First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

PREAMENDED

This Unofficial Version Includes Committee Amendments Not Yet Adopted on Second Reading

LLS NO. 17-0503.01 Christy Chase x2008 **SENATE BILL 17-088**

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A BILL FOR AN ACT

CONCERNING THE CRITERIA USED BY A HEALTH INSURER TO SELECT HEALTH CARE PROVIDERS TO PARTICIPATE IN THE INSURER'S NETWORK OF PROVIDERS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The bill requires a health insurer (carrier) to develop, use, and disclose to participating and prospective health care providers the standards the carrier uses for:

- Selecting participating providers for its network of providers;
- Tiering providers within the network; and
- Placing participating providers in a narrow or tiered provider network.

If a carrier markets a network as having quality or value, the carrier must include in the selection, narrowing, and tiering standards a quality component that:

- Equals or exceeds the weight of the other components of the standards; and
- Is based on specialty-appropriate, nationally recognized, evidence-based medical guidelines or nationally recognized, consensus-based guidelines.

A carrier must disclose its standards and any quality criteria to the commissioner of insurance for review and must make the standards available to providers and the public.

At least 45 days before implementing a decision to terminate, deny, restrict, limit, or otherwise condition a provider's participation in one or more provider networks, a carrier must notify the affected provider in writing and inform the provider of the right to request that the carrier reconsider its decision. The bill requires the carrier to develop procedures for providers to request reconsideration and sets forth minimum requirements for, components of, and deadlines for the procedures.

At least annually, and within 30 days after adding or removing a network plan or product, a carrier must provide to providers participating in at least one of its networks a complete list of all network plans and products it offers to consumers, indicating the participating provider's status within each network plan or product.

A carrier that violates a requirement of the bill engages in an unfair or deceptive act or practice in the business of insurance and is subject to penalties and damages authorized by law.

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

SECTION 1. In Colorado Revised Statutes, **add** 10-16-705.5 as follows:

10-16-705.5. Provider networks - selection standards - quality criteria - disclosure - reconsideration of carrier decision - enforcement - definitions - legislative declaration. (1) **Legislative declaration.** THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(a) IN THE CURRENT MARKETPLACE, CARRIERS ARE OFFERING CONSUMERS A MULTITUDE OF OPTIONS, MANY OF WHICH INCLUDE A LIMITED PROVIDER NETWORK THAT MAY RESULT IN CARRIERS TERMINATING PARTICIPATING PROVIDERS FROM EXISTING NETWORKS OR EXCLUDING OTHERWISE QUALIFIED AND POTENTIALLY ESSENTIAL PROVIDERS FROM NETWORK PARTICIPATION;

(b) ADDITIONALLY, CARRIERS UTILIZE VARIOUS TERMS, SUCH AS "HIGH-QUALITY", "HIGH-PERFORMING", OR "VALUE-BASED", TO DESCRIBE THE QUALITY OF THEIR PRODUCTS AND NETWORKS WITHOUT PROVIDING CONSUMERS WITH THE DEFINITIONS OF THE TERMS, WHICH CAN CONFUSE CONSUMERS AND MAY RESULT IN CONSUMERS MAKING CHOICES THAT LEAVE THEM UNABLE TO CONTINUE UNDER THE CARE OF A PROVIDER WHO HAS BEEN TREATING THEM FOR YEARS; AND

(c) TO ENSURE THAT PATIENTS HAVE SUFFICIENT ACCESS TO CARE AND THAT LONG-STANDING PATIENT-PROVIDER RELATIONSHIPS THAT ARE ESSENTIAL TO PATIENT CARE ARE NOT DISRUPTED, CARRIERS SHOULD:

(I) DISCLOSE THE STANDARDS USED TO CONSTRUCT THEIR PARTICIPATING PROVIDER NETWORKS TO THE COMMISSIONER, PROVIDERS, AND CONSUMERS; AND

(II) PROVIDE A PROCESS FOR PROVIDERS TO SEEK RECONSIDERATION OF A CARRIER'S DECISION TO MAKE CHANGES TO, TERMINATE PROVIDERS FROM, OR DENY PROVIDERS' PARTICIPATION IN, ITS PROVIDER NETWORK.

