

HOUSE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

May 1, 2006  
Date

Committee on Health and Human Services.

After consideration on the merits, the Committee recommends the following:

SB06-198 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend reengrossed bill, strike everything below the enacting clause and  
2 substitute the following:

3 "SECTION 1. Title 6, Colorado Revised Statutes, is amended BY  
4 THE ADDITION OF A NEW ARTICLE to read:

5 **ARTICLE 21**  
6 **Contracts With Health Care Providers**

7 **6-21-101. Health care contracts - required provisions -**  
8 **definitions.** (1) ON AND AFTER JANUARY 1, 2007, A PERSON OR ENTITY  
9 THAT CONTRACTS WITH A HEALTH CARE PROVIDER SHALL COMPLY WITH  
10 THE PROVISIONS OF THIS SECTION AND SHALL INCLUDE THE PROVISIONS  
11 REQUIRED BY THIS SECTION IN THE CONTRACT. A CONTRACT IN EXISTENCE  
12 PRIOR TO JANUARY 1, 2007, THAT IS RENEWED OR RENEWS BY ITS TERMS  
13 SHALL COMPLY WITH THE PROVISIONS OF THIS SECTION AND SHALL  
14 INCLUDE THE PROVISIONS REQUIRED BY THIS SECTION IN THE RENEWED  
15 CONTRACT NO LATER THAN DECEMBER 31, 2007.

16 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE  
17 REQUIRES:

18 (a) "EDIT" MEANS AN ADJUSTMENT TO A PRACTICE OR PROCEDURE  
19 BY WHICH PAYMENT OR COMPENSATION FOR A SERVICE IS MADE OR TO A  
20 PROCEDURE CODE, INCLUDING THE AMERICAN MEDICAL ASSOCIATION'S

1 CURRENT PROCEDURAL TERMINOLOGY CODE AND THE CENTERS FOR  
2 MEDICARE AND MEDICAID SERVICES HEALTH CARE COMMON PROCEDURE  
3 CODING SYSTEM THAT IS USED IN A PROVIDER'S CLAIM FOR PAYMENT OR  
4 COMPENSATION THAT RESULTS IN:

5 (I) PAYMENT FOR SOME, BUT NOT ALL, OF THE CODES;

6 (II) PAYMENT FOR A DIFFERENT CODE; OR

7 (III) A REDUCED PAYMENT AS A RESULT OF SERVICES PROVIDED  
8 TO A PATIENT THAT ARE CLAIMED UNDER MORE THAN ONE CODE ON THE  
9 SAME SERVICE DATE.

10 (b) "HEALTHCARE CONTRACT" MEANS A CONTRACT ENTERED INTO  
11 OR RENEWED BETWEEN A PERSON OR ENTITY AND A HEALTH CARE  
12 PROVIDER FOR THE DELIVERY OF HEALTH CARE SERVICES TO OTHERS.

13 (c) "HEALTH CARE PROVIDER" MEANS A PERSON LICENSED OR  
14 CERTIFIED IN THIS STATE TO PRACTICE MEDICINE, PHARMACY,  
15 CHIROPRACTIC, NURSING, PHYSICAL THERAPY, PODIATRY, DENTISTRY,  
16 OPTOMETRY, OCCUPATIONAL THERAPY, OR OTHER HEALING ARTS.  
17 "HEALTH CARE PROVIDER" ALSO MEANS AN AMBULATORY SURGICAL  
18 CENTER, A LICENSED PHARMACY OR PROVIDER OF PHARMACY SERVICES,  
19 A PROFESSIONAL CORPORATION, OR OTHER CORPORATE ENTITY COMPRISED  
20 OF LICENSED HEALTH CARE PROVIDERS AS PERMITTED BY THE LAWS OF  
21 THIS STATE.

22 (d) "MATERIAL CHANGE" MEANS A CHANGE THAT DECREASES THE  
23 HEALTH CARE PROVIDER'S PAYMENT OR COMPENSATION, CHANGES THE  
24 ADMINISTRATIVE PROCEDURES IN A WAY THAT MAY REASONABLY BE  
25 EXPECTED TO SIGNIFICANTLY INCREASE THE PROVIDERS'S ADMINISTRATIVE  
26 EXPENSE, OR ADDS A NEW PRODUCT LINE.

