CHAPTER 122

INSURANCE

HOUSE BILL 96-1216

BY REPRESENTATIVES Kreutz, Clarke, Gordon, Keller, Mace, and Martin;
also SENATORS Hopper and Wham.

AN ACT

CONCERNING THE PROHIBITION OF PROVISIONS IN INSURANCE CARRIER'S CONTRACTS WITH THEIR PARTICIPATING HEALTH CARE PROVIDERS.

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

SECTION 1. Legislative declaration. The general assembly hereby finds that the changing landscape of health care insurance makes it necessary for health care providers to contract with health maintenance organizations or restricted network provision carriers in order to provide services to many of their patients. The general assembly hereby declares that, in order to protect the ability of providers to communicate openly with their patients and to make health care decisions on behalf of their patients without carrier interference, it is necessary to require that language contained in contracts between providers and carriers include provisions which state that providers shall not be prohibited from protesting or expressing disagreement with the practice of the carrier, and that carriers shall not terminate a provider because the provider expresses disagreement with a plan's decision to deny or limit benefits.

SECTION 2. 10-16-102, Colorado Revised Statutes, 1994 Repl. Vol., is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

10-16-102. Definitions. As used in this article, unless the context otherwise requires:

(13.5) "COVERED PERSON" MEANS A PERSON ENTITLED TO RECEIVE BENEFITS OR SERVICES UNDER A HEALTH COVERAGE PLAN.

(22.5) "HEALTH COVERAGE PLAN" MEANS A POLICY, CONTRACT, CERTIFICATE OR AGREEMENT ENTERED INTO, OFFERED, OR ISSUED BY A CARRIER TO PROVIDE, DELIVER,

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

ARRANGE FOR, PAY FOR, OR REIMBURSE ANY OF THE COSTS OF HEALTH CARE SERVICES.

(25.5) "INTERMEDIARY" MEANS A PERSON AUTHORIZED BY HEALTH CARE PROVIDERS TO NEGOTIATE AND EXECUTE PROVIDER CONTRACTS WITH CARRIERS ON BEHALF OF SUCH PROVIDERS.

(26.5) "MANAGED CARE PLAN" MEANS A POLICY, CONTRACT, CERTIFICATE, OR AGREEMENT OFFERED BY A CARRIER TO PROVIDE, DELIVER, ARRANGE FOR, PAY FOR, OR REIMBURSE ANY OF THE COSTS OF HEALTH CARE SERVICES THROUGH THE COVERED PERSON'S USE OF HEALTH CARE PROVIDERS MANAGED, OWNED, UNDER CONTRACT WITH, OR EMPLOYED BY THE CARRIER BECAUSE THE CARRIER EITHER REQUIRES THE USE OF OR CREATES INCENTIVES, INCLUDING FINANCIAL INCENTIVES, FOR THE COVERED PERSON'S USE OF THOSE PROVIDERS.

SECTION 3. Part 1 of article 16 of title 10, Colorado Revised Statutes, 1994 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

10-16-121. Required contract provisions in contracts between carriers and providers. (1) A CONTRACT BETWEEN A CARRIER AND A PROVIDER OR ITS REPRESENTATIVE CONCERNING THE DELIVERY, PROVISION, PAYMENT, OR OFFERING OF CARE OR SERVICES COVERED BY A MANAGED CARE PLAN SHALL MAKE PROVISIONS FOR THE FOLLOWING REQUIREMENTS:

(a) THE CONTRACT SHALL CONTAIN A PROVISION STATING THAT NEITHER THE PROVIDER NOR THE CARRIER SHALL BE PROHIBITED FROM PROTESTING OR EXPRESSING DISAGREEMENT WITH A MEDICAL DECISION, MEDICAL POLICY, OR MEDICAL PRACTICE OF THE CARRIER OR PROVIDER.

