

CHAPTER 290

LABOR AND INDUSTRY

SENATE BILL 10-178

BY SENATOR(S) Hodge and Mitchell, Boyd;
also REPRESENTATIVE(S) Gerou and Miklosi, Acree, Apuan, Kerr J., Labuda, Scanlan.

AN ACT

CONCERNING FAIRNESS IN WORKERS' COMPENSATION HEALTH CARE PROVIDER REVIEW PROCESSES, AND, IN CONNECTION THEREWITH, REQUIRING PERFORMANCE PROGRAMS TO BE TRANSPARENT, INCLUDE OBJECTIVE AND STANDARDIZED CRITERIA THAT ARE APPLIED CONSISTENTLY, AND PROVIDE MINIMUM DUE PROCESS TO PROVIDERS.

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

SECTION 1. Article 43 of title 8, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 6
PROVIDER REVIEW AND DISCLOSURE**

8-43-601. Short title. THIS PART 6 SHALL BE KNOWN AND MAY BE CITED AS THE "PROVIDER REVIEW AND DISCLOSURE ACT".

8-43-602. Legislative declaration. THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT INSURER PERFORMANCE PROGRAMS ARE USED IN MARKETING, SALES, AND OTHER EFFORTS, AND, AS SUCH, MAY IMPACT AN EMPLOYER'S SELECTION OF AN AUTHORIZED HEALTH CARE PROVIDER. TO PROTECT PATIENTS, EMPLOYERS, AND PROVIDERS, AND TO AVOID IMPROPER PROFILING, ALL PERFORMANCE PROGRAMS MUST BE FAIR, OBJECTIVE, CONSISTENTLY APPLIED, AND ACCORD PROVIDERS DUE PROCESS. CONSISTENT WITH THESE GOALS, PERFORMANCE PROGRAMS SHOULD ALIGN INCENTIVES NOT ONLY WITH EFFICIENT OPERATIONS, BUT ALSO WITH COST-EFFECTIVE, HIGH-QUALITY CARE. ACCORDINGLY, THE GENERAL ASSEMBLY FINDS THAT REQUIRING MINIMUM STANDARDS AND FULL DISCLOSURE OF PERFORMANCE PROGRAM DATA AND METHODOLOGIES WILL HELP IMPROVE THE QUALITY AND EFFICIENCY OF HEALTH CARE DELIVERED TO COLORADO WORKERS.

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

8-43-603. Definitions. AS USED IN THIS PART 6, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "INSURER" MEANS AN ENTITY THAT PROVIDES WORKERS' COMPENSATION INSURANCE COVERAGE REQUIRED BY ARTICLE 44 OF THIS TITLE, INCLUDING ANY THIRD-PARTY INSURER OR SELF-INSURED EMPLOYER.

(2) "METHODOLOGY" MEANS THE METHOD BY WHICH AN ASSESSMENT OR MEASUREMENT IS DETERMINED, INCLUDING ALGORITHMS OR STUDIES, EVALUATION OF DATA, APPLICATION OF GUIDELINES, OR PERFORMANCE MEASURES.

(3) "PATIENT" MEANS A PERSON WHO QUALIFIES FOR HEALTH CARE BENEFITS UNDER ARTICLES 40 TO 47 OF THIS TITLE.

(4) "PERFORMANCE PROGRAM" MEANS ANY PROGRAM, SYSTEM, OR PROCESS THROUGH WHICH AN INSURER RATES OR RECOGNIZES THE COST, EFFICIENCY, QUALITY, OR OTHER ASSESSMENT OR MEASUREMENT OF A PROVIDER'S CARE, WHETHER THROUGH AWARDS, PAYMENTS, ASSIGNMENT, OR CHARACTERIZATION OR REPRESENTATION THAT IS DISCLOSED TO PATIENTS, OTHER PROVIDERS, EMPLOYERS, OR THE PUBLIC.

(5) "PROVIDER" MEANS A PHYSICIAN LICENSED UNDER THE "COLORADO MEDICAL PRACTICE ACT", ARTICLE 36 OF TITLE 12, C.R.S., OR A CLINIC THAT PROVIDES HEALTH CARE PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE.

