

**First Regular Session
Sixty-third General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 01-0675.01 Julie Hoerner

HOUSE BILL 01-1302

HOUSE SPONSORSHIP

Tochtrop, Coleman, and Grossman

SENATE SPONSORSHIP

(None),

House Committees

Health, Environment, Welfare, & Institutions

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE CONDUCT OF HEALTH COVERAGE PLANS WHEN**
102 **MAKING DECISIONS REGARDING HEALTH CARE SERVICES FOR**
103 **COVERED PERSONS, AND, IN CONNECTION THEREWITH,**
104 **EXTENDING THE SCOPE OF REQUIRED REVIEW PROCEDURES FOR**
105 **SUCH DECISIONS AND ESTABLISHING A CIVIL RIGHT OF ACTION**
106 **AGAINST HEALTH COVERAGE PLANS THAT ACT NEGLIGENTLY**
107 **WITH RESPECT TO SUCH DECISIONS.**

Bill Summary

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

Extends review procedures available to policyholders for health

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.

care services decisions made by health coverage plans to include decisions that involve the exercise of discretion by a plan and that affect the provision of health care services, including, but not limited to, experimental treatments. Requires plans to offer policyholders the option of an expedited arbitration process in addition to internal review. Provides that plans that follow such review procedures and do not act negligently when following such review procedures shall not be subject to civil liability for such decisions. Repeals the current provision stating that a health maintenance organization does not practice medicine.

For purposes of the "Health Care Availability Act", adds carriers providing coverage through a managed care plan to the definition of "health care institution".

Makes legislative findings that managed care plans operated by carriers regulated by the division of insurance have a significant impact on the delivery of health care to covered persons; that citizens of this state who are covered persons pay significant sums in premiums to carriers providing coverage through such plans; that the conduct of carriers in the operation of such plans is of vital importance to the physical and mental health of Colorado residents; that such plans constitute an integral part of the business of insurance to carriers operating such plans and regulated under the Colorado insurance laws; and that the law concerning civil liability of managed care plans is a law of general application that involves traditional areas of state regulation of the business of insurance and, as such, the standard of care specified in this act is consistent with the applicable provisions of the federal "McCarran-Ferguson Act", as amended, and the federal "Employee Retirement Income Security Act of 1974", as amended.

Establishes that carriers operating managed care plans have a duty to act with reasonable care when making decisions involving the exercise of discretion by the plan and affecting the provision of health care services, including, but not limited to, decisions regarding experimental treatments, and may be liable for damages for harm to a covered person proximately caused by the carrier's or managed care plan's negligent acts. Provides affirmative defenses to any action filed alleging negligence of a carrier.

Specifies that the duty of reasonable care does not create any obligation on the part of a carrier providing coverage through a managed care plan to provide to a covered person treatment that is not covered by the plan. Specifies that the standard of care does not create any liability on the part of an employer or other entity that purchases coverage or assumes risk on behalf of its employees.

Prohibits carriers entering into contracts with health care providers from including in such contracts an indemnification or hold-harmless clause for the acts or conduct of the carrier or managed care plan. Declares such clauses void as against public policy.

Requires notice to be given to a carrier at least 30 days prior to filing an action alleging breach of the standard of care specified in the law concerning civil liability of managed care plans, and also requires the exhaustion of review mechanisms authorized by law prior to bringing suit. Specifies that an action alleging breach of the applicable standard of care must be brought within 2 years after the date the action accrues as provided by law, or within 3 years after the act or omission that gave rise to the action. Specifies that the damages clause of any pleading in any such action shall not recite any specific sum as alleged damages other than an allegation that the damages are in excess of any minimum dollar amount necessary to establish the jurisdiction of the court.

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

2 **SECTION 1.** 10-16-113 (1) and (7), Colorado Revised Statutes,
3 are amended, and the said 10-16-113 is further amended BY THE
4 ADDITION OF A NEW SUBSECTION, to read:

5 **10-16-113. Procedure for denial of benefits.** (1) A health
6 coverage plan shall not make a determination that it will deny a request
7 for reimbursement for or coverage of medical treatment or other benefits
8 for a covered individual ~~on the grounds that such treatment or covered~~
9 ~~benefit is not medically necessary, appropriate, effective, or efficient~~
10 unless such denial is made pursuant to this section. THIS SECTION AND
11 REGULATIONS PROMULGATED UNDER SUBSECTION (2) OF THIS SECTION
12 SHALL APPLY TO DECISIONS OF A HEALTH COVERAGE PLAN OR ANY AGENT
13 OR CONTRACTOR OF SUCH PLAN THAT INVOLVES THE EXERCISE OF
14 DISCRETION BY THE PLAN AND THAT AFFECTS THE PROVISION OF HEALTH
15 CARE SERVICES, INCLUDING, BUT NOT LIMITED TO, DECISIONS REGARDING
16 EXPERIMENTAL TREATMENTS. ALL SUCH DECISIONS SHALL CONSTITUTE
17 UTILIZATION REVIEW BY THE PLAN OR ITS AGENTS OR CONTRACTORS AND
18 SHALL ENTITLE A PERSON TO ALL REMEDIES AVAILABLE UNDER THIS
19 SECTION AND REGULATIONS PROMULGATED UNDER THE AUTHORITY OF THIS

