

CHAPTER 135

INSURANCE

SENATE BILL 17-088

BY SENATOR(S) Holbert and Williams A., Kefalas, Priola, Tate, Aguilar, Crowder, Gardner, Guzman, Jahn, Jones, Martinez Humenik, Todd, Grantham;
also REPRESENTATIVE(S) Hooton and Van Winkle, Landgraf, Rankin, Buckner, Liston, McKean, Melton, Nordberg, Hamner, Kennedy, Lontine, Mitsch Bush, Singer, Young.

AN ACT

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

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

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

10-16-705.5. Participating provider networks - definition - selection standards - informal reconsideration - enforcement - legislative declaration.

(1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

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

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

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

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

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

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

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

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

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

(a) "HIGH-RISK POPULATION" MEANS A POPULATION PRESENTING A RISK OF HIGHER-THAN-AVERAGE NUMBERS OF CLAIMS, LOSSES, OR HEALTH CARE UTILIZATION RATES.

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

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

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

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

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

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

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

(d) A CARRIER SHALL MAKE ALL APPLICABLE STANDARDS USED FOR SELECTING AND TIERING AVAILABLE FOR REVIEW BY THE COMMISSIONER AND SHALL COMMUNICATE THE STANDARDS TO PROVIDERS THAT ARE PARTICIPATING IN ONE OR

MORE OF ITS NETWORKS. ADDITIONALLY, A CARRIER SHALL MAKE A DESCRIPTION OF ITS STANDARDS, IN PLAIN LANGUAGE, AVAILABLE TO THE PUBLIC.

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

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

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

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

(II) INFORM THE PARTICIPATING PROVIDER OF THE OPPORTUNITY TO REQUEST THE CARRIER TO RECONSIDER THE PENDING ACTION AND THE PERIOD FOR COMPLETING THE INFORMAL RECONSIDERATION PROCESS; AND

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

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

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

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

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

(e) A CARRIER SHALL NOT IMPLEMENT THE PENDING ACTION SPECIFIC TO THE

PARTICIPATING PROVIDER THAT IS THE SUBJECT OF A REQUEST FOR RECONSIDERATION UNTIL THE CARRIER ISSUES A FINAL DECISION TO GRANT OR DENY THE REQUEST TO RECONSIDER THE PENDING ACTION.

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

(7) THIS SECTION DOES NOT:

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

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

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

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

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

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

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

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

SECTION 3. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2018; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in

such case, will take effect on the date of the official declaration of the vote thereon by the governor.

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

Approved: April 18, 2017