A BILL FOR AN ACT

CONCERNING OUT-OF-NETWORK HEALTH CARE SERVICES PROVIDED
TO COVERED PERSONS, AND, IN CONNECTION THEREWITH,
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 health insurance carriers, health care providers, and health care facilities to provide patients covered by health benefit plans with information concerning the provision of services by out-of-network providers and
Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 6-1-105, add (1)(III) as follows:

6-1-105. Deceptive trade practices. (1) A person engages in a deceptive trade practice, when, in the course of the person's business, vocation, or occupation, the person:

(III) Violates section 24-34-114.

SECTION 2. In Colorado Revised Statutes, 10-3-1104, add (1)(ss) as follows:

10-3-1104. Unfair methods of competition - unfair or deceptive practices. (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(ss) A violation of section 10-16-704 (3)(d) and (5.5).

SECTION 3. In Colorado Revised Statutes, 10-16-107, add (7) as follows:
10-16-107. Rate filing regulation - benefits ratio - rules. (7) As part of the rate filing required pursuant to this section, each carrier shall provide to the commissioner, in a form and manner determined by the commissioner, information concerning the utilization of out-of-network providers and facilities and the aggregate cost savings as a result of the implementation of section 10-16-704 (3)(d)(I) and (5.5)(b)(I).

SECTION 4. In Colorado Revised Statutes, 10-16-704, amend (3)(a)(III), (5.5)(a) introductory portion, (5.5)(a)(V), and (5.5)(b); and add (3)(d), (5.5)(c), (5.5)(d), (5.5)(e), (12), (13), (14), (15), and (16) as follows:

10-16-704. Network adequacy - rules - legislative declaration - definitions. (3) (a) (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 covered person from the additional expense charged by an assisting provider who is an out-of-network provider, and has properly required insurers carriers to hold the consumer covered person 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 of 1974", 29 U.S.C. Sec. 1001 ET SEQ. Therefore, the general assembly encourages health care facilities, carriers, and providers to MUST provide consumers disclosure with disclosures about the potential impact of receiving services from an out-of-network provider or health care facility and their rights under this section. Covered persons must have access to accurate information about their health care bills.
AND THEIR PAYMENT OBLIGATIONS IN ORDER TO ENABLE THEM TO MAKE INFORMED DECISIONS ABOUT THEIR HEALTH CARE AND FINANCIAL OBLIGATIONS.


(II) WHEN THE REQUIREMENTS OF SUBSECTION (3)(b) OF THIS SECTION APPLY, THE CARRIER SHALL REIMBURSE THE OUT-OF-NETWORK PROVIDER DIRECTLY IN ACCORDANCE WITH SECTION 10-16-106.5 THE GREATER OF:

(A) THE CARRIER’S MEDIAN IN-NETWORK RATE OF REIMBURSEMENT FOR THAT SERVICE IN THE SAME GEOGRAPHIC AREA; OR

(B) ONE HUNDRED PERCENT OF THE MEDIAN IN-NETWORK RATE OF REIMBURSEMENT FOR THE SAME SERVICE IN THE SAME GEOGRAPHIC AREA FOR THE PRIOR YEAR AS DETERMINED BASED ON CLAIMS DATA FROM THE ALL-PAYER HEALTH CLAIMS DATABASE CREATED IN SECTION 25.5-1-204.

(III) PAYMENT MADE BY A CARRIER IN COMPLIANCE WITH THIS SUBSECTION (3)(d) IS PRESUMED TO BE PAYMENT IN FULL FOR THE SERVICES PROVIDED, EXCEPT FOR ANY COINSURANCE, DEDUCTIBLE, OR COPAYMENT AMOUNT REQUIRED TO BE PAID BY THE COVERED PERSON.

(IV) THIS SUBSECTION (3)(d) DOES NOT PRECLUDE THE CARRIER AND THE OUT-OF-NETWORK PROVIDER FROM VOLUNTARILY NEGOTIATING
AN INDEPENDENT REIMBURSEMENT RATE. IF THE NEGOTIATIONS FAIL, THE
REIMBURSEMENT RATE REQUIRED BY SUBSECTION (3)(d)(II) OF THIS
SECTION APPLIES.

(V) FOR PURPOSES OF THIS SUBSECTION (3):

(A) "GEOGRAPHIC AREA" MEANS A SPECIFIC AREA IN THIS STATE
AS ESTABLISHED BY THE COMMISSIONER BY RULE.

(B) "MEDICARE REIMBURSEMENT RATE" MEANS THE
REIMBURSEMENT RATE FOR A PARTICULAR HEALTH CARE SERVICE
PROVIDED UNDER THE "HEALTH INSURANCE FOR THE AGED ACT", TITLE
XVIII OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, 42 U.S.C.
SEC. 1395 ET SEQ.

