

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

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

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,

Senate Committees

Health & Human Services
Appropriations

House Committees

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.

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; HOWEVER, BODY MASS INDEX, IDEAL BODY WEIGHT, OR ANY

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

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

9 (a) THE INDIVIDUAL'S EATING BEHAVIORS;

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

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

15 (d) THE RECOVERY ENVIRONMENT; AND

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

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

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

21 **25.5-5-334. Prohibition on using the body mass index or ideal**
22 **body weight - medical necessity criteria.** (1) (a) **BEGINNING JULY 1,**
23 **2023, THE STATE MEDICAL ASSISTANCE PROGRAM SHALL NOT UTILIZE THE**
24 **BODY MASS INDEX, IDEAL BODY WEIGHT, OR ANY OTHER STANDARD**
25 **REQUIRING AN ACHIEVED WEIGHT WHEN DETERMINING MEDICAL**
26 **NECESSITY OR THE APPROPRIATE LEVEL OF CARE FOR AN INDIVIDUAL**
27 **DIAGNOSED WITH AN EATING DISORDER, INCLUDING BUT NOT LIMITED TO,**

1 BULIMIA NERVOSA, ATYPICAL ANOREXIA NERVOSA, BINGE-EATING
2 DISORDER, AVOIDANT RESTRICTIVE FOOD INTAKE DISORDER, AND OTHER
3 SPECIFIED FEEDING AND EATING DISORDERS AS DEFINED IN THE MOST
4 RECENT EDITION OF THE DIAGNOSTIC AND STATISTICAL MANUAL OF
5 MENTAL DISORDERS.

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

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

- 18 (a) THE INDIVIDUAL'S EATING BEHAVIORS;
- 19 (b) THE INDIVIDUAL'S NEED FOR SUPERVISED MEALS AND SUPPORT
20 INTERVENTIONS;
- 21 (c) LABORATORY RESULTS, INCLUDING BUT NOT LIMITED TO, THE
22 INDIVIDUAL'S HEART RATE, RENAL OR CARDIOVASCULAR ACTIVITY, AND
23 BLOOD PRESSURE;
- 24 (d) THE RECOVERY ENVIRONMENT; AND
- 25 (e) Co-occurring disorders the individual may have.

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27 **SECTION 3.** In Colorado Revised Statutes, **add** part 7 to article

1 280 of title 12 as follows:

2 PART 7
3 REGULATION OF DIETARY SUPPLEMENTS
4 FOR WEIGHT LOSS

5 12-280-701. Definitions. AS USED IN THIS PART 7, UNLESS THE
6 CONTEXT OTHERWISE REQUIRES:

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

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

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

24 12-280-702. Over-the-counter diet pills - prohibition on selling
25 to persons under eighteen years of age - _____ rules. (1) (a) A RETAIL
26 ESTABLISHMENT SHALL NOT SELL, TRANSFER, OR OTHERWISE FURNISH

1 OVER-THE-COUNTER DIET PILLS TO ANY PERSON UNDER EIGHTEEN YEARS
2 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.

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8 **SECTION 4. Effective date.** This act takes effect upon passage;
9 except that section 1 of this act takes effect January 1, 2024, and section
10 3 of this act takes effect July 1, 2024.

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