

CHAPTER 78

INSURANCE

HOUSE BILL 99-1231

BY REPRESENTATIVES Swenson, Bacon, Chavez, Coleman, Decker, Leyba, Mace, May, T. Williams, and Zimmerman;
also SENATORS Perlmutter, Feeley, Hernandez, Matsunaka, Nichol, Pascoe, Phillips, Reeves, Rupert, Tanner, Tebedo, Thiebaut,
and Weddig.

AN ACT

CONCERNING AN EXCEPTION TO THE FIVE-YEAR LIMITATION ON MEDICAL TREATMENT IN THE
AUTOMOBILE NO-FAULT LAWS.

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

SECTION 1. 10-4-706 (1) (b), Colorado Revised Statutes, 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 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). FOR PURPOSES OF THIS SUBPARAGRAPH (I), 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.

(II) ~~For purposes of this paragraph (b), the treatment of neurologic injuries also~~

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

~~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.~~ ANY PERSON WHO IS ENTITLED TO BENEFITS UNDER THIS PARAGRAPH (b) AND IS LESS THAN THIRTEEN YEARS OF AGE WHEN THE MOTOR VEHICLE ACCIDENT NECESSITATING SUCH BENEFITS OCCURS SHALL BE SUBJECT TO THE FOLLOWING PROVISIONS:

(A) WITHIN FIVE YEARS AFTER THE DATE OF THE ACCIDENT, A LICENSED PHYSICIAN OR DENTIST MAY RENDER A WRITTEN OPINION, BASED ON A REASONABLE DEGREE OF MEDICAL PROBABILITY AND SUPPORTED BY DETAILED AND DESCRIPTIVE OBJECTIVE EVIDENCE, THAT REASONABLE AND NECESSARY SURGERY OR RECONSTRUCTIVE PROCEDURE CANNOT BE PROVIDED TO THE CLAIMANT WITHIN FIVE YEARS AFTER THE DATE OF THE ACCIDENT BECAUSE OF SUCH PERSON'S STATUS OF JUVENILE GROWTH AND LACK OF PHYSICAL MATURITY. IF SUCH OPINION IS RENDERED, BENEFITS SHALL BE PAID IN THE FUTURE WHEN EXPENSES ARE INCURRED FOR SUCH SURGERY OR RECONSTRUCTIVE PROCEDURE, UNLESS A DETERMINATION IS MADE UNDER SUBSECTION (6) OF THIS SECTION BEFORE SUCH SURGERY OR RECONSTRUCTIVE PROCEDURE OCCURS THAT IT IS NO LONGER REASONABLE AND NECESSARY OR THAT THE NEED FOR SUCH SURGERY OR RECONSTRUCTIVE PROCEDURE WAS NOT CAUSED BY THE MOTOR VEHICLE ACCIDENT. ANY BENEFITS PAYMENT FOR A REASONABLE AND NECESSARY SURGERY OR RECONSTRUCTIVE PROCEDURE THAT AROSE OUT OF A MOTOR VEHICLE ACCIDENT SHALL BE SUBJECT TO THE LIMITS OF COVERAGE IN FORCE AT THE TIME OF SUCH ACCIDENT. SUCH TREATMENT AND EXPENSES SHALL BE COMPENSATED AS IF THEY WERE PERFORMED WITHIN FIVE YEARS AFTER THE ACCIDENT IF THEY ARE ACTUALLY INCURRED BEFORE THE CLAIMANT ATTAINS EIGHTEEN YEARS OF AGE. THIS SUBPARAGRAPH (II) APPLIES ONLY TO SURGERY OR RECONSTRUCTIVE PROCEDURES OCCURRING FIVE YEARS OR MORE AFTER A MOTOR VEHICLE ACCIDENT, INCLUDING REASONABLE AND NECESSARY EXPENSES FOR MEDICAL SERVICES, HOSPITAL, NURSING, AND DIAGNOSTIC PROCEDURES SPECIFICALLY RELATED THERETO.

