

## CHAPTER 188

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**INSURANCE**


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**HOUSE BILL 09-1012**

BY REPRESENTATIVE(S) Rice and Stephens, Curry, Massey, Swalm, Apuan, Bradford, Court, Fischer, Frangas, Gardner B., Gardner C., Hullinghorst, Kerr A., Labuda, Lambert, Loper, May, McCann, McGihon, Nikkel, Pace, Priola, Riesberg, Roberts, Ryden, Schafer S., Solano, Summers, Todd, Carroll T., Gerou, Kefalas, Liston, Scanlan, Tipton, Vigil;  
 also SENATOR(S) Mitchell and Newell, Boyd, Brophy, Gibbs, Groff, Heath, Kester, King K., Kopp, Lundberg, Morse, Penry, Sandoval, Schultheis, Schwartz, Shaffer B., Spence, Tapia, White, Williams.

**AN ACT**

**CONCERNING INCENTIVES PROVIDED BY HEALTH INSURANCE CARRIERS TO ENCOURAGE VOLUNTARY PARTICIPATION IN PROGRAMS TO PROMOTE HEALTH.**

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

**SECTION 1.** Part 1 of article 16 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

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

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

AND PREVENT OR REDUCE THE IMPACTS OF DISEASE; AND

(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 WELLNESS AND PREVENTION PROGRAMS.

(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, 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 TO DISCLOSURE OF SUCH INFORMATION.

(b) 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. THE INCENTIVES OR REWARDS 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. AN INCENTIVE OR REWARD OFFERED BY A CARRIER FOR PARTICIPATION IN WELLNESS AND PREVENTION PROGRAMS SHALL BE REASONABLY RELATED TO THE PROGRAM AND TIED TO PARTICIPATION IN THE PROGRAM RATHER THAN PARTICULAR OUTCOMES OR RESULTS FROM SUCH PARTICIPATION.

(c) A CARRIER SHALL NOT OFFER OR SELL IN THIS STATE AN INDIVIDUAL OR GROUP HEALTH COVERAGE PLAN THAT INCLUDES A WELLNESS AND PREVENTION PROGRAM, OR AN INCENTIVE OR REWARD FOR PARTICIPATION IN A WELLNESS AND PREVENTION PROGRAM, THAT VIOLATES THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", AS AMENDED, AND THE FEDERAL REGULATIONS IMPLEMENTING SUCH ACT.

(d) ANY WELLNESS AND PREVENTION PROGRAM, OR AN INCENTIVE OR REWARD FOR PARTICIPATION IN SUCH PROGRAM, OFFERED BY A CARRIER PURSUANT TO THIS SECTION SHALL COMPLY WITH THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", AS AMENDED, 42 U.S.C. SEC. 12101 ET SEQ., AND PARTS 3 TO 8 OF ARTICLE 34 OF TITLE 24, C.R.S.

(3) A CARRIER OFFERING INCENTIVES OR REWARDS PURSUANT TO THIS SECTION SHALL ENSURE THAT:

(a) PARTICIPATION IN A WELLNESS AND PREVENTION PROGRAM IS NOT A CONDITION OF COVERAGE UNDER THE HEALTH COVERAGE PLAN OR SMALL GROUP PLAN;

(b) INCENTIVES OR REWARDS ARE UNIFORMLY APPLIED BASED ON THE WELLNESS AND PREVENTION PROGRAM, AND NOT BASED ON THE SIZE OR COMPOSITION OF THE SMALL GROUP PARTICIPATING IN THE PROGRAM, AND THAT THERE IS A REASONABLE JUSTIFICATION FOR THE AMOUNT, FREQUENCY, AND NATURE OF THE INCENTIVES OR REWARDS;

(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;

(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; AND

(e) THE CARRIER DOES NOT MARKET THE WELLNESS AND PREVENTION PROGRAM IN A MANNER THAT REASONABLY COULD BE CONSTRUED AS PROVIDING AN INCENTIVE OR REWARD PRIMARILY FOR THE PURPOSE OF INDUCING INDIVIDUALS OR SMALL GROUPS TO PURCHASE THE CARRIER'S HEALTH COVERAGE PLAN.

