

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**

Business, Labor and Technology

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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.*

HOUSE  
3rd Reading Unamended  
March 10, 2010

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".

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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 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 - repeal.**

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  
9 AND PREVENTION PROGRAM; IF THE CARRIER OFFERS THE INCENTIVE OR  
10 REWARD TO ALL PERSONS, INCLUDING DEPENDENTS, COVERED BY AN  
11 INDIVIDUAL HEALTH COVERAGE PLAN OR SMALL GROUP PLAN ISSUED BY  
12 THE CARRIER; AND IF THE FOLLOWING STANDARDS ARE MET:

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

26 (II) FOR PURPOSES OF THIS PARAGRAPH (a), THE COST OF  
27 COVERAGE IS DETERMINED BASED ON THE TOTAL AMOUNT OF EMPLOYER

1 AN EMPLOYEE CONTRIBUTIONS FOR THE BENEFIT PACKAGE UNDER WHICH  
2 THE EMPLOYEE IS, OR THE EMPLOYEE AND ANY DEPENDENTS ARE,  
3 RECEIVING COVERAGE.

4 (III) AN INCENTIVE MAY BE IN THE FORM OF A DISCOUNT OR  
5 REBATE OF A PREMIUM OR CONTRIBUTION, A WAIVER OF ALL OR PART OF  
6 A COST-SHARING MECHANISM, INCLUDING, BUT NOT LIMITED TO,  
7 DEDUCTIBLES, COPAYMENTS, OR COINSURANCE, THE ABSENCE OF A  
8 SURCHARGE, OR THE VALUE OF A BENEFIT THAT WOULD OTHERWISE NOT  
9 BE PROVIDED UNDER THE HEALTH COVERAGE OR SMALL GROUP PLAN. THE  
10 CARRIER SHALL ENSURE, AND PROVIDE APPROPRIATE DOCUMENTATION TO  
11 THE COMMISSIONER PURSUANT TO SUBPARAGRAPH (V) OF PARAGRAPH (a)  
12 OF SUBSECTION (5) OF THIS SECTION, THAT THE INCENTIVES ARE PAID  
13 FROM THE COST SAVINGS REALIZED AS A RESULT OF COVERED PERSONS  
14 ATTAINING A STANDARD RELATED TO A HEALTH RISK FACTOR.

15 (b) THE WELLNESS AND PREVENTION PROGRAM:

16 (I) IS CONSISTENT WITH EVIDENCE-BASED RESEARCH AND BEST  
17 PRACTICES;

18 (II) HAS A REASONABLE LIKELIHOOD OF IMPROVING THE HEALTH  
19 OF, OR PREVENTING DISEASE IN, PARTICIPATING INDIVIDUALS; ==

20 (III) CONTAINS CULTURALLY AND LINGUISTICALLY APPROPRIATE  
21 PROGRAMS AND MATERIALS; AND

22 (IV) IS NOT OVERLY BURDENSOME, A SUBTERFUGE FOR  
23 DISCRIMINATING BASED ON A HEALTH FACTOR, OR HIGHLY SUSPECT IN THE  
24 METHOD CHOSEN TO PROMOTE HEALTH OR PREVENT DISEASE.

25 (c) THE PROGRAM GIVES INDIVIDUALS ELIGIBLE FOR THE WELLNESS  
26 AND PREVENTION PROGRAM THE OPPORTUNITY TO QUALIFY FOR THE  
27 INCENTIVE UNDER THE PROGRAM UPON ENROLLMENT IN THE HEALTH

1 COVERAGE OR SMALL GROUP PLAN AND AT LEAST ONCE PER YEAR AFTER  
2 ENROLLMENT.

3 (d) (I) THE FULL INCENTIVE UNDER THE WELLNESS AND  
4 PREVENTION PROGRAM IS MADE AVAILABLE TO ALL SIMILARLY SITUATED  
5 INDIVIDUALS. AN INCENTIVE IS NOT AVAILABLE TO ALL SIMILARLY  
6 SITUATED INDIVIDUALS FOR A PERIOD UNLESS THE WELLNESS AND  
7 PREVENTION PROGRAM ALLOWS AN INDIVIDUAL OR A LICENSED HEALTH  
8 CARE PROVIDER CHOSEN BY THE INDIVIDUAL TO REQUEST:

9 (A) A REASONABLE ALTERNATIVE STANDARD OR WAIVER OF THE  
10 OTHERWISE APPLICABLE STANDARD FOR OBTAINING THE INCENTIVE FOR  
11 THAT PERIOD IF IT IS UNREASONABLY DIFFICULT FOR THE INDIVIDUAL, DUE  
12 TO A MEDICAL CONDITION, TO SATISFY THE OTHERWISE APPLICABLE  
13 STANDARD; OR

14 (B) A REASONABLE ALTERNATIVE STANDARD OR WAIVER OF THE  
15 OTHERWISE APPLICABLE STANDARD FOR OBTAINING THE INCENTIVE FOR  
16 THAT PERIOD IF IT IS MEDICALLY INADVISABLE FOR THE INDIVIDUAL TO  
17 ATTEMPT TO SATISFY THE OTHERWISE APPLICABLE STANDARD.

18 (II) IF AN INDIVIDUAL REQUESTS AND IS GRANTED A WAIVER OR IS  
19 ALLOWED A REASONABLE ALTERNATIVE STANDARD AND SATISFIES THAT  
20 STANDARD, THE INDIVIDUAL SHALL RECEIVE THE FULL INCENTIVE UNDER  
21 THE PROGRAM THAT IS AVAILABLE TO ALL SIMILARLY SITUATED  
22 INDIVIDUALS.

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

1 (IV) THE SMALL EMPLOYER CARRIER SHALL DISCLOSE, IN ALL PLAN  
2 MATERIALS DESCRIBING THE TERMS OF THE WELLNESS AND PREVENTION  
3 PROGRAM, THE AVAILABILITY OF A REASONABLE ALTERNATIVE STANDARD  
4 OR THE POSSIBILITY OF WAIVER OF THE OTHERWISE APPLICABLE STANDARD  
5 AS REQUIRED BY THIS PARAGRAPH (d). IF HEALTH COVERAGE OR SMALL  
6 GROUP PLAN MATERIALS MENTION THE AVAILABILITY OF A WELLNESS AND  
7 PREVENTION PROGRAM BUT DO NOT DESCRIBE THE TERMS OF THE  
8 PROGRAM, THE SMALL EMPLOYER CARRIER IS NOT REQUIRED TO MAKE THE  
9 DISCLOSURE OF AN ALTERNATIVE OR WAIVER PURSUANT TO THIS  
10 SUBPARAGRAPH (IV).

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

15 (3.7) PRIOR TO OFFERING OR PROVIDING AN INCENTIVE OR REWARD  
16 BASED UPON SATISFACTION OF A STANDARD RELATED TO A HEALTH RISK  
17 FACTOR IN ACCORDANCE WITH SUBSECTION (3.5) OF THIS SECTION, A  
18 CARRIER SHALL SUBMIT ITS PROPOSAL FOR THE INCENTIVE OR REWARD TO  
19 A NATIONALLY RECOGNIZED NONPROFIT ENTITY THAT ACCREDITS  
20 WELLNESS PROGRAMS FOR REVIEW AND DETERMINATION AS TO WHETHER  
21 THE PROPOSED PROGRAM AND INCENTIVE OR REWARD SATISFY THE  
22 REQUIREMENTS OF SUBSECTION (3.5) OF THIS SECTION. A CARRIER SHALL  
23 NOT OFFER THE PROPOSED PROGRAM OR THE INCENTIVES OR REWARDS  
24 UNLESS THE ACCREDITING ENTITY DETERMINES THAT THE PROGRAM AND  
25 INCENTIVES OR REWARDS SATISFY THOSE REQUIREMENTS AND ACCREDITS  
26 THE CARRIER'S WELLNESS AND PREVENTION PROGRAM.