27 (e) "PERSON OR ENTITY" MEANS A PERSON OR ENTITY THAT HAS A  
28 PRIMARY BUSINESS PURPOSE OF CONTRACTING WITH HEALTH CARE  
29 PROVIDERS FOR THE DELIVERY OF HEALTH CARE SERVICES.

30 (f) "PRODUCT" MEANS A PRODUCT LINE OR SET OF SERVICES FOR  
31 HEALTH SERVICES, INCLUDING, BUT NOT LIMITED TO A PREFERRED  
32 PROVIDER ORGANIZATION OR HEALTH MAINTENANCE ORGANIZATION  
33 PRODUCT OR A MEDICARE, MEDICAID, OR WORKERS' COMPENSATION  
34 PRODUCT AS ESTABLISHED BY A PERSON OR ENTITY AND FOR WHICH THE

1 HEALTH CARE PROVIDER MAY BE OBLIGATED TO PROVIDE SERVICES  
2 PURSUANT TO A CONTRACT.

3 (3) (a) EACH CONTRACT SHALL HAVE A SUMMARY DISCLOSURE  
4 FORM DISCLOSING IN PLAIN LANGUAGE THE FOLLOWING INFORMATION:

5 (I) THE COMPENSATION AND PAYMENT TERMS;

6 (II) ANY PRODUCT FOR WHICH THE HEALTH CARE PROVIDER IS TO  
7 PROVIDE SERVICE;

8 (III) THE TERM OF THE CONTRACT AND HOW THE CONTRACT MAY  
9 BE TERMINATED;

10 (IV) THE IDENTITY OF THE PERSON OR ENTITY RESPONSIBLE FOR  
11 THE PROVIDER'S COMPENSATION OR PAYMENT;

12 (V) ANY INTERNAL MECHANISM PROVIDED BY THE PERSON OR  
13 ENTITY TO RESOLVE DISPUTES CONCERNING THE INTERPRETATION OR  
14 APPLICATION OF THE TERMS OR CONDITIONS OF THE CONTRACT;

15 (VI) ANY PROVISIONS FOR THE AMENDMENT OF THE CONTRACT;  
16 AND

17 (VII) THE ORDER OF ADDENDA, IF ANY, TO THE CONTRACT.

18 (b) IF THE CONTRACT PROVIDES FOR TERMINATION FOR CAUSE BY  
19 EITHER PARTY, THE CONTRACT SHALL STATE THE REASONS THAT MAY BE  
20 USED FOR TERMINATION FOR CAUSE, WHICH TERMS SHALL NOT BE  
21 UNREASONABLE, AND THE CONTRACT SHALL STATE THE TIME BY WHICH  
22 NOTICE OF TERMINATION FOR CAUSE SHALL BE PROVIDED AND TO WHOM  
23 THE NOTICE SHALL BE GIVEN.

24 (c) IF A PERSON OR ENTITY USES UTILIZATION MANAGEMENT,  
25 QUALITY IMPROVEMENT, OR A SIMILAR PROGRAM TO REVIEW, MONITOR,  
26 EVALUATE, OR ASSESS THE SERVICES PROVIDED PURSUANT TO A  
27 CONTRACT SUBJECT TO THIS SECTION, THE POLICIES, PROCEDURES, OR  
28 GUIDELINES OF SUCH PROGRAM SHALL BE DISCLOSED UPON REQUEST OF  
29 THE HEALTH CARE PROVIDER WITHIN FOURTEEN DAYS AFTER THE DATE OF  
30 THE REQUEST.

