

CHAPTER 146

INSURANCE

SENATE BILL 96-078

BY SENATORS Johnson, Alexander, Casey, Dennis, Feeley, Hernandez, Hopper, Martinez, Matsunaka, Meiklejohn, Norton, Pascoe, L. Powers, R. Powers, Rizzuto, Rupert, Schaffer, Schroeder, Tanner, Tebedo, Thiebaut, Wattenberg, Weddig, and Wham; also REPRESENTATIVES Foster, Leyba, and Mace.

AN ACT

CONCERNING THE PROVISION OF SERVICES IN CONJUNCTION WITH A CLAIM UNDER A POLICY ISSUED PURSUANT TO THE "COLORADO AUTO ACCIDENT REPARATIONS ACT", AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 10-3-207 (1), Colorado Revised Statutes, 1994 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

10-3-207. Fees paid by insurance companies. (1) (d) IN ADDITION TO ANY FEE COLLECTED UNDER PARAGRAPH (a) OR (b) OF THIS SUBSECTION (1), EVERY INSURANCE ENTITY AUTHORIZED TO WRITE PRIVATE PASSENGER AUTOMOBILE INSURANCE COVERAGE SHALL PAY AN ANNUAL FEE NOT TO EXCEED FOUR HUNDRED DOLLARS TO FUND THE COSTS OF ESTABLISHING AND ADMINISTERING THE PIP EXAMINATION PROGRAM ESTABLISHED IN SECTION 10-4-706. SUCH FEE SHALL BE SET BY RULE PROMULGATED BY THE COMMISSIONER. FEES COLLECTED UNDER THIS PARAGRAPH (d) SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE DIVISION OF INSURANCE CASH FUND, CREATED IN SECTION 10-1-103 (3).

SECTION 2. 10-4-706 (1) (b), Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

10-4-706. Required coverages - complying policies - PIP examination program. (1) Subject to the limitations and exclusions authorized by this part 7, the minimum coverages required for compliance with this part 7 are as follows:

(b) (I) Compensation without regard to fault, up to a limit of fifty thousand dollars

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

per person for any one accident, for payment of all reasonable and necessary expenses for medical, chiropractic, optometric, podiatric, hospital, nursing, X-ray, dental, surgical, ambulance, and prosthetic services, and nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing, performed within five years after the accident for bodily injury arising out of the use or operation of a motor vehicle; EXCEPT THAT, TO THE EXTENT THAT THE BENEFITS OFFERED PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (1) HAVE NOT BEEN EXHAUSTED, THE REMAINING VALUE OF SUCH BENEFITS SHALL BE AVAILABLE TO THE INSURED OR INJURED PERSON ENTITLED TO BENEFITS FOR TREATMENT PURSUANT TO THIS PARAGRAPH (b).

(II) FOR PURPOSES OF THIS PARAGRAPH (b), THE TREATMENT OF NEUROLOGIC INJURIES ALSO KNOWN AS CLOSED-HEAD INJURIES AND THEIR SEQUELAE, TEMPOROMANDIBULAR JOINT DISORDER, CRANIOMANDIBULAR DISORDER, VESTIBULAR, AUDITORY, OR VISUAL DISORDERS, PSYCHOLOGICAL DISORDERS, AND COGNITIVE DISORDERS, THAT ARE REASONABLE, NECESSARY, AND ARISING OUT OF THE USE OR OPERATION OF A MOTOR VEHICLE, SHALL BE CONSIDERED COVERED MEDICAL OR DENTAL PROCEDURES.

