

CHAPTER 235

INSURANCE

HOUSE BILL 02-1353

BY REPRESENTATIVE(S) Mitchell, Boyd, Chavez, Cloer, Jahn, Johnson, Lawrence, Miller, Ragsdale, Snook, Tochtrop, Borodkin, Daniel, Fritz, Groff, Harvey, Hoppe, Jameson, King, Lee, Mace, Madden, Marshall, Romanoff, Stafford, Webster, Weddig, and Williams S.;
also SENATOR(S) Hanna, Dyer, Isgar, Pascoe, Tate, Epps, Fitz-Gerald, Hagedorn, Hernandez, and Phillips.

AN ACT**CONCERNING REQUIREMENTS FOR THE RETROACTIVE ADJUSTMENT OF HEALTH CARE CLAIMS.**

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

SECTION 1. 10-16-704, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-16-704. Network adequacy. (4.5) (a) ALL CLAIMS PAID BY A CARRIER SHALL BE CONSIDERED FINAL UNLESS ADJUSTMENTS ARE MADE PURSUANT TO THIS SUBSECTION (4.5).

(b) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (4.5), ADJUSTMENTS TO CLAIMS BY THE PROVIDER OR THE CARRIER SHALL BE MADE WITHIN THE TIME PERIOD SET OUT IN A CONTRACT BETWEEN THE PROVIDER AND THE CARRIER. SUCH TIME PERIOD SHALL BE THE SAME FOR THE PROVIDER AND THE CARRIER AND SHALL NOT EXCEED TWELVE MONTHS AFTER THE DATE OF THE ORIGINAL EXPLANATION OF BENEFITS.

(c) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (4.5), IF THERE IS NO CONTRACT BETWEEN A PROVIDER AND A CARRIER, ADJUSTMENTS TO CLAIMS PAID TO PROVIDERS SHALL BE MADE WITHIN TWELVE MONTHS AFTER THE DATE OF THE ORIGINAL EXPLANATION OF BENEFITS. THE TIME PERIOD FOR ADJUSTMENTS SHALL BE THE SAME FOR THE PROVIDER AND THE CARRIER.

(d) (I) ADJUSTMENTS TO CLAIMS PAID UNDER A RISK ASSUMPTION OR RISK SHARING AGREEMENT SHALL BE MADE WITHIN SIX MONTHS AFTER THE LAST DATE OF SERVICE FOR A PERIOD FOR WHICH A SETTLEMENT IS BEING RECONCILED. THE PERIOD FOR

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

WHICH A SETTLEMENT IS RECONCILED SHALL NOT EXCEED TWELVE MONTHS.

(II) FOR PURPOSES OF THIS PARAGRAPH (d), "RISK ASSUMPTION" AND "RISK SHARING" REFER TO A TRANSACTION WHEREBY THE CHANCE OF LOSS, INCLUDING THE EXPENSES FOR THE DELIVERY OF SERVICE, WITH RESPECT TO THE HEALTH CARE OF A PERSON IS TRANSFERRED TO OR SHARED WITH ANOTHER ENTITY IN RETURN FOR FULL CONSIDERATION. SUCH TRANSACTIONS INCLUDE, BUT ARE NOT LIMITED TO, FULL OR PARTIAL CAPITATION AGREEMENTS, WITHHOLDS, RISK CORRIDORS, AND INDEMNIFICATION AGREEMENTS. SUCH TRANSACTIONS DO NOT INCLUDE FEE-FOR-SERVICE ARRANGEMENTS, PER DIEM PAYMENTS, AND DIAGNOSTIC-RELATED GROUP PAYMENT AGREEMENTS.

(e) ADJUSTMENTS TO CLAIMS RELATED TO COORDINATION OF BENEFITS WITH FEDERALLY FUNDED HEALTH BENEFIT PLANS, INCLUDING MEDICARE AND MEDICAID, SHALL BE MADE WITHIN THIRTY-SIX MONTHS AFTER THE DATE OF SERVICE.

(f) A CARRIER SHALL NOT RETROACTIVELY ADJUST A CLAIM BASED ON ELIGIBILITY IF THE PROVIDER RECEIVED VERIFICATION OF ELIGIBILITY WITHIN TWO BUSINESS DAYS PRIOR TO THE DELIVERY OF SERVICES.

(g) (I) (A) IN CIRCUMSTANCES WHERE A CARRIER DETERMINES THAT A PREMIUM HAS NOT BEEN RECEIVED DURING A GRACE PERIOD REQUIRED BY SECTION 10-16-202 (4) FOR AN INDIVIDUAL POLICY, THE CARRIER MAY REPORT TO THE PROVIDER THAT ELIGIBILITY IS CONTINGENT ON PAYMENT OF THE PREMIUM DUE AND THAT ELIGIBILITY CANNOT BE CONFIRMED FOR THE PERIOD THAT THE PREMIUM IS OUTSTANDING. IN SUCH CASES, A CARRIER SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 10-16-705 (12) (b) AND (12) (c).