(b) THE CONTRACT SHALL CONTAIN A PROVISION THAT STATES THE CARRIER SHALL NOT TERMINATE THE CONTRACT WITH A PROVIDER BECAUSE THE PROVIDER EXPRESSES DISAGREEMENT WITH A CARRIER'S DECISION TO DENY OR LIMIT BENEFITS TO A COVERED PERSON OR BECAUSE THE PROVIDER ASSISTS THE COVERED PERSON TO SEEK RECONSIDERATION OF THE CARRIER'S DECISION; OR BECAUSE A PROVIDER DISCUSSES WITH A CURRENT, FORMER, OR PROSPECTIVE PATIENT ANY ASPECT OF THE PATIENT'S MEDICAL CONDITION, ANY PROPOSED TREATMENTS OR TREATMENT ALTERNATIVES, WHETHER COVERED BY THE PLAN OR NOT, POLICY PROVISIONS OF A PLAN, OR A PROVIDER'S PERSONAL RECOMMENDATION REGARDING SELECTION OF A HEALTH PLAN BASED ON THE PROVIDER'S PERSONAL KNOWLEDGE OF THE HEALTH NEEDS OF SUCH PATIENTS.

(2) NOTHING IN SUBSECTION (1) OF THIS SECTION SHALL BE CONSTRUED TO PROHIBIT A CARRIER FROM:

(a) INCLUDING IN ITS PROVIDER CONTRACTS A PROVISION THAT PRECLUDES A PROVIDER FROM MAKING, PUBLISHING, DISSEMINATING, OR CIRCULATING DIRECTLY OR INDIRECTLY OR AIDING, ABETTING, OR ENCOURAGING THE MAKING, PUBLISHING, DISSEMINATING, OR CIRCULATING OF ANY ORAL OR WRITTEN STATEMENT OR ANY PAMPHLET, CIRCULAR, ARTICLE, OR LITERATURE THAT IS FALSE OR MALICIOUSLY CRITICAL OF THE CARRIER AND CALCULATED TO INJURE SUCH CARRIER; OR

(b) TERMINATING A CONTRACT WITH A PROVIDER BECAUSE SUCH PROVIDER MATERIALLY MISREPRESENTS THE PROVISIONS, TERMS, OR REQUIREMENTS OF A CARRIER'S PRODUCTS; OR

(c) TERMINATING A CONTRACT WITH A PROVIDER PURSUANT TO A CONTRACT PROVISION THAT ALLOWS EITHER PARTY TO THE CONTRACT TO TERMINATE THE CONTRACT WITHOUT CAUSE PURSUANT TO SPECIFIC NOTICE REQUIREMENTS THAT ARE THE SAME FOR BOTH PARTIES.

(3) EACH CONTRACT BETWEEN A CARRIER AND AN INTERMEDIARY SHALL CONTAIN A PROVISION REQUIRING THAT THE UNDERLYING CONTRACT AUTHORIZING THE INTERMEDIARY TO NEGOTIATE AND EXECUTE CONTRACTS WITH CARRIERS, ON BEHALF OF THE PROVIDERS, SHALL COMPLY WITH THE REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION.

(4) THE COMMISSIONER SHALL NOT ACT TO ARBITRATE, MEDIATE, OR SETTLE DISPUTES BETWEEN A CARRIER, ITS INTERMEDIARIES, OR A PROVIDER NETWORK ARISING UNDER OR BY REASON OF A PROVIDER CONTRACT OR ITS TERMINATION. EXISTING DISPUTE RESOLUTION MECHANISMS AVAILABLE IN CONTRACT LAW SHALL BE USED TO RESOLVE SUCH DISPUTES.

(5) THE COMMISSIONER SHALL, AFTER NOTICE AND HEARING, PROMULGATE REASONABLE REGULATIONS AS ARE NECESSARY OR PROPER TO CARRY OUT THE REQUIREMENTS OF THIS SECTION.

(6) NO CONTRACT BETWEEN A CARRIER AND A PROVIDER OR ITS REPRESENTATIVE OR BETWEEN A CARRIER AND AN INTERMEDIARY THAT CONCERNS THE DELIVERY, PROVISION, PAYMENT, OR OFFERING OF CARE OR SERVICES COVERED BY A MANAGED CARE PLAN SHALL BE ISSUED, RENEWED, AMENDED, OR EXTENDED IN THIS STATE AFTER JANUARY 1, 1997, UNLESS IT COMPLIES WITH THE REQUIREMENTS OF THIS SECTION.

SECTION 4. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 5. Effective date - applicability. This act shall take effect July 1, 1996, and shall apply to all carriers offering managed care plans.

SECTION 6. 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: April 25, 1996