

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

ENGROSSED

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

LLS NO. 10-0493.01 Christy Chase

HOUSE BILL 10-1160

HOUSE SPONSORSHIP

Rice and Stephens,

SENATE SPONSORSHIP

Mitchell,

House Committees

Health and Human Services

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE ABILITY OF HEALTH INSURANCE CARRIERS TO OFFER**
102 **INCENTIVES FOR PARTICIPATION IN WELLNESS PROGRAMS**
103 **BASED ON SATISFACTION OF A STANDARD RELATED TO A HEALTH**
104 **RISK FACTOR.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Current law allows health insurance carriers offering individual health coverage plans and small group plans and the board of directors of

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
Amended 2nd Reading
March 9, 2010

the CoverColorado program or carriers providing health benefit plans to CoverColorado participants to offer incentives or rewards to encourage persons covered under the plans to participate in a wellness and prevention program. The incentives or rewards can be based only on participation in a wellness and prevention program and cannot be tied to any particular outcome achieved by participating in the program.

The bill repeals the restriction on incentives based on outcomes and allows carriers to base the incentives or rewards on satisfaction of a standard related to a health factor if the incentive or reward under the wellness and prevention program is consistent with the nondiscrimination requirements of the federal "Health Insurance Portability and Accountability Act of 1996".

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

2 **SECTION 1.** 10-16-136 (2) (b), (3) (a), (3) (c), (3) (d), and (5)
3 (b), Colorado Revised Statutes, are amended, and the said 10-16-136 is
4 further amended BY THE ADDITION OF THE FOLLOWING NEW
5 SUBSECTIONS, to read:

6 **10-16-136. Wellness and prevention programs - individual and**
7 **small group health coverage plans - voluntary participation -**
8 **incentives or rewards - definitions - legislative declaration.**

9 (2) (b) (I) Carriers may determine the types of wellness and prevention
10 programs to offer to individuals and small groups and the incentives or
11 rewards allowed under the health coverage plan or small group plan.

12 (II) LICENSED HEALTH CARE PROVIDERS, COMMUNITY-BASED
13 WELLNESS PROGRAMS, EMPLOYERS, AND INDIVIDUALS PARTICIPATING IN
14 AN INDIVIDUAL HEALTH COVERAGE PLAN MAY DEVELOP WELLNESS AND
15 PREVENTION PROGRAMS FOR CARRIERS TO CONSIDER IN DETERMINING THE
16 TYPES OF WELLNESS AND PREVENTION PROGRAMS TO OFFER UNDER A
17 HEALTH COVERAGE PLAN OR SMALL GROUP PLAN.

18 (III) The incentives or rewards THAT A CARRIER MAY ALLOW
19 UNDER A HEALTH COVERAGE PLAN OR SMALL GROUP PLAN may include,

1 but are not limited to, premium discounts or rebates; modifications to
2 copayment, deductible, or coinsurance amounts; or a combination of these
3 incentives or rewards.

4 (IV) An incentive or reward offered by a carrier for participation
5 in UNDER wellness and prevention programs shall be reasonably related
6 to the program and MAY BE:

7 (A) Tied ONLY to participation in the program; rather than
8 particular outcomes or results from such participation OR

9 (B) BASED ON SATISFACTION OF A STANDARD RELATED TO A
10 HEALTH RISK FACTOR, AS PERMITTED BY AND IN COMPLIANCE WITH THE
11 FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT
12 OF 1996", AS AMENDED, 42 U.S.C. SEC. 201 ET SEQ., AND THE FEDERAL
13 REGULATIONS IMPLEMENTING SUCH ACT.

14 (3) A carrier offering incentives or rewards pursuant to this
15 section shall ensure that:

16 (a) Participation in OR SATISFACTION OF A STANDARD RELATED TO
17 A HEALTH RISK FACTOR PURSUANT TO a wellness and prevention program
18 is not a condition of coverage under the health coverage plan or small
19 group plan;

20 (c) Participation in a wellness and prevention program is
21 voluntary and that a penalty may not be imposed on a covered person or
22 small group for not participating in a wellness and prevention program OR
23 NOT SATISFYING A STANDARD RELATED TO A HEALTH RISK FACTOR
24 PURSUANT TO THE PROGRAM;

25 (d) ~~A covered person or small group is not required to achieve any~~
26 ~~specific outcome in order to receive the incentive or reward for~~
27 ~~participation in a wellness and prevention program~~ ANY INCENTIVE OR