(5.5) (a) Notwithstanding any provision of law, a carrier that
provides any benefits with respect to EMERGENCY services in an
emergency department of a hospital shall cover the emergency services:

(V) AT THE IN-NETWORK BENEFIT LEVEL, with the same
cost-sharing COINSURANCE, DEDUCTIBLE, OR COPAYMENT requirements
as would apply if the emergency services were provided by an
in-network PROVIDER OR FACILITY, AND AT NO GREATER COST TO THE
COVERED PERSON THAN IF THE EMERGENCY SERVICES WERE OBTAINED AT
OR FROM AN IN-NETWORK PROVIDER AT AN IN-NETWORK FACILITY. ANY
PAYMENT MADE BY A COVERED PERSON PURSUANT TO THIS SUBSECTION
(5.5)(a)(V) MUST BE APPLIED TO THE COVERED PERSON'S IN-NETWORK
OUT-OF-POCKET MAXIMUM.

(b) For purposes of this subsection (5.5):

(I) "Emergency medical condition" means a medical condition that
manifests itself by acute symptoms of sufficient severity, including severe
pain, that a prudent layperson with an average knowledge of health and
medicine could reasonably expect, in the absence of immediate medical
treatment, to result in:

(A) Placing the health of the individual or, with respect to a
pregnant woman, the health of the woman or her unborn child, in serious
jeopardy;

(B) Serious impairment to bodily functions; or

(C) Serious dysfunction of any bodily organ or part.

(II) "Emergency services", with respect to an emergency medical
condition, means:

(A) A medical screening examination that is within the capability
of the emergency department of a hospital, including ancillary services
routinely available to the emergency department to evaluate the
emergency medical condition; and

(B) Within the capabilities of the staff and facilities available at
the hospital, further medical examination and treatment as required to
stabilize the patient to assure, within reasonable medical probability, that
no material deterioration of the condition is likely to result from or occur
during the transfer of the individual from a facility, or with respect to an
emergency medical condition:

(b) (I) If a covered person receives emergency services at
an out-of-network facility, other than any out-of-network
facility operated by the Denver Health and Hospital Authority
pursuant to article 29 of title 25, the carrier shall reimburse
the out-of-network facility and out-of-network provider
directly in accordance with section 10-16-106.5 the greater of:

(A) One hundred five percent of the carrier's median
in-network rate of reimbursement for that service provided in
A similar facility or setting in the same geographic area; or

(B) One hundred percent of the median in-network rate of reimbursement for the same service provided in a similar facility or setting in the same geographic area for the prior year as determined based on claims data from the Colorado all-payer health claims database created in section 25.5-1-204.

(II) If a covered person receives emergency services at any out-of-network facility operated by the Denver Health and Hospital Authority created in section 25-29-103, the carrier shall reimburse the out-of-network facility directly in accordance with section 10-16-106.5 the greater of:

(A) The carrier's median in-network rate of reimbursement for that service provided in a similar facility or setting in the same geographic area;

(B) Two hundred fifty percent of the Medicare reimbursement rate for the same service provided in a similar facility or setting in the same geographic area; or

(C) One hundred percent of the median in-network rate of reimbursement for the same service provided in a similar facility or setting in the same geographic area for the prior year as determined based on claims data from the Colorado all-payer health claims database created in section 25.5-1-204.

(III) Payment made by a carrier in compliance with this subsection (5.5)(b) is presumed to be payment in full for the services provided, except for any coinsurance, deductible, or copayment required to be paid by the covered person.
(c) This subsection (5.5) does not preclude the carrier and
the out-of-network facility and the carrier and the provider
from voluntarily negotiating an independent reimbursement
rate. If the negotiations fail, the reimbursement rate required
by subsection (5.5)(b) of this section applies.

(d) (I) Subsections (5.5)(a), (5.5)(b), and (5.5)(c) of this
section do not apply to service agencies, as defined in section
25-3.5-103 (11.5), providing ambulance services, as defined in
section 25-3.5-103 (3).

(II) (A) The commissioner shall promulgate rules to
identify and implement a payment methodology that applies to
service agencies described in subsection (5.5)(d)(I) of this section,
except for service agencies that are publicly funded fire
agencies.

(B) The commissioner shall make the payment
methodology available to the public on the division's website.
The rules must be equitable to providers and carriers; hold
consumers harmless except for any applicable copayment,
coinsurance, or deductible amounts; and be based on a
cost-based model that includes direct payment to service
agencies as described in subsection (5.5)(d)(I) of this section.