8-43-604. Performance programs. (1) ALL PERFORMANCE PROGRAMS SHALL INCLUDE, AT A MINIMUM:

(a) A QUALITY OF CARE COMPONENT THAT IS SATISFIED BY USING STANDARD TREATMENT GUIDELINES PROMULGATED BY THE DIRECTOR PURSUANT TO SECTION 8-42-101 OR EVIDENCED-BASED ADMINISTRATIVE, OPERATIONAL, OR CLINICAL PERFORMANCE MEASURES THAT IMPROVE CARE;

(b) A CLEAR REPRESENTATION OF THE WEIGHT GIVEN TO THE QUALITY OF CARE COMPONENT IN COMPARISON WITH OTHER FACTORS, WHICH WEIGHT SHALL BE EQUAL TO OR GREATER THAN ANY OTHER FACTOR;

(c) IF A PERFORMANCE PROGRAM INCLUDES AN EMPLOYER SATISFACTION ELEMENT, A PATIENT SATISFACTION ELEMENT, WHICH SHALL BE WEIGHTED EQUAL TO OR GREATER THAN THE EMPLOYER SATISFACTION ELEMENT;

(d) STATISTICAL ANALYSES THAT ARE OBJECTIVE, ACCURATE, VALID, RELIABLE, AND VERIFIABLE;

(e) A PERIOD OF ASSESSMENT OF DATA, PERTINENT TO THE PERFORMANCE PROGRAM, WHICH SHALL BE UPDATED AT APPROPRIATE INTERVALS;

(f) IF CLAIMS DATA ARE USED, ACCURATE CLAIMS DATA APPROPRIATELY ATTRIBUTED TO THE PROVIDER. WHEN REASONABLY AVAILABLE, THE INSURER SHALL USE AGGREGATED DATA FROM OTHER INSURERS TO SUPPLEMENT ITS OWN CLAIMS DATA.

(g) THE PROVIDER'S RESPONSIBILITY FOR HEALTH CARE DECISIONS AND THE FINANCIAL CONSEQUENCES OF THOSE DECISIONS, WHICH SHALL BE FAIRLY AND ACCURATELY ATTRIBUTED TO THE PROVIDER.

(2) PERFORMANCE PROGRAM RESULTS SHALL BE REPORTED TO EACH PROVIDER REVIEWED IN THE PROGRAM AND SHALL INCLUDE COMPARISON OF THE PROVIDER'S RESULTS TO THE RESULTS OF THE PROVIDER'S PEERS.

(3) ANY DISCLOSURE TO PATIENTS, OTHER PROVIDERS, EMPLOYERS, OR THE PUBLIC OF THE RESULTS OF A PERFORMANCE PROGRAM SHALL BE ACCOMPANIED BY A CONSPICUOUS DISCLAIMER WRITTEN IN BOLD-FACED TYPE STATING THAT THE INFORMATION IS INTENDED ONLY AS A GUIDE, SHOULD NOT BE THE SOLE FACTOR IN SELECTING A PROVIDER, HAS A RISK OF ERROR, AND SHOULD BE DISCUSSED WITH THE PROVIDER.

8-43-605. Due process. (1) AT LEAST FORTY-FIVE DAYS BEFORE DISCLOSING THE RESULTS OF A PERFORMANCE PROGRAM, AN INSURER SHALL GIVE A PROVIDER WRITTEN NOTICE OF THE AVAILABILITY OF THE PROVIDER'S INDIVIDUAL RESULT, SPECIFIC INSTRUCTIONS ON HOW THE PROVIDER CAN ACCESS THE RESULT, AND A DESCRIPTION OF THE IMPLICATIONS TO THE PROVIDER. THE WRITTEN NOTICE SHALL DESCRIBE THE PROCEDURES BY WHICH THE PROVIDER MAY REQUEST:

(a) THE INFORMATION REQUIRED TO BE DISCLOSED UNDER SUBSECTION (2) OF THIS SECTION; AND

(b) AN APPEAL OF THE RESULT PURSUANT TO SUBSECTION (3) OF THIS SECTION.

(2) (a) WITHIN TEN BUSINESS DAYS AFTER RECEIVING A REQUEST BY OR ON BEHALF OF A PROVIDER, AN INSURER SHALL DISCLOSE, IN A MANNER THAT IS REASONABLY UNDERSTANDABLE AND THAT ALLOWS THE PROVIDER TO VERIFY THE DATA AGAINST HIS OR HER RECORDS, THE METHODOLOGY AND ALL DATA UPON WHICH A PROVIDER'S PERFORMANCE PROGRAM RESULT WAS CALCULATED, WITH SUFFICIENT DETAIL TO ALLOW THE PROVIDER TO DETERMINE THE EFFECT OF THE METHODOLOGY ON THE DATA REVIEWED.

