

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 06-0969.01 Kristen Forrestal

SENATE BILL 06-213

SENATE SPONSORSHIP

Hagedorn,

HOUSE SPONSORSHIP

Penry,

Senate Committees

Health and Human Services

House Committees

Business Affairs and Labor

A BILL FOR AN ACT

101 **CONCERNING THE REQUIREMENT THAT HEALTH CARE SERVICES**
102 **PROVIDED AT AN IN-NETWORK FACILITY BE PROVIDED TO THE**
103 **COVERED PERSON AT NO GREATER COST THAN SERVICES**
104 **PROVIDED BY AN IN-NETWORK PROVIDER.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires health care services provided at an in-network facility, including services provided by an out-of-network provider, to be provided to the covered person at no greater cost to the covered person than if the services were obtained from an in-network provider.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
May 1, 2006

SENATE
Amended 3rd Reading
April 21, 2006

SENATE
Amended 2nd Reading
April 20, 2006

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

2 **SECTION 1.** 10-16-704 (3), Colorado Revised Statutes, is
3 amended to read:

4 **10-16-704. Network adequacy - legislative declaration.**

5 (3) (a) (I) In 1997, the general assembly enacted this part 7 with the
6 express intent to incorporate consumer protections into the creation and
7 maintenance of provider networks and to establish standards to assure the
8 adequacy, accessibility, and quality of health care services offered under
9 a managed care plan.

10 (II) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND
11 DECLARES THAT THERE ARE SITUATIONS IN WHICH INSURED CONSUMERS
12 RECEIVE HEALTH CARE SERVICES, INCLUDING PROCEDURES APPROVED BY
13 THEIR INSURANCE CARRIER, IN A NETWORK FACILITY, WITH A PRIMARY
14 PROVIDER THAT IS A NETWORK PROVIDER, BUT IN WHICH OTHER HEALTH
15 CARE PROFESSIONALS ASSISTING WITH SUCH PROCEDURES MAY NOT BE
16 IN-NETWORK PROVIDERS. IN SUCH SITUATIONS, THE CONSUMER IS NOT
17 AWARE THAT THE ASSISTING PROVIDERS ARE OUT-OF-NETWORK
18 PROVIDERS. FURTHER, THE CONSUMER MAY HAVE LITTLE OR NO DIRECT
19 CONTACT WITH THE ASSISTING HEALTH CARE PROFESSIONALS. THE
20 DIVISION OF INSURANCE HAS INTERPRETED THE NETWORK ADEQUACY
21 PROVISIONS IN THIS SECTION, ALONG WITH THE PROVISIONS RELATED TO
22 RELATIONSHIPS BETWEEN AN INSURER AND A HEALTH CARE PROVIDER IN
23 SECTION 10-16-705 TO HOLD THE CONSUMER HARMLESS FOR ADDITIONAL
24 CHARGES FROM OUT-OF-NETWORK PROVIDERS FOR CARE RENDERED IN A
25 NETWORK FACILITY. THE DIVISION OF INSURANCE'S INTERPRETATION OF
26 THESE STATUTES WAS CHALLENGED BY AN INSURER AND INVALIDATED BY

1 A DIVISION OF THE COLORADO COURT OF APPEALS IN PACIFIC LIFE &
2 ANNUITY CO. V. COLORADO DIV. OF INS., NO 04CA216 (SLIP OP.) (FEB.
3 23, 2006).

4 (III) THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES
5 THAT THE DIVISION OF INSURANCE HAS CORRECTLY INTERPRETED THE
6 PROVISIONS OF THIS SECTION TO PROTECT THE INSURED FROM THE
7 ADDITIONAL EXPENSE CHARGED BY AN ASSISTING PROVIDER WHO IS AN
8 OUT-OF-NETWORK PROVIDER, AND HAS PROPERLY REQUIRED INSURERS TO
9 HOLD THE CONSUMER HARMLESS. THE DIVISION OF INSURANCE DOES NOT
10 HAVE REGULATORY AUTHORITY OVER ALL HEALTH PLANS. SOME
11 CONSUMERS ARE ENROLLED IN SELF-FUNDED HEALTH INSURANCE
12 PROGRAMS THAT ARE GOVERNED UNDER THE FEDERAL "EMPLOYEE
13 RETIREMENT INCOME SECURITY ACT". THEREFORE, THE GENERAL
14 ASSEMBLY ENCOURAGES HEALTH CARE FACILITIES, CARRIERS, AND
15 PROVIDERS TO PROVIDE CONSUMERS DISCLOSURE ABOUT THE POTENTIAL
16 IMPACT OF RECEIVING SERVICES FROM AN OUT-OF-NETWORK PROVIDER.