1 REWARD FOR SATISFYING A STANDARD RELATED TO A HEALTH RISK
2 FACTOR IS MADE IN COMPLIANCE WITH THIS SECTION, THE FEDERAL
3 "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996",
4 AS AMENDED, AND THE FEDERAL REGULATIONS IMPLEMENTING SUCH ACT;
5 and

6 (3.5) AN INCENTIVE OR REWARD BASED UPON SATISFACTION OF A
7 STANDARD RELATED TO A HEALTH RISK FACTOR MAY BE OFFERED OR
8 PROVIDED BY A CARRIER ONLY PURSUANT TO A BONA FIDE WELLNESS AND
9 PREVENTION PROGRAM AND IF THE FOLLOWING STANDARDS ARE MET:

10 (a) (I) THE INCENTIVE FOR THE WELLNESS AND PREVENTION
11 PROGRAM, TOGETHER WITH THE INCENTIVE FOR OTHER WELLNESS AND
12 PREVENTION PROGRAMS WITH RESPECT TO THE HEALTH COVERAGE PLAN
13 OR SMALL GROUP PLAN THAT REQUIRES SATISFACTION OF A STANDARD
14 RELATED TO A HEALTH RISK FACTOR, IS REASONABLY RELATED TO THE
15 PROGRAM AND DOES NOT EXCEED TWENTY PERCENT OF THE COST OF
16 EMPLOYEE-ONLY COVERAGE UNDER THE HEALTH COVERAGE OR SMALL
17 GROUP PLAN OR, IF AN EMPLOYEE'S DEPENDENTS ARE ALLOWED TO
18 PARTICIPATE IN THE PROGRAM, DOES NOT EXCEED TWENTY PERCENT OF
19 THE COST OF THE COVERAGE IN WHICH AN EMPLOYEE AND DEPENDENTS
20 ARE ENROLLED. AN EMPLOYER MAY ALSO RECEIVE AN INCENTIVE FOR
21 PARTICIPATION OF EMPLOYEES IN A WELLNESS AND PREVENTION PROGRAM
22 AS LONG AS THE EMPLOYEES ARE ALLOWED AN INCENTIVE.

23 (II) FOR PURPOSES OF THIS PARAGRAPH (a), THE COST OF
24 COVERAGE IS DETERMINED BASED ON THE TOTAL AMOUNT OF EMPLOYER
25 AND EMPLOYEE CONTRIBUTIONS FOR THE BENEFIT PACKAGE UNDER WHICH
26 THE EMPLOYEE IS, OR THE EMPLOYEE AND ANY DEPENDENTS ARE,
27 RECEIVING COVERAGE.

1 (III) AN INCENTIVE MAY BE IN THE FORM OF A DISCOUNT OR
2 REBATE OF A PREMIUM OR CONTRIBUTION, A WAIVER OF ALL OR PART OF
3 A COST-SHARING MECHANISM, INCLUDING, BUT NOT LIMITED TO,
4 DEDUCTIBLES, COPAYMENTS, OR COINSURANCE, THE ABSENCE OF A
5 SURCHARGE, OR THE VALUE OF A BENEFIT THAT WOULD OTHERWISE NOT
6 BE PROVIDED UNDER THE HEALTH COVERAGE OR SMALL GROUP PLAN.

7 (b) THE WELLNESS AND PREVENTION PROGRAM:

8 (I) IS CONSISTENT WITH EVIDENCE-BASED RESEARCH AND BEST
9 PRACTICES;

10 (II) HAS A REASONABLE LIKELIHOOD OF IMPROVING THE HEALTH
11 OF, OR PREVENTING DISEASE IN, PARTICIPATING INDIVIDUALS; AND

12 (III) IS NOT OVERLY BURDENSOME, A SUBTERFUGE FOR
13 DISCRIMINATING BASED ON A HEALTH FACTOR, OR HIGHLY SUSPECT IN THE
14 METHOD CHOSEN TO PROMOTE HEALTH OR PREVENT DISEASE.

15 (c) THE PROGRAM GIVES INDIVIDUALS ELIGIBLE FOR THE WELLNESS
16 AND PREVENTION PROGRAM THE OPPORTUNITY TO QUALIFY FOR THE
17 INCENTIVE UNDER THE PROGRAM UPON ENROLLMENT IN THE HEALTH
18 COVERAGE OR SMALL GROUP PLAN AND AT LEAST ONCE PER YEAR AFTER
19 ENROLLMENT.

