THE COMMISSIONER OF INSURANCE.

22 (b) "FAMILY MEMBER" MEANS AN INDIVIDUAL WHO IS RELATED TO
23 ANOTHER INDIVIDUAL BY BLOOD, ADOPTION, OR MARRIAGE WITHIN THE
24 FIRST, SECOND, THIRD, OR FOURTH DEGREE.

25 (c) (I) "GENETIC INFORMATION" MEANS INFORMATION ABOUT AN
26 INDIVIDUAL'S GENETIC TEST, THE GENETIC TESTS OF FAMILY MEMBERS OF
27 THE INDIVIDUAL, AND THE MANIFESTATION OF A DISEASE OR DISORDER IN

1 FAMILY MEMBERS OF THE INDIVIDUAL. "GENETIC INFORMATION"
2 INCLUDES ANY REQUEST FOR, OR RECEIPT OF, GENETIC SERVICES WITH
3 RESPECT TO AN INDIVIDUAL, OR PARTICIPATION BY AN INDIVIDUAL OR THE
4 FAMILY MEMBER OF AN INDIVIDUAL IN CLINICAL RESEARCH THAT
5 INCLUDES GENETIC SERVICES.

6 (II) WITH REGARD TO AN INDIVIDUAL WHO IS PREGNANT, "GENETIC
7 INFORMATION" INCLUDES GENETIC INFORMATION OF THE FETUS CARRIED
8 BY THE PREGNANT INDIVIDUAL. WITH REGARD TO AN INDIVIDUAL OR
9 FAMILY MEMBER USING REPRODUCTIVE TECHNOLOGY, "GENETIC
10 INFORMATION" INCLUDES GENETIC INFORMATION OF ANY EMBRYO
11 LEGALLY HELD BY AN INDIVIDUAL OR FAMILY MEMBER.

12 (III) "GENETIC INFORMATION" DOES NOT INCLUDE INFORMATION
13 ABOUT THE SEX OR AGE OF AN INDIVIDUAL.

14 (d) "GENETIC SERVICES" MEANS A GENETIC TEST, GENETIC
15 COUNSELING, WHICH INCLUDES OBTAINING, INTERPRETING, OR ASSESSING
16 GENETIC INFORMATION, OR GENETIC EDUCATION.

17 (e) (I) "GENETIC TEST" MEANS ANY ANALYSIS OF HUMAN DNA,
18 RNA, CHROMOSOMES, PROTEINS, OR METABOLITES THAT DETECTS
19 GENOTYPES, MUTATIONS, OR CHROMOSOMAL CHANGES.

20 (II) "GENETIC TEST" DOES NOT INCLUDE AN ANALYSIS OF PROTEINS
21 OR METABOLITES THAT IS DIRECTLY RELATED TO A MANIFESTED DISEASE,
22 DISORDER, OR PATHOLOGICAL CONDITION THAT COULD REASONABLY BE
23 DETECTED BY A HEALTH CARE PROFESSIONAL WITH APPROPRIATE
24 TRAINING AND EXPERTISE IN THE FIELD OF MEDICINE INVOLVED.

25 (f) "UNDERWRITING PURPOSES" MEANS ANY OF THE FOLLOWING:

26 (I) RULES FOR, OR DETERMINATION OF, ELIGIBILITY FOR
27 ENROLLMENT OR CONTINUED ELIGIBILITY IN A POLICY OR FOR BENEFITS

1 UNDER THE POLICY;
2 (II) THE COMPUTATION OF PREMIUM OR CONTRIBUTION AMOUNTS
3 UNDER THE POLICY;
4 (III) THE APPLICATION OF ANY PREEXISTING CONDITION
5 EXCLUSION UNDER THE POLICY; AND
6 (IV) OTHER ACTIVITIES RELATED TO THE CREATION, RENEWAL, OR
7 REPLACEMENT OF A CONTRACT OF HEALTH INSURANCE OR HEALTH
8 BENEFITS.

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10 (3) (a) GENETIC INFORMATION SHALL BE CONFIDENTIAL AND
11 PRIVILEGED. ANY RELEASE, FOR PURPOSES OTHER THAN DIAGNOSIS,
12 TREATMENT, OR THERAPY, OF GENETIC INFORMATION THAT IDENTIFIES THE
13 PERSON TESTED WITH THE TEST RESULTS RELEASED REQUIRES SPECIFIC
14 WRITTEN CONSENT BY THE PERSON ABOUT WHOM THE GENETIC
15 INFORMATION PERTAINS OR THE PARENT OR GUARDIAN OF THAT PERSON.