SECTION 3. 10-4-706 (1) (c), Colorado Revised Statutes, 1994 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

10-4-706. Required coverages - complying policies - PIP examination program. (1) Subject to the limitations and exclusions authorized by this part 7, the minimum coverages required for compliance with this part 7 are as follows:

(c) (I.5) FOR PURPOSES OF THIS PARAGRAPH (c), THE TREATMENT OF NEUROLOGIC INJURIES ALSO KNOWN AS CLOSED-HEAD INJURIES AND THEIR SEQUELAE, TEMPOROMANDIBULAR JOINT DISORDER, CRANIOMANDIBULAR DISORDER, VESTIBULAR, AUDITORY, OR VISUAL DISORDERS, PSYCHOLOGICAL DISORDERS, AND COGNITIVE DISORDERS, ARISING OUT OF THE USE OR OPERATION OF A MOTOR VEHICLE, THAT CONTRIBUTES SUBSTANTIALLY TO REHABILITATION, AND WHOSE COST IS REASONABLE IN RELATION TO ITS PROBABLE REHABILITATIVE EFFECT, SHALL BE CONSIDERED A COVERED REHABILITATION TREATMENT OR PROCEDURE.

SECTION 4. 10-4-706 (2), Colorado Revised Statutes, 1994 Repl. Vol., is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:

10-4-706. Required coverages - complying policies - PIP examination program. (2) (h) WITHIN A COUNTY HAVING A POPULATION IN EXCESS OF ONE HUNDRED THOUSAND, ACCORDING TO THE MOST RECENT CENSUS, NO INSURED OR INJURED PERSON ENTITLED TO BENEFITS WHO IS REQUIRED BY A CONTRACT WITH AN INSURER TO RECEIVE THE BENEFITS DESCRIBED IN PARAGRAPHS (b) AND (c) OF SUBSECTION (1) OF THIS SECTION THROUGH MANAGED CARE ARRANGEMENTS SHALL BE REQUIRED TO TRAVEL MORE THAN THIRTY MILES FROM THAT PERSON'S RESIDENCE TO ANY NETWORK PROVIDER OF CARE FOR TREATMENT WITHOUT HIS OR HER CONSENT. THE INSURER SHALL PAY THE REASONABLE AND NECESSARY COST OF TRANSPORTING THE INSURED OR INJURED PERSON ENTITLED TO BENEFITS.

(i) ANY HEALTH CARE PROFESSIONAL WHO REFERS AN INSURED OR INJURED PERSON

ENTITLED TO BENEFITS FOR DIAGNOSIS OR TREATMENT TO A FACILITY IN WHICH THE PROFESSIONAL HAS A FINANCIAL INTEREST AS AN OWNER, PARTNER, OR EMPLOYEE SHALL DISCLOSE SUCH INTEREST IN WRITING AT THE TIME OF THE REFERRAL TO THE INSURED OR INJURED PERSON ENTITLED TO BENEFITS, TO THE INSURER AND, IF APPLICABLE, TO THE MANAGED CARE ORGANIZATION.

SECTION 5. 10-4-706 (4), Colorado Revised Statutes, 1994 Repl. Vol., is amended, and the said 10-4-706 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

10-4-706. Required coverage - complying policies - PIP examination program. (4) (a) An insurer issuing policies providing coverages as set forth in this section shall provide written explanations of all available coverages prior to issuing any policy to an insured. After a named insured selects a policy with desired personal injury protection coverage, an insurer shall not be under any further obligation to notify such policyholder in any renewal or replacement policy of the availability of a basic personal injury protection policy or of any alternative personal injury protection coverage.

(b) UPON RECEIPT OF A NOTICE FROM AN INSURED OR INJURED PERSON ENTITLED TO BENEFITS THAT A PIP CLAIM IS BEING MADE, THE INSURER SHALL FURNISH TO THE INSURED OR INJURED PERSON ENTITLED TO BENEFITS A FACT SHEET ENUMERATING THE RIGHTS OF SUCH PERSON TO PIP BENEFITS. THE FACT SHEET SHALL ALSO SET OUT DEADLINES BY WHICH THE INSURED OR INJURED PERSON ENTITLED TO BENEFITS IS REQUIRED TO FILE NECESSARY DOCUMENTS OR FORMS WITH THE INSURER AND SHALL PROVIDE A TELEPHONE NUMBER THAT THE INSURED OR INJURED PERSON ENTITLED TO BENEFITS CAN USE TO TELEPHONE THE INSURER.