(C) The division may contract with a neutral third-party
that has no financial interest in providers, emergency service
providers, or carriers to conduct the analysis to identify and
implement the payment methodology.

(e) For purposes of this subsection (5.5):

(I) "Emergency medical condition" means a medical
CONDITION THAT MANIFESTS ITSELF BY ACUTE SYMPTOMS OF SUFFICIENT SEVERITY, INCLUDING SEvere PAIN, THAT A PRUDENT LAYPERSON WITH AN AVERAGE KNOWLEDGE OF HEALTH AND MEDICINE COULD REASONABLY EXPECT, IN THE ABSENCE OF IMMEDIATE MEDICAL ATTENTION, TO RESULT IN:

(A) SERIOUS JEOPARDY TO THE HEALTH OF THE INDIVIDUAL OR, WITH RESPECT TO A PREGNANT WOMAN, THE HEALTH OF THE WOMAN OR HER UNBORN CHILD;

(B) SERIOUS IMPAIRMENT TO BODILY FUNCTIONS; OR

(C) SERIOUS DYSFUNCTION OF ANY BODILY ORGAN OR PART.

(II) "EMERGENCY SERVICES", WITH RESPECT TO AN EMERGENCY MEDICAL CONDITION, MEANS:

(A) A MEDICAL SCREENING EXAMINATION THAT IS WITHIN THE CAPABILITY OF THE EMERGENCY DEPARTMENT OF A HOSPITAL, INCLUDING ANCILLARY SERVICES ROUTINELY AVAILABLE TO THE EMERGENCY DEPARTMENT TO EVALUATE THE EMERGENCY MEDICAL CONDITION; AND

(B) WITHIN THE CAPABILITIES OF THE STAFF AND FACILITIES AVAILABLE AT THE HOSPITAL, FURTHER MEDICAL EXAMINATION AND TREATMENT AS REQUIRED TO STABILIZE THE PATIENT TO ASSURE, WITHIN REASONABLE MEDICAL PROBABILITY, THAT NO MATERIAL DETERIORATION OF THE CONDITION IS LIKELY TO RESULT FROM OR OCCUR DURING THE TRANSFER OF THE INDIVIDUAL FROM A FACILITY.

(III) "GEOGRAPHIC AREA" HAS THE SAME MEANING AS DEFINED IN SUBSECTION (3)(d)(V)(A) OF THIS SECTION.

(IV) "MEDICARE REIMBURSEMENT RATE" HAS THE SAME MEANING AS DEFINED IN SUBSECTION (3)(d)(V)(B) OF THIS SECTION.

(12) (a) ON AND AFTER JANUARY 1, 2020, CARRIERS SHALL
DEVELOP AND PROVIDE DISCLOSURES TO COVERED PERSONS ABOUT THE
POTENTIAL EFFECTS OF RECEIVING EMERGENCY OR NONEMERGENCY
SERVICES FROM AN OUT-OF-NETWORK PROVIDER OR AT AN
OUT-OF-NETWORK FACILITY. THE DISCLOSURES MUST COMPLY WITH THE
RULES ADOPTED UNDER SUBSECTION (12)(b) OF THIS SECTION.

(b) The commissioner, in consultation with the state
board of health created in section 25-1-103 and the director of
the division of professions and occupations in the department of
regulatory agencies, shall adopt rules to specify the disclosure
requirements under this subsection (12), which rules must
specify, at a minimum, the following:

(I) The timing for providing the disclosures for emergency
and nonemergency services with consideration given to
potential limitations relating to the federal "Emergency
Medical Treatment and Labor Act", 42 U.S.C. sec. 1395dd;

(II) Requirements regarding how the disclosures must be
made, including requirements to include the disclosures on
billing statements, billing notices, prior authorizations, or
other forms or communications with covered persons;

(III) The contents of the disclosures, including the
covered person's rights and payment obligations if the covered
person's health benefit plan is under the jurisdiction of the
division;

(IV) Disclosure requirements specific to carriers,
including the possibility of being treated by an out-of-network
provider, whether a provider is out of network, the types of
services an out-of-network provider may provide, and the right
TO REQUEST AN IN-NETWORK PROVIDER TO PROVIDE SERVICES; AND

(V) REQUIREMENTS CONCERNING THE LANGUAGE TO BE USED IN
THE DISCLOSURES, INCLUDING USE OF PLAIN LANGUAGE, TO ENSURE THAT
CARRIERS, HEALTH CARE FACILITIES, AND PROVIDERS USE LANGUAGE THAT
IS CONSISTENT WITH THE DISCLOSURES REQUIRED BY THIS SUBSECTION
(12) AND SECTIONS 24-34-113 (2) AND 25-3-120 AND THE RULES ADOPTED
PURSUANT TO THIS SUBSECTION (12)(b) AND SECTIONS 24-34-113 (3) AND
25-3-120 (2).

