

CHAPTER 382

HEALTH CARE POLICY AND FINANCING

HOUSE BILL 08-1409

BY REPRESENTATIVE(S) Pommer, Buescher, McGihon, Merrifield, Primavera, and Stafford;
also SENATOR(S) Johnson, Boyd, Gibbs, Gordon, Groff, Kester, Morse, Shaffer, Spence, Taylor, Tupa, Williams, and Windels.

AN ACT

CONCERNING RECOVERY OF PAYMENTS UNDER MEDICAID, AND MAKING AN APPROPRIATION.

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

SECTION 1. 25.5-4-209 (1) (a), (2), and (3) (a), Colorado Revised Statutes, are amended to read:

25.5-4-209. Payments by third parties - copayments by recipients - review - appeal. (1) (a) Any recipient receiving benefits under this article or article 5 or 6 of this title who receives any supplemental income, available for medical purposes under rules of the state department, or who receives proceeds from sickness, accident, health, or casualty insurance shall apply the supplemental income OR INSURANCE PROCEEDS to the cost of the benefits rendered, and the rules may require reports from providers of other payments received by them from or on behalf of recipients.

(2) (a) Notwithstanding the provisions of section 26-1-114, C.R.S., the state department is authorized to ~~share information with and require any insurer or nonprofit hospital and health service corporation to provide information concerning coverage of any recipient but only in the manner provided in this section~~ TAKE ALL REASONABLE MEASURES TO ASCERTAIN THE LEGAL LIABILITY OF THIRD PARTIES TO PAY FOR CARE AND SERVICES AVAILABLE, INCLUDING THE COLLECTION OF SUFFICIENT INFORMATION FROM INDIVIDUALS WHO ARE ELIGIBLE FOR MEDICAL ASSISTANCE TO PURSUE CLAIMS AGAINST THE THIRD PARTIES. THE STATE DEPARTMENT SHALL COLLECT THE INFORMATION AT THE TIME OF ANY DETERMINATION OR REDETERMINATION OF ELIGIBILITY FOR MEDICAL ASSISTANCE. A KNOWINGLY OR WILFUL FAILURE OF AN INDIVIDUAL TO PROVIDE THE INFORMATION MAY RESULT IN THE TERMINATION OF THE INDIVIDUAL'S ELIGIBILITY FOR MEDICAL ASSISTANCE.

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

~~(b) In order to determine if applicants for or recipients of medical assistance have coverages, the state department may provide to such insurer or nonprofit hospital and health service corporation a list of social security numbers identifying these applicants or recipients and may require them to provide a written computerized match disclosing any coverages for individuals adequately identified on such list. The requirement to run such computerized match shall apply only to information which is entered in the insurer's or nonprofit hospital and health service corporation's data processing system on the date the match is run and shall not require such insurer or corporation to change its data or make new entries for the purpose of comparing identifying information. A THIRD PARTY, AS A CONDITION OF DOING BUSINESS IN THE STATE, SHALL:~~

(I) (A) PROVIDE ON A MONTHLY BASIS TO THE STATE DEPARTMENT OR ITS BUSINESS ASSOCIATE ELIGIBILITY RECORDS IDENTIFYING ALL PERSONS COVERED BY THE THIRD PARTY IN A MANNER PRESCRIBED BY RULE TO ALLOW THE STATE DEPARTMENT OR ITS BUSINESS ASSOCIATE TO PERFORM AN ANALYSIS AND DETERMINE WHICH PERSONS ARE ELIGIBLE FOR MEDICAL ASSISTANCE;

(B) THE ELIGIBILITY RECORD DATA ELEMENTS PROVIDED BY THE THIRD PARTY SHALL BE THE MINIMUM NECESSARY TO ACHIEVE A SATISFACTORY DATA MATCH. THE THIRD PARTY SHALL PROVIDE, UPON REQUEST OF THE STATE DEPARTMENT OR ITS BUSINESS ASSOCIATE, ADDITIONAL DATA ELEMENTS AS NEEDED TO CONFIRM ELIGIBILITY MATCHES AS DETERMINED BY THE INITIAL ANALYSIS, INCLUDING, BUT NOT LIMITED TO, THE NAME, ADDRESS, AND IDENTIFYING NUMBER OF THE THIRD PARTY'S PLAN.

