

## CHAPTER 315

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**INSURANCE**

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**SENATE BILL 06-213**

BY SENATOR(S) Hagedorn, Boyd, Fitz-Gerald, Tochtrop, Tupa, Veiga, and Williams;  
also REPRESENTATIVE(S) Penry, Berens, Borodkin, Carroll M., Coleman, Frangas, Garcia, Hall, Jahn, Kerr A., McCluskey,  
Paccione, Rose, Solano, Stafford, Sullivan, White, and Witwer.

**AN ACT**

**CONCERNING THE REQUIREMENT THAT HEALTH CARE SERVICES PROVIDED AT AN IN-NETWORK FACILITY BE PROVIDED TO THE COVERED PERSON AT NO GREATER COST THAN SERVICES PROVIDED BY AN IN-NETWORK PROVIDER.**

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

**SECTION 1.** 10-16-704 (3), Colorado Revised Statutes, is amended to read:

**10-16-704. Network adequacy - legislative declaration.** (3) (a) (I) IN 1997, THE GENERAL ASSEMBLY ENACTED THIS PART 7 WITH THE EXPRESS INTENT TO INCORPORATE CONSUMER PROTECTIONS INTO THE CREATION AND MAINTENANCE OF PROVIDER NETWORKS AND TO ESTABLISH STANDARDS TO ASSURE THE ADEQUACY, ACCESSIBILITY, AND QUALITY OF HEALTH CARE SERVICES OFFERED UNDER A MANAGED CARE PLAN.

(II) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT THERE ARE SITUATIONS IN WHICH INSURED CONSUMERS RECEIVE HEALTH CARE SERVICES, INCLUDING PROCEDURES APPROVED BY THEIR INSURANCE CARRIER, IN A NETWORK FACILITY, WITH A PRIMARY PROVIDER THAT IS A NETWORK PROVIDER, BUT IN WHICH OTHER HEALTH CARE PROFESSIONALS ASSISTING WITH SUCH PROCEDURES MAY NOT BE IN-NETWORK PROVIDERS. IN SUCH SITUATIONS, THE CONSUMER IS NOT AWARE THAT THE ASSISTING PROVIDERS ARE OUT-OF-NETWORK PROVIDERS. FURTHER, THE CONSUMER MAY HAVE LITTLE OR NO DIRECT CONTACT WITH THE ASSISTING HEALTH CARE PROFESSIONALS. THE DIVISION OF INSURANCE HAS INTERPRETED THE NETWORK ADEQUACY PROVISIONS IN THIS SECTION, ALONG WITH THE PROVISIONS RELATED TO RELATIONSHIPS BETWEEN AN INSURER AND A HEALTH CARE PROVIDER IN SECTION 10-16-705, TO HOLD THE CONSUMER HARMLESS FOR ADDITIONAL CHARGES FROM OUT-OF-NETWORK PROVIDERS FOR CARE RENDERED IN

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

A NETWORK FACILITY. THE DIVISION OF INSURANCE'S INTERPRETATION OF THESE STATUTES WAS CHALLENGED BY AN INSURER AND INVALIDATED BY A DIVISION OF THE COLORADO COURT OF APPEALS IN PACIFIC LIFE & ANNUITY CO. V. COLORADO DIV. OF INS., NO 04CA216 (SLIP OP.) (FEB. 23, 2006).

(III) THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT THE DIVISION OF INSURANCE HAS CORRECTLY INTERPRETED THE PROVISIONS OF THIS SECTION TO PROTECT THE INSURED FROM THE ADDITIONAL EXPENSE CHARGED BY AN ASSISTING PROVIDER WHO IS AN OUT-OF-NETWORK PROVIDER, AND HAS PROPERLY REQUIRED INSURERS TO HOLD THE CONSUMER HARMLESS. THE DIVISION OF INSURANCE DOES NOT HAVE REGULATORY AUTHORITY OVER ALL HEALTH PLANS. SOME CONSUMERS ARE ENROLLED IN SELF-FUNDED HEALTH INSURANCE PROGRAMS THAT ARE GOVERNED UNDER THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY ACT". THEREFORE, THE GENERAL ASSEMBLY ENCOURAGES HEALTH CARE FACILITIES, CARRIERS, AND PROVIDERS TO PROVIDE CONSUMERS DISCLOSURE ABOUT THE POTENTIAL IMPACT OF RECEIVING SERVICES FROM AN OUT-OF-NETWORK PROVIDER.