16 (b) ANY ENTITY THAT RECEIVES GENETIC INFORMATION MAY NOT
17 SEEK, USE, OR KEEP THE INFORMATION FOR ANY NONTHERAPEUTIC
18 PURPOSE OR FOR ANY UNDERWRITING PURPOSE CONNECTED WITH THE
19 PROVISION OF HEALTH CARE INSURANCE OR MEDICARE SUPPLEMENT
20 INSURANCE COVERAGE.

21 (c) AN ENTITY SHALL NOT REQUEST OR REQUIRE AN INDIVIDUAL OR
22 FAMILY MEMBER OF THE INDIVIDUAL TO UNDERGO A GENETIC TEST UNLESS
23 OTHERWISE AUTHORIZED BY APPLICABLE STATE OR FEDERAL LAW.

24 (4) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (3) OF
25 THIS SECTION, IN THE COURSE OF A CRIMINAL INVESTIGATION OR A
26 CRIMINAL PROSECUTION, AND TO THE EXTENT ALLOWED UNDER THE
27 FEDERAL OR STATE CONSTITUTION, ANY PEACE OFFICER, DISTRICT

1 ATTORNEY, OR ASSISTANT ATTORNEY GENERAL, OR A DESIGNEE THEREOF,
2 MAY OBTAIN GENETIC INFORMATION REGARDING THE IDENTITY OF ANY
3 INDIVIDUAL WHO IS THE SUBJECT OF THE CRIMINAL INVESTIGATION OR
4 PROSECUTION FOR USE EXCLUSIVELY IN THE CRIMINAL INVESTIGATION OR
5 PROSECUTION WITHOUT THE CONSENT OF THE INDIVIDUAL BEING TESTED.

6 (5) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (3) OF
7 THIS SECTION, ANY RESEARCH FACILITY MAY USE GENETIC INFORMATION
8 FOR SCIENTIFIC RESEARCH PURPOSES IF THE IDENTITY OF ANY INDIVIDUAL
9 TO WHOM THE INFORMATION PERTAINS IS NOT DISCLOSED TO ANY THIRD
10 PARTY; EXCEPT THAT THE INDIVIDUAL'S IDENTITY MAY BE DISCLOSED TO
11 THE INDIVIDUAL'S PHYSICIAN IF THE INDIVIDUAL CONSENTS TO THE
12 DISCLOSURE IN WRITING.

13 (6) THIS SECTION DOES NOT LIMIT THE AUTHORITY OF A COURT OR
14 ANY PARTY TO A PARENTAGE PROCEEDING TO USE GENETIC INFORMATION
15 FOR PURPOSES OF DETERMINING PARENTAGE PURSUANT TO SECTION
16 13-25-126, C.R.S.

17 (7) THIS SECTION DOES NOT LIMIT THE AUTHORITY OF A COURT OR
18 ANY PARTY TO A PROCEEDING THAT IS SUBJECT TO THE LIMITATIONS OF
19 PART 5 OF ARTICLE 64 OF TITLE 13, C.R.S., TO USE GENETIC INFORMATION
20 FOR PURPOSES OF DETERMINING THE CAUSE OF DAMAGE OR INJURY.

21 (8) THIS SECTION DOES NOT LIMIT THE AUTHORITY OF THE STATE
22 BOARD OF PAROLE TO REQUIRE ANY OFFENDER WHO IS INVOLVED IN A
23 SEXUAL ASSAULT TO SUBMIT TO BLOOD TESTS AND TO RETAIN THE
24 RESULTS OF SUCH TESTS ON FILE AS AUTHORIZED UNDER SECTION 17-2-201
25 (5) (g), C.R.S.

26 (9) THIS SECTION DOES NOT LIMIT THE AUTHORITY GRANTED THE
27 STATE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, THE STATE

1 BOARD OF HEALTH, OR LOCAL DEPARTMENTS OF HEALTH PURSUANT TO
2 SECTION 25-1-122, C.R.S.

3 (10) ANY VIOLATION OF THIS SECTION IS AN UNFAIR PRACTICE AS
4 DEFINED IN SECTION 10-3-1104 (1), AND IS SUBJECT TO THE PROVISIONS OF
5 SECTIONS 10-3-1106 TO 10-3-1113.

