

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 11-0883.01 Christy Chase

SENATE BILL 11-205

SENATE SPONSORSHIP

Tochtrop,

HOUSE SPONSORSHIP

Miklosi,

Senate Committees
Health and Human Services

House Committees

A BILL FOR AN ACT

101 **CONCERNING PARITY IN STATUS BETWEEN HEALTH CARE PROVIDERS**
102 **UNDER HEALTH BENEFIT PLANS, AND, IN CONNECTION**
103 **THEREWITH, SPECIFYING THE CONDITIONS UNDER WHICH**
104 **HEALTH INSURANCE CARRIERS MUST GRANT PARTICIPATING**
105 **PROVIDER STATUS TO ADVANCED PRACTICE NURSES UNDER THE**
106 **CARRIERS' HEALTH BENEFIT PLANS.**

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.

SENATE
3rd Reading Unamended
April 29, 2011

SENATE
Amended 2nd Reading
April 28, 2011

Current law prohibits health insurance carriers offering health benefit plans in rural areas of the state from discriminating between physicians and advanced practice nurses (APNs) when establishing reimbursement rates for covered services provided, regardless of whether the services are provided by a physician or APN. Additionally, when evaluating applications by APNs for participating provider status, the carrier is to use objective and reasonable criteria and take into account provider-to-covered-person ratios for covered benefits that an APN can provide and, if the carrier denies the application, notify the APN and provide the reason for the denial.

The bill eliminates the limited applicability of the nondiscrimination provision, thereby prohibiting carriers offering health benefit plans anywhere in the state from discriminating between physicians and APNs, and extends the nondiscrimination provisions to prohibit a carrier from discriminating between physicians and APNs with regard to determining participating provider status.

The bill further requires a carrier to notify an APN of its determination on a participating provider status application within 90 days after receipt of the application and, in the case of a denial, to notify the APN in writing of its specific reasons for the denial. If the APN so requests, the carrier must also provide the APN with a written, clear, and understandable explanation of the objective and reasonable criteria it used in making its determination.

Carriers are prohibited from restricting the scope of practice or requiring supervision of an APN, in a manner not otherwise required by the "Nurse Practice Act", as part of granting participating provider status to the APN. For purposes of enforcing these requirements, APNs are afforded the same remedies as would be available for health care providers who enter a contract with a carrier, including a private right of action, equitable relief, reasonable attorney fees and costs if the APN prevails, and the ability to resolve the dispute through arbitration. Additionally, if the carrier violates these requirements, the carrier is subject to penalties for engaging in an unfair or deceptive act or practice in the business of insurance.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and determines that:

4 (a) In its 2010 report of a two-year study of the barriers that
5 prevent nurses from effectively responding to rapidly changing health

1 care settings and an evolving health care system, the committee of the
2 Robert Wood Johnson Foundation Initiative on the Future of Nursing at
3 the Institute of Medicine recommends that nurses should practice to the
4 full extent of their education, training, and scope of practice, which
5 defines the activities a qualified nurse may perform;

6 (b) With an aging population and the increased demands of an
7 evolving health care delivery system, physicians alone will not be
8 sufficient to meet growing demands for health care, particularly in the
9 primary care area, and advanced practice nurses are a critical provider
10 resource;

11 (c) Allowing advanced practice nurses to practice to the full extent
12 of their authority will improve access and offer consumers additional
13 choice in necessary providers;

14 (d) Moreover, advanced practice nurses invest heavily in their
15 education and training so that they are able to offer a needed skill to
16 consumers of health care, and future funding for nursing education at the
17 state and federal level targets the need for advanced practice nurse
18 providers;

19 (e) The added education and training obtained by an advanced
20 practice nurse enables that nurse to provide a wider range of care to
21 consumers in an independent setting, and by virtue of that independent
22 setting, advanced practice nurses are often in a position to create
23 additional health care jobs; and

24 (f) When health insurance carriers unreasonably restrict advanced
25 practice nurses from participation on insurance panels, not only does that
26 action prevent the advanced practice nurse from practicing, == == but the
27 action limits the capacity and effectiveness of the health care delivery

1 system, restricts access to care for health care consumers, and limits
2 health care market job growth.

3 (2) The general assembly therefore declares it to be the policy of
4 this state that health insurance carriers must give advanced practice nurses
5 fair opportunity to apply for participating provider status _____ so as to
6 meet the growing demands of the health care delivery system in this state
7 and assist in job growth in the health care market, and in furtherance of
8 that policy, health insurance carriers are:

9 (a) Required to evaluate an application for participating provider
10 status submitted by an advanced practice nurse using objective and
11 reasonable criteria;

12 (b) Required to respond timely and use appropriate criteria in
13 making determinations on participating provider status applications by
14 advanced practice nurses;

15 (c) Required to provide advanced practice nurses access to the
16 criteria used in making determinations; and

17 (d) Subject to private enforcement proceedings brought by an
18 advanced practice nurse and penalties for engaging in an unfair or
19 deceptive act or practice in the business of insurance for violating these
20 requirements.

