

**Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 06-0856.02 Kristen Forrestal

SENATE BILL 06-198

SENATE SPONSORSHIP

Johnson, Bacon, Dyer, Entz, Evans, Fitz-Gerald, Groff, Grossman, Hagedorn, Hanna, Isgar, Keller, Kester, Owen, Sandoval, Shaffer, Spence, Tapia, Teck, Tochtrop, Traylor, Williams, and Windels

HOUSE SPONSORSHIP

Romanoff, Madden, Benefield, Berens, Boyd, Carroll M., Carroll T., Cerbo, Cloer, Coleman, Decker, Frangas, Gallegos, Garcia, Green, Hodge, Jahn, Kerr, King, Larson, Liston, McGihon, McKinley, Paccione, Pommer, Ragsdale, Riesberg, Rose, Solano, Soper, Stafford, Stengel, Sullivan, Todd, Vigil, and Weissmann

Senate Committees

Health and Human Services

House Committees

A BILL FOR AN ACT

101 **CONCERNING CONTRACTUAL AGREEMENTS WITH HEALTH CARE**
102 **PROVIDERS TO PROVIDE HEALTH CARE SERVICES.**

Bill Summary

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

Requires any person or entity contracting with a health care provider on or after January 1, 2008, to use a standard form contract (contract) as directed by the commissioner of insurance (commissioner). Creates an advisory panel, whose members shall be appointed by the speaker of the house of representatives, the president of the senate, and the governor, to advise the commissioner regarding the adoption of a contract. Requires the commissioner to adopt the standard contract by

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.

July 1, 2007. Specifies certain terms to be included in the contract. Allows a health care provider to choose an alternative to the standard contract. Prohibits retaliation or discrimination against a health care provider who chooses not to use the standard contract, and makes such retaliation or discrimination a violation of the "Unfair Practices Act".

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

2 SECTION 1. Part 1 of article 16 of title 10, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 10-16-121.5. Health care contract headnotes - contract
6 provisions - definitions. (1) (a) ON AND AFTER JANUARY 1, 2007, A
7 HEALTH CARE CONTRACT SHALL INCLUDE, IN THE ORDER SPECIFIED IN
8 SUBSECTION (3) OF THIS SECTION, THE HEADNOTES STATED IN SUBSECTION
9 (3) OF THIS SECTION, UNLESS THE HEALTH CARE PROFESSIONAL CHOOSES
10 TO USE A DIFFERENT CONTRACT.

11 (b) FOR THE PURPOSES OF THIS SECTION:

12 (I) "HEADNOTES" MEANS WORDS OR PHRASES THAT ARE PRINTED
13 IN BOLD, UNDERLINED, OR OTHER CONTRASTING TYPE AND THAT BEGIN A
14 NEW PARAGRAPH OR CLAUSE CONTAINING CONTRACTUAL TERMS
15 CONSISTENT WITH THE SUBJECT MATTER OF THE HEADNOTE.

16 (II) "HEALTH CARE CONTRACT" OR "CONTRACT" MEANS A
17 CONTRACT THAT IS ENTERED INTO OR RENEWED BETWEEN A HEALTH CARE
18 PROFESSIONAL AND A PERSON OR ENTITY WHO, IN THE NORMAL COURSE OF
19 BUSINESS, ENTERS INTO CONTRACTS FOR THE DELIVERY OF HEALTH CARE
20 SERVICES.

21 (III) "HEALTH CARE PROFESSIONAL" MEANS A PERSON OR ENTITY
22 LICENSED IN THIS STATE TO PRACTICE MEDICINE, CHIROPRACTIC, NURSING,
23 PHYSICAL THERAPY, PODIATRY, DENTISTRY, OPTOMETRY, OR OTHER

1 HEALING ARTS. "HEALTH CARE PROFESSIONAL" INCLUDES A
2 PROFESSIONAL CORPORATION OR OTHER PROFESSIONAL ENTITY
3 COMPRISING SUCH HEALTH CARE PROFESSIONALS AS PERMITTED BY LAWS
4 OF THIS STATE; EXCEPT THAT "HEALTH CARE PROFESSIONAL" DOES NOT
5 INCLUDE A PHARMACIST, PHARMACY, OR PROVIDER OF PHARMACY
6 SERVICES.

7 (2) A CONTRACT SHALL BE WRITTEN IN PLAIN LANGUAGE.

