

Have a good weekend
First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 23-0473.01 Shelby Ross x4510

SENATE BILL 23-176

SENATE SPONSORSHIP

Moreno and Cutter,

HOUSE SPONSORSHIP

(None),

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.

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

19 **25.5-5-334. Prohibition on using the body mass index or ideal**
20 **body weight - medical necessity criteria. (1) (a) BEGINNING JULY 1,**
21 **2023, THE STATE MEDICAL ASSISTANCE PROGRAM SHALL NOT UTILIZE THE**
22 **BODY MASS INDEX, IDEAL BODY WEIGHT, OR ANY OTHER STANDARD**
23 **REQUIRING AN ACHIEVED WEIGHT WHEN DETERMINING MEDICAL**
24 **NECESSITY OR THE APPROPRIATE LEVEL OF CARE FOR AN INDIVIDUAL**
25 **DIAGNOSED WITH AN EATING DISORDER, INCLUDING BUT NOT LIMITED TO,**
26 **BULIMIA NERVOSA, ATYPICAL ANOREXIA NERVOSA, BINGE-EATING**
27 **DISORDER, AVOIDANT RESTRICTIVE FOOD INTAKE DISORDER, AND OTHER**

1 SPECIFIED FEEDING AND EATING DISORDERS AS DEFINED IN THE MOST
2 RECENT EDITION OF THE DIAGNOSTIC AND STATISTICAL MANUAL OF
3 MENTAL DISORDERS.

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

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

- 16 (a) THE INDIVIDUAL'S EATING BEHAVIORS;
- 17 (b) THE INDIVIDUAL'S NEED FOR SUPERVISED MEALS AND SUPPORT
18 INTERVENTIONS;
- 19 (c) LABORATORY RESULTS, INCLUDING BUT NOT LIMITED TO, THE
20 INDIVIDUAL'S HEART RATE, RENAL OR CARDIOVASCULAR ACTIVITY, AND
21 BLOOD PRESSURE;
- 22 (d) THE RECOVERY ENVIRONMENT; AND
- 23 (e) CO-OCCURRING DISORDERS THE INDIVIDUAL MAY HAVE.

24 **SECTION 3.** In Colorado Revised Statutes, **add** article 8 to title
25 44 as follows:

26 **ARTICLE 8**
27 **Regulation of Over-the-Counter Diet Pills**

1 **44-8-101. Definitions.** AS USED IN THIS ARTICLE 8, UNLESS THE
2 CONTEXT OTHERWISE REQUIRES:

3
4 (1) (a) "OVER-THE-COUNTER DIET PILL" MEANS A CLASS OF DRUGS
5 THAT ARE LABELED AND MARKETED UNDER THE "FEDERAL FOOD, DRUG,
6 AND COSMETIC ACT", 21 U.S.C. SEC. 301 ET SEQ., FOR THE PURPOSE OF
7 ACHIEVING WEIGHT LOSS THAT ARE LAWFULLY SOLD, TRANSFERRED, OR
8 OTHERWISE FURNISHED WITHOUT A PRESCRIPTION.

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

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

20 **44-8-102. Over-the-counter diet pills - prohibition on selling**
21 **to persons under eighteen years of age - rules.** (1) (a) A RETAIL
22 ESTABLISHMENT SHALL NOT SELL, TRANSFER, OR OTHERWISE FURNISH
23 OVER-THE-COUNTER DIET PILLS TO ANY PERSON UNDER EIGHTEEN YEARS
24 OF AGE.

25 (b) A RETAIL ESTABLISHMENT SHALL REQUEST VALID
26 IDENTIFICATION FROM ANY PERSON WHO ATTEMPTS TO PURCHASE
27 OVER-THE-COUNTER DIET PILLS IF THAT PERSON REASONABLY APPEARS TO

1 THE RETAIL ESTABLISHMENT TO BE UNDER EIGHTEEN YEARS OF AGE.

2 (2) THE DEPARTMENT, IN COLLABORATION WITH THE BEHAVIORAL
3 HEALTH ADMINISTRATION AND OTHER RELEVANT STAKEHOLDERS, MAY
4 PROMULGATE RULES AS NECESSARY TO IMPLEMENT THIS SECTION,
5 INCLUDING DETERMINING WHICH OVER-THE-COUNTER DIET PILLS ARE
6 SUBJECT TO THE REQUIREMENTS OF THIS ARTICLE 8, INCLUDING, BUT NOT
7 LIMITED TO, LAXATIVES THAT INCLUDE AN ACTIVE INGREDIENT THAT ACTS
8 AS A STIMULANT, SUCH AS SENNOSIDES OR BISACODYL.