(2) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ADVERSE ACTION" MEANS A DECISION BY A CARRIER TO NONRENEW A PROVIDER'S CONTRACT OR TERMINATE, DENY, RESTRICT,

LIMIT, OR OTHERWISE CONDITION A PROVIDER'S PARTICIPATION IN ONE OR MORE PROVIDER NETWORKS, INCLUDING A DECISION PERTAINING TO PARTICIPATION IN A NARROW NETWORK OR ALLOCATION WITHIN A TIERED NETWORK.

(b) "ECONOMIC CRITERIA" MEANS MEASURES USED TO DETERMINE PROVIDER RESOURCE UTILIZATION OR COSTS OF CARE FOR SPECIFIED HEALTH CARE SERVICES OR SETS OF HEALTH CARE SERVICES.

(c) "NARROW NETWORK" MEANS A REDUCED OR SELECTIVE PROVIDER NETWORK THAT IS A SUBGROUP OR SUBDIVISION OF A LARGER PROVIDER NETWORK AND FROM WHICH PROVIDERS WHO PARTICIPATE IN THE LARGER NETWORK MAY BE EXCLUDED.

(d) "NATIONAL QUALITY FORUM" MEANS THE NOT-FOR-PROFIT, NONPARTISAN, MEMBERSHIP-BASED ORGANIZATION THAT WORKS TO CATALYZE IMPROVEMENTS IN HEALTH CARE AND WHOSE MISSION IS TO LEAD NATIONAL COLLABORATION TO IMPROVE HEALTH AND HEALTH CARE QUALITY THROUGH MEASUREMENT, OR ITS SUCCESSOR ORGANIZATION.

(e) "QUALITY CRITERIA" MEANS MEASURES USED TO DETERMINE THE QUALITY OF CARE PROVIDED BY A PROVIDER, AS DETERMINED BASED ON THE DEGREE TO WHICH HEALTH CARE SERVICES PROVIDED BY A PROVIDER TO INDIVIDUALS AND POPULATIONS INCREASE THE LIKELIHOOD OF THE DESIRED HEALTH OUTCOMES, CONSISTENT WITH CURRENT PROFESSIONAL KNOWLEDGE.

(f) "TIERED NETWORK" MEANS A NETWORK THAT IDENTIFIES AND ASSIGNS SOME OR ALL TYPES OF PROVIDERS AND FACILITIES TO SPECIFIC GROUPS TO WHICH DIFFERENT PROVIDER REIMBURSEMENT, COVERED PERSON COST-SHARING, OR PROVIDER ACCESS REQUIREMENTS, OR ANY COMBINATION OF REIMBURSEMENT, COST-SHARING, OR ACCESS

REQUIREMENTS, APPLY FOR THE SAME SERVICES.

(g) "TIERING" MEANS A SYSTEM THAT COMPARES, RATES, RANKS, MEASURES, TIERS, OR CLASSIFIES A PROVIDER'S PERFORMANCE, QUALITY OF CARE, OR COST OF CARE AGAINST OBJECTIVE STANDARDS OR AGAINST THE PRACTICE OR PERFORMANCE OF OTHER HEALTH CARE PROVIDERS. "TIERING" INCLUDES QUALITY IMPROVEMENT PROGRAMS, PAY-FOR-PERFORMANCE PROGRAMS, PUBLIC REPORTING ON HEALTH CARE PROVIDER PERFORMANCE OR RATINGS, AND THE USE OF TIERED OR NARROWED NETWORKS.

(3) **Selection standards.** (a) IF A CARRIER OFFERS A NARROW NETWORK OR A TIERED NETWORK, THE CARRIER SHALL DEVELOP STANDARDS FOR SELECTING PARTICIPATING PROVIDERS FOR ITS NETWORK, TIERING PARTICIPATING PROVIDERS WITHIN THE PROVIDER NETWORK, AND PLACING PARTICIPATING PROVIDERS IN A NARROW NETWORK OR TIERED NETWORK. A CARRIER SHALL DEVELOP THE STANDARDS FOR PROVIDERS AND EACH HEALTH CARE PROFESSIONAL SPECIALTY AND SHALL COMMUNICATE THE STANDARDS TO CURRENT AND PROSPECTIVE PARTICIPATING PROVIDERS.

(b) A CARRIER OR AN INTERMEDIARY WITH WHICH THE CARRIER CONTRACTS SHALL USE THE STANDARDS DEVELOPED UNDER THIS SUBSECTION (3) IN DETERMINING THE SELECTION, NARROWING, AND TIERING OF PARTICIPATING PROVIDER NETWORKS.