(c) RECEIPT OF THE DISCLOSURES REQUIRED BY THIS SUBSECTION
(12) DOES NOT WAIVE A COVERED PERSON’S PROTECTIONS UNDER
SUBSECTION (3) OR (5.5) OF THIS SECTION OR THE RIGHT TO BENEFITS
UNDER THE HEALTH BENEFIT PLAN AT THE IN-NETWORK BENEFIT LEVEL
FOR ALL COVERED SERVICES AND TREATMENT RECEIVED.

(13) WHEN A CARRIER MAKES A PAYMENT TO A PROVIDER OR A
FACILITY PURSUANT TO SUBSECTION (3)(d)(II) OR (5.5)(b)(I) OF THIS
SECTION, THE PROVIDER OR THE FACILITY MAY REQUEST AND THE
COMMISSIONER SHALL COLLECT DATA FROM THE CARRIER TO EVALUATE
THE CARRIER’S COMPLIANCE IN PAYING THE HIGHEST RATE REQUIRED. THE
INFORMATION REQUESTED MAY INCLUDE THE METHODOLOGY FOR
DETERMINING THE CARRIER’S MEDIAN IN-NETWORK RATE OR
REIMBURSEMENT FOR EACH SERVICE IN THE SAME GEOGRAPHIC AREA.

(14) ON OR BEFORE JANUARY 1 OF EACH YEAR, EACH CARRIER
SHALL SUBMIT INFORMATION TO THE COMMISSIONER, IN A FORM AND
MANNER DETERMINED BY THE COMMISSIONER, CONCERNING THE USE OF
OUT-OF-NETWORK PROVIDERS AND FACILITIES BY COVERED PERSONS AND
THE IMPACT ON PREMIUM AFFORDABILITY FOR CONSUMERS.

(15) (a) (I) IF A PROVIDER BELIEVES THAT A PAYMENT MADE
Pursuant to subsection (3) or (5.5) of this section or Section 24-34-114 or a health care facility believes that a payment made pursuant to subsection (5.5) of this section or Section 25-3-121(3) was not sufficient given the complexity and circumstances of the services provided, the provider or the health care facility may initiate arbitration by filing a request for arbitration with the commissioner and the carrier. The request must be filed within ninety days after the receipt of the payment.

(II) Prior to arbitration under subsection (15)(a)(I) of this section, the carrier and provider or health care facility may conduct an informal settlement teleconference within thirty days after the request for arbitration. The parties shall notify the commissioner of the results of the settlement conference.

(III) Upon receipt of notice that the settlement teleconference was unsuccessful, the commissioner shall appoint an arbitrator and notify the parties of the arbitration.

(b) The commissioner shall promulgate rules to implement an arbitration process that includes the selection of an arbitrator from a list of qualified arbitrators developed pursuant to the rules. Qualified arbitrators must be independent; not be affiliated with a carrier, health care facility, or provider, or any professional association of carriers, health care facilities, or providers; not have a personal, professional, or financial conflict with any parties to the arbitration; and have experience in health care billing and reimbursement rates.

(c) (I) The arbitrator shall perform the review of the
written submission by the provider or health care facility. The arbitrator shall determine whether the disputed payment was not sufficient given the complexity and circumstances.

(II) If the arbitrator determines additional payment is warranted, then both parties shall submit, in writing, each party's final offer. The arbitrator shall pick one of the two amounts submitted by the parties as the arbitrator's final and binding decision. The decision must be in writing and made within forty-five days after the arbitrator's appointment. In making the decision, the arbitrator may consider the circumstances and complexity of the particular case, including the time and place of services, and availability of providers in the same geographic region.

(d) If the arbitrator's decision requires additional payment by the carrier above the amount paid, the carrier shall pay the provider in accordance with section 10-16-106.5.

(e) The arbitrator's expenses and fees shall be split equally among the parties.

(16) Not withstanding section 24-1-136 (11)(a)(I), on or before July 1, 2020, and each July 1 thereafter, the commissioner shall provide a written report to the health and human services committee of the senate and the health and insurance committee of the house of representatives, or their successor committees, and shall post the report on the division's website summarizing:

(a) The information submitted to the commissioner in subsection (14) of this section; and

(b) The number of arbitrations filed; the number of
ARBITRATIONS SETTLED, ARBITRATED, AND DISMISSED IN THE PREVIOUS CALENDAR YEAR; AND A SUMMARY OF WHETHER THE ARBITRATIONS WERE IN FAVOR OF THE CARRIER OR THE OUT-OF-NETWORK PROVIDER OR HEALTH CARE FACILITY. THE LIST OF ARBITRATION DECISIONS MUST NOT INCLUDE ANY INFORMATION THAT SPECIFICALLY IDENTIFIES THE PROVIDER, HEALTH CARE FACILITY, CARRIER, OR COVERED PERSON INVOLVED IN EACH ARBITRATION DECISION.