(II) ACCEPT THE STATE'S RIGHT OF RECOVERY AND THE ASSIGNMENT TO THE STATE OF ANY RIGHT OF AN INDIVIDUAL OR OTHER ENTITY TO PAYMENT FROM THE THIRD PARTY FOR AN ITEM OR SERVICE FOR WHICH PAYMENT HAS BEEN MADE UNDER THE MEDICAL ASSISTANCE PLAN TO THE EXTENT THAT SUCH SERVICE IS COVERED BY THE THIRD PARTY;

(III) RESPOND TO ANY INQUIRY BY THE STATE REGARDING A CLAIM FOR PAYMENT FOR ANY HEALTH CARE ITEM OR SERVICE THAT IS SUBMITTED NOT LATER THAN THREE YEARS AFTER THE DATE OF THE PROVISION OF THE HEALTH CARE ITEM OR SERVICE; AND

(IV) AGREE NOT TO DENY A CLAIM SUBMITTED BY THE STATE SOLELY ON THE BASIS OF THE DATE OF SUBMISSION OF THE CLAIM, THE TYPE OR FORMAT OF THE CLAIM FORM, OR A FAILURE TO PRESENT PROPER DOCUMENTATION AT THE POINT-OF-SALE THAT IS THE BASIS OF THE CLAIM, IF:

(A) THE CLAIM IS SUBMITTED BY THE STATE WITHIN THE THREE-YEAR PERIOD BEGINNING ON THE DATE THAT THE ITEM OR SERVICE IS FURNISHED; AND

(B) ANY ACTION BY THE STATE TO ENFORCE ITS RIGHTS WITH RESPECT TO THE CLAIM IS COMMENCED WITHIN SIX YEARS AFTER THE STATE'S SUBMISSION OF THE CLAIM.

(c) The cost to ~~such insurer or corporation~~ A THIRD PARTY of providing ~~such~~

~~computerized match~~ DATA, INCLUDING ELIGIBILITY RECORDS, shall be borne by the state department.

(d) ~~No such insurer or corporation which~~ A THIRD PARTY THAT provides data required by the state department, whether confidential or not, shall NOT be held liable for the provision of such data to the state department or for any use made thereof.

(e) (I) ~~For the fiscal year beginning July 1, 1984, and thereafter, all funds expended by the state department to pay the cost of providing such computerized matches shall be subject to an annual appropriation by the general assembly.~~ THE STATE DEPARTMENT'S BUSINESS ASSOCIATE SHALL NOT USE, TRANSFER, EXTRACT, COPY, REVISE, OR STORE ANY DATA REQUIRED TO BE PROVIDED TO THE STATE DEPARTMENT AND ITS BUSINESS ASSOCIATE, INCLUDING THE ELIGIBILITY RECORDS, SOCIAL SECURITY NUMBERS, COVERAGE, NATURE OF COVERAGE, PERIOD PROVIDED, OR ANY OTHER DATA ELEMENTS, FOR PURPOSES OTHER THAN:

(A) THE IDENTIFICATION OF PERSONS ELIGIBLE TO RECEIVE MEDICAL ASSISTANCE, AS DEFINED BY SECTION 25.5-1-103 (5);

(B) COST AVOIDANCE;

(C) THE REMUNERATION OF THE STATE DEPARTMENT FOR SERVICES PROVIDED OR PAID FOR;

(D) ANY RECORD RETENTION REQUIREMENTS;

(E) AUDIT REQUIREMENTS; AND

(F) PURPOSES RELATED TO LITIGATION AND TESTIMONY.

(II) THE STATE DEPARTMENT'S BUSINESS ASSOCIATE SHALL DESTROY ALL DATA ONCE THE FUNCTIONS SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (e) HAVE BEEN ACCOMPLISHED.

