

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

ENGROSSED

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

LLS NO. 17-0503.01 Christy Chase x2008

SENATE BILL 17-088

SENATE SPONSORSHIP

Holbert and Williams A., Kefalas, Priola, Tate

HOUSE SPONSORSHIP

Hooton and Van Winkle, Landgraf, Rankin, Buckner, Liston, McKean, Melton, Nordberg

Senate Committees

Business, Labor, & Technology
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE CRITERIA USED BY A HEALTH INSURER TO SELECT**
102 **HEALTH CARE PROVIDERS TO PARTICIPATE IN THE INSURER'S**
103 **NETWORK OF PROVIDERS, AND, IN CONNECTION THEREWITH,**
104 **MAKING AN APPROPRIATION.**

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 requires a health insurer (carrier) to develop, use, and disclose to participating and prospective health care providers the standards the carrier uses for:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
March 10, 2017

- ! Selecting participating providers for its network of providers;
- ! Tiering providers within the network; and
- ! Placing participating providers in a narrow or tiered provider network.

If a carrier markets a network as having quality or value, the carrier must include in the selection, narrowing, and tiering standards a quality component that:

- ! Equals or exceeds the weight of the other components of the standards; and
- ! Is based on specialty-appropriate, nationally recognized, evidence-based medical guidelines or nationally recognized, consensus-based guidelines.

A carrier must disclose its standards and any quality criteria to the commissioner of insurance for review and must make the standards available to providers and the public.

At least 45 days before implementing a decision to terminate, deny, restrict, limit, or otherwise condition a provider's participation in one or more provider networks, a carrier must notify the affected provider in writing and inform the provider of the right to request that the carrier reconsider its decision. The bill requires the carrier to develop procedures for providers to request reconsideration and sets forth minimum requirements for, components of, and deadlines for the procedures.

At least annually, and within 30 days after adding or removing a network plan or product, a carrier must provide to providers participating in at least one of its networks a complete list of all network plans and products it offers to consumers, indicating the participating provider's status within each network plan or product.

A carrier that violates a requirement of the bill engages in an unfair or deceptive act or practice in the business of insurance and is subject to penalties and damages authorized by law.

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

2 **SECTION 1. In Colorado Revised Statutes, add 10-16-705.5 as**
 3 **follows:**

4 **10-16-705.5. Participating provider networks - definition -**
 5 **selection standards - informal reconsideration - enforcement -**
 6 **legislative declaration. (1) THE GENERAL ASSEMBLY FINDS AND**
 7 **DECLARES THAT:**

1 (a) CARRIERS CREATE NETWORKS OF PROVIDERS THAT ENSURE
2 CONSUMERS HAVE ACCESS TO AN ADEQUATE NUMBER OF PROVIDERS TO
3 MEET THEIR NEEDS;

4 (b) IN THE CURRENT MARKETPLACE, CARRIERS OFFER CONSUMERS
5 A MULTITUDE OF PLAN OPTIONS, SOME OF WHICH INCLUDE A LIMITED
6 PROVIDER NETWORK THAT MAY RESULT IN A SMALLER NUMBER OF
7 PARTICIPATING PROVIDERS FROM WHICH TO CHOOSE;

8 (c) LIMITED PROVIDER NETWORKS ALLOW CARRIERS AND
9 PROVIDERS TO WORK TOGETHER TO IMPROVE THE QUALITY OF CARE AND
10 CONTROL THE ASSOCIATED COSTS ON BEHALF OF CONSUMERS;

11 (d) TRANSPARENCY IN THE MARKET PROVIDES CONSUMERS,
12 PAYERS, AND PROVIDERS WITH INFORMATION NECESSARY TO MAKE
13 INFORMED DECISIONS ABOUT HEALTH CARE CHOICES; AND

14 (e) TO ENSURE THAT CONSUMERS HAVE SUFFICIENT ACCESS TO
15 CARE AND APPROPRIATE, TRANSPARENT INFORMATION TO MAKE DECISIONS
16 RELATED TO THEIR HEALTH CARE, CARRIERS SHOULD:

