

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

**PREAMENDED**

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

LLS NO. 10-0493.01 Christy Chase

**HOUSE BILL 10-1160**

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**HOUSE SPONSORSHIP**

**Rice and Stephens,**

**SENATE SPONSORSHIP**

**Mitchell,**

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**House Committees**

Health and Human Services

**Senate Committees**

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**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.**

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**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.

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".

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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 A NEW SUBSECTION, to  
5 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 ■  
13 (II) LICENSED HEALTH CARE PROVIDERS, COMMUNITY-BASED  
14 WELLNESS PROGRAMS, EMPLOYERS, AND INDIVIDUALS PARTICIPATING IN  
15 AN INDIVIDUAL HEALTH COVERAGE PLAN MAY DEVELOP WELLNESS AND  
16 PREVENTION PROGRAMS FOR CARRIERS TO CONSIDER IN DETERMINING THE  
17 TYPES OF WELLNESS AND PREVENTION PROGRAMS TO OFFER UNDER A  
18 HEALTH COVERAGE PLAN OR SMALL GROUP PLAN.

19 (III) The incentives or rewards THAT A CARRIER MAY ALLOW

1 UNDER A HEALTH COVERAGE PLAN OR SMALL GROUP PLAN may include,  
2 but are not limited to, premium discounts or rebates; modifications to  
3 copayment, deductible, or coinsurance amounts; or a combination of these  
4 incentives or rewards.

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

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

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

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

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

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

26 (d) ~~A covered person or small group is not required to achieve any~~  
27 ~~specific outcome in order to receive the incentive or reward for~~

1 ~~participation in a wellness and prevention program~~ ANY INCENTIVE OR  
2 REWARD FOR SATISFYING A STANDARD RELATED TO A HEALTH RISK  
3 FACTOR IS MADE IN COMPLIANCE WITH THIS SECTION, THE FEDERAL  
4 "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996",  
5 AS AMENDED, AND THE FEDERAL REGULATIONS IMPLEMENTING SUCH ACT;  
6 and

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

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

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

1 RECEIVING COVERAGE.

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

8 (b) THE WELLNESS AND PREVENTION PROGRAM:

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

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

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

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

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

27 (A) A REASONABLE ALTERNATIVE STANDARD OR WAIVER OF THE

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

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

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

13 (III) THE DIVISION SHALL INVESTIGATE ANY COMPLAINT ALLEGING  
14 AN UNREASONABLE DENIAL OF A REQUEST FOR AN ALTERNATIVE  
15 STANDARD OR WAIVER OF A STANDARD THAT WOULD OTHERWISE BE  
16 APPLICABLE TO AN INDIVIDUAL UNDER A WELLNESS AND PREVENTION  
17 PROGRAM.

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 (5) (b) The division shall determine the percentage of carriers  
6 issuing individual health coverage plans or small group plans in the state  
7 that offer wellness and prevention programs and shall provide that  
8 information and the information collected pursuant to paragraph (a) of  
9 this subsection (5) to the health care task force created in section  
10 10-16-221 BY JULY 1, 2015.

11 **SECTION 2.** 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 3.** 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 4. 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 5. 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.