6 (11) ANY INDIVIDUAL WHO IS INJURED BY AN ENTITY'S VIOLATION
7 OF THIS SECTION MAY RECOVER IN A COURT OF COMPETENT JURISDICTION
8 THE FOLLOWING REMEDIES:

9 (a) EQUITABLE RELIEF, WHICH MAY INCLUDE A RETROACTIVE
10 ORDER, DIRECTING THE ENTITY TO PROVIDE HEALTH INSURANCE OR
11 MEDICARE SUPPLEMENT INSURANCE COVERAGE, WHICHEVER IS
12 APPROPRIATE, TO THE INJURED INDIVIDUAL UNDER THE SAME TERMS AND
13 CONDITIONS AS WOULD HAVE APPLIED HAD THE VIOLATION NOT
14 OCCURRED; AND

15 (b) THE GREATER OF:

16 (I) AN AMOUNT EQUAL TO ANY ACTUAL DAMAGES SUFFERED BY
17 THE INDIVIDUAL AS A RESULT OF THE VIOLATION; OR

18 (II) TEN THOUSAND DOLLARS PER VIOLATION.

19 (12) THE PREVAILING PARTY IN AN ACTION UNDER THIS SECTION
20 MAY RECOVER COSTS AND REASONABLE ATTORNEY FEES.

21 **SECTION 3.** 10-16-102 (26) (e), Colorado Revised Statutes, is
22 amended, and the said 10-16-102 (26) is further amended BY THE
23 ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

24 **10-16-102. Definitions.** As used in this article, unless the context
25 otherwise requires:

26 (26) "Late enrollee" means an eligible employee or dependent
27 who requests enrollment in a group health benefit plan following the

1 initial enrollment period for which such individual is entitled to enroll
2 under the terms of the health benefit plan, if such initial enrollment period
3 is a period of at least thirty days. An eligible employee or dependent shall
4 not be considered a late enrollee if:

5 (e) The parent or legal guardian of the dependent disenrolls the
6 dependent from, OR THE DEPENDENT OTHERWISE BECOMES INELIGIBLE
7 FOR, the children's basic health plan, established pursuant to article 8 of
8 title 25.5, C.R.S., and requests enrollment of the dependent no later than
9 ninety days after the disenrollment.

10 (f) THE EMPLOYEE OR DEPENDENT IS ENROLLED IN THE MEDICAL
11 ASSISTANCE PROGRAM ESTABLISHED UNDER THE "COLORADO MEDICAL
12 ASSISTANCE ACT", ARTICLES 4 TO 6 OF TITLE 25.5, C.R.S., IS TERMINATED
13 FROM THE PROGRAM AS A RESULT OF LOSS OF ELIGIBILITY FOR THE
14 PROGRAM, AND REQUESTS COVERAGE UNDER THE GROUP HEALTH BENEFIT
15 PLAN WITHIN SIXTY DAYS AFTER THE DATE OF TERMINATION FROM THE
16 PROGRAM.

17 (g) THE EMPLOYEE OR DEPENDENT BECOMES ELIGIBLE FOR
18 PREMIUM ASSISTANCE UNDER THE "COLORADO MEDICAL ASSISTANCE
19 ACT", ARTICLES 4 TO 6 OF TITLE 25.5, C.R.S., OR THE CHILDREN'S BASIC
20 HEALTH PLAN ESTABLISHED IN ARTICLE 8 OF TITLE 25.5, C.R.S.,
21 INCLUDING UNDER ANY WAIVER OR DEMONSTRATION PROJECT CONDUCTED
22 UNDER OR IN RELATION TO SUCH ACT OR PLAN, AND THE EMPLOYEE OR
23 DEPENDENT REQUESTS COVERAGE UNDER THE GROUP HEALTH BENEFIT
24 PLAN WITHIN SIXTY DAYS AFTER THE DATE THE EMPLOYEE OR DEPENDENT
25 IS DETERMINED TO BE ELIGIBLE FOR SUCH ASSISTANCE.