8 (3) A CONTRACT'S HEADNOTES SHALL APPEAR IN THE FOLLOWING
9 ORDER AND SHALL INDICATE THE FOLLOWING PROVISIONS:

10 (a) THE NAME AND ADDRESS OF EACH PARTY ENTERING INTO OR
11 RENEWING THE CONTRACT;

12 (b) FACTUAL RECITALS;

13 (c) THE TERMS OF THE CONTRACT, WHICH TERMS SHALL INCLUDE
14 THE EFFECTIVE DATE AND DURATION OF THE CONTRACT AND THE SPECIFIC
15 PRODUCTS OR SERVICES TO BE PROVIDED BY THE PERSON OR ENTITY
16 ENTERING INTO THE CONTRACT WITH THE HEALTH CARE PROFESSIONAL;

17 (d) TERMINATION PROVISIONS, WHICH SHALL INCLUDE:

18 (I) THAT THE CONTRACT MAY BE TERMINATED BY EITHER PARTY
19 AFTER NINETY DAYS' WRITTEN NOTICE TO THE OTHER PARTY; AND

20 (II) THE CIRCUMSTANCES JUSTIFYING TERMINATION FOR CAUSE;

21 (e) THE ORDER OF PRECEDENCE OF DOCUMENTS CONTAINED IN THE
22 CONTRACT;

23 (f) THE SCOPE OF WORK COVERED UNDER THE CONTRACT,
24 INCLUDING:

25 (I) THE PRODUCTS AND SERVICES TO BE PROVIDED BY THE HEALTH
26 CARE PROFESSIONAL; AND

27 (II) THE PERSONS OR ENTITIES RESPONSIBLE FOR MAKING PAYMENT

1 TO THE HEALTH CARE PROFESSIONAL;
2 (g) RESPONSIBILITIES OF THE PERSON OR ENTITY AND THE HEALTH
3 CARE PROFESSIONAL, INCLUDING:
4 (I) A PROHIBITION AGAINST INTERFERING WITH THE HEALTH CARE
5 PROFESSIONAL'S RIGHT TO DETERMINE AND SET THE PAYOR MIX RATIO OF
6 THE PRACTICE;
7 (II) A NONDISCRIMINATION PROVISION STATING THAT THE HEALTH
8 CARE PROFESSIONAL SHALL NOT DISCRIMINATE OR DIFFERENTIATE IN THE
9 TIMING, MANNER, OR PROVISION OF HEALTH CARE PRODUCTS OR SERVICES
10 BECAUSE OF A PERSON'S RACE, COLOR, ETHNICITY, NATIONAL ORIGIN,
11 RELIGION, SEX, MARITAL STATUS, SEXUAL ORIENTATION, INCOME,
12 DISABILITY, OR AGE; AND
13 (III) A PROVISION IDENTIFYING THE LICENSURE OR CERTIFICATION
14 REQUIREMENTS OF THE HEALTH CARE PROFESSIONAL;
15 (h) CONSIDERATION OR PAYMENT TERMS, INCLUDING:
16 (I) THE METHODS USED FOR THE CALCULATION OF COMPENSATION,
17 INCLUDING ANY METHODOLOGY, CALCULATION, OR POLICY AFFECTING THE
18 FINAL, NET, OR ACTUAL COMPENSATION, AND THE APPLICABLE VERSION,
19 ALONG WITH ANY GEOGRAPHIC ADJUSTMENTS, CONVERSION FACTORS, OR
20 UNIT VALUES;
21 (II) THE FEE SCHEDULE, UPON REQUEST OF THE HEALTH CARE
22 PROFESSIONAL; AND
23 (III) A DESCRIPTION OF THE PERSON'S OR ENTITY'S CODING
24 METHODOLOGY AND ANY EXCEPTIONS TO STANDARD CPT METHODOLOGY;
25 (i) DISPUTE RESOLUTION PROCEDURES, INCLUDING A PROVISION
26 THAT ALLOWS FOR THE HEALTH CARE PROFESSIONAL TO RESOLVE A
27 DISPUTE THROUGH THE "UNIFORM ARBITRATION ACT", AS SET FORTH AND

1 AMENDED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON
2 UNIFORM STATE LAWS;

3 (j) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF ANY PARTY
4 TO BE NOTIFIED OF A DISPUTE REGARDING OR AMENDMENT TO THE
5 CONTRACT;

