

An Act

SENATE BILL 23-176

BY SENATOR(S) Moreno and Cutter, Buckner, Coleman, Exum, Hansen, Kolker, Marchman, Mullica, Priola, Roberts, Winter F., Fenberg;
also REPRESENTATIVE(S) deGruy Kennedy and Bradley, Amabile, Bird, Boesenecker, Brown, Dickson, Duran, Froelich, Jodeh, Kipp, Lieder, Lindsay, McCormick, Michaelson Jenet, Ricks, Sirota, Snyder, Story, Titone, Valdez, Young, McCluskie.

CONCERNING MEASURES TO IMPROVE OUTCOMES FOR INDIVIDUALS WITH AN
EATING DISORDER.

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

SECTION 1. In Colorado Revised Statutes, **add** 10-16-166 as follows:

10-16-166. Prohibition on using the body mass index or ideal body weight - medical necessity criteria - rules. (1) (a) EVERY HEALTH BENEFIT PLAN SUBJECT TO PART 2, 3, OR 4 OF THIS ARTICLE 16, EXCEPT THOSE DESCRIBED IN SECTION 10-16-102 (32)(b), SHALL NOT UTILIZE THE BODY MASS INDEX, IDEAL BODY WEIGHT, OR ANY OTHER STANDARD REQUIRING AN ACHIEVED WEIGHT WHEN DETERMINING MEDICAL NECESSITY OR THE APPROPRIATE LEVEL OF CARE FOR AN INDIVIDUAL DIAGNOSED WITH

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

AN EATING DISORDER, INCLUDING BUT NOT LIMITED TO BULIMIA NERVOSA, ATYPICAL ANOREXIA NERVOSA, BINGE-EATING DISORDER, AVOIDANT RESTRICTIVE FOOD INTAKE DISORDER, AND OTHER SPECIFIED FEEDING AND EATING DISORDERS AS DEFINED IN THE MOST RECENT EDITION OF THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS.

(b) SUBSECTION (1)(a) OF THIS SECTION DOES NOT APPLY WHEN DETERMINING MEDICAL NECESSITY OR THE APPROPRIATE LEVEL OF CARE FOR AN INDIVIDUAL DIAGNOSED WITH ANOREXIA NERVOSA, RESTRICTING SUBTYPE, OR BINGE-EATING/PURGING SUBTYPE; HOWEVER, BODY MASS INDEX, IDEAL BODY WEIGHT, OR ANY OTHER STANDARD REQUIRING AN ACHIEVED BODY WEIGHT MUST NOT BE THE DETERMINING FACTOR WHEN ASSESSING MEDICAL NECESSITY OR THE APPROPRIATE LEVEL OF CARE FOR AN INDIVIDUAL DIAGNOSED WITH ANOREXIA NERVOSA, RESTRICTING SUBTYPE, OR BINGE-EATING/PURGING SUBTYPE.

(2) THE FOLLOWING FACTORS, AT A MINIMUM, MUST BE CONSIDERED WHEN DETERMINING MEDICAL NECESSITY OR THE APPROPRIATE LEVEL OF CARE FOR AN INDIVIDUAL DIAGNOSED WITH AN EATING DISORDER:

(a) THE INDIVIDUAL'S EATING BEHAVIORS;

(b) THE INDIVIDUAL'S NEED FOR SUPERVISED MEALS AND SUPPORT INTERVENTIONS;

(c) LABORATORY RESULTS, INCLUDING BUT NOT LIMITED TO, THE INDIVIDUAL'S HEART RATE, RENAL OR CARDIOVASCULAR ACTIVITY, AND BLOOD PRESSURE;

(d) THE RECOVERY ENVIRONMENT; AND

(e) CO-OCCURRING DISORDERS THE INDIVIDUAL MAY HAVE.

(3) THE COMMISSIONER MAY PROMULGATE RULES AS NECESSARY TO IMPLEMENT AND ENFORCE THIS SECTION.

SECTION 2. In Colorado Revised Statutes, **add** 25.5-5-336 as follows:

25.5-5-336. Prohibition on using the body mass index or ideal

body weight - medical necessity criteria. (1) (a) BEGINNING JULY 1, 2023, THE STATE MEDICAL ASSISTANCE PROGRAM SHALL NOT UTILIZE THE BODY MASS INDEX, IDEAL BODY WEIGHT, OR ANY OTHER STANDARD REQUIRING AN ACHIEVED WEIGHT WHEN DETERMINING MEDICAL NECESSITY OR THE APPROPRIATE LEVEL OF CARE FOR AN INDIVIDUAL DIAGNOSED WITH AN EATING DISORDER, INCLUDING BUT NOT LIMITED TO, BULIMIA NERVOSA, ATYPICAL ANOREXIA NERVOSA, BINGE-EATING DISORDER, AVOIDANT RESTRICTIVE FOOD INTAKE DISORDER, AND OTHER SPECIFIED FEEDING AND EATING DISORDERS AS DEFINED IN THE MOST RECENT EDITION OF THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS.