31 (4) (a) THE DISCLOSURE OF PAYMENT AND COMPENSATION TERMS

1 PURSUANT TO SUBSECTION (3) OF THIS SECTION SHALL INCLUDE  
2 INFORMATION SUFFICIENT FOR THE HEALTH CARE PROVIDER TO DETERMINE  
3 THE COMPENSATION OR PAYMENT FOR THE HEALTH CARE SERVICES, AND  
4 SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

5 (I) THE MANNER OF PAYMENT, SUCH AS FEE-FOR-SERVICE,  
6 CAPITATION, OR RISK WITHHOLD PAYMENTS.

7 (II) THE FEE SCHEDULE FOR SERVICE PROVIDED PURSUANT TO THE  
8 CONTRACT, INCLUDING, AS MAY BE APPLICABLE, SERVICE OR PROCEDURE  
9 CODES SUCH AS CURRENT PROCEDURAL TERMINOLOGY CODES OR  
10 HEALTHCARE COMMON PROCEDURE CODING SYSTEM CODES AND THE  
11 ASSOCIATED PAYMENT OR COMPENSATION FOR EACH SERVICE CODE. A  
12 FEE SCHEDULE MAY BE PROVIDED ELECTRONICALLY. UPON REQUEST, A  
13 PERSON OR ENTITY SHALL PROVIDE A HEALTH CARE PROVIDER WITH A  
14 WRITTEN FEE SCHEDULE, WHICH SHALL NOT BE REQUIRED MORE  
15 FREQUENTLY THAN TWICE PER YEAR EXCLUDING WHEN IT IS PROVIDED IN  
16 CONNECTION WITH ANY CHANGE TO THE SCHEDULE. THE PERSON OR  
17 ENTITY SHALL ALSO STATE THE EFFECT, IF ANY, ON PAYMENT OR  
18 COMPENSATION IF MORE THAN ONE SERVICE OR PROCEDURE CODE APPLIES  
19 TO THE SERVICE. A PERSON OR ENTITY MAY SATISFY THIS REQUIREMENT  
20 BY PROVIDING A CLEARLY UNDERSTANDABLE, READILY AVAILABLE  
21 MECHANISM, SUCH AS THROUGH A WEBSITE, THAT ALLOWS A HEALTH CARE  
22 PROVIDER TO DETERMINE THE EFFECT OF SERVICE CODES ON PAYMENT OR  
23 COMPENSATION BEFORE SERVICE IS PROVIDED OR A CLAIM IS SUBMITTED.

24 (III) THE METHODOLOGY USED TO CALCULATE ANY FEE SCHEDULE,  
25 SUCH AS RELATIVE VALUE UNIT SYSTEM AND CONVERSION FACTOR,  
26 PERCENTAGE OF MEDICARE PAYMENT SYSTEM, OR PERCENTAGE OF BILLED  
27 CHARGES. AS APPLICABLE, THE METHODOLOGY DISCLOSURE SHALL  
28 INCLUDE THE NAME OF ANY RELATIVE VALUE SYSTEM, ITS VERSION,  
29 EDITION, OR PUBLICATION DATE, ANY APPLICABLE CONVERSION OR  
30 GEOGRAPHIC FACTOR, AND ANY DATE BY WHICH COMPENSATION OR FEE  
31 SCHEDULES MAY BE CHANGED BY SUCH METHODOLOGY AS ANTICIPATED  
32 AT THE TIME OF CONTRACTING.

33 (IV) ANY INTERNAL PROCESSING AND EDITS USED BY THE PERSON  
34 OR ENTITY, INCLUDING, BUT NOT LIMITED TO, THE PUBLISHER, PRODUCT  
35 NAME, VERSION, AND VERSION UPDATE OF ANY EDITING SOFTWARE USED  
36 BY THE PERSON OR ENTITY.

37 (b) NOTWITHSTANDING ANYTHING IN THIS SUBSECTION (4) TO THE

1 CONTRARY, DISCLOSURE OF A FEE SCHEDULE IS NOT REQUIRED FROM A  
2 PERSON OR ENTITY IF THE FEE SCHEDULE IS FOR A PLAN FOR DENTAL  
3 SERVICES, ITS PROVIDERS INCLUDE LICENSED DENTISTS, THE FEE SCHEDULE  
4 IS BASED UPON FEES FILED WITH THE PERSON OR ENTITY BY DENTAL  
5 PROVIDERS, AND THE FEE SCHEDULE IS REVISED BASED UPON SUCH  
6 FILINGS.