6 (k) THE ASSIGNMENT OF DUTIES UNDER, AND SUCCESSORS TO, THE
7 CONTRACT, INCLUDING A PROVISION THAT PROHIBITS ANY ASSIGNMENT
8 WITHOUT NOTICE ACCORDING TO PARAGRAPH (m) OF THIS SUBSECTION (3);

9 (l) SEVERABILITY PROVISIONS;

10 (m) THE ENTIRE UNDERSTANDING OF AND PROCESS FOR
11 AMENDMENTS, INCLUDING:

12 (I) A PROVISION STATING THAT AMENDMENTS CONSTITUTING A
13 MATERIAL ADVERSE CHANGE IN THE TERMS OF THE CONTRACT SHALL
14 ONLY OCCUR IN CONJUNCTION WITH THE ANNIVERSARY DATE ON WHICH
15 THE CONTRACT WAS ENTERED INTO AND THAT THE PERSON OR ENTITY
16 SHALL PROVIDE THE HEALTH CARE PROFESSIONAL WITH WRITTEN NOTICE
17 OF THE CHANGES AT LEAST NINETY DAYS PRIOR TO SUCH ANNIVERSARY
18 DATE, EXCEPT WHEN A SHORTER NOTICE PERIOD IS REQUIRED TO COMPLY
19 WITH CHANGES IN APPLICABLE LAW. THE PROVISION SHALL ALSO STATE
20 THAT, WITHIN THIRTY DAYS THEREAFTER, THE PARTIES SHALL AGREE TO
21 THE NEW TERMS AND, IF THEY ARE UNABLE TO AGREE, THE HEALTH CARE
22 PROFESSIONAL MAY TERMINATE THE CONTRACT BY PROVIDING NOTICE TO
23 THE CONTRACTING PERSON OR ENTITY.

24 (II) A PROVISION THAT STATES THE PERSON OR ENTITY SHALL
25 NOTIFY THE HEALTH CARE PROFESSIONAL IN WRITING OF AMENDMENTS
26 FOR CLERICAL MATTERS THAT DO NOT AFFECT SUBSTANTIVE RIGHTS OR
27 PAYMENTS UNDER THE CONTRACT FOR AT LEAST SIXTY DAYS PRIOR TO THE

1 EFFECTIVE DATE OF THE CHANGES, EXCEPT WHEN A SHORTER NOTICE
2 PERIOD IS REQUIRED TO COMPLY WITH CHANGES IN APPLICABLE LAW; AND

3 (III) A PROVISION THAT SPECIFIES THAT CHANGES IN TERMS WITH
4 REGARD TO PARAGRAPHS (f) AND (h) OF THIS SUBSECTION (3) SHALL NOT
5 BE MADE EXCEPT IN ACCORDANCE WITH THIS PARAGRAPH (m);

6 (n) SURVIVAL OF THE TERMS, INCLUDING THE PROHIBITION OF ANY
7 OBLIGATIONS BEYOND THE TERM OF THE CONTRACT;

8 (o) CHANGES TO THE CONTRACT TO COINCIDE WITH CHANGES IN
9 THE LAW;

10 (p) REMEDIES, INCLUDING A PROVISION THAT REQUIRES THE
11 ALLOWANCE FOR ALL AVAILABLE STATUTORY AND COMMON LAW
12 REMEDIES; AND

13 (q) ANY OTHER PROVISIONS AGREED UPON BY BOTH PARTIES TO
14 THE CONTRACT.

15 (4) A CONTRACT SHALL NOT REQUIRE A HEALTH CARE
16 PROFESSIONAL TO CONTRACT FOR ALL PRODUCTS AND SERVICES OFFERED
17 BY THE PERSON OR ENTITY WITH WHOM THE HEALTH CARE PROFESSIONAL
18 IS CONTRACTING.

19 (5) IF A CONTRACT REFERS TO ADDENDA, THE ADDENDA SHALL
20 APPEAR IN THE FOLLOWING ORDER:

21 (a) THE IDENTITY OF THE PRODUCTS OR SERVICES COVERED UNDER
22 THE CONTRACT AND ALL THE PERSONS OR ENTITIES RESPONSIBLE TO MAKE
23 PAYMENT TO THE HEALTH CARE PROFESSIONAL;

24 (b) A FEE SCHEDULE FOR COMPENSATION AND COMPENSATION TO
25 BE PAID; THE METHODS USED FOR THE CALCULATION OF COMPENSATION;
26 ANY METHODOLOGY, CALCULATION, POLICY AFFECTING THE FINAL NET OR
27 ACTUAL COMPENSATION, THE APPLICABLE VERSION, ANY GEOGRAPHIC