SECTION 5. In Colorado Revised Statutes, add 24-34-113 and 24-34-114 as follows:

24-34-113. Health care providers - required disclosures - rules - definitions. (1) FOR THE PURPOSES OF THIS SECTION AND SECTION 24-34-114:

(a) "CARRIER" HAS THE SAME MEANING AS DEFINED IN SECTION 10-16-102 (8).

(b) "COVERED PERSON" HAS THE SAME MEANING AS DEFINED IN SECTION 10-16-102 (15).

(c) "EMERGENCY SERVICES" HAS THE SAME MEANING AS DEFINED IN SECTION 10-16-704 (5.5)(e)(II).

(d) "GEOGRAPHIC AREA" HAS THE SAME MEANING AS DEFINED IN SECTION 10-16-704 (3)(d)(V)(A).

(e) "HEALTH BENEFIT PLAN" HAS THE SAME MEANING AS DEFINED IN SECTION 10-16-102 (32).

(f) "HEALTH CARE PROVIDER" HAS THE SAME MEANING AS "PROVIDER" AS DEFINED IN SECTION 10-16-102 (56).

(g) "MEDICARE REIMBURSEMENT RATE" HAS THE SAME MEANING AS DEFINED IN SECTION 10-16-704 (3)(d)(V)(B).

(h) "OUT-OF-NETWORK PROVIDER" MEANS A HEALTH CARE
PROVIDER THAT IS NOT A PARTICIPATING PROVIDER, AS DEFINED IN SECTION 10-16-102 (46).

(2) ON AND AFTER JANUARY 1, 2020, HEALTH CARE PROVIDERS SHALL DEVELOP AND PROVIDE DISCLOSURES TO CONSUMERS ABOUT THE POTENTIAL EFFECTS OF RECEIVING EMERGENCY OR NONEMERGENCY SERVICES FROM AN OUT-OF-NETWORK PROVIDER. THE DISCLOSURES MUST COMPLY WITH THE RULES ADOPTED PURSUANT TO SUBSECTION (3) OF THIS SECTION.

(3) THE DIRECTOR, IN CONSULTATION WITH THE COMMISSIONER OF INSURANCE AND THE STATE BOARD OF HEALTH CREATED IN SECTION 25-1-103, SHALL ADOPT RULES THAT SPECIFY THE REQUIREMENTS FOR HEALTH CARE PROVIDERS REGULATED UNDER TITLE 12 TO DEVELOP AND PROVIDE CONSUMER DISCLOSURES IN ACCORDANCE WITH THIS SECTION. THE DIRECTOR SHALL ENSURE THAT THE RULES ARE CONSISTENT WITH SECTION 10-16-704 (12) AND 25-3-120 AND RULES ADOPTED BY THE COMMISSIONER PURSUANT TO SECTION 10-16-704 (12)(b) AND BY THE STATE BOARD OF HEALTH PURSUANT TO SECTION 25-3-120(2). THE RULES MUST SPECIFY, AT A MINIMUM, THE FOLLOWING:

(a) THE TIMING FOR PROVIDING THE DISCLOSURES FOR EMERGENCY AND NONEMERGENCY SERVICES WITH CONSIDERATION GIVEN TO POTENTIAL LIMITATIONS RELATING TO THE FEDERAL "EMERGENCY MEDICAL TREATMENT AND LABOR ACT", 42 U.S.C. SEC. 1395dd;

(b) REQUIREMENTS REGARDING HOW THE DISCLOSURES MUST BE MADE, INCLUDING REQUIREMENTS TO INCLUDE THE DISCLOSURES ON BILLING STATEMENTS, BILLING NOTICES, OR OTHER FORMS OR COMMUNICATIONS WITH CONSUMERS;

(c) THE CONTENTS OF THE DISCLOSURES, INCLUDING THE
CONSUMER'S RIGHTS AND PAYMENT OBLIGATIONS PURSUANT TO THE
CONSUMER'S HEALTH BENEFIT PLAN;

(d) DISCLOSURE REQUIREMENTS SPECIFIC TO HEALTH CARE
PROVIDERS, INCLUDING WHETHER A PROVIDER IS OUT OF NETWORK, THE
TYPES OF SERVICES AN OUT-OF-NETWORK PROVIDER MAY PROVIDE, AND
THE RIGHT TO REQUEST AN IN-NETWORK PROVIDER TO PROVIDE SERVICES;
AND