1 SECTION FOR AN ADVERSE UTILIZATION REVIEW DETERMINATION.

2 (6.5) IN ADDITION TO THE INTERNAL REVIEW PROCESS CONDUCTED
3 PURSUANT TO THIS SECTION, A HEALTH COVERAGE PLAN SHALL ALSO OFFER
4 COVERED INDIVIDUALS THE OPTION OF UTILIZING AN EXPEDITED BINDING
5 ARBITRATION PROCESS. UNDER SUCH PROCESS, THE ARBITRATOR SHALL
6 ISSUE A DECISION WITHIN THIRTY DAYS AFTER THE ARBITRATION HEARING.
7 THE COMMISSIONER MAY PROMULGATE RULES PURSUANT TO SUBSECTION
8 (2) OF THIS SECTION SPECIFYING PROCEDURES FOR SUCH ARBITRATION
9 PROCESS.

10 (7) Nothing in this section shall preclude or deny the right of the
11 covered individual to seek any other remedy or relief. ~~and nothing in this~~
12 ~~section shall be a condition precedent to any legal proceeding.~~ A HEALTH
13 COVERAGE PLAN THAT FOLLOWS THE PROCEDURES OF THIS SECTION AND
14 REGULATIONS PROMULGATED UNDER SUBSECTION (2) OF THIS SECTION AND
15 ACTS WITH REASONABLE CARE SHALL NOT BE SUBJECT TO LIABILITY UNDER
16 PART 6 OF ARTICLE 64 OF TITLE 13, C.R.S.

17 **SECTION 2. Repeal.** 10-16-421 (3), Colorado Revised Statutes,
18 is repealed as follows:

19 **10-16-421. Statutory construction and relationship to other**
20 **laws.** (3) ~~Any health maintenance organization authorized under part 1~~
21 ~~of this article and this part 4 shall not be deemed to be practicing medicine~~
22 ~~and shall be exempt from the provisions of laws relating to the practice of~~
23 ~~medicine.~~

24 **SECTION 3.** 13-64-202 (3), Colorado Revised Statutes, is
25 amended to read:

26 **13-64-202. Definitions.** As used in this part 2, unless the context
27 otherwise requires:

1 PERSONS, AS DEFINED IN SECTION 10-16-102 (13.5), C.R.S.;

2 (II) CITIZENS OF THIS STATE WHO ARE COVERED PERSONS PAY
3 SIGNIFICANT SUMS IN PREMIUMS TO CARRIERS THAT PROVIDE COVERAGE
4 THROUGH THE OPERATION OF MANAGED CARE PLANS;

5 (III) THE CONDUCT OF CARRIERS IN THE OPERATION OF MANAGED
6 CARE PLANS WHEN MAKING DECISIONS THAT INVOLVE THE EXERCISE OF
7 DISCRETION BY THE PLAN AND THAT AFFECT THE PROVISION OF HEALTH
8 CARE SERVICES, INCLUDING, BUT NOT LIMITED TO, DECISIONS REGARDING
9 EXPERIMENTAL TREATMENTS IS OF VITAL IMPORTANCE TO THE PHYSICAL
10 AND MENTAL HEALTH OF RESIDENTS OF THIS STATE;

11 (IV) THE CONDUCT OF CARRIERS IN THE OPERATION OF MANAGED
12 CARE PLANS WHEN MAKING DECISIONS THAT INVOLVE THE EXERCISE OF
13 DISCRETION BY THE PLAN AND THAT AFFECT THE PROVISION OF HEALTH
14 CARE SERVICES, INCLUDING, BUT NOT LIMITED TO, DECISIONS REGARDING
15 EXPERIMENTAL TREATMENTS CONSTITUTES AN INTEGRAL PART OF THE
16 BUSINESS OF INSURANCE, AS CONDUCTED BY CARRIERS OPERATING SUCH
17 PLANS, AND IS SUBJECT TO REGULATION UNDER TITLE 10, C.R.S., AS PART
18 OF THE REGULATION OF THE BUSINESS OF INSURANCE; AND

19 (V) THIS PART 6 IS A LAW OF GENERAL APPLICATION THAT
20 INVOLVES TRADITIONAL AREAS OF STATE REGULATION OF THE BUSINESS OF
21 INSURANCE AND, AS SUCH, THE PROVISIONS OF THIS PART 6 ARE
22 CONSISTENT WITH THE APPLICABLE PROVISIONS OF THE FEDERAL
23 "McCARRAN-FERGUSON ACT", AS AMENDED, 15 U.S.C. SEC. 1011 ET SEQ.,
24 AND THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF
25 1974", AS AMENDED, INCLUDING, BUT NOT LIMITED TO, 29 U.S.C. SEC.
26 1001.