9

10 **SECTION 4.** In Colorado Revised Statutes, **amend** 27-65-128 as
11 follows:

12 **27-65-128. Administration - rules.** The BHA shall promulgate
13 any rules and develop and distribute any applications or forms necessary
14 to consistently enforce the provisions of this article 65, INCLUDING RULES
15 CONCERNING INVOLUNTARY TUBE FEEDING FOR INDIVIDUALS WITH AN
16 EATING DISORDER. PRIOR TO PROMULGATING RULES, THE BHA SHALL
17 REVIEW CURRENT REGULATIONS AND DETERMINE HOW ADDITIONAL
18 REGULATIONS FIT INTO THE EXISTING INFRASTRUCTURE. The BHA shall
19 proactively train providers, facilities, counties, judges, magistrates,
20 intervening professionals, and certified peace officers on the procedures
21 under this article 65, which training must include an understanding of the
22 criteria for invoking an emergency mental health hold pursuant to section
23 27-65-106, the definition of "gravely disabled" and how a person who is
24 gravely disabled may present physically and psychiatrically, and
25 suggested templates and resources to be used by facilities to meet the
26 requirements of section 27-65-106 (8)(a)(III) and (8)(a)(VII).

27 **SECTION 5.** In Colorado Revised Statutes, **add** article 65.5 to

1 title 27 as follows:

2 **ARTICLE 65.5**

3 **Eating Disorder Treatment and Recovery Programs**

4 **27-65.5-101. Eating disorder and treatment recovery**
5 **programs - rules.** (1) NO LATER THAN JULY 1, 2024, THE BEHAVIORAL
6 HEALTH ADMINISTRATION, ESTABLISHED IN SECTION 27-60-203, SHALL
7 REQUIRE ALL EATING DISORDER TREATMENT AND RECOVERY FACILITIES TO
8 HOLD AN APPROPRIATE DESIGNATION BASED ON THE LEVEL OF CARE THE
9 FACILITY PROVIDES, INCLUDING FACILITIES THAT OFFER INTENSIVE
10 OUTPATIENT TREATMENT, PARTIAL HOSPITALIZATION, RESIDENTIAL
11 PROGRAMS, AND INPATIENT PROGRAMS. LICENSED CLINICIANS WHO ARE
12 NOT FACILITY-BASED AND OFFER BEHAVIORAL HEALTH THERAPY TO
13 INDIVIDUALS WITH AN EATING DISORDER ON AN OUTPATIENT BASIS ARE
14 NOT REQUIRED TO HOLD A DESIGNATION.

15 (2) THE STATE BOARD OF HUMAN SERVICES SHALL PROMULGATE
16 RULES THAT ADDRESS:

17 (a) ADEQUATE PRIVACY DURING ANY REQUIRED MEDICAL
18 EXAMINATION, WHICH MUST INCLUDE:

19 (I) THE ABILITY FOR THE CLIENT TO REQUEST PRIVATE MEDICAL
20 EXAMINATIONS, INCLUDING WEIGH-INS AND MONITORING OF VITAL SIGNS,
21 AND NOT BE VISIBLE TO OTHER CLIENTS;

22 (II) PROHIBITING THAT A CLIENT PERFORM PHYSICAL EXERCISE OR
23 REMOVE ALL CLOTHING DURING A WEIGH-IN UNLESS THE CLIENT IS
24 PROVIDED ADEQUATE CLOTHING THAT SUFFICIENTLY COVERS THE CLIENT'S
25 PRIVATE BODY PARTS;

26 (III) POTENTIAL ALTERNATIVE INTERVENTIONS, WHEN MEDICALLY
27 NECESSARY, WHICH MUST BE OPENLY DISCUSSED WITH THE CLIENT, TO

1 MINIMIZE THE RISK OF A CLIENT INFLUENCING ASSESSMENTS OF VITAL
2 SIGNS OR LABS; AND

3 (IV) PROVIDING CLIENTS, INCLUDING GENDER NONCONFORMING
4 AND TRANSGENDER CLIENTS, WITH THE SAME RESTROOM POLICIES
5 PROVIDED FOR CISGENDER CLIENTS, WHICH INCLUDES, BUT IS NOT LIMITED
6 TO, SET TIMES FOR RESTROOM ACCESS FOR GENDER NONCONFORMING AND
7 TRANSGENDER CLIENTS, AND PROHIBITING THAT A CLIENT SHARE A SINGLE
8 STALL WITH A STAFF MEMBER OR ANOTHER CLIENT.