(e) REQUIREMENTS CONCERNING THE LANGUAGE TO BE USED IN
THE DISCLOSURES, INCLUDING USE OF PLAIN LANGUAGE, TO ENSURE THAT
CARRIERS, HEALTH CARE FACILITIES, AND HEALTH CARE PROVIDERS USE
LANGUAGE THAT IS CONSISTENT WITH THE DISCLOSURES REQUIRED BY
THIS SECTION AND SECTIONS 10-16-704 (12) AND 25-3-120 AND THE RULES
ADOPTED PURSUANT TO THIS SUBSECTION (3) AND SECTIONS 10-16-704
(12)(b) AND 25-3-120 (2).

(4) RECEIPT OF THE DISCLOSURES REQUIRED BY SUBSECTION (2) OF
THIS SECTION DOES NOT WAIVE A CONSUMER'S PROTECTIONS UNDER
SECTION 10-16-704 (3) OR (5.5) OR THE CONSUMER'S RIGHT TO BENEFITS
UNDER THE CONSUMER'S HEALTH BENEFIT PLAN AT THE IN-NETWORK
BENEFIT LEVEL FOR ALL COVERED SERVICES AND TREATMENT RECEIVED.

(5) THIS SECTION DOES NOT APPLY TO SERVICE AGENCIES, AS
DEFINED IN SECTION 25-3.5-103 (11.5), THAT ARE PUBLICLY FUNDED FIRE
AGENCIES.

24-34-114. Out-of-network health care providers -
out-of-network services - billing - payment. (1) IF AN
OUT-OF-NETWORK HEALTH CARE PROVIDER PROVIDES EMERGENCY
SERVICES OR COVERED NONEMERGENCY SERVICES TO A COVERED PERSON
AT AN IN-NETWORK FACILITY, THE OUT-OF-NETWORK PROVIDER SHALL:
(a) Submit a claim for the entire cost of the services to the covered person's carrier; and

(b) Not bill or collect payment from a covered person for any outstanding balance for covered services not paid by the carrier, except for the applicable in-network coinsurance, deductible, or copayment required to be paid by the covered person.

(2)(a) If an out-of-network health care provider provides nonemergency services at an in-network facility or emergency services at an out-of-network or in-network facility and the health care provider receives payment from the covered person for services for which the covered person is not responsible pursuant to section 10-16-704 (3)(b) or (5.5), the health care provider shall reimburse the covered person within sixty calendar days after the date that the overpayment was reported to the provider.

(b) An out-of-network health care provider that fails to reimburse a covered person as required by subsection (2)(a) of this section for an overpayment shall pay interest on the overpayment at the rate of ten percent per annum beginning on the date the provider received the notice of the overpayment. The covered person is not required to request the accrued interest from the out-of-network health care provider in order to receive interest with the reimbursement amount.

(3) An out-of-network health care provider shall provide a covered person a written estimate of the amount for which the covered person may be responsible for nonemergency services.
WITHIN THREE BUSINESS DAYS AFTER A REQUEST FROM THE COVERED PERSON.

(4) (a) An out-of-network health care provider must send a claim for a covered service to the carrier within one hundred eighty days after the delivery of services in order to receive reimbursement as specified in this subsection (4)(a). The reimbursement rate is the greater of:

(I) One hundred fifty percent of the carrier's median in-network rate of reimbursement for that service provided in the same geographic area; or

(II) One hundred percent of the median in-network rate of reimbursement for the same service in the same geographic area for the prior year as determined based on claims data from the all-payer health claims database created in section 25.5-1-204.

(b) If the out-of-network health care provider submits a claim for services after the one-hundred-eighty-day period specified in subsection (4)(a) of this section, the carrier shall reimburse the health care provider one hundred twenty-five percent of the Medicare reimbursement rate for the same services in the same geographic area.

(c) The health care provider shall not bill a covered person any outstanding balance for a covered service not paid for by the carrier, except for any coinsurance, deductible, or copayment required to be paid by the covered person.

(5) A health care provider may initiate arbitration pursuant to section 10-16-704 (15) if the health care provider
believes the payment made pursuant to subsection (4) of this section is not sufficient.

section 6. In Colorado Revised Statutes, add 25-3-120 and 25-3-121 as follows:

25-3-120. Health care facilities - emergency and nonemergency services - required disclosures - rules - definitions.

(1) On and after January 1, 2020, health care facilities shall develop and provide disclosures to consumers about the potential effects of receiving emergency or nonemergency services from an out-of-network provider providing services at an in-network facility or emergency services at an out-of-network facility. The disclosures must comply with the rules adopted under subsection (2) of this section.