26 **SECTION 4.** The introductory portion to 10-16-104 (5) and
27 10-16-104 (5) (e), (5) (f), (5) (g), and (5.5) (b), Colorado Revised

1 Statutes, are amended to read:

2 **10-16-104. Mandatory coverage provisions - definitions.**

3 (5) **Mental illness.** Every SMALL group policy ~~or contract~~ providing
4 hospitalization or medical benefits by an entity subject to the provisions
5 of part 2 or 3 of this article shall provide benefits for conditions arising
6 from mental illness at least equal to the following:

7 (e) The commissioner may exempt from the requirements of
8 paragraphs (a) and (b) of this subsection (5) any SMALL GROUP policy or
9 type of SMALL GROUP policy with respect to which the commissioner has
10 determined that the prescribed mental illness benefits are inapplicable or
11 inappropriate.

12 (f) The provisions of paragraphs (a) to (e) of this subsection (5)
13 shall apply to all SMALL group policies ~~or contracts~~ issued, renewed, or
14 reinstated on and after January 1, 1976.

15 (g) Every SMALL group ~~health care service~~ plan THAT IS A HEALTH
16 CARE SERVICE PLAN providing hospitalization or medical benefits under
17 the provisions of part 4 of this article shall provide benefits for conditions
18 arising from mental illness at least equal to the benefits required by this
19 subsection (5). The health care service plan issued by an entity subject to
20 the provisions of part 4 of this article may provide that the benefits
21 required pursuant to this subsection (5) shall be covered benefits only if
22 the services are rendered by a provider who is designated by and affiliated
23 with the health maintenance organization.

24 **(5.5) Biologically based mental illness and mental disorders.**

25 (b) Benefits provided under this subsection (5.5) THROUGH A SMALL
26 GROUP PLAN are not required to be provided to the extent that such
27 benefits duplicate benefits required to be provided under subsection (5)

1 of this section.

2 **SECTION 5.** 10-16-104.3, Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW SUBSECTION to read:

4 **10-16-104.3. Dependent health coverage for persons under**
5 **twenty-five years of age - coverage for students who take medical**
6 **leave of absence.** (3) (a) ALL INDIVIDUAL AND GROUP SICKNESS AND
7 ACCIDENT INSURANCE POLICIES PROVIDING COVERAGE WITHIN THE STATE
8 BY AN ENTITY SUBJECT TO THE PROVISIONS OF PART 2 OF THIS ARTICLE
9 AND ALL GROUP HEALTH SERVICE CONTRACTS ISSUED BY AN ENTITY
10 SUBJECT TO THE PROVISIONS OF PART 3 OR 4 OF THIS ARTICLE THAT
11 PROVIDE DEPENDENT COVERAGE TO A CHILD WHO IS ENROLLED IN A
12 POSTSECONDARY EDUCATIONAL INSTITUTION SHALL NOT TERMINATE
13 COVERAGE DUE TO A MEDICALLY NECESSARY LEAVE OF ABSENCE BEFORE
14 THE DATE THAT IS THE EARLIER OF:

15 (I) ONE YEAR AFTER THE FIRST DAY OF THE MEDICALLY
16 NECESSARY LEAVE OF ABSENCE; OR

17 (II) THE DATE THE COVERAGE WOULD OTHERWISE TERMINATE
18 UNDER THE TERMS OF THE PLAN OR HEALTH INSURANCE COVERAGE.

19 (b) FOR PURPOSES OF THIS SUBSECTION (3), "MEDICALLY
20 NECESSARY LEAVE OF ABSENCE" MEANS A LEAVE OF ABSENCE FROM A
21 POSTSECONDARY EDUCATIONAL INSTITUTION OR A CHANGE IN
22 ENROLLMENT OF THE DEPENDENT AT THE INSTITUTION THAT:

23 (I) BEGINS WHILE THE DEPENDENT IS SUFFERING FROM A SERIOUS
24 ILLNESS;

25 (II) IS MEDICALLY NECESSARY; AND

26 (III) CAUSES THE DEPENDENT TO LOSE STUDENT STATUS FOR THE
27 PURPOSE OF DEPENDENT COVERAGE.

1 **SECTION 6. Effective date - applicability.** This act shall take
2 effect July 1, 2009, and shall apply to policies and contracts issued,
3 delivered, renewed, or reinstated on or after said date.

4 **SECTION 7. Safety clause.** The general assembly hereby finds,
5 determines, and declares that this act is necessary for the immediate
6 preservation of the public peace, health, and safety.