(c) A CARRIER SHALL NOT ESTABLISH SELECTION, NARROWING, AND TIERING STANDARDS THAT WOULD:

(I) ALLOW THE CARRIER TO DISCRIMINATE AGAINST HIGH-RISK POPULATIONS BY EXCLUDING AND TIERING PROVIDERS BASED ON THEIR LOCATION IN A GEOGRAPHIC AREA THAT CONTAINS POPULATIONS OR

PROVIDERS PRESENTING A RISK OF HIGHER-THAN-AVERAGE NUMBER OF CLAIMS, LOSSES, OR HEALTH CARE UTILIZATION RATES;

(II) EXCLUDE PROVIDERS BECAUSE THEY TREAT OR SPECIALIZE IN TREATING POPULATIONS PRESENTING A RISK OF HIGHER-THAN-AVERAGE NUMBERS OF CLAIMS, LOSSES, OR HEALTH CARE UTILIZATION RATES;

(III) ALLOW A CARRIER TO SOLELY UTILIZE ECONOMIC CRITERIA TO CREDENTIAL A PROVIDER; OR

(IV) DISCRIMINATE, WITH RESPECT TO PARTICIPATION UNDER THE HEALTH BENEFIT PLAN, AGAINST ANY PROVIDER WHO IS ACTING WITHIN THE SCOPE OF THE PROVIDER'S LICENSE OR CERTIFICATION UNDER THE APPLICABLE STATE LAW OR RULES.

(4) **Quality criteria.** (a) FOR NETWORKS THAT A CARRIER MARKETS AS REPRESENTING QUALITY OR VALUE, THE CARRIER MUST INCLUDE IN THE SELECTION, NARROWING, AND TIERING STANDARDS A QUALITY COMPONENT THAT CARRIES AN EQUAL OR GREATER WEIGHT THAN OTHER COMPONENTS OF THE STANDARDS.

(b) A CARRIER MUST BASE THE QUALITY CRITERIA ON SPECIALTY-APPROPRIATE, NATIONALLY RECOGNIZED, EVIDENCE-BASED MEDICAL GUIDELINES OR NATIONALLY RECOGNIZED, CONSENSUS-BASED GUIDELINES. WHERE AVAILABLE, THE CARRIER SHALL USE QUALITY CRITERIA THAT ARE ENDORSED BY THE NATIONAL QUALITY FORUM AND DEVELOPED BY ENTITIES WHOSE WORK IN THE AREA OF HEALTH CARE PROFESSIONAL QUALITY PERFORMANCE IS GENERALLY ACCEPTED WITHIN THE HEALTH CARE INDUSTRY. ADDITIONALLY, IN DEVELOPING AND USING QUALITY CRITERIA, THE CARRIER IS SUBJECT TO THE REQUIREMENTS OF SECTION 25-38-104.

(c) A CARRIER MAY USE PROFESSIONAL CERTIFICATION OR

ACCREDITATION IN DETERMINING PROVIDER QUALITY OF CARE, BUT A CARRIER SHALL NOT RELY ON CERTIFICATION OR ACCREDITATION AS THE SOLE DETERMINANT OF PROVIDER QUALITY.

(5) **Disclosure.** A CARRIER SHALL MAKE ITS STANDARDS FOR SELECTING AND NARROWING OR TIERING ITS NETWORK OF PARTICIPATING PROVIDERS, AS APPLICABLE, AND ANY QUALITY CRITERIA IT USES AVAILABLE TO THE COMMISSIONER FOR REVIEW. ADDITIONALLY, THE CARRIER SHALL MAKE A DESCRIPTION OF THE SELECTION STANDARDS AND QUALITY CRITERIA, IN PLAIN LANGUAGE, AVAILABLE TO PROVIDERS AND CONSUMERS IN THE CARRIER'S MARKETING MATERIALS, PLAN OR PRODUCT INFORMATION, PRINTED AND WEB-BASED PROVIDER DIRECTORIES, AND PARTICIPATING PROVIDER AGREEMENTS.

(6) **Reconsideration.** (a) A CARRIER SHALL NOT TAKE AN ADVERSE ACTION AGAINST A PROVIDER WITHOUT FIRST COMPLYING WITH THE REQUIREMENTS OF THIS SUBSECTION (6).