17 == ==

18 (IV) THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES
19 THAT SOME CONSUMERS INTENTIONALLY USE OUT-OF-NETWORK
20 PROVIDERS, WHICH IS THE CONSUMERS' PREROGATIVE UNDER CERTAIN
21 HEALTH BENEFIT PLANS. WHEN CONSUMERS INTENTIONALLY USE AN
22 OUT-OF-NETWORK PROVIDER, THE CONSUMER IS ONLY ENTITLED TO
23 BENEFITS AT THE OUT-OF-NETWORK RATE AND MAY BE SUBJECT TO
24 BALANCE BILLING BY THE OUT-OF-NETWORK PROVIDER. == ==

25 (V) THEREFORE, THE GENERAL ASSEMBLY FINDS, DETERMINES,
26 AND DECLARES THAT THE PURPOSE OF SENATE BILL 06-213 IS TO CODIFY
27 THE INTERPRETATION OF THE DIVISION OF INSURANCE THAT HOLDS

1 CONSUMERS HARMLESS FOR CHARGES OVER AND ABOVE THE IN-NETWORK
2 RATES FOR SERVICES RENDERED IN A NETWORK FACILITY.

3 (b) When a covered person receives services or treatment in
4 accordance with plan provisions at a network facility, the benefit level for
5 all covered services and treatment received through the facility shall be
6 the in-network benefit. COVERED SERVICES OR TREATMENT RENDERED
7 AT A NETWORK FACILITY, INCLUDING COVERED ANCILLARY SERVICES OR
8 TREATMENT RENDERED BY AN OUT-OF-NETWORK PROVIDER PERFORMING
9 THE SERVICES OR TREATMENT AT A NETWORK FACILITY, SHALL BE
10 COVERED AT NO GREATER COST TO THE COVERED PERSON THAN IF THE
11 SERVICES OR TREATMENT WERE OBTAINED FROM AN IN-NETWORK
12 PROVIDER.

13 (c) (I) THIS SUBSECTION (3) IS REPEALED, EFFECTIVE JULY 1, 2010.
14 PRIOR TO SUCH REPEAL, THE DIVISION SHALL CONDUCT AN EVALUATION
15 TO INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

16 (A) THE EFFECTS OF THIS SUBSECTION (3) ON NETWORK
17 ADEQUACY;

18 (B) THE FREQUENCY THAT NONPARTICIPATING PROVIDERS SUBMIT
19 MORE THAN NETWORK REIMBURSEMENT RATES FOR SERVICES RENDERED
20 IN AN IN-NETWORK FACILITY COMPARED TO THE CARRIER'S BOOK OF
21 BUSINESS FOR THAT LINE OF INSURANCE;

22 (C) THE AMOUNTS PAID BY CARRIERS TO NONPARTICIPATING
23 PROVIDERS ; AND

24 (D) THE IMPACT OF THIS SUBSECTION (3) ON CONSUMERS.

25 (II) THE DIVISION SHALL COMPLETE THE EVALUATION ON OR
26 BEFORE JANUARY 15, 2010, AND SHALL REPORT ITS FINDINGS TO THE
27 SENATE HEALTH AND HUMAN SERVICES COMMITTEE AND THE HOUSE OF

1 REPRESENTATIVES BUSINESS AFFAIRS AND LABOR COMMITTEE, OR ANY
2 SUCCESSOR COMMITTEES. THE LEGISLATIVE STAFF FOR SUCH COMMITTEES
3 SHALL NOTIFY THE COMMITTEE CHAIRS OF THE EXPECTATION OF THE
4 EVALUATION AND THE REPEAL OF THIS SUBSECTION (3) ON OR BEFORE
5 JULY 1, 2009.

6 **SECTION 2. Applicability.** This act shall apply to services and
7 treatment rendered on or after the effective date of this act.

8 **SECTION 3. Safety clause.** The general assembly hereby finds,
9 determines, and declares that this act is necessary for the immediate
10 preservation of the public peace, health, and safety.