27 (b) THE GENERAL ASSEMBLY, THEREFORE, DECLARES THAT THIS

1 PART 6 IS ENACTED TO PROMOTE THE PUBLIC WELFARE AS PART OF THIS
2 STATE'S REGULATION OF THE BUSINESS OF INSURANCE IN ORDER TO
3 PROVIDE COVERED PERSONS WITH A CIVIL RIGHT OF ACTION IF CARRIERS
4 THAT OPERATE MANAGED CARE PLANS DO NOT ACT WITH REASONABLE
5 CARE IN MAKING DECISIONS THAT INVOLVE THE EXERCISE OF DISCRETION
6 BY THE PLAN AND THAT AFFECT THE PROVISION OF HEALTH CARE SERVICES,
7 INCLUDING, BUT NOT LIMITED TO, DECISIONS REGARDING EXPERIMENTAL
8 TREATMENTS.

9 (2) A CARRIER PROVIDING COVERAGE THROUGH A MANAGED CARE
10 PLAN SHALL ACT WITH REASONABLE CARE WHEN MAKING DECISIONS THAT
11 INVOLVE THE EXERCISE OF DISCRETION BY THE PLAN AND THAT AFFECT THE
12 PROVISION OF HEALTH CARE SERVICES, AS DEFINED IN SECTION 10-16-102
13 (22), C.R.S., INCLUDING, BUT NOT LIMITED TO, DECISIONS REGARDING
14 EXPERIMENTAL TREATMENTS.

15 (3) A CARRIER PROVIDING COVERAGE THROUGH A MANAGED CARE
16 PLAN WHEN MAKING DECISIONS THAT INVOLVE THE EXERCISE OF
17 DISCRETION BY THE PLAN AND THAT AFFECT THE PROVISION OF HEALTH
18 CARE SERVICES, AS DEFINED IN SECTION 10-16-102 (22), C.R.S.,
19 INCLUDING, BUT NOT LIMITED TO, DECISIONS REGARDING EXPERIMENTAL
20 TREATMENTS SHALL BE LIABLE FOR DAMAGES FOR HARM TO A COVERED
21 PERSON PROXIMATELY CAUSED BY ANY DECISION MADE BY THE PLAN OR BY
22 THE PLAN'S EMPLOYEES, AGENTS, OR REPRESENTATIVES WHO ARE ACTING
23 ON BEHALF OF SUCH PLAN AND OVER WHOM THE CARRIER OPERATING SUCH
24 PLAN HAS THE RIGHT TO EXERCISE INFLUENCE OR CONTROL, OR HAS
25 ACTUALLY EXERCISED INFLUENCE OR CONTROL, IF THE DECISION IS SHOWN
26 TO BE NEGLIGENT OR TO HAVE RESULTED IN ANY NEGLIGENT ACT OR
27 OMISSION.

1 (4) IT SHALL BE A DEFENSE TO ANY ACTION ASSERTED AGAINST A
2 CARRIER THAT:

3 (a) THE CARRIER, THE MANAGED CARE PLAN, OR ANY AGENT,
4 EMPLOYEE, OR REPRESENTATIVE OF SUCH CARRIER OR PLAN FOR WHOSE
5 CONDUCT SUCH CARRIER OR PLAN IS LIABLE UNDER SUBSECTION (3) OF THIS
6 SECTION DID NOT CONTROL, INFLUENCE, OR PARTICIPATE IN THE HEALTH
7 CARE SERVICES DECISION; AND

8 (b) THE CARRIER OR MANAGED CARE PLAN DID NOT DENY OR DELAY
9 PAYMENT FOR ANY TREATMENT PRESCRIBED OR RECOMMENDED TO THE
10 COVERED PERSON BY A PROVIDER.

11 (5) THE STANDARDS IN SUBSECTIONS (2) AND (3) OF THIS SECTION
12 CREATE NO OBLIGATION ON THE PART OF A CARRIER PROVIDING COVERAGE
13 THROUGH A MANAGED CARE PLAN TO PROVIDE TO A COVERED PERSON
14 TREATMENT THAT IS NOT COVERED BY THE PLAN.

15 (6) THIS SECTION DOES NOT CREATE ANY LIABILITY ON THE PART OF
16 AN EMPLOYER OR OTHER ENTITY THAT PURCHASES COVERAGE OR ASSUMES
17 RISK ON BEHALF OF ITS EMPLOYEES.

