

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 23-0473.01 Shelby Ross x4510

SENATE BILL 23-176

SENATE SPONSORSHIP

Moreno and Cutter, Buckner, Coleman, Exum, Fenberg, Hansen, Kolker, Marchman, Mullica, Priola, Roberts, Winter F.

HOUSE SPONSORSHIP

deGruy Kennedy and Bradley, Amabile, Bird, Boesenecker, Brown, Dickson, Duran, Froelich, Jodeh, Kipp, Lieder, Lindsay, McCluskie, McCormick, Michaelson Jenet, Ricks, Sirota, Snyder, Story, Titone, Valdez, Young

Senate Committees

Health & Human Services
Appropriations

House Committees

Public & Behavioral Health & Human Services

A BILL FOR AN ACT

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

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://leg.colorado.gov>.)

The bill prohibits certain health benefit plans or the state medical assistance program from utilizing the body mass index, ideal body weight, or any other standard requiring an achieved weight when determining medical necessity criteria or appropriate level of care for an individual with a diagnosed eating disorder.

The bill prohibits a retail establishment from selling, transferring,

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

HOUSE
3rd Reading Unamended
May 7, 2023

HOUSE
Amended 2nd Reading
May 6, 2023

SENATE
Amended 3rd Reading
April 25, 2023

SENATE
Amended 2nd Reading
April 24, 2023

or otherwise furnishing dietary supplements for weight loss or over-the-counter diet pills to any individual under 18 years of age without a prescription.

The bill requires the behavioral health administration (BHA) to promulgate rules concerning forced feeding tubes for individuals with an eating disorder.

No later than July 1, 2024, the bill requires the BHA to require all eating disorder treatment and recovery facilities to hold an appropriate designation based on the level of care the facility provides.

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

2 SECTION 1. In Colorado Revised Statutes, add 10-16-158
3 as follows:

4 10-16-158. Prohibition on using the body mass index or ideal
5 body weight - medical necessity criteria - rules. (1) (a) EVERY HEALTH
6 BENEFIT PLAN SUBJECT TO PART 2, 3, OR 4 OF THIS ARTICLE 16, EXCEPT
7 THOSE DESCRIBED IN SECTION 10-16-102 (32)(b), SHALL NOT UTILIZE THE
8 BODY MASS INDEX, IDEAL BODY WEIGHT, OR ANY OTHER STANDARD
9 REQUIRING AN ACHIEVED WEIGHT WHEN DETERMINING MEDICAL
10 NECESSITY OR THE APPROPRIATE LEVEL OF CARE FOR AN INDIVIDUAL
11 DIAGNOSED WITH AN EATING DISORDER, INCLUDING BUT NOT LIMITED TO
12 BULIMIA NERVOSA, ATYPICAL ANOREXIA NERVOSA, BINGE-EATING
13 DISORDER, AVOIDANT RESTRICTIVE FOOD INTAKE DISORDER, AND OTHER
14 SPECIFIED FEEDING AND EATING DISORDERS AS DEFINED IN THE MOST
15 RECENT EDITION OF THE DIAGNOSTIC AND STATISTICAL MANUAL OF
16 MENTAL DISORDERS.

17 (b) SUBSECTION (1)(a) OF THIS SECTION DOES NOT APPLY WHEN
18 DETERMINING MEDICAL NECESSITY OR THE APPROPRIATE LEVEL OF CARE
19 FOR AN INDIVIDUAL DIAGNOSED WITH ANOREXIA NERVOSA, RESTRICTING
20 SUBTYPE, OR BINGE-EATING/PURGING SUBTYPE; HOWEVER, BODY MASS

1 INDEX, IDEAL BODY WEIGHT, OR ANY OTHER STANDARD REQUIRING AN
2 ACHIEVED BODY WEIGHT MUST NOT BE THE DETERMINING FACTOR WHEN
3 ASSESSING MEDICAL NECESSITY OR THE APPROPRIATE LEVEL OF CARE FOR
4 AN INDIVIDUAL DIAGNOSED WITH ANOREXIA NERVOSA, RESTRICTING
5 SUBTYPE, OR BINGE-EATING/PURGING SUBTYPE.

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

10 (a) THE INDIVIDUAL'S EATING BEHAVIORS;

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

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

16 (d) THE RECOVERY ENVIRONMENT; AND

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

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

20 **SECTION 2.** In Colorado Revised Statutes, **add 25.5-5-334** as
21 follows:

22 **25.5-5-334. Prohibition on using the body mass index or ideal**
23 **body weight - medical necessity criteria.** (1) (a) BEGINNING JULY 1,
24 2023, THE STATE MEDICAL ASSISTANCE PROGRAM SHALL NOT UTILIZE THE
25 BODY MASS INDEX, IDEAL BODY WEIGHT, OR ANY OTHER STANDARD
26 REQUIRING AN ACHIEVED WEIGHT WHEN DETERMINING MEDICAL
27 NECESSITY OR THE APPROPRIATE LEVEL OF CARE FOR AN INDIVIDUAL

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

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

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

19 (a) THE INDIVIDUAL'S EATING BEHAVIORS;

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

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

25 (d) THE RECOVERY ENVIRONMENT; AND

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

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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:

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(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

1 OTHERWISE FURNISH OVER-THE-COUNTER DIET PILLS TO ANY PERSON
2 UNDER EIGHTEEN YEARS OF AGE.

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

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

9 **SECTION 4.** In Colorado Revised Statutes, 6-1-105, **add**
10 (1)(uuu) as follows:

11 **6-1-105. Unfair or deceptive trade practices.** (1) A person
12 engages in a deceptive trade practice when, in the course of the person's
13 business, vocation, or occupation, the person:

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

17 =====

18 **SECTION 5. Effective date.** This act takes effect upon passage;
19 except that section 1 of this act takes effect January 1, 2024, and section
20 3 of this act takes effect July 1, 2024.

21 **SECTION 6. 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, or safety.