17 (I) DISCLOSE THE STANDARDS USED TO CONSTRUCT THEIR
18 PARTICIPATING PROVIDER NETWORKS TO THE COMMISSIONER, PROVIDERS,
19 AND CONSUMERS; AND

20 (II) PROVIDE A PROCESS FOR EXISTING PARTICIPATING PROVIDERS
21 TO SEEK RECONSIDERATION OF A CARRIER'S DECISION TO CHANGE
22 PARTICIPATION IN A CARRIER'S NETWORK, INCLUDING TIERING OF A
23 NETWORK.

24 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
25 REQUIRES:

26 (a) "HIGH-RISK POPULATION" MEANS A POPULATION PRESENTING
27 A RISK OF HIGHER-THAN-AVERAGE NUMBERS OF CLAIMS, LOSSES, OR

1 HEALTH CARE UTILIZATION RATES.

2 (b) "TIERED NETWORK" MEANS A NETWORK THAT IDENTIFIES AND
3 ASSIGNS SOME OR ALL TYPES OF PROVIDERS AND FACILITIES INTO SPECIFIC
4 GROUPS TO WHICH DIFFERENT PROVIDER REIMBURSEMENT, COVERED
5 PERSON COST-SHARING, OR PROVIDER ACCESS REQUIREMENTS, OR ANY
6 COMBINATION OF REIMBURSEMENT, COST-SHARING, AND ACCESS
7 REQUIREMENTS, APPLY FOR THE SAME SERVICE.

8 (3) (a) A CARRIER SHALL DEVELOP STANDARDS FOR THE
9 SELECTION OF PROVIDERS IN THE CARRIER'S PARTICIPATING PROVIDER
10 NETWORK, INCLUDING THE SELECTION OF PROVIDERS IN EACH HEALTH
11 CARE SPECIALTY. IF THE CARRIER OFFERS A TIERED NETWORK, THE
12 CARRIER SHALL DEVELOP STANDARDS FOR TIERING PARTICIPATING
13 PROVIDERS WITHIN THE TIERED NETWORK.

14 (b) THE CARRIER AND THE CARRIER'S INTERMEDIARY SHALL USE
15 THE STANDARDS DEVELOPED PURSUANT TO SUBSECTION (3)(a) OF THIS
16 SECTION IN SELECTING AND TIERING PROVIDERS.

17 (c) (I) A CARRIER SHALL NOT ESTABLISH SELECTION AND TIERING
18 CRITERIA IN A MANNER THAT WOULD:

19 (A) ALLOW A CARRIER TO DISCRIMINATE AGAINST HIGH-RISK
20 POPULATIONS BY EXCLUDING OR TIERING PROVIDERS BASED ON THEIR
21 LOCATION IN A GEOGRAPHIC AREA THAT CONTAINS HIGH-RISK
22 POPULATIONS; OR

23 (B) EXCLUDE PROVIDERS BECAUSE THEY TREAT OR SPECIALIZE IN
24 TREATING HIGH-RISK POPULATIONS.

25 (II) NOTHING IN THIS SUBSECTION (3)(c) PROHIBITS A CARRIER
26 FROM OFFERING SPECIFIC NETWORKS OR PRODUCTS THAT ARE LIMITED TO
27 DESIGNATED SERVICE AREAS.

1 (d) A CARRIER SHALL MAKE ALL APPLICABLE STANDARDS USED
2 FOR SELECTING AND TIERING AVAILABLE FOR REVIEW BY THE
3 COMMISSIONER AND SHALL COMMUNICATE THE STANDARDS TO
4 PROVIDERS THAT ARE PARTICIPATING IN ONE OR MORE OF ITS NETWORKS.
5 ADDITIONALLY, A CARRIER SHALL MAKE A DESCRIPTION OF ITS
6 STANDARDS, IN PLAIN LANGUAGE, AVAILABLE TO THE PUBLIC.

