

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REREVISED

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

LLS NO. 10-0916.01 Thomas Morris

SENATE BILL 10-178

SENATE SPONSORSHIP

Hodge and Mitchell,

HOUSE SPONSORSHIP

Gerou and Miklosi,

Senate Committees
Judiciary

House Committees
Business Affairs and Labor

A BILL FOR AN ACT

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

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://www.leg.state.co.us/billsummaries>.)

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
3rd Reading Unamended
May 6, 2010

HOUSE
Amended 2nd Reading
May 5, 2010

SENATE
3rd Reading Unamended
April 20, 2010

SENATE
Amended 2nd Reading
April 19, 2010

The bill creates the "Provider Review and Disclosure Act". The act requires workers' compensation insurers to include quality and patient data in performance initiatives. The act also requires such initiatives to be based on objective data that is available to affected providers. The act requires credentialing, quality, and service reviews to be based on objective criteria that are applied consistently. The act provides due process for health care providers, including disclosure of the processes followed, the provider's rights, and an appeal process to challenge results and decisions relating to performance initiatives.

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

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

4 **PART 6**

5 **PROVIDER REVIEW AND DISCLOSURE**

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

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

1 EFFICIENCY OF HEALTH CARE DELIVERED TO COLORADO WORKERS.

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3 **8-43-603. Definitions.** AS USED IN THIS PART 6, UNLESS THE
4 CONTEXT OTHERWISE REQUIRES:

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

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

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

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

22 (5) "PROVIDER" MEANS A PHYSICIAN LICENSED UNDER THE
23 "COLORADO MEDICAL PRACTICE ACT", ARTICLE 36 OF TITLE 12, C.R.S.,
24 OR A CLINIC THAT PROVIDES HEALTH CARE PURSUANT TO ARTICLES 40 TO
25 47 OF THIS TITLE.

26 **8-43-604. Performance programs.** (1) ALL PERFORMANCE
27 PROGRAMS SHALL INCLUDE, AT A MINIMUM:

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

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

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

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

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

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

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

26 (2) PERFORMANCE PROGRAM RESULTS SHALL BE REPORTED TO
27 EACH PROVIDER REVIEWED IN THE PROGRAM AND SHALL INCLUDE

1 COMPARISON OF THE PROVIDER'S RESULTS TO THE RESULTS OF THE
2 PROVIDER'S PEERS.

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

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11 **8-43-605. Due process.** (1) AT LEAST FORTY-FIVE DAYS BEFORE
12 DISCLOSING THE RESULTS OF A PERFORMANCE PROGRAM, AN INSURER
13 SHALL GIVE A PROVIDER WRITTEN NOTICE OF THE AVAILABILITY OF THE
14 PROVIDER'S INDIVIDUAL RESULT, SPECIFIC INSTRUCTIONS ON HOW THE
15 PROVIDER CAN ACCESS THE RESULT, AND A DESCRIPTION OF THE
16 IMPLICATIONS TO THE PROVIDER. THE WRITTEN NOTICE SHALL DESCRIBE
17 THE PROCEDURES BY WHICH THE PROVIDER MAY REQUEST:

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

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

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

1 DETAIL TO ALLOW THE PROVIDER TO DETERMINE THE EFFECT OF THE
2 METHODOLOGY ON THE DATA REVIEWED.

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

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

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

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

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

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

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

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

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

13 **8-43-606. Enforcement.** (1) AN INSURER SHALL NOT LIMIT, BY
14 CONTRACT OR OTHER MEANS, THE RIGHT OF A PROVIDER TO ENFORCE THIS
15 PART 6.

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

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

22 **8-43-607. Filing with director.** AT LEAST THIRTY DAYS BEFORE
23 IMPLEMENTING ANY NEW OR AMENDED PERFORMANCE PROGRAM, AN
24 INSURER SHALL FILE A DETAILED DESCRIPTION OF THE PERFORMANCE
25 PROGRAM WITH THE DIRECTOR.

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

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

5 **(hh) VIOLATION OF PART 6 OF ARTICLE 43 OF TITLE 8, C.R.S.**

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

9 **SECTION 4. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, and safety.