1 ADJUSTMENT, CONVERSION FACTORS, OR UNIT VALUES;

2 (c) THE PERSON'S OR ENTITY'S CODING STANDARDS AND
3 REQUIREMENTS, ADMINISTRATIVE CONSIDERATIONS, AND DISPUTE
4 RESOLUTION PROCEDURES, AND A CLEARLY DEFINED DESCRIPTION OF THE
5 GRIEVANCE PROCEDURES; AND

6 (d) CLEARLY DEFINED UTILIZATION REVIEW AND QUALITY
7 IMPROVEMENT PROGRAMS.

8 (6) A PERSON OR ENTITY SHALL NOT DISCRIMINATE OR RETALIATE
9 AGAINST A HEALTH CARE PROFESSIONAL FOR REQUIRING THE USE OF THE
10 STANDARD CONTRACT HEADNOTES AND PROVISIONS PURSUANT TO THIS
11 SECTION OR FOR ASSERTING OR ENFORCING THE RIGHTS AND OBLIGATIONS
12 IN THIS SECTION. "DISCRIMINATION" SHALL INCLUDE, BUT NOT BE LIMITED
13 TO, OFFERING OR PROVIDING ANY FINANCIAL OR OTHER BENEFIT FOR NOT
14 USING THE CONTRACT HEADNOTES AND PROVISIONS.

15 (7) A PERSON OR ENTITY SHALL NOT REQUIRE A HEALTH CARE
16 PROFESSIONAL TO WAIVE ANY PROVISION OF STATE OR FEDERAL LAW
17 UNDER A CONTRACT.

18 (8) A CONTRACT MAY BE MODIFIED TO THE EXTENT NECESSARY TO
19 COMPLY WITH STANDARDS SET FORTH IN STATE-FUNDED OR
20 FEDERALLY-FUNDED PROGRAM REQUIREMENTS.

21 (9) NOTHING IN THIS SECTION SHALL PROHIBIT THE USE OR
22 DISCLOSURE OF A CONTRACT FOR PURPOSES OF ENSURING COMPLIANCE
23 WITH STATE OR FEDERAL LAW.

24 (10) THIS SECTION SHALL NOT APPLY TO:

25 (a) ORGANIZATIONS THAT EXCLUSIVELY CONTRACT WITH A SINGLE
26 MEDICAL GROUP IN A SPECIFIC GEOGRAPHIC AREA TO PROVIDE OR
27 ARRANGE FOR HEALTH CARE SERVICES;

1 (b) EMPLOYMENT CONTRACTS OR ARRANGEMENTS BETWEEN AN
2 INDIVIDUAL HEALTH CARE PROFESSIONAL OR FACILITY AND OTHER HEALTH
3 CARE PROFESSIONALS OR BETWEEN AN INDIVIDUAL HEALTH CARE
4 PROFESSIONAL AND A BUSINESS ENTITY CONSISTING OF HEALTH CARE
5 PROVIDERS;

6 (c) CONTRACTS BETWEEN A HEALTH CARE FACILITY LICENSED
7 UNDER 25-3-101, C.R.S., AND A HEALTH CARE PROVIDER; OR

8 (d) CONTRACTS FOR THE PROVISION OF PRODUCTS OR SERVICES
9 THROUGH A WORKERS' COMPENSATION PROGRAM, A MEDICAID OR
10 MEDICARE PROGRAM, THE CHILDREN'S BASIC HEALTH PLAN AS DESCRIBED
11 IN ARTICLE 19 OF TITLE 26, C.R.S., OR THE COLORADO INDIGENT CARE
12 PROGRAM CREATED IN PART 1 OF ARTICLE 15 OF TITLE 26, C.R.S.

13 **SECTION 2. Effective date.** This act shall take effect at 12:01
14 a.m. on the day following the expiration of the ninety-day period after
15 final adjournment of the general assembly that is allowed for submitting
16 a referendum petition pursuant to article V, section 1 (3) of the state
17 constitution (August 9, 2006, if adjournment sine die is on May 10,
18 2006); except that, if a referendum petition is filed against this act or an
19 item, section, or part of this act within such period, then the act, item,
20 section, or part, if approved by the people, shall take effect on the date of
21 the official declaration of the vote thereon by proclamation of the
22 governor.