(f) (I) ~~The state department may expend funds appropriated pursuant to paragraph (e) of this subsection (2) in an amount not to exceed the amount of annualized general fund savings that result from payment by third parties specifically due to disclosure of coverages pursuant to this section.~~ A COLORADO RESIDENT SHALL HAVE A PRIVATE RIGHT OF ACTION AGAINST THE STATE DEPARTMENT'S BUSINESS ASSOCIATE IF THE BUSINESS ASSOCIATE NEGLIGENTLY USES THE DATA SPECIFIED IN PARAGRAPH (e) OF THIS SUBSECTION (2) FOR PURPOSES OTHER THAN THOSE STATED IN PARAGRAPH (e) OF THIS SUBSECTION (2). THE RIGHT OF ACTION SHALL BE ENFORCEABLE IN THE COURTS OF COLORADO AND LIMITED TO THE ACTUAL DAMAGES INCURRED BY THE INDIVIDUAL BRINGING THE ACTION.

(II) A THIRD PARTY MAY BRING AN ACTION ON BEHALF OF A COLORADO RESIDENT FOR INJUNCTIVE RELIEF AGAINST THE STATE DEPARTMENT'S BUSINESS ASSOCIATE TO PREVENT THE BUSINESS ASSOCIATE FROM INTENTIONALLY USING THE DATA FOR PURPOSES OTHER THAN THOSE SPECIFIED IN PARAGRAPH (e) OF THIS SUBSECTION (2).

(g) ~~The state department shall make quarterly reports concerning the value of computerized matches pursuant to this subsection (2) to the general assembly and the joint budget committee. Such reports shall include, but need not be limited to, the number of individuals against whom computer matches were run, the number of resulting matches, and the resulting corresponding savings to the state department.~~ AS USED IN THIS SECTION:

(I) "BUSINESS ASSOCIATE" SHALL HAVE THE SAME MEANING AS PROVIDED IN 45 CFR 160.103.

(II) "THIRD PARTY" MEANS A HEALTH INSURER, SELF-INSURED PLAN, GROUP HEALTH PLAN AS DEFINED IN 29 U.S.C. SEC. 1167 (1), SERVICE BENEFIT PLAN, MANAGED CARE ORGANIZATION, PHARMACY BENEFIT MANAGER, OR OTHER PARTY THAT IS, BY STATUTE, CONTRACT, OR AGREEMENT, LEGALLY RESPONSIBLE FOR PAYMENT OF A CLAIM FOR A HEALTH CARE ITEM OR SERVICE.

(3) (a) The rights assigned by a recipient of medical assistance to the state department pursuant to section 25.5-4-205 (4) shall include the right to appeal an adverse coverage decision by a third party for which the medical assistance program may be responsible for payment, including but not limited to, the internal and external reviews provided for in sections 10-16-113 and 10-16-113.5, C.R.S., AND A THIRD PARTY'S REASONABLE APPEAL PROCEDURE UNDER STATE AND FEDERAL LAW. The state department or the independent contractor retained pursuant to paragraph (b) of this subsection (3) shall review and, if necessary, appeal an adverse coverage decision, except an adverse coverage decision relating to medicare, Title XVIII of the federal "Social Security Act", as amended.

SECTION 2. Part 3 of article 4 of title 25.5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

25.5-4-300.4. Last resort for payment - legislative intent. IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT MEDICAID BE THE LAST RESORT FOR PAYMENT FOR MEDICALLY NECESSARY GOODS AND SERVICES FURNISHED TO RECIPIENTS AND THAT ALL OTHER SOURCES OF PAYMENT ARE PRIMARY TO MEDICAL ASSISTANCE PROVIDED BY MEDICAID.

SECTION 3. Appropriation - adjustments to the 2008 long bill. For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 2008, shall be adjusted as follows: The appropriation to the department of health care policy and financing, division of medical services premiums, for medical services premiums, are decreased by three hundred thousand dollars (\$300,000). Of said sum, one hundred fifty thousand dollars (\$150,000) shall be from the general fund and one hundred fifty thousand dollars (\$150,000) shall be from federal funds.

SECTION 4. 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: June 2, 2008