(b) SUBSECTION (1)(a) OF THIS SECTION DOES NOT APPLY WHEN DETERMINING MEDICAL NECESSITY OR THE APPROPRIATE LEVEL OF CARE FOR AN INDIVIDUAL DIAGNOSED WITH ANOREXIA NERVOSA, RESTRICTING SUBTYPE; HOWEVER, BODY MASS INDEX, IDEAL BODY WEIGHT, OR ANY OTHER STANDARD REQUIRING AN ACHIEVED BODY WEIGHT MUST NOT BE THE DETERMINING FACTOR WHEN ASSESSING MEDICAL NECESSITY OR THE APPROPRIATE LEVEL OF CARE FOR AN INDIVIDUAL DIAGNOSED WITH ANOREXIA NERVOSA, RESTRICTING SUBTYPE.

(2) THE FOLLOWING FACTORS, AT A MINIMUM, MUST BE CONSIDERED WHEN DETERMINING MEDICAL NECESSITY OR THE APPROPRIATE LEVEL OF CARE FOR AN INDIVIDUAL DIAGNOSED WITH AN EATING DISORDER:

(a) THE INDIVIDUAL'S EATING BEHAVIORS;

(b) THE INDIVIDUAL'S NEED FOR SUPERVISED MEALS AND SUPPORT INTERVENTIONS;

(c) LABORATORY RESULTS, INCLUDING BUT NOT LIMITED TO, THE INDIVIDUAL'S HEART RATE, RENAL OR CARDIOVASCULAR ACTIVITY, AND BLOOD PRESSURE;

(d) THE RECOVERY ENVIRONMENT; AND

(e) CO-OCCURRING DISORDERS THE INDIVIDUAL MAY HAVE.

SECTION 3. In Colorado Revised Statutes, **add** article 26 to title 6 as follows:

ARTICLE 26
Regulation Of Dietary Supplements For Weight Loss

6-26-101. Definitions. AS USED IN THIS ARTICLE 26, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) (a) "OVER-THE-COUNTER DIET PILL" MEANS A CLASS OF DRUGS THAT ARE LABELED AND MARKETED UNDER THE "FEDERAL FOOD, DRUG, AND COSMETIC ACT", 21 U.S.C. SEC. 301 ET SEQ., FOR THE PURPOSE OF ACHIEVING WEIGHT LOSS THAT ARE LAWFULLY SOLD, TRANSFERRED, OR OTHERWISE FURNISHED WITHOUT A PRESCRIPTION.

(b) "OVER-THE-COUNTER DIET PILL" INCLUDES PRODUCTS MARKETED WITH A DRUG FACTS PANEL PURSUANT TO FEDERAL REGULATIONS THAT CONTAIN EITHER APPROVED DRUG INGREDIENTS OR INGREDIENTS DEEMED ADULTERATED PURSUANT TO 21 U.S.C. SEC. 342, OR BOTH.

(2) "RETAIL ESTABLISHMENT" MEANS ANY VENDOR THAT, IN THE REGULAR COURSE OF BUSINESS, SELLS OVER-THE-COUNTER DIET PILLS AT RETAIL DIRECTLY TO THE PUBLIC, INCLUDING BUT NOT LIMITED TO, PHARMACIES, GROCERY STORES, OTHER RETAIL STORES, AND VENDORS THAT ACCEPT ORDERS PLACED BY MAIL, TELEPHONE, ELECTRONIC MAIL, INTERNET WEBSITE, ONLINE CATALOG, OR SOFTWARE APPLICATION.

6-26-102. Over-the-counter diet pills - prohibition on selling to persons under eighteen years of age - deceptive trade practice - rules.

(1) (a) A RETAIL ESTABLISHMENT SHALL NOT SELL, TRANSFER, OR OTHERWISE FURNISH OVER-THE-COUNTER DIET PILLS TO ANY PERSON UNDER EIGHTEEN YEARS OF AGE.

(b) A RETAIL ESTABLISHMENT SHALL REQUEST VALID IDENTIFICATION FROM ANY PERSON WHO ATTEMPTS TO PURCHASE OVER-THE-COUNTER DIET PILLS IF THAT PERSON REASONABLY APPEARS TO THE RETAIL ESTABLISHMENT TO BE UNDER EIGHTEEN YEARS OF AGE.

(2) A VIOLATION OF THIS ARTICLE 26 IS A DECEPTIVE TRADE PRACTICE PURSUANT TO SECTION 6-1-105 (1)(cccc).

SECTION 4. In Colorado Revised Statutes, 6-1-105, **add** (1)(cccc)

as follows:

6-1-105. Unfair or deceptive trade practices. (1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person:

(cccc) SELLS OR OFFERS FOR SALE A PRODUCT THAT IS AGE-RESTRICTED TO A PERSON WHO DOES NOT MEET THE AGE RESTRICTION.

SECTION 5. Effective date. This act takes effect upon passage; except that section 1 of this act takes effect January 1, 2024, and section 3 of this act takes effect July 1, 2024.

SECTION 6. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.



Steve Fenberg
PRESIDENT OF
THE SENATE



Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Cindi L. Markwell
SECRETARY OF
THE SENATE



Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED Tuesday, May 30th, 2023 at 11:30am
(Date and Time)



~~Jared S. Polis~~

~~GOVERNOR OF THE STATE OF COLORADO~~

Dianne Primavera
Lt. Governor, acting on behalf of the
state while Governor Polis is absent from
the state