(B) IF A CARRIER FAILS TO REPORT TO THE PROVIDER THAT ELIGIBILITY IS CONTINGENT ON PAYMENT OF PREMIUM DUE PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I), THE CARRIER SHALL COMPLY WITH PARAGRAPH (f) OF THIS SECTION.

(II) IN CIRCUMSTANCES WHERE THE PROVIDER RECEIVES INFORMATION FROM THE CARRIER THAT COVERAGE IS CONTINGENT UPON RECEIPT OF A PREMIUM, THE REQUIREMENTS OF SECTION 10-16-705 (3) SHALL NOT APPLY AND THE PROVIDER MAY COLLECT PAYMENT FOR SERVICES FROM THE ENROLLEE.

(III) IF THE PROVIDER HAS COLLECTED PAYMENT FROM THE ENROLLEE AND SUBSEQUENTLY RECEIVES PAYMENT FROM THE CARRIER, THE PROVIDER SHALL REIMBURSE THE ENROLLEE LESS ANY APPLICABLE COPAYMENTS, DEDUCTIBLES, OR COINSURANCE AMOUNTS.

(h) IN CIRCUMSTANCES WHERE A CARRIER DETERMINES THAT A PREMIUM HAS NOT BEEN RECEIVED DURING A GRACE PERIOD REQUIRED BY SECTION 10-16-214 (3) FOR A GROUP POLICY, THE CARRIER MAY REPORT TO THE PROVIDER THAT THE CARRIER IS NOT REQUIRED TO PAY FOR HEALTH CARE SERVICES RENDERED TO AN ENROLLEE DURING A TIME IN WHICH THE CARRIER CAN DEMONSTRATE THAT THE POLICYHOLDER HAS SECURED COVERAGE WITH ANOTHER CARRIER.

(i) NOTHING IN THIS SUBSECTION (4.5) SHALL PROHIBIT THE CARRIER FROM

REQUIRING THE ENROLLEE TO REIMBURSE THE CARRIER FOR CLAIMS PAID BY THE CARRIER TO THE PROVIDER IF:

(I) A CHANGE IN ELIGIBILITY STATUS HAS OCCURRED MAKING THE ENROLLEE INELIGIBLE FOR COVERAGE ON THE DATE SERVICES WERE PROVIDED; OR

(II) AN ENROLLEE HAS COMMITTED FRAUD OR MATERIAL MISREPRESENTATION IN APPLYING FOR COVERAGE OR IN RECEIVING OR FILING FOR BENEFITS.

(j) A CARRIER SHALL NOT RETROACTIVELY ADJUST A CLAIM BASED ON ELIGIBILITY IF THE PROVISION OF BENEFITS IS A REQUIRED POLICY PROVISION PURSUANT TO SECTION 10-16-202 (4) OR SECTION 10-16-214 (3).

(k) NOTHING IN THIS SUBSECTION (4.5) SHALL BE CONSTRUED TO REQUIRE A GRACE PERIOD FOR THE PAYMENT OF PREMIUMS TO A HEALTH MAINTENANCE ORGANIZATION.

(l) (I) ANY ADJUSTMENT MADE BY THE CARRIER THAT RECOVERS CARRIER OVERPAYMENTS TO A PROVIDER SHALL INCLUDE A WRITTEN NOTICE TO THE PROVIDER AND SHALL CONTAIN A COMPLETE AND SPECIFIC EXPLANATION OF SUCH ADJUSTMENTS AND INFORMATION REGARDING THE CARRIER'S PROVIDER DISPUTE RESOLUTION PROCEDURES PURSUANT TO SECTION 10-16-705 (13). SUCH NOTICE SHALL BE MADE TO BOTH THE PROVIDER AND THE ENROLLEE TO THE EXTENT THAT THE ADJUSTMENT WILL RESULT IN ENROLLEE LIABILITY. NOTICE TO THE ENROLLEE REQUIRED BY THIS PARAGRAPH SHALL INCLUDE INFORMATION REGARDING THE CARRIER'S ENROLLEE APPEALS PROCEDURE RATHER THAN THE CARRIER'S PROVIDER DISPUTE RESOLUTION PROCEDURES.

(II) (A) FOR CLAIMS ADJUSTED BY THE CARRIER DUE TO COORDINATION OF BENEFITS, IN ADDITION TO THE REQUIREMENTS OF THIS PARAGRAPH (l), UPON REQUEST OF THE PROVIDER, THE CARRIER SHALL PROVIDE ALL AVAILABLE INFORMATION REGARDING THE PARTY RESPONSIBLE FOR PAYMENT OF THE CLAIM TO THE PROVIDER.

(B) THE CARRIER SHALL PROVIDE NOTICE TO THE PROVIDER WITH THE EXPLANATION OF BENEFITS REGARDING THE AVAILABILITY OF THE INFORMATION RELATED TO THE PARTY RESPONSIBLE FOR PAYMENT OF THE CLAIM.