(B) NO LATER THAN NINETY DAYS BEFORE A FUTURE SURGERY OR RECONSTRUCTIVE PROCEDURE IS SCHEDULED TO OCCUR, THE CLAIMANT OR HIS OR HER REPRESENTATIVE OR THE PROVIDER WHO INTENDS TO PERFORM THE SURGERY OR RECONSTRUCTIVE PROCEDURE SHALL NOTIFY THE INSURER IN WRITING OF THE SURGERY OR RECONSTRUCTIVE PROCEDURE. SUCH WRITTEN NOTICE SHALL INCLUDE THE DATE OF THE MOTOR VEHICLE ACCIDENT, THE CLAIM NUMBER, IF ANY WAS ASSIGNED BY THE INSURER, A DESCRIPTION OF THE PROPOSED TREATMENT, THE DIAGNOSIS OR PROGNOSIS, THE DATE THE TREATMENT IS SCHEDULED TO BEGIN, AND THE NAME, ADDRESS, TELEPHONE NUMBER, AND SPECIALTY OF THE PROVIDER. THE INSURER MAY USE THE PROCEDURES SET FORTH IN SUBSECTION (6) OF THIS SECTION TO DETERMINE IF SUCH PROPOSED SURGERY OR RECONSTRUCTIVE PROCEDURE IS REASONABLE AND NECESSARY AND AROSE OUT OF THE SUBJECT MOTOR VEHICLE ACCIDENT.

(C) ANY FUTURE SURGERY OR RECONSTRUCTIVE PROCEDURE THAT IS PAID ON BEHALF OF A CLAIMANT UNDER THIS SUBPARAGRAPH (II) SHALL BE IN ADDITION TO ANY MEDICAL BENEFITS PAID FOR TREATMENT AND EXPENSES INCURRED WITHIN FIVE YEARS AFTER THE ACCIDENT, SUBJECT TO APPLICABLE COVERAGE LIMITS IN FORCE AT THE TIME OF THE ACCIDENT.

(D) THE TREATING PROVIDER SHALL MAINTAIN THE ORIGINALS OF ALL MEDICAL REPORTS, OFFICE NOTES, TESTS, X RAYS, DIAGNOSTIC STUDIES, AND ALL OTHER RECORDS OF ANY KIND IN SUCH PROVIDER'S FILE UNTIL THE CLAIMANT IS EIGHTEEN YEARS OF AGE. THE PROVIDER OR THE PROVIDER'S SUCCESSOR IN INTEREST SHALL PRODUCE UPON WRITTEN REQUEST ALL SUCH DOCUMENTS, OR COPIES THEREOF, AS APPROPRIATE, TO ANY SUBSEQUENT PROVIDER TREATING THE CLAIMANT, TO ANY PROVIDER PERFORMING A PIP EXAMINATION UNDER SUBSECTION (6) OF THIS SECTION, AND TO THE INSURER.

(E) ANY BENEFITS PAYABLE UNDER THIS SUBPARAGRAPH (II) SHALL BE SUBJECT TO ALL PROVISIONS OF THE UNDERLYING INSURANCE POLICY, INCLUDING ANY MANAGED CARE ARRANGEMENTS.

(F) NO INSURER SHALL BE REQUIRED TO MAINTAIN A PIP CLAIM FILE LONGER THAN IS REQUIRED BY APPLICABLE LAW UNLESS THE CLAIM FILE CONTAINS A WRITTEN OPINION RECEIVED BY THE INSURER WITHIN FIVE YEARS AFTER THE DATE OF THE ACCIDENT, PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II). ANY INSURER THAT RECEIVES SUCH A WRITTEN OPINION SHALL MAINTAIN SUCH CLAIM FILE UNTIL THE CLAIMANT RECEIVES THE NECESSARY SURGERY OR RECONSTRUCTIVE PROCEDURE OR ATTAINS EIGHTEEN YEARS OF AGE.

SECTION 2. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to claims for benefits arising out of motor vehicle accidents occurring on or after January 1, 2000.

Approved: April 5, 1999