

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

**REVISED**

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

LLS NO. 17-0503.01 Christy Chase x2008

**SENATE BILL 17-088**

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**SENATE SPONSORSHIP**

**Holbert and Williams A.**, Kefalas, Priola, Tate

**HOUSE SPONSORSHIP**

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

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**Senate Committees**

Business, Labor, & Technology  
Appropriations

**House Committees**

Health, Insurance, & Environment

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**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.**

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**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.*

HOUSE  
2nd Reading Unamended  
April 3, 2017

SENATE  
3rd Reading Unamended  
March 13, 2017

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.