(m) ADJUSTMENTS TO CLAIMS MADE IN CASES WHERE A CARRIER, PURSUANT TO SECTION 10-1-127 (6) (a) (IV), HAS REPORTED FRAUD OR ABUSE COMMITTED BY THE PROVIDER, SHALL NOT BE SUBJECT TO THE REQUIREMENTS OF THIS SUBSECTION (4.5).

SECTION 2. 10-16-705 (12), Colorado Revised Statutes, is amended to read:

10-16-705. Requirements for carriers and participating providers.

(12) (a) A carrier shall establish ~~a mechanism~~ ONE OR MORE MECHANISMS by which the participating providers may determine, at the time services are provided, whether or not a person is covered by the carrier. IF A CARRIER MAINTAINS ONLY ONE MECHANISM, SUCH MECHANISM SHALL NOT REQUIRE ELECTRONIC ACCESS.

(b) (I) EACH CARRIER, REGARDLESS OF THE MECHANISM USED, SHALL ISSUE A VERIFICATION CODE THAT THE PARTICIPATING PROVIDER MAY USE AS PROOF OF VERIFICATION AS REQUIRED BY SECTION 10-16-704 (4.5) (f), (4.5) (g), AND (4.5) (h).

(II) IN LIEU OF THE REQUIREMENTS OF THIS PARAGRAPH (b), FOR THE PURPOSES OF VERIFYING THE CARRIER'S COMMUNICATION TO THE PROVIDER PURSUANT TO SECTION 10-16-704 (4.5) (g) OR (4.5) (h), A CARRIER MAY SUBMIT WRITTEN CONFIRMATION TO A PROVIDER WITHIN TWO BUSINESS DAYS.

(III) IF A CARRIER PROVIDES ELECTRONIC ACCESS AS A MECHANISM TO VERIFY COVERAGE, THE CARRIER MAY, IN LIEU OF THE REQUIREMENT TO ISSUE A VERIFICATION CODE THROUGH SUCH MECHANISM, ACCEPT AS PROOF OF VERIFICATION A DATED SCREEN PRINT FROM THE CARRIER'S ELECTRONIC VERIFICATION MECHANISM DEMONSTRATING THAT THE MEMBER IS ELIGIBLE PURSUANT TO SECTION 10-16-704 (4.5) (g) OR THAT THE CARRIER IS NOT REQUIRED TO PAY FOR SERVICES PURSUANT TO SECTION 10-16-704 (4.5) (h).

(c) IN LIEU OF THE REQUIREMENTS OF PARAGRAPH (b) OF THIS SUBSECTION (12), A CARRIER MAY INSTITUTE A POLICY PROVIDING THAT ADJUSTMENTS TO CLAIMS RELATED TO ELIGIBILITY WILL BE MADE ONLY IF THE CARRIER CAN DEMONSTRATE THAT THE MEMBER DID NOT APPEAR AS ELIGIBLE ON ANY OF THE CARRIER'S VERIFICATION MECHANISMS ON THE DATE OF SERVICE.

(d) A CARRIER SHALL NOTIFY PARTICIPATING PROVIDERS OF THE MECHANISMS AVAILABLE TO VERIFY ELIGIBILITY AND THE CARRIER'S INTENT WITH RESPECT TO THE REQUIREMENTS OF PARAGRAPHS (a), (b), AND (c) OF THIS SUBSECTION (12).

SECTION 3. Part 1 of article 16 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

10-16-103.5. Payment of premiums - required term in contract. (1) EVERY CONTRACT BETWEEN A CARRIER AND A POLICYHOLDER SHALL CONTAIN A PROVISION THAT REQUIRES A POLICYHOLDER TO PAY PREMIUMS:

(a) FOR EACH INDIVIDUAL COVERED UNDER THE POLICYHOLDER'S POLICY THROUGH THE DATE THAT THE POLICYHOLDER NOTIFIES THE CARRIER THAT THE INDIVIDUAL COVERED UNDER THE POLICY IS NO LONGER ELIGIBLE OR COVERED; OR

(b) THROUGH THE DATE THAT THE POLICYHOLDER NOTIFIES THE CARRIER THAT THE POLICYHOLDER NO LONGER INTENDS TO MAINTAIN COVERAGE FOR THE GROUP THROUGH THE CARRIER.

(2) PREMIUMS SHALL BE PAID ACCORDING TO THE PREMIUM PAYMENT PROVISIONS OF THE CONTRACT.

SECTION 4. 10-16-106.5 (6), Colorado Revised Statutes, is amended to read:

10-16-106.5. Prompt payment of claims - legislative declaration. (6) This section shall not prohibit a carrier from retroactively adjusting payment of a claim THAT IS NOT SUBJECT TO THE PROVISIONS OF SECTION 10-16-704, if:

(a) The policyholder notifies the carrier of a change in eligibility of an individual; and

(b) The adjustment is made within thirty days after the carrier's receipt of such

notification.

SECTION 5. Effective date - applicability. (1) This act shall take effect January 1, 2003, unless a referendum petition is filed during the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution. If such a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to claims submitted for dates of service on or after the applicable effective date of this act.

Approved: May 30, 2002