18 (7) A CARRIER PROVIDING COVERAGE THROUGH A MANAGED CARE
19 PLAN SHALL NOT ENTER INTO A CONTRACT WITH A HEALTH CARE PROVIDER
20 THAT INCLUDES AN INDEMNIFICATION OR HOLD-HARMLESS CLAUSE FOR THE
21 ACTS OR CONDUCT OF THE CARRIER OR MANAGED CARE PLAN WHEN
22 MAKING DECISIONS THAT INVOLVE THE EXERCISE OF DISCRETION BY THE
23 PLAN AND THAT AFFECT THE PROVISION OF HEALTH CARE SERVICES, AS
24 DEFINED IN SECTION 10-16-102 (22), C.R.S., INCLUDING, BUT NOT LIMITED
25 TO, DECISIONS REGARDING EXPERIMENTAL TREATMENTS. ANY SUCH
26 INDEMNIFICATION OR HOLD-HARMLESS CLAUSE SHALL BE VOID AS AGAINST
27 THE PUBLIC POLICY OF COLORADO.

1 (8) NOTWITHSTANDING THE PROVISIONS OF SECTION 10-16-421,
2 C.R.S., OR ANY OTHER PROVISION OF LAW TO THE CONTRARY, NO LAW
3 THAT PROHIBITS A CARRIER PROVIDING COVERAGE THROUGH A MANAGED
4 CARE PLAN FROM PRACTICING MEDICINE OR BEING LICENSED TO PRACTICE
5 MEDICINE MAY BE ASSERTED AS A DEFENSE BY SUCH CARRIER IN ANY
6 ACTION BROUGHT AGAINST IT PURSUANT TO THIS SECTION.

7 (9) IN AN ACTION UNDER THIS SECTION AGAINST A CARRIER
8 PROVIDING COVERAGE THROUGH A MANAGED CARE PLAN, A FINDING THAT
9 A HEALTH CARE PROVIDER IS AN EMPLOYEE, AGENT, OR REPRESENTATIVE
10 OF SUCH CARRIER OR MANAGED CARE PLAN SHALL NOT BE BASED SOLELY
11 ON PROOF THAT SUCH PERSON'S NAME APPEARS IN A LISTING OF APPROVED
12 HEALTH CARE PROVIDERS MADE AVAILABLE TO COVERED PERSONS UNDER
13 SUCH PLAN.

14 (10) A COVERED PERSON WHO FILES AN ACTION PURSUANT TO THIS
15 SECTION SHALL COMPLY WITH THE REQUIREMENTS OF PART 6 OF ARTICLE
16 20 OF THIS TITLE AND SHALL HAVE EXHAUSTED ALL REVIEW MECHANISMS
17 AVAILABLE PURSUANT TO SECTION 10-16-113, C.R.S.

18 (11) A PERSON MAY NOT MAINTAIN A CAUSE OF ACTION UNDER THIS
19 SECTION AGAINST A CARRIER PROVIDING COVERAGE THROUGH A MANAGED
20 CARE PLAN UNLESS SUCH PERSON, BEFORE INSTITUTING THE ACTION, GIVES
21 AT LEAST THIRTY DAYS' WRITTEN NOTICE OF THE CLAIM. SUCH NOTICE
22 SHALL BE DELIVERED OR MAILED TO THE CARRIER.

23 (12) NO ACTION ALLEGING A VIOLATION OF THE PROVISIONS OF
24 THIS SECTION SHALL BE MAINTAINED UNLESS SUCH ACTION IS INSTITUTED
25 WITHIN TWO YEARS AFTER THE DATE THAT SUCH ACTION ACCRUES
26 PURSUANT TO SECTION 13-80-108 (1), BUT IN NO EVENT SHALL AN ACTION
27 BE BROUGHT MORE THAN THREE YEARS AFTER THE ACT OR OMISSION THAT

1 GAVE RISE TO THE ACTION.

2 (13) IN ANY ACTION ALLEGING A VIOLATION OF THE PROVISIONS OF
3 THIS SECTION, THE AD DAMNUM CLAUSE OR PRAYER FOR DAMAGES IN ANY
4 PLEADING SHALL NOT RECITE ANY SUM AS ALLEGED DAMAGES OTHER THAN
5 AN ALLEGATION THAT DAMAGES ARE IN EXCESS OF ANY MINIMUM DOLLAR
6 AMOUNT NECESSARY TO ESTABLISH THE JURISDICTION OF THE COURT.

7 **SECTION 5. Effective date - applicability.** This act shall take
8 effect July 1, 2001, and shall apply to review procedures available to
9 persons under section 10-16-113, Colorado Revised Statutes, on or after
10 said date and to civil actions filed on or after said date.

11 **SECTION 6. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, and safety.