7 (4) UPON REQUEST, AND NOT MORE OFTEN THAN QUARTERLY, A
8 CARRIER SHALL PROVIDE A PROVIDER THAT IS PARTICIPATING IN ONE OR
9 MORE OF ITS NETWORKS WITH A COMPLETE LIST OF ALL NETWORK PLANS
10 AND PRODUCTS THE CARRIER OFFERS TO CONSUMERS, WITH AN INDICATION
11 OF THE PROVIDER'S PARTICIPATION STATUS WITHIN EACH NETWORK PLAN
12 OR PRODUCT. THE CARRIER SHALL RESPOND TO A PROVIDER'S REQUEST
13 WITHIN THIRTY DAYS AFTER IT RECEIVES THE REQUEST.

14 (5) (a) A CARRIER SHALL NEITHER TERMINATE A PARTICIPATING
15 PROVIDER NOR PLACE A PARTICIPATING PROVIDER IN A TIERED NETWORK
16 WITHOUT FIRST COMPLYING WITH THE REQUIREMENTS OF THIS SUBSECTION
17 (5).

18 (b) AT LEAST SIXTY DAYS BEFORE TERMINATING OR PLACING A
19 PARTICIPATING PROVIDER IN A TIERED NETWORK, THE CARRIER SHALL
20 SEND A WRITTEN NOTICE TO THE PARTICIPATING PROVIDER INFORMING THE
21 PARTICIPATING PROVIDER OF THE PENDING ACTION. THE NOTICE MUST:

22 (I) CONTAIN AN EXPLANATION OF THE REASONS FOR THE
23 PROPOSED ACTION IN SUFFICIENT DETAIL TO ENABLE THE PARTICIPATING
24 PROVIDER TO CHALLENGE THE PROPOSED ACTION, REFERENCING THE
25 RELEVANT INFORMATION THE CARRIER IS RELYING ON FOR THE
26 DETERMINATION;

27 (II) INFORM THE PARTICIPATING PROVIDER OF THE OPPORTUNITY

1 TO REQUEST THE CARRIER TO RECONSIDER THE PENDING ACTION AND THE
2 PERIOD FOR COMPLETING THE INFORMAL RECONSIDERATION PROCESS; AND

3 (III) INFORM THE PARTICIPATING PROVIDER OF THE CARRIER'S
4 ABILITY TO RESCIND THE PENDING ACTION.

5 (c) A CARRIER SHALL ESTABLISH PROCEDURES FOR A
6 PARTICIPATING PROVIDER TO REQUEST A CARRIER TO RECONSIDER ITS
7 DECISION TO TERMINATE THE PARTICIPATING PROVIDER OR PLACE THE
8 PARTICIPATING PROVIDER IN A TIERED NETWORK. THE PROCEDURES MUST
9 INCLUDE:

10 (I) A REASONABLE METHOD BY WHICH THE PARTICIPATING
11 PROVIDER MAY SUBMIT A REQUEST FOR THE CARRIER TO RECONSIDER A
12 PROPOSED PENDING ACTION, INCLUDING THE NAME OF THE PERSON OR
13 DIVISION TO WHOM OR TO WHICH THE PARTICIPATING PROVIDER IS TO
14 SUBMIT THE REQUEST; AND

15 (II) AN OPPORTUNITY TO SUBMIT OR HAVE THE CARRIER CONSIDER
16 EVIDENCE THAT MAY CORRECT INFORMATION RELEVANT TO THE PENDING
17 ACTION.

18 (d) THE CARRIER SHALL COMPLETE THE INFORMAL
19 RECONSIDERATION PROCESS WITHIN FORTY-FIVE DAYS AFTER THE DATE
20 THE CARRIER RECEIVED THE REQUEST FOR RECONSIDERATION FROM THE
21 PARTICIPATING PROVIDER UNLESS THE CARRIER AND PARTICIPATING
22 PROVIDER AGREE TO AN ALTERNATIVE DEADLINE TO COMPLETE THE
23 INFORMAL RECONSIDERATION PROCESS.