(4.5) ALL MEDICAL DEVICES OR MEDICAL EQUIPMENT PROVIDED TO AN INSURED OR INJURED PERSON ENTITLED TO BENEFITS, AS PART OF SUCH PERSON'S BENEFITS PURSUANT TO PARAGRAPHS (b) AND (c) OF SUBSECTION (1) OF THIS SECTION OR THE EQUIVALENT UNDER SUBSECTION (2) OR (3) OF THIS SECTION, SHALL BE THE PROPERTY OF THE INSURED AND SHALL NOT BE REQUIRED TO BE SURRENDERED TO THE INSURER, UNLESS SUCH MEDICAL DEVICE OR MEDICAL EQUIPMENT WAS RENTED OR LEASED BY THE INSURER, OR UNLESS SUCH MEDICAL DEVICE OR MEDICAL EQUIPMENT IS OF A TYPE COMMONLY FOUND AT A HEALTH, EXERCISE, OR ATHLETIC FACILITY.

SECTION 6. 10-4-706, Colorado Revised Statutes, 1994 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-4-706. Required coverage - complying policies - PIP examination program. (6) (a) THE GENERAL ASSEMBLY DIRECTS THE COMMISSIONER TO PROMULGATE A RULE, PURSUANT TO THE "STATE ADMINISTRATIVE PROCEDURES ACT", ARTICLE 4 OF TITLE 24, C.R.S., ESTABLISHING A PIP EXAMINATION PROGRAM FOR THE PURPOSE OF TIMELY INVESTIGATION AND RESOLUTION OF DISPUTED PIP CLAIMS SUBMITTED TO AN INSURANCE COMPANY UNDER THIS PART 7. THE PIP EXAMINATION PROGRAM SHALL BE THE EXCLUSIVE METHOD FOR OBTAINING AN INDEPENDENT MEDICAL EXAMINATION FROM A HEALTH CARE PRACTITIONER OTHER THAN A TREATING PROVIDER RELATING TO A DISPUTED PIP CLAIM, EXCEPT AS PROVIDED IN PARAGRAPH (c) OF THIS SUBSECTION (6).

(b) THE PIP EXAMINATION PROGRAM SHALL PROVIDE A GROUP OF LICENSED HEALTH CARE PRACTITIONERS THAT SHALL BE KNOWN AS THE PIP EXAMINATION REVIEW PANEL. THE COMMISSIONER SHALL UTILIZE SUCH PUBLIC AND PRIVATE RESOURCES AS ARE AVAILABLE AND APPROPRIATE IN DETERMINING STANDARDS AND QUALIFICATIONS FOR THE PIP REVIEW PANEL MEMBERS. A HEALTH CARE PRACTITIONER PARTICIPATING IN THE PIP REVIEW PANEL SHALL BE ACTIVELY ENGAGED IN THE PRACTICE OF HIS OR HER PROFESSION AND A MAJORITY OF SUCH PRACTICE AND INCOME SHALL NOT DERIVE FROM WITNESS FEES AND EXAMINATIONS OF PERSONS NOT UNDER THE PRACTITIONER'S CARE AND TREATMENT. IT SHALL BE THE DUTY OF THE PIP EXAMINATION REVIEW PANEL TO PERFORM THE PIP EXAMINATIONS AT THE REQUEST OF THE COMMISSIONER.