9 (b) RESPECT FOR AND ACCOMMODATION OF A CLIENT'S SEXUAL
10 ORIENTATION, GENDER IDENTITY, RELIGION, AND PERSONAL DIETARY
11 ETHICS BY THE PROGRAM AND DIETARY STAFF;

12 (c) THE PRESENCE OF TRAINED STAFF DURING WEIGH-INS;
13 BATHROOM TIME; VITAL SIGN CHECKS; AND BEHAVIORAL HEALTH
14 TREATMENT AND GROUP THERAPY. IF STAFF PERFORM MULTIPLE
15 FUNCTIONS AT A TREATMENT FACILITY, THE RULES MUST ENSURE THE
16 THERAPEUTIC RELATIONSHIP BETWEEN STAFF AND THE CLIENT IS
17 PRESERVED AND PRIORITIZED. IF A CLIENT REQUESTS A STAFF MEMBER OF
18 A SPECIFIC GENDER TO MONITOR THE CLIENT'S BATHROOM TIME, PHYSICAL
19 EXAMS, WEIGH-INS, PLACEMENT OF FEEDING TUBES, OR ANY OTHER
20 INVOLUNTARY FEEDING PROCESS, THE FACILITY SHALL MAKE EVERY
21 POSSIBLE ACCOMMODATION TO MEET THE CLIENT'S REQUEST.

22 (d) THE USE OF RESTRAINTS AND RESTRICTION OF A CLIENT'S
23 ALLOWED BODILY MOVEMENT. THE RULES MUST ENSURE CLIENTS ARE NOT
24 INAPPROPRIATELY SECLUDED OR RESTRAINED AND THAT RESTRICTION OF
25 MOVEMENT IS NEVER USED AS A FORM OF PUNISHMENT.

26 (e) THE USE OF BED-BASED OR ROOM-BASED CARE, ENSURING
27 THESE PRACTICES ARE USED AS A LAST RESORT AND THAT STAFF ARE

1 MEANINGFULLY ENGAGING CLIENTS TO AVOID THESE RESTRICTIVE
2 MEASURES. THE FACILITY SHALL ENSURE CLIENTS RECEIVING BED-BASED
3 CARE RECEIVE COMPARABLE ACCESS TO PROGRAMMING AND THERAPY
4 SERVICES AS OTHER CLIENTS IN THE FACILITY.

5 (f) PHYSICAL ACTIVITY LIMITATIONS THAT ARE DISCUSSED OPENLY
6 WITH THE CLIENT AND ARE BASED ON MEDICAL STABILITY, THE CLIENT'S
7 ABILITY TO MANAGE ACTIVITY URGES, AND THE NUTRITION NECESSARY TO
8 SAFELY SUPPORT PHYSICAL ACTIVITY;

9 (g) A REQUIREMENT THAT AN EATING DISORDER TREATMENT AND
10 RECOVERY FACILITY IMPLEMENT A TREATMENT FRAMEWORK IN
11 ACCORDANCE WITH RECOGNIZED PRINCIPLES OF TRAUMA-INFORMED
12 APPROACHES AND TRAUMA-INFORMED INTERVENTIONS;

13 (h) THE MINIMUM RIGHTS EACH PATIENT IS ENTITLED TO AT THE
14 TREATMENT FACILITY, THE REQUIREMENT THAT THE PATIENT'S RIGHTS BE
15 PUBLICLY POSTED AND INDIVIDUALLY FURNISHED TO EACH PATIENT, AND
16 THE FORMAL GRIEVANCE PROCESS FOR A PATIENT TO FILE A COMPLAINT
17 AGAINST THE TREATMENT FACILITY THROUGH THE BEHAVIORAL HEALTH
18 ADMINISTRATION FOR A VIOLATION OF THE PATIENT'S RIGHTS; ==

19 (i) THE REQUIREMENT FOR THE TREATMENT FACILITY TO HAVE A
20 FORMAL DISCHARGE POLICY THAT IS PROVIDED TO CLIENTS AT THE TIME
21 OF ADMISSION AND REVIEWED REGULARLY DURING TREATMENT PLANNING
22 SESSIONS, AND THAT UPON DISCHARGE, FOLLOW-UP SERVICES WILL BE
23 OFFERED AS CLINICALLY INDICATED; AND

24 (j) A REQUIREMENT THAT CLIENTS RECEIVE ADEQUATE TIME FOR
25 BATHING AND OTHER HYGIENE CARE DAILY.

26 **SECTION 6. Effective date.** This act takes effect upon passage;
27 except that section 1 of this act takes effect January 1, 2024, and section

1 3 of this act takes effect July 1, 2024.

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