(2) The state board of health, in consultation with the commissioner of insurance and the director of the division of professions and occupations in the department of regulatory agencies, shall adopt rules that specify the requirements for health care facilities to develop and provide consumer disclosures in accordance with this section. The state board of health shall ensure that the rules are consistent with section 10-16-704 (12) and 24-34-113 (2) and rules adopted by the commissioner pursuant to section 10-16-704 (12)(b) and by the director of the division of professions and occupations pursuant to section 24-34-113 (3). The rules must specify, at a minimum, the following:

(a) The timing for providing the disclosures for emergency and nonemergency services with consideration given to
POTENTIAL LIMITATIONS RELATING TO THE "EMERGENCY MEDICAL TREATMENT AND LABOR ACT", 42 U.S.C. SEC. 1395dd;

(b) REQUIREMENTS REGARDING HOW THE DISCLOSURES MUST BE MADE, INCLUDING REQUIREMENTS TO INCLUDE THE DISCLOSURES ON BILLING STATEMENTS, BILLING NOTICES, OR OTHER FORMS OR COMMUNICATIONS WITH COVERED PERSONS;

(c) THE CONTENTS OF THE DISCLOSURES, INCLUDING THE CONSUMER'S RIGHTS AND PAYMENT OBLIGATIONS PURSUANT TO THE CONSUMER'S HEALTH BENEFIT PLAN;

(d) DISCLOSURE REQUIREMENTS SPECIFIC TO HEALTH CARE FACILITIES, WHETHER A HEALTH CARE PROVIDER DELIVERING SERVICES AT THE FACILITY IS OUT OF NETWORK, THE TYPES OF SERVICES AN OUT-OF-NETWORK HEALTH CARE PROVIDER MAY PROVIDE, AND THE RIGHT TO REQUEST AN IN-NETWORK HEALTH CARE PROVIDER TO PROVIDE SERVICES; AND

(e) REQUIREMENTS CONCERNING THE LANGUAGE TO BE USED IN THE DISCLOSURES, INCLUDING USE OF PLAIN LANGUAGE, TO ENSURE THAT CARRIERS, HEALTH CARE FACILITIES, AND HEALTH CARE PROVIDERS USE LANGUAGE THAT IS CONSISTENT WITH THE DISCLOSURES REQUIRED BY THIS SECTION AND SECTIONS 10-16-704 (12) AND 24-34-113 (2) AND THE RULES ADOPTED PURSUANT TO THIS SUBSECTION (2) AND SECTIONS 10-16-704 (12) AND 24-34-113 (3).

(3) RECEIPT OF THE DISCLOSURE REQUIRED BY SUBSECTION (1) OF THIS SECTION DOES NOT WAIVE A CONSUMER'S PROTECTIONS UNDER SECTION 10-16-704 (3) OR (5.5) OR THE CONSUMER'S RIGHT TO BENEFITS UNDER THE CONSUMER'S HEALTH BENEFIT PLAN AT THE IN-NETWORK BENEFIT LEVEL FOR ALL COVERED SERVICES AND TREATMENT RECEIVED.
(4) For the purposes of this section and section 25-3-121:

(a) "Carrier" has the same meaning as defined in section 10-16-102 (8).

(b) "Covered person" has the same meaning as defined in section 10-16-102 (15).

(c) "Geographic area" has the same meaning as defined in section 10-16-704 (3)(d)(V)(A).

(d) "Health benefit plan" has the same meaning as defined in section 10-16-102 (32).

(e) "Medicare reimbursement rate" has the same meaning as defined in section 10-16-704 (3)(d)(V)(B).

(f) "Out-of-network facility" means a health care facility that is not a participating provider, as defined in section 10-16-102 (46).

25-3-121. Out-of-network facilities - emergency medical services - billing - payment. (1) If a covered person receives emergency services at an out-of-network facility, the out-of-network facility shall:

(a) Submit a claim for the entire cost of the services to the covered person's carrier; and

(b) Not bill or collect payment from the covered person for any outstanding balance for covered services not paid by the carrier, except for the applicable in-network coinsurance, deductible, or copayment required to be paid by the covered person.

(2) (a) If a covered person receives emergency services at an out-of-network facility, and the facility receives payment
FROM THE COVERED PERSON FOR SERVICES FOR WHICH THE COVERED PERSON IS NOT RESPONSIBLE PURSUANT TO SECTION 10-16-704 (5.5), THE FACILITY SHALL REIMBURSE THE COVERED PERSON WITHIN SIXTY CALENDAR DAYS AFTER THE DATE THAT THE OVERPAYMENT WAS REPORTED TO THE FACILITY.