(c) ANY INSURER, INSURED, OR INJURED PERSON ENTITLED TO BENEFITS HAS THE RIGHT TO OBTAIN A PIP EXAMINATION WITH A HEALTH CARE PRACTITIONER FROM THE PIP EXAMINATION REVIEW PANEL REGARDING EACH TYPE OF TREATMENT INVOLVED IN THE DISPUTED PORTION OF THE PIP CLAIM; EXCEPT THAT THIS PARAGRAPH (c) SHALL NOT APPLY TO AN INSURER PROVIDING PIP COVERAGE THROUGH MANAGED CARE ARRANGEMENTS, PURSUANT TO SUBSECTION (2) OF THIS SECTION. THE REQUESTING PARTY, WHEN SUBMITTING A REQUEST FOR A PIP EXAMINATION, SHALL SPECIFY THE PROFESSIONAL SPECIALTY OF THE HEALTH CARE PRACTITIONER WHO WILL PERFORM THE PIP EXAMINATION. WHERE PRACTICAL, SUCH PROFESSIONAL SPECIALTY SHALL BE THE SAME AS THAT OF THE TREATING HEALTH CARE PRACTITIONER WHOSE TREATMENT AND OPINION ARE INTENDED TO BE REVIEWED BY THE MEMBER OF THE PIP REVIEW PANEL; EXCEPT THAT PSYCHIATRISTS, PSYCHOLOGISTS, AND NEUROPSYCHOLOGISTS MAY REVIEW ONE ANOTHER'S TREATMENT AND OPINIONS TO THE EXTENT THAT THE REVIEWING EXPERT IS QUALIFIED TO ADDRESS THE SPECIFIC ISSUES WHICH ARISE IN A PARTICULAR CASE. NOTHING IN THIS SECTION SHALL PRECLUDE A MANAGED CARE ORGANIZATION FROM USING ITS USUAL AND CUSTOMARY REVIEW PROCEDURES.

(d) THROUGH A REVOLVING SELECTION PROCESS ESTABLISHED BY RULE, THE COMMISSIONER SHALL PREPARE A LIST OF FIVE HEALTH CARE PRACTITIONERS, QUALIFIED TO PERFORM THE PIP EXAMINATION, AND SUBMIT IT TO THE REQUESTING PARTY. WITHIN FIVE DAYS OF RECEIPT, THE REQUESTING PARTY SHALL STRIKE TWO NAMES FROM THE LIST, AND SUBMIT IT TO THE OPPOSING PARTY. WITHIN FIVE DAYS OF RECEIPT, THE OPPOSING PARTY SHALL STRIKE TWO NAMES FROM THE LIST. THE OPPOSING PARTY SHALL IMMEDIATELY RETURN THE LIST TO THE COMMISSIONER. THE INSURER AND INSURED OR THE INJURED PERSON ENTITLED TO BENEFITS MAY AGREE UPON A HEALTH CARE PRACTITIONER TO PERFORM THE PIP EXAMINATION WITHOUT USING THE REVOLVING SELECTION PROCESS. UPON THE SELECTION OF THE HEALTH CARE PRACTITIONER, THE PIP EXAMINATION SHALL PROCEED AND THE REQUESTING PARTY SHALL PAY THE COSTS OF THE EXAMINATION.

(e) THE PIP HEALTH CARE PRACTITIONER SHALL DETERMINE WHETHER THE TREATMENT THAT HAS BEEN RENDERED TO THE INSURED OR INJURED PERSON ENTITLED TO BENEFITS IS REASONABLE, NECESSARY, AND IF SUCH CLAIMED INJURY OR CONDITION ARISES OUT OF THE USE OF A MOTOR VEHICLE.

(f) A HEALTH CARE PRACTITIONER WHO PERFORMS A PIP EXAMINATION PURSUANT TO THIS SUBSECTION (6) SHALL BE IMMUNE FROM CIVIL LIABILITY IN ANY ACTION BROUGHT BY ANY PERSON BASED UPON SUCH PRACTITIONER'S FINDINGS, OPINIONS,

AND CONCLUSIONS, ABSENT THE SHOWING OF MALICE OR BAD FAITH ON THE PART OF THE EXAMINING HEALTH CARE PRACTITIONER.

