

CHAPTER 283

INSURANCE

HOUSE BILL 10-1160

BY REPRESENTATIVE(S) Rice and Stephens, Curry, Gardner B., Gerou, Kerr J., Loooper, Priola, Roberts, Swalm, Waller, Liston, McFadyen, Nikkel, Summers, Carroll T.;
also SENATOR(S) Mitchell and Newell.

AN ACT

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

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

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

10-16-136. Wellness and prevention programs - individual and small group health coverage plans - voluntary participation - incentives or rewards - definitions - legislative declaration - repeal. (1) The general assembly hereby finds and declares that:

(a) With the rising costs of health care coverage, it is important to find innovative ways to reduce costs and make health coverage more affordable for individuals and small employer groups;

(b) When individuals covered under a health coverage plan lead healthy lifestyles and engage in wellness and disease prevention activities, their need for health care and the costs of their health care are reduced, and the entity providing their health care coverage benefits from reduced utilization rates and costs;

(c) Carriers should be afforded the ability to develop innovative and flexible ways to encourage covered persons under their health coverage plans to engage in activities that promote their overall health and prevent or reduce the impacts of disease; ~~and~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(d) It is therefore important to allow carriers to provide incentives or rewards, including premium discounts and reduced out-of-pocket costs for health care services, to encourage covered persons to participate in AND SATISFY A STANDARD RELATED TO A HEALTH RISK FACTOR PURSUANT TO wellness and prevention programs; AND

(e) THIS SECTION IS INTENDED TO LOWER COSTS FOR ALL SMALL GROUPS AND INDIVIDUALS AND IS NOT INTENDED TO INCREASE OR ALLOW CARRIERS TO INCREASE RATES FOR OR SHIFT COSTS TO THOSE INDIVIDUALS AND SMALL GROUPS THAT DECLINE TO PARTICIPATE IN WELLNESS AND PREVENTION PROGRAMS OFFERED BY CARRIERS.

(2)(a) Consistent with section 10-16-107 (6) and subject to subsection (3) of this section, a carrier offering an individual health coverage plan or a small group plan in this state may offer incentives or rewards to encourage the individual or small group and other covered persons under the plan to participate in wellness and prevention programs. For purposes of small group plans, the incentives or rewards may be applied to the entire small group or to individuals in the small group based on their participation in wellness and prevention programs. A carrier offering such incentives or rewards shall implement adequate measures to ensure that the privacy of individuals in the group is maintained and that individually identifiable health information is not shared or made available to an individual's employer or any other person not otherwise allowed access to the information under the federal "Health Insurance Portability and Accountability Act of 1996", as amended. A carrier shall not disclose to any third party, including a covered person's employer, AND THE COVERED PERSON'S EMPLOYER SHALL NOT DISCLOSE, any information obtained from or about a covered person in connection with the covered person's participation in a wellness and prevention program that is reasonably attributable to the covered person, unless the covered person consents IN WRITING to disclosure of such information.

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

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

(III) The incentives or rewards THAT A CARRIER MAY ALLOW UNDER A HEALTH COVERAGE PLAN OR SMALL GROUP PLAN may include, but are not limited to, premium discounts or rebates; modifications to copayment, deductible, or coinsurance amounts; or a combination of these incentives or rewards.

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

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

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

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

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

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

(d) ~~A covered person or small group is not required to achieve any specific outcome in order to receive the incentive or reward for participation in a wellness and prevention program~~ ANY INCENTIVE OR REWARD FOR SATISFYING A STANDARD RELATED TO A HEALTH RISK FACTOR IS MADE IN COMPLIANCE WITH THIS SECTION, THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", AS AMENDED, AND THE FEDERAL REGULATIONS IMPLEMENTING SUCH ACT; and

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

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

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

(III) AN INCENTIVE MAY BE IN THE FORM OF A DISCOUNT OR REBATE OF A

PREMIUM OR CONTRIBUTION, A WAIVER OF ALL OR PART OF A COST-SHARING MECHANISM, INCLUDING, BUT NOT LIMITED TO, DEDUCTIBLES, COPAYMENTS, OR COINSURANCE, THE ABSENCE OF A SURCHARGE, OR THE VALUE OF A BENEFIT THAT WOULD OTHERWISE NOT BE PROVIDED UNDER THE HEALTH COVERAGE OR SMALL GROUP PLAN.