(b) AN INSURER SHALL NOT USE THE "UNIFORM TRADE SECRETS ACT", ARTICLE 74 OF TITLE 7, C.R.S., TO AVOID COMPLIANCE WITH THIS SECTION.

(3) INSURERS SHALL ESTABLISH PROCEDURES FOR PROVIDERS TO APPEAL THE RESULTS OF A PERFORMANCE PROGRAM. SUCH PROCEDURES, IN ADDITION TO THE DISCLOSURES AND THE WRITTEN NOTICE FURNISHED, SHALL PROVIDE:

(a) A REASONABLE METHOD BY WHICH THE PROVIDER MAY SUBMIT NOTICE OF THE DESIRE TO APPEAL;

(b) THE NAME, TITLE, QUALIFICATIONS, AND RELATIONSHIP TO THE INSURER OF ANY PERSON RESPONSIBLE FOR DECIDING THE APPEAL, WHO SHALL BE AUTHORIZED TO UPHOLD, MODIFY, OR REJECT RESULTS OR REQUIRE ADDITIONAL ACTION TO ENSURE THAT RESULTS ARE FAIR, REASONABLE, ACCURATE, AND COMPLY WITH THE REQUIREMENTS OF THIS PART 6;

(c) AN OPPORTUNITY FOR A PROVIDER TO SUBMIT OR HAVE CONSIDERED CORRECTED DATA OR OTHER INFORMATION RELEVANT TO THE RESULTS OR THE APPROPRIATENESS OF THE METHODOLOGY USED. IF REQUESTED, A PROVIDER MAY APPEAR AT A FACE-TO-FACE MEETING WITH THOSE RESPONSIBLE FOR THE APPEAL DECISION AT A LOCATION REASONABLY CONVENIENT TO THE PROVIDER OR BY TELECONFERENCE. THE PROVIDER SHALL SUBMIT IN WRITING ANY CORRECTED DATA OR INFORMATION IN ADVANCE OF THE MEETING.

(d) THE PROVIDER'S RIGHT TO BE ASSISTED BY A REPRESENTATIVE, INCLUDING AN ATTORNEY;

(e) A DETAILED WRITTEN DECISION REGARDING THE APPEAL THAT STATES THE REASONS FOR UPHOLDING, MODIFYING, OR REJECTING THE APPEAL;

(f) RESOLUTION OF THE APPEAL WITHIN FORTY-FIVE DAYS AFTER THE DATE UPON WHICH THE DATA AND METHODOLOGY ARE DISCLOSED UNLESS OTHERWISE AGREED TO BY THE PARTIES TO THE APPEAL; AND

(g) A STAY ON THE IMPLEMENTATION, USE, AND DISCLOSURE OF AND ACTION UPON THE INDIVIDUAL RESULTS OF THE PERFORMANCE PROGRAM UNTIL THE APPEAL AND ANY SUBSEQUENT HEARING REQUESTED PURSUANT TO SECTION 8-43-207 HAS BECOME FINAL.

8-43-606. Enforcement. (1) AN INSURER SHALL NOT LIMIT, BY CONTRACT OR OTHER MEANS, THE RIGHT OF A PROVIDER TO ENFORCE THIS PART 6.

(2) THIS PART 6 MAY BE ENFORCED THROUGH A HEARING PURSUANT TO SECTION 8-43-207 OR IN A CIVIL ACTION, AND ANY REMEDIES AT LAW AND IN EQUITY ARE AVAILABLE.

(3) A VIOLATION OF THIS PART 6 CONSTITUTES AN UNFAIR OR DECEPTIVE ACT OR PRACTICE UNDER PART 11 OF ARTICLE 3 OF TITLE 10, C.R.S.

8-43-607. Filing with director. AT LEAST THIRTY DAYS BEFORE IMPLEMENTING ANY NEW OR AMENDED PERFORMANCE PROGRAM, AN INSURER SHALL FILE A DETAILED DESCRIPTION OF THE PERFORMANCE PROGRAM WITH THE DIRECTOR.

SECTION 2. 10-3-1104 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

10-3-1104. Unfair methods of competition and unfair or deceptive acts or practices. (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(jj) VIOLATION OF PART 6 OF ARTICLE 43 OF TITLE 8, C.R.S.

SECTION 3. Specified effective date - applicability. This act shall take effect July 1, 2010, and shall apply to performance programs conducted on or after said date.

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: May 26, 2010