7 (5) WHEN A PROPOSED CONTRACT IS PRESENTED BY A PERSON OR  
8 ENTITY FOR CONSIDERATION BY A HEALTH CARE PROVIDER, THE PERSON  
9 OR ENTITY MUST PROVIDE IN WRITING OR MAKE REASONABLY AVAILABLE  
10 THE INFORMATION REQUIRED IN SUBSECTION (4) OF THIS SECTION. IF THE  
11 INFORMATION IS NOT DISCLOSED IN WRITING, IT SHALL BE DISCLOSED IN A  
12 MANNER THAT ALLOWS THE HEALTH CARE PROVIDER TO EVALUATE THE  
13 PROVIDER'S PAYMENT OR COMPENSATION FOR SERVICES UNDER THE  
14 CONTRACT. AFTER THE CONTRACT IS EXECUTED, DISCLOSURE OF THE  
15 INFORMATION REQUIRED BY SUBSECTION (4) OF THIS SECTION SHALL BE  
16 MADE AVAILABLE UPON REQUEST BY THE HEALTH CARE PROVIDER. SUCH  
17 INFORMATION NEED NOT BE MADE AVAILABLE IN WRITTEN FORMAT MORE  
18 THAN TWICE A YEAR.

19 (6) (a) A MATERIAL CHANGE TO A CONTRACT SHALL OCCUR ONLY  
20 IF A DESCRIPTION OF THE NATURE OF THE CHANGE AND THIRTY DAYS  
21 WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF THE CHANGE ARE GIVEN  
22 TO THE OTHER PARTY.

23 (b) A MATERIAL CHANGE SHALL BE EFFECTIVE UNLESS, WITHIN  
24 THIRTY DAYS AFTER THE EFFECTIVE DATE OF THE CHANGE, THE PROVIDER  
25 OBJECTS IN WRITING TO THE CHANGE.

26 (c) IF, WITHIN SIXTY DAYS AFTER THE EFFECTIVE DATE OF A  
27 CONTRACT CHANGE NO RESOLUTION OF THE OBJECTION OCCURS, EITHER  
28 PARTY TO THE CONTRACT MAY TERMINATE THE CONTRACT.

29 (d) IF A CHANGE TO THE CONTRACT IS ADMINISTRATIVE ONLY AND  
30 IS NOT A MATERIAL CHANGE, THE CHANGE SHALL BE EFFECTIVE UPON  
31 FIFTEEN DAYS NOTICE TO THE PROVIDER.

32 (e) THE PROVISIONS OF THIS SUBSECTION (6) DO NOT APPLY IF THE  
33 HEALTH CARE PROVIDER'S PAYMENT OR COMPENSATION IS BASED ON THE  
34 CURRENT MEDICARE PHYSICIAN FEE SCHEDULE FINAL RULE AS PUBLISHED  
35 ANNUALLY IN THE FEDERAL REGISTER AND THE CHANGE IN PAYMENT OR  
36 COMPENSATION RESULTS SOLELY FROM A CHANGE IN THE MEDICARE

1     PHYSICIAN FEE SCHEDULE.

2             (7) A PERSON OR ENTITY SHALL NOT REQUIRE AS A CONDITION OF  
3     CONTRACTING THAT A PROVIDER PROVIDE SERVICES UNDER MORE THAN  
4     ONE PRODUCT OFFERED BY THE PERSON OR ENTITY.