(b) THE WELLNESS AND PREVENTION PROGRAM:

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) (a) The division of insurance shall determine which carriers are offering wellness and prevention programs in Colorado and collect the following information from those carriers:

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

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

(III) The total number of small groups in the small group market participating in programs offered by the carrier, ~~and~~ SPECIFYING THE NUMBER OF EACH OF THE FOLLOWING SMALL GROUPS PARTICIPATING IN SUCH PROGRAMS:

(A) BUSINESS GROUPS OF ONE;

(B) SMALL GROUPS WITH AT LEAST TWO EMPLOYEES AND FEWER THAN ELEVEN EMPLOYEES;

(C) SMALL GROUPS WITH AT LEAST ELEVEN EMPLOYEES AND FEWER THAN TWENTY-SIX EMPLOYEES;

(D) SMALL GROUPS WITH AT LEAST TWENTY-SIX EMPLOYEES AND FEWER THAN FIFTY-ONE EMPLOYEES;

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

(V) ANY INFORMATION, INCLUDING SOCIOECONOMIC INFORMATION, AS REQUIRED BY THE COMMISSIONER PURSUANT TO SECTION 10-16-107 TO ENSURE THAT RATES FILED IN CONJUNCTION WITH THE PROGRAMS ARE NOT EXCESSIVE, INADEQUATE, OR UNFAIRLY DISCRIMINATORY;

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

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

(b) The division shall determine the percentage of carriers issuing individual health coverage plans or small group plans in the state that offer wellness and prevention programs and shall provide that information and the information collected pursuant to paragraph (a) of this subsection (5) to the ~~health care task force created in section 10-16-221~~ HEALTH AND HUMAN SERVICES COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES, THE BUSINESS, LABOR, AND TECHNOLOGY COMMITTEE OF THE SENATE, AND THE BUSINESS AFFAIRS AND LABOR COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR THEIR SUCCESSOR COMMITTEES, BY JANUARY 1, 2012, AND BY EACH JANUARY 1 THEREAFTER UNTIL JANUARY 1, 2015. THE DIVISION SHALL ALSO MAKE THE INFORMATION AVAILABLE TO THE PUBLIC BY THAT DATE.

(6.5) NOTHING IN THIS SECTION MODIFIES RATE REGULATION OF HEALTH COVERAGE PLANS PURSUANT TO THIS ARTICLE, INCLUDING THE APPLICABILITY OF MODIFIED COMMUNITY RATING TO SUCH PLANS.

(6.7) THE COMMISSIONER SHALL MONITOR AND ENFORCE THE REQUIREMENTS OF THIS SECTION AND, IN CONNECTION WITH SUCH MONITORING AND ENFORCEMENT, MAY TAKE ANY MARKET CONDUCT ACTION AUTHORIZED BY PART 2 OF ARTICLE 1 OF THIS TITLE THAT THE COMMISSIONER DEEMS NECESSARY TO ENFORCE THE REQUIREMENTS OF THIS SECTION. AS USED IN THIS SUBSECTION (6.7), "MONITOR AND ENFORCE" INCLUDES AT LEAST THE FOLLOWING:

(a) THE REVIEW OF CARRIER AND PRODUCER MARKETING PRACTICES RELATED TO WELLNESS AND PREVENTION PROGRAMS; AND

(b) AN ASSESSMENT OF THE TYPES OF INDIVIDUAL HEALTH COVERAGE PLANS AND SMALL GROUP PLANS CONTAINING WELLNESS AND PREVENTION PROGRAMS THAT HAVE BEEN SOLD, INDICATING THE PERCENTAGE OF SUCH PLANS THAT ARE HIGH DEDUCTIBLE, HIGH COST-SHARING PLANS.

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

SECTION 2. 10-16-136 (3), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

10-16-136. Wellness and prevention programs - individual and small group health coverage plans - voluntary participation - incentives or rewards - definitions - legislative declaration. (3) A carrier offering incentives or rewards pursuant to this section shall ensure that:

(f) THE CARRIER DOES NOT USE WELLNESS AND PREVENTION PROGRAMS, OR INCENTIVES OR REWARDS UNDER SUCH PROGRAMS, TO INCREASE RATES OR PREMIUMS FOR ANY INDIVIDUALS OR SMALL GROUPS COVERED BY THE CARRIER'S PLANS.

SECTION 3. 10-16-136 (7), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

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

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

SECTION 4. 10-16-107 (6), Colorado Revised Statutes, is amended to read:

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

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

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

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

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

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

(C) SATISFACTION OF A STANDARD RELATED TO A HEALTH RISK FACTOR PURSUANT TO A WELLNESS AND PREVENTION PROGRAM AUTHORIZED IN SECTION

10-16-136.

SECTION 5. 10-8-514.5, Colorado Revised Statutes, is amended to read:

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

SECTION 6. Specified effective date - applicability. This act shall take effect July 1, 2010, and shall apply to health coverage plans and small group plans issued, delivered, or renewed on or after said date.

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

Approved: May 26, 2010