

Initiative #116 - Transparency in Health Insurance Billing

Be it enacted by the people of the state of Colorado:



SECTION 1. In Colorado Revised Statutes, **add** part 3 of article 20 of title 6 as follows:

6-20-300. Purpose. A DECLARATION FROM THE PEOPLE OF COLORADO.

- (1) THE PEOPLE OF COLORADO ENACT THIS LAW REGARDING PRICE TRANSPARENCY IN HEALTHCARE BILLING TO ESTABLISH COMMON SENSE, ORDER, AND INTEGRITY IN COLORADO'S HEALTHCARE SYSTEM AND TO SET AN EXAMPLE FOR THE REST OF OUR NATION. THE PEOPLE BELIEVE TRANSPARENCY, IN ALL ASPECTS OF HEALTHCARE BILLING, IS OF PARAMOUNT IMPORTANCE AND THAT IT WILL NOT, IN ANY WAY, IMPEDE COMPETITION, BUT RATHER, WILL IMPROVE COMPETITION AND EMPOWER PATIENTS TO BECOME MORE ACTIVE PARTICIPANTS IN THEIR OWN CARE.
- (2) THE PEOPLE UNDERSTAND THAT SOME IN THE HEALTHCARE INDUSTRY MAY FIND PROVISIONS OF THIS LAW ONEROUS. THE PEOPLE, HOWEVER, BELIEVE THAT THE LACK OF TRANSPARENCY THAT IS THE NORM AT THE TIME OF THIS LAW'S ENACTMENT IS FAR MORE ONEROUS AND DANGEROUS, AND THUS, FIND THIS LAW ABSOLUTELY NECESSARY IN ALL OF ITS DETAIL.
- (3) THE PURPOSE OF TRANSPARENCY IN HEALTHCARE BILLING IS NOT MERELY TO PROVIDE PATIENTS WITH THE ABILITY TO SHOP FOR HEALTHCARE SERVICES ON THE BASIS OF PRICE. IN FACT, SHOPPING AROUND IS ONLY A SMALL ASPECT OF TRANSPARENCY IN HEALTHCARE BILLING, BECAUSE SHOPPING FOR SERVICES IS NOT ALWAYS PRACTICAL WHEN HEALTHCARE SERVICE IS NEEDED. THE PURPOSE OF TRANSPARENCY IN HEALTHCARE BILLING, AND OF THIS LAW, IS TO ENSURE THAT COLORADO'S HEALTHCARE SYSTEM BEGINS TO FUNCTION IN A MANNER WHERE PRICES ARE AVAILABLE TO ANYONE AND EVERYONE AT ALL TIMES. THE PEOPLE OF COLORADO BELIEVE THAT IF THERE IS TRANSPARENCY IN HEALTHCARE BILLING, PRICES WILL BE FAIR AND WILL BE DETERMINED BY THE MARKETPLACE, WHETHER OR NOT THEY PERSONALLY REVIEW ALL PRICES IN ADVANCE OF HEALTHCARE SERVICES.

SECTION 2. In Colorado Revised Statutes, **add** part 3 of article 20 of title 6 as follows:

PART 3 HEALTHCARE INSURANCE CARRIER BILLING TRANSPARENCY

6-20-301. Short title. THE SHORT TITLE OF THIS PART 3 IS THE "HEALTHCARE INSURANCE CARRIER BILLING TRANSPARENCY ACT".