5             (8) A PERSON OR ENTITY EXECUTING A CONTRACT TO WHICH THIS  
6     SECTION APPLIES SHALL NOT SELL, RENT, OR GIVE ITS PROVIDER NETWORK  
7     INFORMATION TO ANY OTHER PERSON OR ENTITY. A PERSON OR ENTITY,  
8     OTHER THAN THE PERSON OR ENTITY THAT EXECUTES A CONTRACT TO  
9     WHICH THIS SECTION APPLIES, SHALL NOT ENFORCE AGAINST THE HEALTH  
10    CARE PROVIDER THE PAYMENT OR COMPENSATION TERMS OF THE  
11    CONTRACT UNLESS THE OTHER PERSON OR ENTITY IS CONTRACTUALLY  
12    BOUND TO ALL TERMS AND CONDITIONS OF THE CONTRACT EXECUTED BY  
13    THE PROVIDER AND:

14            (a) THE OTHER PERSON OR ENTITY IS CLEARLY IDENTIFIED IN THE  
15    CONTRACT EXECUTED BY THE PROVIDER; OR

16            (b) BEFORE HEALTH CARE SERVICES ARE PROVIDED, THE  
17    CONTRACT IS AMENDED BY A WRITING IN WHICH THE HEALTH CARE  
18    PROVIDER AGREES TO PROVIDE HEALTH CARE SERVICES FOR THE PAYMENT  
19    OR COMPENSATION DESCRIBED IN THE CONTRACT TO BE PAID BY THE  
20    OTHER PERSON OR ENTITY.

21            (9) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (6) OF  
22    THIS SECTION, A CONTRACT SUBJECT TO THIS SECTION MAY BE MODIFIED,  
23    WITHOUT THE NEED FOR AMENDMENT, BY OPERATION OF LAW AS  
24    REQUIRED BY ANY APPLICABLE STATE OR FEDERAL LAW OR REGULATION.  
25    NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE THE  
26    RENEGOTIATION OF A CONTRACT IN EXISTENCE BEFORE THE APPLICABLE  
27    COMPLIANCE DATE IN THIS SECTION.

28            (10) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (18) OF  
29    THIS SECTION, NOTHING IN THIS SECTION SHALL PROHIBIT A PERSON OR  
30    ENTITY OR A HEALTH CARE PROVIDER FROM INCLUDING IN A CONTRACT AN  
31    AGREEMENT FOR BINDING ARBITRATION.

32            (11) A PERSON OR ENTITY SHALL NOT REQUIRE AS A CONDITION OF  
33    CONTRACTING THAT A HEALTH CARE PROVIDER WAIVE OR FOREGO ANY  
34    RIGHT OR BENEFIT TO WHICH THE HEALTH CARE PROVIDER MAY BE  
35    ENTITLED UNDER STATE OR FEDERAL LAW.

1 (12) A CONTRACT SUBJECT TO THIS SECTION SHALL NOT INTERFERE  
2 WITH A HEALTH CARE PROVIDER'S RIGHT TO SET THE HEALTH CARE  
3 PROVIDER'S PAYOR-MIX RATIO IN THE HEALTH CARE PROVIDER'S  
4 PRACTICE.

5 (13) A TERM FOR COMPENSATION OR PAYMENT SHALL NOT  
6 SURVIVE THE TERMINATION OF A CONTRACT, EXCEPT WITH THE  
7 AGREEMENT OF THE HEALTH CARE PROVIDER OR WHERE A HEALTH CARE  
8 PROVIDER MAY BE REQUIRED TO CONTINUE UNDER THE CONTRACT TO  
9 PROVIDE SERVICES BY LAW.

10 (14) A CONTRACT SHALL NOT PRECLUDE ITS USE OR DISCLOSURE  
11 FOR THE PURPOSE OF ENFORCING THE PROVISIONS OF THIS SECTION OR  
12 OTHER STATE OR FEDERAL LAW.

13 (15) EACH CONTRACT SHALL PROVIDE THAT THE PERSON OR  
14 ENTITY AND THE HEALTH CARE PROVIDER SHALL HAVE NO LESS THAN  
15 NINETY DAYS AFTER WRITTEN NOTICE TO THE OTHER PARTY TO  
16 TERMINATE THE CONTRACT WITHOUT CAUSE.