(g) IN THE EVENT THE FINDINGS, OPINIONS, AND CONCLUSION OF THE PIP REVIEW PANEL MEMBER ARE CONTRARY TO THE STATEMENT OF CAUSATION, DIAGNOSIS, PROGNOSIS, PLAN OF TREATMENT, OPINIONS, OR RECOMMENDATIONS OF THE TREATING PRACTITIONER WHOSE ACTIONS HAVE BEEN REVIEWED, ANY PARTY DISSATISFIED WITH SUCH FINDINGS, OPINIONS, AND CONCLUSIONS MAY SEEK AND PAY FOR A SECOND PIP EXAMINATION UNDER THE PROCEDURES SET FORTH IN PARAGRAPHS (c) AND (d) OF THIS SUBSECTION (6).

(h) IN ANY ARBITRATION OR JUDICIAL PROCEEDING COMMENCED BY THE INSURER, INSURED, OR THE INJURED PERSON ENTITLED TO BENEFITS, THE FINDINGS, OPINIONS, AND CONCLUSIONS OF THE PIP EXAMINATION SHALL BE PRESUMED TO BE CORRECT, BUT SUCH PRESUMPTION MAY BE REBUTTED BY A PREPONDERANCE OF THE EVIDENCE. IF THERE HAS BEEN A SECOND PIP EXAMINATION PURSUANT TO PARAGRAPH (g) OF THIS SUBSECTION (6), THE AGREED UPON FINDINGS, OPINIONS, AND CONCLUSIONS OF TWO OF THE THREE HEALTH CARE PRACTITIONERS SHALL BE BINDING UNLESS REBUTTED BY CLEAR AND CONVINCING EVIDENCE IN ANY ARBITRATION OR JUDICIAL PROCEEDING COMMENCED BY THE INSURER, THE INSURED, OR INJURED PERSON ENTITLED TO BENEFITS. NO CIVIL PROCEEDING, INCLUDING BUT NOT LIMITED TO, A PROCEEDING ALLEGING ANY CAUSE OF ACTION UNDER SECTION 10-4-708, OR THE TORT OF BAD FAITH BREACH OF THE INSURANCE CONTRACT, ARISING OUT OF ANY ACTION TAKEN BY THE INSURER THAT IS CONSISTENT WITH THE AGREED UPON FINDINGS, OPINIONS, AND CONCLUSIONS OF TWO OF THE THREE HEALTH CARE PRACTITIONERS SHALL BE BROUGHT OR MAINTAINED AGAINST THE INSURER; EXCEPT THAT THE INSURED OR INJURED PERSON ENTITLED TO BENEFITS MAY BRING A CIVIL PROCEEDING ALLEGING THAT CLEAR AND CONVINCING EVIDENCE REBUTS THE FINDINGS, OPINIONS, AND CONCLUSIONS OF TWO OF THE THREE HEALTH CARE PRACTITIONERS. IF THE INSURED OR INJURED PERSON ENTITLED TO BENEFITS IS SUCCESSFUL, THE NO-FAULT INSURER SHALL BE OBLIGATED TO PAY ONLY THE NO-FAULT BENEFITS THAT HAD BEEN DENIED AND THAT WERE THE SUBJECT OF SUCH PROCEEDING.

(i) PRIOR TO PROMULGATION OF THE PIP EXAMINATION REVIEW PANEL RULE, THE COMMISSIONER SHALL APPOINT A PIP EXAMINATION REVIEW PANEL ADVISORY COMMITTEE TO ASSIST THE COMMISSIONER. SUCH COMMITTEE SHALL CONSIST OF APPROPRIATE REPRESENTATION FROM COLORADO LICENSED PHYSICIANS, COLORADO LICENSED CHIROPRACTORS, THE COLORADO HOSPITAL ASSOCIATION, INSURERS LICENSED TO DO BUSINESS IN COLORADO, THE COLORADO DEFENSE LAWYERS ASSOCIATION, THE COLORADO TRIAL LAWYERS ASSOCIATION, CONSUMERS OF AUTOMOBILE INSURANCE, AND ANY OTHERS THE COMMISSIONER DEEMS NECESSARY.