(IV) THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT SOME CONSUMERS INTENTIONALLY USE OUT-OF-NETWORK PROVIDERS, WHICH IS THE CONSUMERS' PREROGATIVE UNDER CERTAIN HEALTH BENEFIT PLANS. WHEN CONSUMERS INTENTIONALLY USE AN OUT-OF-NETWORK PROVIDER, THE CONSUMER IS ONLY ENTITLED TO BENEFITS AT THE OUT-OF-NETWORK RATE AND MAY BE SUBJECT TO BALANCE BILLING BY THE OUT-OF-NETWORK PROVIDER.

(V) THEREFORE, THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT THE PURPOSE OF SENATE BILL 06-213 IS TO CODIFY THE INTERPRETATION OF THE DIVISION OF INSURANCE THAT HOLDS CONSUMERS HARMLESS FOR CHARGES OVER AND ABOVE THE IN-NETWORK RATES FOR SERVICES RENDERED IN A NETWORK FACILITY.

(b) When a covered person receives services or treatment in accordance with plan provisions at a network facility, the benefit level for all covered services and treatment received through the facility shall be the in-network benefit. COVERED SERVICES OR TREATMENT RENDERED AT A NETWORK FACILITY, INCLUDING COVERED ANCILLARY SERVICES OR TREATMENT RENDERED BY AN OUT-OF-NETWORK PROVIDER PERFORMING THE SERVICES OR TREATMENT AT A NETWORK FACILITY, SHALL BE COVERED AT NO GREATER COST TO THE COVERED PERSON THAN IF THE SERVICES OR TREATMENT WERE OBTAINED FROM AN IN-NETWORK PROVIDER.

(c) (I) THIS SUBSECTION (3) IS REPEALED, EFFECTIVE JULY 1, 2010. PRIOR TO SUCH REPEAL, THE DIVISION SHALL CONDUCT AN EVALUATION TO INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

(A) THE EFFECTS OF THIS SUBSECTION (3) ON NETWORK ADEQUACY;

(B) THE FREQUENCY THAT NONPARTICIPATING PROVIDERS SUBMIT MORE THAN NETWORK REIMBURSEMENT RATES FOR SERVICES RENDERED IN AN IN-NETWORK FACILITY COMPARED TO THE CARRIER'S BOOK OF BUSINESS FOR THAT LINE OF INSURANCE;

(C) THE AMOUNTS PAID BY CARRIERS TO NONPARTICIPATING PROVIDERS; AND

(D) THE IMPACT OF THIS SUBSECTION (3) ON CONSUMERS.

(II) THE DIVISION SHALL COMPLETE THE EVALUATION ON OR BEFORE JANUARY 15, 2010, AND SHALL REPORT ITS FINDINGS TO THE SENATE HEALTH AND HUMAN SERVICES COMMITTEE AND THE HOUSE OF REPRESENTATIVES BUSINESS AFFAIRS AND LABOR COMMITTEE, OR ANY SUCCESSOR COMMITTEES. THE LEGISLATIVE STAFF FOR SUCH COMMITTEES SHALL NOTIFY THE COMMITTEE CHAIRS OF THE EXPECTATION OF THE EVALUATION AND THE REPEAL OF THIS SUBSECTION (3) ON OR BEFORE JULY 1, 2009.

**SECTION 2. Applicability.** This act shall apply to services and treatment rendered on or after the effective date of this act.

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

Approved: June 2, 2006