20 (d) (I) THE FULL INCENTIVE UNDER THE WELLNESS AND
21 PREVENTION PROGRAM IS MADE AVAILABLE TO ALL SIMILARLY SITUATED
22 INDIVIDUALS. AN INCENTIVE IS NOT AVAILABLE TO ALL SIMILARLY
23 SITUATED INDIVIDUALS FOR A PERIOD UNLESS THE WELLNESS AND
24 PREVENTION PROGRAM ALLOWS AN INDIVIDUAL OR A LICENSED HEALTH
25 CARE PROVIDER CHOSEN BY THE INDIVIDUAL TO REQUEST:

26 (A) A REASONABLE ALTERNATIVE STANDARD OR WAIVER OF THE
27 OTHERWISE APPLICABLE STANDARD FOR OBTAINING THE INCENTIVE FOR

1 THAT PERIOD IF IT IS UNREASONABLY DIFFICULT FOR THE INDIVIDUAL, DUE
2 TO A MEDICAL CONDITION, TO SATISFY THE OTHERWISE APPLICABLE
3 STANDARD; AND

4 (B) A REASONABLE ALTERNATIVE STANDARD OR WAIVER OF THE
5 OTHERWISE APPLICABLE STANDARD FOR OBTAINING THE INCENTIVE FOR
6 THAT PERIOD IF IT IS MEDICALLY INADVISABLE FOR THE INDIVIDUAL TO
7 ATTEMPT TO SATISFY THE OTHERWISE APPLICABLE STANDARD.

8 (II) IF AN INDIVIDUAL REQUESTS AND IS GRANTED A WAIVER OR IS
9 ALLOWED A REASONABLE ALTERNATIVE STANDARD AND SATISFIES THAT
10 STANDARD, THE INDIVIDUAL SHALL RECEIVE THE FULL INCENTIVE UNDER
11 THE PROGRAM THAT IS AVAILABLE TO ALL SIMILARLY SITUATED
12 INDIVIDUALS.

13 (III) IF THE CARRIER DENIES A REQUEST FOR AN ALTERNATIVE
14 STANDARD OR WAIVER OF A STANDARD THAT WOULD OTHERWISE BE
15 APPLICABLE TO AN INDIVIDUAL UNDER A WELLNESS AND PREVENTION
16 PROGRAM, THE INDIVIDUAL MAY REQUEST AN INDEPENDENT EXTERNAL
17 REVIEW PURSUANT TO SECTION 10-16-113.5.

18 (IV) THE SMALL EMPLOYER CARRIER SHALL DISCLOSE, IN ALL PLAN
19 MATERIALS DESCRIBING THE TERMS OF THE WELLNESS AND PREVENTION
20 PROGRAM, THE AVAILABILITY OF A REASONABLE ALTERNATIVE STANDARD
21 OR THE POSSIBILITY OF WAIVER OF THE OTHERWISE APPLICABLE STANDARD
22 AS REQUIRED BY THIS PARAGRAPH (d). IF HEALTH COVERAGE OR SMALL
23 GROUP PLAN MATERIALS MENTION THE AVAILABILITY OF A WELLNESS AND
24 PREVENTION PROGRAM BUT DO NOT DESCRIBE THE TERMS OF THE
25 PROGRAM, THE SMALL EMPLOYER CARRIER IS NOT REQUIRED TO MAKE THE
26 DISCLOSURE OF AN ALTERNATIVE OR WAIVER PURSUANT TO THIS
27 SUBPARAGRAPH (IV).

1 (e) THE INCENTIVES ARE PROVIDED TO AN INDIVIDUAL BASED ON
2 A PROGRAM OR ACTIVITY THAT IS SCIENTIFICALLY PROVEN TO IMPROVE
3 HEALTH, AND THE CARRIER DOES NOT PROVIDE INCENTIVES BASED ON AN
4 INDIVIDUAL'S ACTUAL HEALTH STATUS.

5 (3.7) PRIOR TO OFFERING OR PROVIDING AN INCENTIVE OR REWARD
6 BASED UPON SATISFACTION OF A STANDARD RELATED TO A HEALTH RISK
7 FACTOR IN ACCORDANCE WITH SUBSECTION (3.5) OF THIS SECTION, A
8 CARRIER SHALL SUBMIT ITS PROPOSAL FOR THE INCENTIVE OR REWARD TO
9 THE CONSUMER INSURANCE COUNCIL, CREATED IN SECTION 10-1-133, FOR
10 REVIEW. THE COUNCIL SHALL REVIEW AND MAKE RECOMMENDATIONS TO
11 THE COMMISSIONER REGARDING THE PROPOSED INCENTIVES OR REWARDS
12 AND WHETHER THE PROPOSED INCENTIVES OR REWARDS SATISFY THE
13 REQUIREMENTS OF SUBSECTION (3.5) OF THIS SECTION. ADDITIONALLY,
14 THE COUNCIL MAY REVIEW AND MAKE RECOMMENDATIONS TO THE
15 COMMISSIONER REGARDING ANY COMPLAINTS FILED WITH THE DIVISION
16 REGARDING SUCH INCENTIVES OR REWARDS.