17 (16) THIS SECTION SHALL NOT APPLY TO:

18 (a) AN ORGANIZATION THAT EXCLUSIVELY CONTRACTS WITH A  
19 SINGLE MEDICAL GROUP IN A SPECIFIC GEOGRAPHIC AREA TO PROVIDE OR  
20 ARRANGE FOR HEALTH CARE SERVICES;

21 (b) AN EMPLOYMENT CONTRACT OR ARRANGEMENT BETWEEN AN  
22 INDIVIDUAL PROVIDER OR A CORPORATE ENTITY CONSISTING OF HEALTH  
23 CARE PROVIDERS AND ANOTHER HEALTH CARE PROVIDER;

24 (c) A CONTRACT BETWEEN A PERSON OR ENTITY AND A HEALTH  
25 CARE FACILITY LICENSED PURSUANT TO SECTION 25-3-101, C.R.S.;

26 (d) A CONTRACT FOR HEALTH CARE SERVICES THROUGH A  
27 PROGRAM FOR WORKERS' COMPENSATION, MEDICAID OR MEDICARE  
28 PROGRAM, THE CHILDREN'S BASIC HEALTH PLAN PROVIDED FOR IN ARTICLE  
29 19 OF TITLE 26, C.R.S., OR THE COLORADO INDIGENT CARE PROGRAM  
30 CREATED IN PART 1 OF ARTICLE 15 OF TITLE 26, C.R.S; OR

31 (e) CONTRACTS BETWEEN A PERSON OR ENTITY FOR PHARMACY  
32 BENEFIT MANAGEMENT, SUCH AS WITH A PHARMACY BENEFIT  
33 MANAGEMENT FIRM AS DEFINED IN SECTION 10-16-102 (29.5), C.R.S. THIS

1 EXCLUSION SHALL NOT INCLUDE A CONTRACT FOR HEALTH CARE SERVICES  
2 BETWEEN A PERSON OR ENTITY AND A PHARMACY, A PHARMACIST, OR A  
3 PROFESSIONAL CORPORATION OR CORPORATE ENTITY COMPRISED OF  
4 PHARMACIES OR PHARMACISTS AS PERMITTED BY THE LAWS OF THIS STATE.

5 (17) NOTWITHSTANDING THE APPLICABLE COMPLIANCE DATE  
6 REQUIREMENT IN SUBSECTION (1) OF THIS SECTION, A HEALTH  
7 MAINTENANCE ORGANIZATION HAVING FEWER THAN FIFTEEN THOUSAND  
8 ENROLLEES SHALL COMPLY WITH THE PROVISIONS OF THIS SECTION WITHIN  
9 TWELVE MONTHS AFTER THE APPLICABLE COMPLIANCE DATE.

10 (18) A CONTRACT SHALL NOT LIMIT A HEALTH CARE PROVIDER'S  
11 REMEDIES AT LAW OR EQUITY OR FOR A BREACH OF CONTRACT AND  
12 NOTHING SHALL PROHIBIT THE ENFORCEMENT OF THE PROVISIONS OF THIS  
13 SECTION IN A COURT OF GENERAL JURISDICTION IN THIS STATE. IF A  
14 HEALTH CARE PROVIDER PREVAILS IN ANY CIVIL ACTION OR ARBITRATION  
15 WHICH, IN WHOLE OR IN PART, SEEKS TO ENFORCE THE PROVISIONS OF THIS  
16 SECTION, THE REASONABLE ATTORNEY FEES AND COSTS RELATED TO  
17 ENFORCEMENT SHALL BE AWARDED TO THE HEALTH CARE PROVIDER.

18 **SECTION 2. Effective date.** This act shall take effect at 12:01  
19 a.m. on the day following the expiration of the ninety-day period after  
20 final adjournment of the general assembly that is allowed for submitting  
21 a referendum petition pursuant to article V, section 1 (3) of the state  
22 constitution (August 9, 2006, if adjournment sine die is on May 10,  
23 2006); except that, if a referendum petition is filed against this act or an  
24 item, section, or part of this act within such period, then the act, item,  
25 section, or part, if approved by the people, shall take effect on the date of  
26 the official declaration of the vote thereon by proclamation of the  
27 governor."

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