24 (e) A CARRIER SHALL NOT IMPLEMENT THE PENDING ACTION
25 SPECIFIC TO THE PARTICIPATING PROVIDER THAT IS THE SUBJECT OF A
26 REQUEST FOR RECONSIDERATION UNTIL THE CARRIER ISSUES A FINAL
27 DECISION TO GRANT OR DENY THE REQUEST TO RECONSIDER THE PENDING

1 ACTION.

2 (6) WHEN A CARRIER DOES NOT SELECT A PROVIDER TO
3 PARTICIPATE IN THE CARRIER'S PARTICIPATING PROVIDER NETWORK, THE
4 CARRIER SHALL PROVIDE A WRITTEN NOTIFICATION TO THE PROVIDER. THE
5 CARRIER IS NOT REQUIRED TO PROVIDE AN OPPORTUNITY FOR
6 RECONSIDERATION TO A PROVIDER WHO IS NOT PARTICIPATING IN ANY OF
7 THE CARRIER'S PARTICIPATING PROVIDER NETWORKS.

8 (7) THIS SECTION DOES NOT:

9 (a) PROHIBIT A CARRIER FROM DECLINING TO SELECT A PROVIDER
10 WHO FAILS TO MEET OTHER LEGITIMATE SELECTION CRITERIA DEVELOPED
11 BY THE CARRIER IN COMPLIANCE WITH THIS SECTION;

12 (b) PROHIBIT A CARRIER FROM CREATING AN EXCLUSIVE PROVIDER
13 NETWORK; OR

14 (c) REQUIRE A CARRIER TO CONTRACT WITH ANY PROVIDER WHO
15 IS WILLING TO ABIDE BY THE TERMS AND CONDITIONS FOR PARTICIPATION
16 ESTABLISHED BY THE CARRIER.

17 (8) (a) IF THE COMMISSIONER DETERMINES THAT A CARRIER HAS
18 NOT COMPLIED WITH THIS SECTION, THE COMMISSIONER SHALL REQUIRE A
19 CORRECTIVE ACTION PLAN THAT THE CARRIER MUST FOLLOW. THE
20 COMMISSIONER MAY USE ALL ENFORCEMENT POWERS UNDER THIS TITLE 10
21 TO OBTAIN COMPLIANCE BY THE CARRIER.

22 (b) THE COMMISSIONER AND THE COMMISSIONER'S STAFF SHALL
23 NOT ARBITRATE, MEDIATE, OR SETTLE DISPUTES REGARDING A DECISION
24 NOT TO INCLUDE A PROVIDER IN A NETWORK OR TIERED NETWORK OR
25 REGARDING ANY DISPUTE BETWEEN A CARRIER, THE CARRIER'S
26 INTERMEDIARY, OR ONE OR MORE PROVIDERS ARISING UNDER OR BY
27 REASON OF A PROVIDER CONTRACT OR ITS TERMINATION.

1 **SECTION 2. Appropriation.** For the 2017-18 state fiscal year,
2 \$42,006 is appropriated to the department of regulatory agencies for use
3 by the division of insurance. This appropriation is from the division of
4 insurance cash fund created in section 10-1-103 (3), C.R.S. To implement
5 this act, the division may use this appropriation as follows:

6 (a) \$36,828 for personal services, which is based on an
7 assumption that the division will require an additional 0.5 FTE; and

8 (b) \$5,178 for operating expenses and capital outlay costs.

9 **SECTION 3. Act subject to petition - effective date -**
10 **applicability.** (1) This act takes effect January 1, 2018; except that, if a
11 referendum petition is filed pursuant to section 1 (3) of article V of the
12 state constitution against this act or an item, section, or part of this act
13 within the ninety-day period after final adjournment of the general
14 assembly, then the act, item, section, or part will not take effect unless
15 approved by the people at the general election to be held in November
16 2018 and, in such case, will take effect on the date of the official
17 declaration of the vote thereon by the governor.

18 (2) This act applies to contracts issued or renewed on or after the
19 applicable effective date of this act.