17 (5) (b) The division shall determine the percentage of carriers
18 issuing individual health coverage plans or small group plans in the state
19 that offer wellness and prevention programs and shall provide that
20 information and the information collected pursuant to paragraph (a) of
21 this subsection (5) to the ~~health care task force created in section~~
22 ~~10-16-221~~ HEALTH AND HUMAN SERVICES COMMITTEES OF THE SENATE
23 AND HOUSE OF REPRESENTATIVES, THE BUSINESS, LABOR, AND
24 TECHNOLOGY COMMITTEE OF THE SENATE, AND THE BUSINESS AFFAIRS
25 AND LABOR COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR THEIR
26 SUCCESSOR COMMITTEES, BY JULY 1, 2015.

27 **SECTION 2.** 10-16-136 (7), Colorado Revised Statutes, is

1 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

2 **10-16-136. Wellness and prevention programs - individual and**
3 **small group health coverage plans - voluntary participation -**
4 **incentives or rewards - definitions - legislative declaration. (7) As**
5 used in this section:

6 (a.5) "HEALTH RISK FACTOR" INCLUDES, WITHOUT LIMITATION,
7 HEALTH BEHAVIORS SUCH AS SMOKING, DIET, ALCOHOL CONSUMPTION,
8 EXERCISE, AND EXPOSURE TO UV RADIATION, THAT ARE KNOWN TO BE
9 ASSOCIATED WITH INCREASED MORTALITY AND MORBIDITY FOR A NUMBER
10 OF CONDITIONS.

11 **SECTION 3.** 10-16-107 (6), Colorado Revised Statutes, is
12 amended to read:

13 **10-16-107. Rate regulation - rules - approval of policy forms**
14 **- benefit certificates - evidences of coverage - benefits ratio -**
15 **disclosures on treatment of intractable pain. (6) (a) A carrier offering**
16 a group health benefit plan may not require any individual, as a condition
17 of enrollment or continued enrollment under the plan, to pay a premium
18 or contribution that is greater than ~~such~~ THE premium or contribution for
19 a similarly situated individual enrolled in the plan on the basis of any
20 health status-related factor in relation to the individual or to an individual
21 enrolled under the plan as a dependent of the individual.

22 (b) ~~This~~ THE prohibition IN PARAGRAPH (a) OF THIS SUBSECTION
23 (6) shall not be construed to:

24 (I) Restrict the amount that an employer may be charged for
25 coverage under a group health benefit plan; or ~~to~~

26 (II) Prevent a carrier from establishing premium discounts or
27 rebates or modifying otherwise applicable copayments, coinsurance, or

1 deductibles in return for:

2 (A) Adherence to programs of health promotion and disease
3 prevention if otherwise allowed by state or federal law; ~~or for~~

4 (B) Participation in a wellness and prevention program pursuant
5 to section 10-16-136; OR

6 (C) SATISFACTION OF A STANDARD RELATED TO A HEALTH RISK
7 FACTOR PURSUANT TO A WELLNESS AND PREVENTION PROGRAM
8 AUTHORIZED IN SECTION 10-16-136.

9 **SECTION 4.** 10-8-514.5, Colorado Revised Statutes, is amended
10 to read:

11 **10-8-514.5. Incentives or rewards for participation in wellness**
12 **and prevention programs.** Notwithstanding any provision of this part
13 5 to the contrary and consistent with section 10-16-136, the board or a
14 carrier providing health benefit plans to participants may offer incentives
15 or rewards to participants for participation in a wellness and prevention
16 program OR FOR SATISFACTION OF A STANDARD RELATED TO A HEALTH
17 FACTOR PURSUANT TO A WELLNESS AND PREVENTION PROGRAM.

18 **SECTION 5. Specified effective date - applicability.** This act
19 shall take effect July 1, 2010, and shall apply to health coverage plans and
20 small group plans issued, delivered, or renewed on or after said date.

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