(j) THE COMMISSIONER SHALL HAVE THE AUTHORITY TO CONTRACT WITH ANY PERSON OR ENTITY TO DEVELOP THE RULE AND FOR THE ADMINISTRATION OF THE PIP EXAMINATION PROGRAM.

SECTION 7. 10-4-708, Colorado Revised Statutes, 1994 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-4-708. Prompt payment of direct benefits. (1.3) THE GENERAL ASSEMBLY

DIRECTS THE COMMISSIONER OF INSURANCE TO PROMULGATE A RULE, PURSUANT TO THE "STATE ADMINISTRATIVE PROCEDURES ACT", ARTICLE 4 OF TITLE 24, C.R.S., TO ESTABLISH GUIDELINES FOR THE TIMELY PAYMENT OF PERSONAL INJURY PROTECTION BENEFITS INCLUDING THE PENALTIES FOR THE FAILURE TO TIMELY PAY SUCH BENEFITS OR TO OTHERWISE COMPLY WITH THE RULE. THE GUIDELINES FOR TIMELY PAYMENT ESTABLISHED BY RULE SHALL INCLUDE AT THE MINIMUM A LIST OF THE ITEMS NECESSARY, IN ADDITION TO THE REQUIREMENTS SET FORTH IN SECTION 10-4-706, TO ESTABLISH PROOF OF THE FACT AND AMOUNT OF EXPENSES INCURRED AND SPECIFICALLY INCORPORATING THE NOTICE REQUIREMENTS OF SECTION 10-4-708.5 AND THE PROVIDER OBLIGATIONS IN SECTION 10-4-708.6. SUCH GUIDELINES SHALL ALSO PROVIDE FOR THE COMMENCEMENT OF INVESTIGATIONS BY INSURERS AFTER RECEIPT OF THE ITEMS LISTED IF PAYMENT OF THE EXPENSES IS NOT MADE WITHIN THIRTY DAYS OF THE ITEMS' RECEIPT, TOGETHER WITH WRITTEN NOTICE TO THE INSURED AND PROVIDER OF THE REASONS THE CLAIM HAS NOT BEEN PAID.

SECTION 8. 10-4-708.6, Colorado Revised Statutes, 1994 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-4-708.6. Obligations of persons providing services - penalties - availability and maintenance of records. (3) ANY TREATMENT OR PROCEDURE RECOMMENDED BY A MEMBER OF A MANAGED CARE PROVIDER NETWORK PURSUANT TO SECTION 10-4-706 (1) (b) OR (1) (c) OR THE EQUIVALENT COVERAGE IN SECTION 10-4-706 (2) OR (3) SHALL BE APPROVED OR DENIED WITHIN TWENTY BUSINESS DAYS AFTER RECEIPT OF ALL INFORMATION DEEMED NECESSARY BY THE MANAGED CARE ORGANIZATION TO APPROVE OR DENY THE REQUESTED TREATMENT OR PROCEDURE.

SECTION 9. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of insurance cash fund not otherwise appropriated, to the department of regulatory agencies for allocation to the division of insurance, for the fiscal year beginning July 1, 1996, the sum of one hundred thousand dollars (\$100,000), or so much thereof as may be necessary, for the implementation of this act.

SECTION 10. Effective date - applicability - nonseverability. Section 6 of this act shall take effect January 1, 1997, and shall apply to all personal injury protection claims made on or after such date. No portion of section 6 shall be severable from any other portion of such section. The remainder of this act shall take effect August 1, 1996, and shall apply to all personal injury protection claims made on or after such date.

SECTION 11. 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: May 2, 1996