(b) AT LEAST SIXTY DAYS BEFORE TAKING AN ADVERSE ACTION, A CARRIER SHALL SEND THE AFFECTED PROVIDER, BY CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED, A WRITTEN NOTICE INFORMING THE PROVIDER OF THE PROPOSED ADVERSE ACTION. THE NOTICE MUST:

(I) CONTAIN AN EXPLANATION OF THE REASONS FOR THE PROPOSED ADVERSE ACTION IN SUFFICIENT DETAIL TO ENABLE THE PROVIDER TO CHALLENGE THE PROPOSED ADVERSE ACTION;

(II) REFERENCE THE EVIDENCE OR DOCUMENTATION UNDERLYING THE DECISION TO PURSUE THE PROPOSED ADVERSE ACTION, WHICH THE CARRIER MUST PROVIDE TO THE PROVIDER WITHIN SEVEN WORKING DAYS AFTER THE DATE ON WHICH THE CARRIER RECEIVES A REQUEST FROM THE PROVIDER FOR THE EVIDENCE OR DOCUMENTATION; AND

(III) INFORM THE PROVIDER OF THE RIGHT TO REQUEST THE CARRIER TO RECONSIDER THE ADVERSE ACTION, INCLUDING THE OPPORTUNITY FOR A FACE-TO-FACE MEETING, IN ACCORDANCE WITH THE CARRIER'S PROCEDURES DEVELOPED UNDER SUBSECTION (6)(c) OF THIS SECTION.

(c) A CARRIER SHALL ESTABLISH PROCEDURES FOR A PROVIDER TO REQUEST A CARRIER TO RECONSIDER AN ADVERSE ACTION. THE PROCEDURES, IN ADDITION TO THE WRITTEN NOTICE PROVIDED FOR IN SUBSECTION (6)(b) OF THIS SECTION, MUST PROVIDE THE FOLLOWING:

(I) A REASONABLE METHOD BY WHICH THE PROVIDER IS TO SUBMIT A REQUEST FOR RECONSIDERATION OF A PROPOSED ADVERSE ACTION, INCLUDING THE NAME OF THE PERSON OR PERSONS TO WHOM THE PROVIDER IS TO SUBMIT THE REQUEST;

(II) IF REQUESTED BY THE PROVIDER, DISCLOSURE OF THE EVIDENCE OR DOCUMENTATION UPON WHICH THE CARRIER'S ADVERSE ACTION IS BASED;

(III) THE NAME, TITLE, QUALIFICATIONS, AND RELATIONSHIP TO THE CARRIER OF THE PERSON OR PERSONS RESPONSIBLE FOR THE PROVIDER'S REQUEST FOR RECONSIDERATION, AS DESIGNATED BY THE CARRIER UNDER SUBSECTION (6)(e) OF THIS SECTION;

(IV) AN OPPORTUNITY TO SUBMIT OR HAVE THE CARRIER CONSIDER CORRECTED DATA RELEVANT TO THE ADVERSE ACTION AND TO HAVE THE CARRIER CONSIDER THE APPLICABILITY OF THE CARRIER'S SELECTION STANDARDS AND QUALITY CRITERIA IN THE DECISION;

(V) THE OPPORTUNITY, IF THE PROVIDER REQUESTS, FOR A FACE-TO-FACE MEETING WITH THOSE RESPONSIBLE FOR THE RECONSIDERATION DECISION AT A LOCATION REASONABLY CONVENIENT

TO THE PROVIDER OR BY TELECONFERENCE;

(VI) THE RIGHT OF THE PROVIDER TO BE ASSISTED BY A REPRESENTATIVE; AND

(VII) A WRITTEN DECISION TO GRANT OR DENY THE PROVIDER'S RECONSIDERATION REQUEST THAT STATES THE REASONS FOR GRANTING OR REJECTING THE REQUEST AND FOR IMPLEMENTING, MODIFYING, OR REVERSING THE ADVERSE ACTION.

(d) ALL DATA THAT A PROVIDER SUBMITS TO THE CARRIER UNDER SUBSECTION (6)(c)(IV) OF THIS SECTION OR IN A FACE-TO-FACE MEETING UNDER SUBSECTION (6)(c)(V) OF THIS SECTION ARE PRESUMED VALID AND ACCURATE, AND A CARRIER SHALL NOT UNREASONABLY WITHHOLD CONSIDERATION OF CORRECTED OR SUPPLEMENTED DATA SUBMITTED UNDER THOSE SUBSECTIONS.

