

CHAPTER 44

HEALTH CARE POLICY AND FINANCING

HOUSE BILL 05-1017

BY REPRESENTATIVE(S) McGihon;
also SENATOR(S) Hagedorn and Groff.

AN ACT

**CONCERNING CONFORMING THE PROHIBITION OF SPECIFIED PROVIDER REFERRALS UNDER THE
"COLORADO MEDICAL ASSISTANCE ACT" TO APPLICABLE FEDERAL LAW.**

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

SECTION 1. 26-4-410.5, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

26-4-410.5. Providers - physicians - prohibition of certain referrals. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DESIGNATED HEALTH SERVICES" MEANS ANY OF THE FOLLOWING SERVICES:

(I) CLINICAL LABORATORY SERVICES;

(II) PHYSICAL THERAPY SERVICES;

(III) OCCUPATIONAL THERAPY SERVICES;

(IV) RADIOLOGY AND OTHER DIAGNOSTIC SERVICES;

(V) RADIATION THERAPY SERVICES;

(VI) DURABLE MEDICAL EQUIPMENT;

(VII) PARENTERAL OR ENTERAL NUTRIENTS, EQUIPMENT, AND SUPPLIES;

(VIII) PROSTHETICS, ORTHOTICS, AND PROSTHETIC DEVICES;

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

(IX) HOME HEALTH SERVICES;

(X) OUTPATIENT PRESCRIPTION DRUGS; AND

(XI) INPATIENT AND OUTPATIENT HOSPITAL SERVICES.

(b) "FINANCIAL RELATIONSHIP" MEANS AN OWNERSHIP OR INVESTMENT INTEREST IN AN ENTITY FURNISHING DESIGNATED HEALTH SERVICES OR A COMPENSATION ARRANGEMENT BETWEEN A PROVIDER OR AN IMMEDIATE FAMILY MEMBER OF THE PROVIDER AND THE ENTITY. AN OWNERSHIP OR INVESTMENT INTEREST MAY BE REFLECTED IN EQUITY, DEBT, OR OTHER INSTRUMENTS.

(c) "IMMEDIATE FAMILY MEMBER OF THE PROVIDER" MEANS ANY SPOUSE, NATURAL OR ADOPTIVE PARENT, NATURAL OR ADOPTIVE CHILD, STEPPARENT, STEPCHILD, STEPBROTHER, STEPSISTER, IN-LAW, GRANDPARENT, OR GRANDCHILD OF THE PROVIDER.

(d) "PROVIDER" MEANS:

(I) A DOCTOR OF MEDICINE OR OSTEOPATHY WHO IS LICENSED TO PRACTICE MEDICINE PURSUANT TO ARTICLE 36 OF TITLE 12, C.R.S.;

(II) A DOCTOR OF DENTAL SURGERY OR OF DENTAL MEDICINE WHO IS LICENSED TO PRACTICE DENTISTRY PURSUANT TO ARTICLE 35 OF TITLE 12, C.R.S.;

(III) A DOCTOR OF PODIATRIC MEDICINE WHO IS LICENSED TO PRACTICE PODIATRY PURSUANT TO ARTICLE 32 OF TITLE 12, C.R.S.;

(IV) A DOCTOR OF OPTOMETRY WHO IS LICENSED TO PRACTICE OPTOMETRY PURSUANT TO ARTICLE 40 OF TITLE 12, C.R.S.; OR

(V) A CHIROPRACTOR WHO IS LICENSED TO PRACTICE CHIROPRACTIC PURSUANT TO ARTICLE 33 OF TITLE 12, C.R.S.

(2) (a) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (2), A PROVIDER PARTICIPATING IN THE MEDICAL ASSISTANCE PROGRAM UNDER THIS ARTICLE 4 IS PROHIBITED FROM MAKING A REFERRAL TO AN ENTITY FOR DESIGNATED HEALTH SERVICES FOR WHICH PAYMENT MAY BE MADE UNDER THE STATE'S MEDICAL ASSISTANCE PROGRAM IF THE PROVIDER OR AN IMMEDIATE FAMILY MEMBER OF THE PROVIDER HAS A FINANCIAL RELATIONSHIP WITH THE ENTITY.

(b) PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL NOT APPLY TO ANY FINANCIAL RELATIONSHIP THAT MEETS THE REQUIREMENTS OF AN EXCEPTION TO THE PROHIBITIONS ESTABLISHED BY 42 U.S.C. SEC. 1395nn, AS AMENDED, OR ANY REGULATIONS PROMULGATED THEREUNDER, AS AMENDED.

(c) PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL NOT APPLY TO A FINANCIAL RELATIONSHIP OR REFERRAL FOR DESIGNATED HEALTH SERVICES IF THE FINANCIAL RELATIONSHIP OR REFERRAL FOR DESIGNATED HEALTH SERVICES WOULD NOT VIOLATE 42 U.S.C. SEC. 1395nn, AS AMENDED, AND ANY REGULATIONS PROMULGATED THEREUNDER, AS AMENDED, IF THE DESIGNATED HEALTH SERVICES WERE ELIGIBLE

FOR PAYMENT UNDER MEDICARE RATHER THAN THE "COLORADO MEDICAL ASSISTANCE ACT".

(3) AN ENTITY THAT PROVIDES DESIGNATED HEALTH SERVICES AS A RESULT OF A PROHIBITED REFERRAL SHALL NOT PRESENT A CLAIM OR BILL TO ANY INDIVIDUAL, ANY THIRD-PARTY PAYOR, THE STATE DEPARTMENT, OR ANY OTHER ENTITY FOR THE DESIGNATED HEALTH SERVICES.

(4) AN ENTITY THAT PROVIDES DESIGNATED HEALTH SERVICES SHALL PROVIDE TO THE STATE DEPARTMENT, UPON ITS REQUEST AND IN THE FORM SPECIFIED BY THE STATE DEPARTMENT, INFORMATION CONCERNING THE ENTITY'S OWNERSHIP ARRANGEMENTS INCLUDING:

(a) THE ITEMS AND SERVICES PROVIDED BY THE ENTITY;

(b) THE NAMES AND PROVIDER IDENTIFICATION NUMBERS OF ALL PROVIDERS WITH A FINANCIAL INTEREST IN THE ENTITY OR WHOSE IMMEDIATE FAMILY MEMBERS HAVE A FINANCIAL INTEREST IN THE ENTITY.

(5) IF A PROVIDER REFERS A PATIENT FOR DESIGNATED HEALTH SERVICES IN VIOLATION OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION OR THE ENTITY REFUSES TO PROVIDE THE INFORMATION REQUIRED IN SUBSECTION (4) OF THIS SECTION, THE STATE DEPARTMENT MAY:

(a) DENY ANY CLAIMS FOR PAYMENT FROM THE PROVIDER OR ENTITY;

(b) REQUIRE THE PROVIDER OR ENTITY TO REFUND PAYMENTS FOR SERVICES;

(c) REFER THE MATTER TO THE APPROPRIATE AGENCY FOR MEDICAL ASSISTANCE FRAUD INVESTIGATION; OR

(d) TERMINATE THE PROVIDER'S OR ENTITY'S PARTICIPATION IN THE MEDICAL ASSISTANCE PROGRAM.

SECTION 2. 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 7, 2005