21 (3) It is not the intention of the general assembly to limit the
22 ability of a carrier to make reasonable contracting decisions or require a
23 carrier to approve a certain number of a specific type of provider for
24 participation in the carrier's network.

25 **SECTION 2.** 10-16-125, Colorado Revised Statutes, is amended
26 to read:

27 **10-16-125. Carrier requirements - advanced practice nurses**

1 **- reimbursement rates - participating provider status - enforcement**

2 **and penalties.** (1) (a) In counties of the state that are neither part of a
3 metropolitan statistical area nor a primary statistical area, a carrier
4 offering a health benefit plan shall not discriminate between a physician
5 and an advanced practice nurse ~~not practicing under the direction of a~~
6 ~~physician~~ when establishing reimbursement == rates for covered services;
7 ~~that could be provided by an advanced practice nurse or a physician~~ ==

8 (b) A CARRIER OFFERING A HEALTH BENEFIT PLAN SHALL NOT
9 DISCRIMINATE BETWEEN A PHYSICIAN AND AN ADVANCED PRACTICE NURSE
10 WHEN DETERMINING PARTICIPATING PROVIDER STATUS.

11 (2) (a) In order to improve access to primary care and choices of
12 providers, a carrier providing a health benefit plan shall evaluate an
13 application for status as a participating provider from an advanced
14 practice nurse utilizing objective and reasonable criteria and shall take
15 into account the provider-to-covered-person ratio PURSUANT TO SECTION
16 10-16-704 for the covered benefits that appropriately may be provided by
17 the advanced practice nurse. The carrier shall make a determination on
18 an application for participating provider status submitted by an advanced
19 practice nurse, and notify the applicant of its determination, within ~~the~~
20 ~~same period in which the carrier makes a participating provider~~
21 ~~determination for physicians~~ NINETY DAYS AFTER RECEIPT OF THE
22 APPLICATION. If the application is denied, the carrier shall specify the
23 reason for the denial IN WRITING. If the application is approved, the
24 carrier shall list the advanced practice nurse in the provider directory for
25 the health benefit plan.

26 (b) UPON REQUEST OF THE APPLICANT, THE CARRIER SHALL
27 PROVIDE THE SPECIFIC OBJECTIVE AND REASONABLE CRITERIA IT USED IN

1 EVALUATING AND MAKING ITS DETERMINATION ON THE APPLICATION FOR
2 STATUS AS A PARTICIPATING PROVIDER. THE CARRIER SHALL PROVIDE THE
3 CRITERIA IN WRITING AND IN A CLEAR AND UNDERSTANDABLE FORMAT
4 THAT IS READILY AVAILABLE TO THE APPLICANT.

5 (3) A CARRIER THAT APPROVES AN ADVANCED PRACTICE NURSE'S
6 APPLICATION FOR PARTICIPATING PROVIDER STATUS SHALL NOT LIMIT THE
7 SCOPE OF PRACTICE OR REQUIRE SUPERVISION OF THE ADVANCED
8 PRACTICE NURSE WITH AN UNRESTRICTED LICENSE IN A MANNER THAT IS
9 MORE RESTRICTIVE THAN THE REQUIREMENTS FOR THE PRACTICE OF
10 ADVANCED PRACTICE NURSING AS SET FORTH IN ARTICLE 38 OF TITLE 12,
11 C.R.S., AND STATE BOARD OF NURSING RULES ADOPTED PURSUANT TO
12 THAT ARTICLE.

13 (4) (a) IF A CARRIER VIOLATES THIS SECTION, AN ADVANCED
14 PRACTICE NURSE MAY PURSUE ANY OF THE REMEDIES PROVIDED BY
15 SECTION 25-37-114, C.R.S.

16 (b) A VIOLATION OF THIS SECTION CONSTITUTES AN UNFAIR OR
17 DECEPTIVE ACT OR PRACTICE IN THE BUSINESS OF INSURANCE PURSUANT
18 TO SECTION 10-3-1104.

19 (5) THIS SECTION DOES NOT LIMIT THE ABILITY OF A CARRIER TO
20 MAKE REASONABLE CONTRACTING DECISIONS OR REQUIRE A CARRIER TO
21 APPROVE A CERTAIN NUMBER OF A SPECIFIC TYPE OF PROVIDER FOR
22 PARTICIPATION IN THE CARRIER'S NETWORK.

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

25 **10-3-1104. Unfair methods of competition - unfair or deceptive**
26 **acts or practices.** (1) The following are defined as unfair methods of
27 competition and unfair or deceptive acts or practices in the business of

1 insurance:

2 (kk) FAILING TO COMPLY WITH THE REQUIREMENTS OF SECTION
3 10-16-125.

4 **SECTION 4. Act subject to petition - effective date.** This act
5 shall take effect January 1, 2012; except that, if a referendum petition is
6 filed pursuant to section 1 (3) of article V of the state constitution against
7 this act or an item, section, or part of this act within the ninety-day period
8 after final adjournment of the general assembly, then the act, item,
9 section, or part shall not take effect unless approved by the people at the
10 general election to be held in November 2012 and shall take effect on
11 January 1, 2012, or on the date of the official declaration of the vote
12 thereon by the governor, whichever is later.