(e) THE CARRIER SHALL DESIGNATE A PERSON OR PERSONS WITH THE AUTHORITY TO GRANT OR DENY THE RECONSIDERATION REQUEST AND TO WHOM THE PROVIDER MUST SUBMIT THE REQUEST FOR RECONSIDERATION.

(f) THE CARRIER SHALL COMPLETE THE RECONSIDERATION PROCESS WITHIN FORTY-FIVE DAYS AFTER THE DATE THE PROVIDER RECEIVES THE NOTICE OF THE ADVERSE ACTION OR, IF REQUESTED, THE EVIDENCE OR DOCUMENTATION UPON WITH THE ADVERSE ACTION IS BASED, WHICHEVER IS LATER, UNLESS THE CARRIER AND PROVIDER AGREE TO AN ALTERNATIVE DEADLINE TO COMPLETE THE RECONSIDERATION PROCESS.

(g) A CARRIER SHALL NOT IMPLEMENT AN ADVERSE ACTION THAT IS THE SUBJECT OF A REQUEST FOR RECONSIDERATION UNTIL THE CARRIER ISSUES A FINAL DECISION TO GRANT OR DENY THE REQUEST.

(7) **Exclusions.** THIS SECTION DOES NOT:

(a) PROHIBIT A CARRIER FROM DECLINING TO SELECT A PROVIDER WHO FAILS TO MEET OTHER LEGITIMATE SELECTION CRITERIA DEVELOPED BY THE CARRIER IN COMPLIANCE WITH THIS SECTION; EXCEPT THAT THE CARRIER SHALL COMMUNICATE TO THE PROVIDER THE REASONS WHY THE PROVIDER FAILS TO MEET THE OTHER CRITERIA; ___

(b) REQUIRE A CARRIER TO CONTRACT WITH ANY PROVIDER WHO IS WILLING TO ABIDE BY THE TERMS AND CONDITIONS FOR PARTICIPATION ESTABLISHED BY THE CARRIER; OR

(c) REQUIRE A CARRIER, ITS INTERMEDIARIES, OR THE PROVIDER NETWORKS WITH WHICH A CARRIER OR INTERMEDIARY CONTRACTS TO CONTRACT WITH OR RETAIN MORE PROVIDERS ACTING WITHIN THEIR SCOPE OF PRACTICE AUTHORIZED UNDER APPLICABLE STATE LAW THAN ARE NECESSARY FOR THE CARRIER TO MAINTAIN A SUFFICIENT PROVIDER NETWORK.

(8) **Participation list.** A CARRIER SHALL PROVIDE A PROVIDER THAT IS PARTICIPATING IN ONE OR MORE OF ITS NETWORKS WITH A COMPLETE LIST OF ALL NETWORK PLANS AND PRODUCTS THE CARRIER OFFERS TO CONSUMERS, WITH AN INDICATION OF THE PROVIDER'S PARTICIPATION STATUS WITHIN EACH NETWORK PLAN OR PRODUCT, AT LEAST ANNUALLY AND WITHIN THIRTY DAYS AFTER THE CARRIER ADDS OR REMOVES A NEW NETWORK PLAN OR PRODUCT FROM ITS OFFERINGS.

(9) **Enforcement.** A CARRIER THAT VIOLATES THIS SECTION ENGAGES IN AN UNFAIR OR DECEPTIVE ACT OR PRACTICE IN THE BUSINESS OF INSURANCE UNDER PART 11 OF ARTICLE 3 OF THIS TITLE 10.

SECTION 2. In Colorado Revised Statutes, 10-3-1104, **add** (1)(ss) as follows:

10-3-1104. Unfair methods of competition - 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:

(ss) VIOLATING SECTION 10-16-705.5.

SECTION 3. Appropriation. For the 2017-18 state fiscal year, $42,006 is appropriated to the department of regulatory agencies for use by the division of insurance. This appropriation is from the division of insurance cash fund created in section 10-1-103 (3), C.R.S. To implement this act, the division may use this appropriation as follows:

(a) $36,828 for personal services, which is based on an assumption that the division will require an additional 0.5 FTE; and

(b) $5,178 for operating expenses and capital outlay costs.

SECTION 4. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2018; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to health plans issued, amended, or renewed on or after the applicable effective date of this act.