(b) AN OUT-OF-NETWORK FACILITY THAT FAILS TO REIMBURSE A COVERED PERSON AS REQUIRED BY SUBSECTION (2)(a) OF THIS SECTION FOR AN OVERPAYMENT SHALL PAY INTEREST ON THE OVERPAYMENT AT THE RATE OF TEN PERCENT PER ANNUM BEGINNING ON THE DATE THE FACILITY RECEIVED THE NOTICE OF THE OVERPAYMENT. THE COVERED PERSON IS NOT REQUIRED TO REQUEST THE ACCRUED INTEREST FROM THE OUT-OF-NETWORK HEALTH CARE PROVIDER IN ORDER TO RECEIVE INTEREST WITH THE REIMBURSEMENT AMOUNT.

(3) (a) AN OUT-OF-NETWORK FACILITY, OTHER THAN ANY OUT-OF-NETWORK FACILITY OPERATED BY THE DENVER HEALTH AND HOSPITAL AUTHORITY PURSUANT TO ARTICLE 29 OF TITLE 25, MUST SEND A CLAIM FOR EMERGENCY SERVICES TO THE CARRIER WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE DELIVERY OF SERVICES IN ORDER TO RECEIVE REIMBURSEMENT AS SPECIFIED IN THIS SUBSECTION (3)(a). THE REIMBURSEMENT RATE IS THE GREATER OF:

(I) ONE HUNDRED FIVE PERCENT OF THE CARRIER'S MEDIAN IN-NETWORK RATE OF REIMBURSEMENT FOR THAT SERVICE PROVIDED IN A SIMILAR FACILITY OR SETTING IN THE SAME GEOGRAPHIC AREA; OR

(II) ONE HUNDRED PERCENT OF THE MEDIAN IN-NETWORK RATE OF REIMBURSEMENT FOR THE SAME SERVICE PROVIDED IN A SIMILAR FACILITY OR SETTING IN THE SAME GEOGRAPHIC AREA FOR THE PRIOR YEAR AS
DETERMINED BASED ON CLAIMS DATA FROM THE ALL-PAYER HEALTH CLAIMS DATABASE CREATED IN SECTION 25.5-1-204.

(b) An out-of-network facility operated by the Denver Health and Hospital Authority created in Section 25-29-103 must send a claim for emergency services to the carrier within one hundred eighty days after the delivery of services in order to receive reimbursement as specified in this subsection (3)(b). The reimbursement rate is the greater of:

(I) The carrier's median in-network rate of reimbursement for that service provided in a similar facility or setting in the same geographic area;

(II) Two hundred fifty percent of the Medicare reimbursement rate for the same service provided in a similar facility or setting in the same geographic area; or

(III) One hundred percent of the median in-network rate of reimbursement for the same service provided in a similar facility or setting in the same geographic area for the prior year as determined based on claims data from the Colorado All-Payer Health Claims Database created in Section 25.5-1-204.

(c) If the out-of-network facility submits a claim for emergency services after the one-hundred-eighty-day period specified in subsection (3)(a) of this section, the carrier shall reimburse the facility one hundred twenty-five percent of the Medicare reimbursement rate for the same services in a similar setting or facility in the same geographic area.

(d) The out-of-network facility shall not bill a covered person any outstanding balance for a covered service not paid
FOR BY THE CARRIER, EXCEPT FOR ANY COINSURANCE, DEDUCTIBLE, OR
COPAYMENT REQUIRED TO BE PAID BY THE COVERED PERSON.

(4) AN OUT-OF-NETWORK FACILITY MAY INITIATE ARBITRATION
PURSUANT TO SECTION 10-16-704 (15) IF THE FACILITY BELIEVES THE
PAYMENT MADE PURSUANT TO SUBSECTION (3) OF THIS SECTION IS NOT
SUFFICIENT.

SECTION 7. In Colorado Revised Statutes, 25-1-114, add (1)(j)
as follows:

25-1-114. Unlawful acts - penalties. (1) It is unlawful for any
person, association, or corporation, and the officers thereof:

(j) TO VIOLATE SECTION 25-3-121.

SECTION 8. Appropriation. (1) For the 2019-20 state fiscal
year, $33,884 is appropriated to the department of public health and
environment for use by the health facilities and emergency medical
services division. This appropriation is from the general fund and is based
on an assumption that the division will require an additional 0.4 FTE. To
implement this act, the division may use this appropriation for
administration and operations.

(2) For the 2019-20 state fiscal year, $16,340 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) $16,150 for personal services, which amount is based on an
assumption that the division will require an additional 0.2 FTE; and
(b) $190 for operating expenses.
SECTION 9. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2020; 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 2020 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 health benefit plans issued or renewed on or after the applicable effective date of this act.