27 (5) (a) The division of insurance shall determine which carriers

1 are offering wellness and prevention programs in Colorado and collect  
2 the following information from those carriers:

3 (I) The types of wellness and prevention programs offered;

4 (II) The types and nature of incentives or rewards the carrier  
5 provides for participation;

6 (III) The total number of small groups in the small group market  
7 participating in programs offered by the carrier; and

8 (IV) The number of individuals insured through an individual  
9 health coverage plan that are participating in programs offered by the  
10 carrier;

11 (V) DOCUMENTATION REQUIRED BY SUBPARAGRAPH (III) OF  
12 PARAGRAPH (a) OF SUBSECTION (3.5) OF THIS SECTION, DEMONSTRATING  
13 THAT THE INCENTIVES PROVIDED BY THE CARRIER BASED ON SATISFACTION  
14 OF A STANDARD RELATED TO A HEALTH RISK FACTOR ARE PAID FROM THE  
15 COST SAVINGS REALIZED AS A RESULT OF COVERED PERSONS ATTAINING  
16 THE STANDARD;

17 (VI) THE DOLLAR AMOUNT OF DISCOUNTS PROVIDED TO THE TOTAL  
18 NUMBER OF SMALL GROUPS, AS IDENTIFIED PURSUANT TO SUBPARAGRAPH  
19 (III) OF THIS PARAGRAPH (a); AND

20 (VII) THE DOLLAR AMOUNT OF DISCOUNTS PROVIDED TO THE  
21 TOTAL NUMBER OF INDIVIDUALS, AS IDENTIFIED PURSUANT TO  
22 SUBPARAGRAPH (IV) OF THIS PARAGRAPH (a).

23 \_\_\_\_\_ (b) The division shall determine the percentage of carriers  
24 issuing individual health coverage plans or small group plans in the state  
25 that offer wellness and prevention programs and shall provide that  
26 information and the information collected pursuant to paragraph (a) of  
27 this subsection (5) to the health care task force created in section



1 ~~10-16-221~~ HEALTH AND HUMAN SERVICES COMMITTEES OF THE SENATE  
2 AND HOUSE OF REPRESENTATIVES, THE BUSINESS, LABOR, AND  
3 TECHNOLOGY COMMITTEE OF THE SENATE, AND THE BUSINESS AFFAIRS  
4 AND LABOR COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR THEIR  
5 SUCCESSOR COMMITTEES, BY JANUARY 1, 2012, AND BY EACH JANUARY  
6 1 THEREAFTER UNTIL JANUARY 1, 2015. THE DIVISION SHALL ALSO MAKE  
7 THE INFORMATION AVAILABLE TO THE PUBLIC BY THAT DATE.

8 (8) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2015.

9 **SECTION 2.** 10-16-136 (7), Colorado Revised Statutes, is  
10 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

11 **10-16-136. Wellness and prevention programs - individual and**  
12 **small group health coverage plans - voluntary participation -**  
13 **incentives or rewards - definitions - legislative declaration. (7) As**  
14 **used in this section:**

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

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

22 **10-16-107. Rate regulation - rules - approval of policy forms**  
23 **- benefit certificates - evidences of coverage - benefits ratio -**  
24 **disclosures on treatment of intractable pain. (6) (a) A carrier offering**  
25 **a group health benefit plan may not require any individual, as a condition**  
26 **of enrollment or continued enrollment under the plan, to pay a premium**  
27 **or contribution that is greater than such THE premium or contribution for**

1 a similarly situated individual enrolled in the plan on the basis of any  
2 health status-related factor in relation to the individual or to an individual  
3 enrolled under the plan as a dependent of the individual.

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

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

8 (II) Prevent a carrier from establishing premium discounts or  
9 rebates or modifying otherwise applicable copayments, coinsurance, or  
10 deductibles in return for:

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

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

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

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

20 **10-8-514.5. Incentives or rewards for participation in wellness**  
21 **and prevention programs.** Notwithstanding any provision of this part  
22 5 to the contrary and consistent with section 10-16-136, the board or a  
23 carrier providing health benefit plans to participants may offer incentives  
24 or rewards to participants for participation in a wellness and prevention  
25 program OR FOR SATISFACTION OF A STANDARD RELATED TO A HEALTH  
26 FACTOR PURSUANT TO A WELLNESS AND PREVENTION PROGRAM.

27 **SECTION 5. Specified effective date - applicability.** This act

1 shall take effect July 1, 2010, and shall apply to health coverage plans and  
2 small group plans issued, delivered, or renewed on or after said date.

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