(4) NOTHING IN THIS SECTION SHALL PROHIBIT A CARRIER FROM OFFERING INCENTIVES OR REWARDS TO COVERED PERSONS FOR ADHERENCE TO PROGRAMS OF HEALTH PROMOTION AND DISEASE PREVENTION IF OTHERWISE ALLOWED BY STATE OR FEDERAL LAW.

(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

(IV) THE NUMBER OF INDIVIDUALS INSURED THROUGH AN INDIVIDUAL HEALTH COVERAGE PLAN THAT ARE PARTICIPATING IN PROGRAMS OFFERED BY THE CARRIER.

(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.

(6) A SMALL EMPLOYER THAT MAKES AVAILABLE TO ITS EMPLOYEES, THROUGH ITS SMALL GROUP PLAN, WELLNESS AND PREVENTION PROGRAMS SHALL NOT MAKE PARTICIPATION OR DISCLOSURE OF PARTICIPATION IN A WELLNESS AND PREVENTION PROGRAM A CONDITION OF EMPLOYMENT WITH THE SMALL EMPLOYER.

(7) AS USED IN THIS SECTION:

(a) "CARRIER" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 10-16-102 AND SHALL INCLUDE COVERCOLORADO, ESTABLISHED IN SECTION 10-8-504, AND ANY CARRIER OFFERING A HEALTH BENEFIT PLAN TO PARTICIPANTS IN COVERCOLORADO.

(b) "WELLNESS AND PREVENTION PROGRAM" MEANS A PROGRAM DESIGNED TO PROMOTE HEALTH OR PREVENT DISEASE AND MAY INCLUDE, WITHOUT LIMITATION, THE FOLLOWING:

(I) HEALTH SCREENINGS;

(II) MENTAL HEALTH AND SUBSTANCE ABUSE SCREENINGS AND PREVENTION;

(III) INTERNET, TELEPHONIC, LIVE COACHING, OR CONSULTATION-BASED WELLNESS PROGRAMS;

(IV) EDUCATION AND TRAINING ABOUT DIETARY HABITS;

(V) ONLINE AND IN-PERSON SEMINARS OR PODCASTS ON HEALTH AND WELLNESS TOPICS, WELLNESS HANDOUTS, A WELLNESS LIBRARY, VIDEOS, OR NEWSLETTERS, AND A WELLNESS INTRANET SITE;

(VI) WELLNESS PROGRAMS GEARED SPECIFICALLY FOR CHILDREN, TEENS, OR SPECIAL POPULATIONS;

(VII) CORPORATE HEALTH FAIRS THAT MAY COMBINE HEALTH SCREENINGS WITH EDUCATIONAL OPPORTUNITIES, INCLUDING ACCESS TO INFORMATION ON LEADING A HEALTHY LIFESTYLE AND TO NUTRITIONAL COUNSELING;

(VIII) STRESS MANAGEMENT PROGRAMS;

(IX) EMPLOYEE ASSISTANCE PROGRAMS FOR EMPLOYEES AND THEIR FAMILIES;

(X) DISEASE MANAGEMENT;

(XI) DIABETES CARE PROGRAMS;

(XII) TOBACCO CESSATION PROGRAMS;

(XIII) PRESCRIPTION DRUG OR CARRIER-APPROVED NONPRESCRIPTION DIETARY SUPPLEMENT USE THAT AIDS IN OVERALL HEALTH AND WELLNESS OR PREVENTS DISEASE;

(XIV) PATIENT-CENTERED MEDICAL HOME PROGRAMS;

(XV) NURSE-ON-CALL PROGRAMS; OR

(XVI) ON-SITE OR EXTERNAL HEALTH CLUB OR FITNESS CENTER MEMBERSHIPS OR FACILITIES.

**SECTION 2.** 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 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 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. This prohibition shall not be construed to restrict the amount that an employer may be charged for coverage under a group health benefit plan or to prevent a carrier from establishing premium discounts or rebates or modifying otherwise applicable copayments, COINSURANCE, or deductibles in return for adherence to programs of health promotion and disease prevention if otherwise allowed by STATE OR FEDERAL law OR FOR PARTICIPATION IN A WELLNESS AND PREVENTION PROGRAM PURSUANT TO SECTION 10-16-136.

**SECTION 3.** Part 5 of article 8 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION 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.

**SECTION 4. Effective date - applicability.** This act shall take effect July 1, 2009, and shall apply to health coverage plans issued or renewed on or after said date.

**SECTION 5. 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: April 25, 2009