6-20-302. Definitions. AS USED IN THIS PART 3, UNLESS THE CONTEXT OTHERWISE REQUIRES:

- (1) "CMS" MEANS THE CENTERS FOR MEDICARE AND MEDICAID SERVICES.
- (2) "COMMISSIONER" MEANS THE COMMISSIONER OF INSURANCE.
- (3) "HEALTH INSURANCE" OR "HEALTH INSURANCE PLAN" HAS THE SAME MEANING AS "HEALTH COVERAGE PLAN", AS DEFINED IN SECTION 10-16-102(34).
- (4) "HEALTH INSURANCE CARRIER", "INSURANCE CARRIER", OR "CARRIER" HAS THE SAME MEANING AS "CARRIER", AS DEFINED IN SECTION 10-16-102(8).
- (5) "HEALTHCARE PROVIDER" OR "PROVIDER" MEANS:
 - (a) A HEALTHCARE FACILITY LICENSED OR CERTIFIED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO SECTION 25-1.5-103 (1)(a), WHICH INCLUDES A HOSPITAL, HOSPITAL UNIT AS DEFINED IN SECTION 25-3-101(2), PSYCHIATRIC HOSPITAL, COMMUNITY CLINIC, REHABILITATION HOSPITAL, CONVALESCENT CENTER, COMMUNITY MENTAL HEALTH CENTER, ACUTE TREATMENT UNIT, FACILITY FOR PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, NURSING CARE

FACILITY, HOSPICE CARE, ASSISTED LIVING RESIDENCE, DIALYSIS TREATMENT CLINIC, AMBULATORY SURGICAL CENTER, BIRTHING CENTER, HOME CARE AGENCY, OR OTHER FACILITY OF A LIKE NATURE;

(b) A CLINICAL LABORATORY REGISTERED THROUGH THE CERTIFICATION PROGRAM ADMINISTERED BY THE CMS;

(c) A FACILITY THAT USES RADIATION MACHINES FOR MEDICAL PURPOSES AND THAT IS REGISTERED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO STATE BOARD OF HEALTH RULES ADOPTED IN ACCORDANCE WITH SECTION 25-11-104;

(d) A PERSON WHO IS LICENSED, CERTIFIED, OR REGISTERED BY THE STATE UNDER TITLE 12 OR ARTICLE 3.5 OF TITLE 25 TO PROVIDE HEALTHCARE SERVICES AND WHO DIRECTLY BILLS PATIENTS OR THIRD-PARTY PAYERS FOR THE SERVICES, INCLUDING AN ACUPUNCTURIST, ATHLETIC TRAINER, AUDIOLOGIST, PODIATRIST, CHIROPRACTOR, DENTIST, DENTAL HYGIENIST, MASSAGE THERAPIST, PHYSICIAN, PHYSICIAN ASSISTANT, ANESTHESIOLOGIST ASSISTANT, DIRECT-ENTRY MIDWIFE, NATUROPATHIC DOCTOR, NURSE, CERTIFIED NURSE AIDE, NURSING HOME ADMINISTRATOR, OPTOMETRIST, OCCUPATIONAL THERAPIST, OCCUPATIONAL THERAPY ASSISTANT, PHYSICAL THERAPIST, PHYSICAL THERAPY ASSISTANT, RESPIRATORY THERAPIST, PSYCHIATRIC TECHNICIAN, PSYCHOLOGIST, SOCIAL WORKER, CLINICAL SOCIAL WORKER, MARRIAGE AND FAMILY THERAPIST, PROFESSIONAL COUNSELOR, PSYCHOTHERAPIST, ADDICTION COUNSELOR, SURGICAL ASSISTANT, SURGICAL TECHNOLOGIST, SPEECH-LANGUAGE PATHOLOGIST, OR EMERGENCY MEDICAL SERVICE PROVIDER; OR

(e) A MEDICAL GROUP, INDEPENDENT PRACTICE ASSOCIATION, OR PROFESSIONAL CORPORATION PROVIDING HEALTHCARE SERVICES.

(f) TO THE EXTENT NOT COVERED BY SECTION (a) THROUGH (e), FREE-STANDING EMERGENCY ROOMS AND URGENT CARE CENTERS AND THOSE PROVIDING HEALTHCARE SERVICES UNDER OTHER DESCRIPTIONS.

(6) "HEALTHCARE SERVICE" OR "SERVICE" MEANS A SERVICE, PROCEDURE, TREATMENT, OR GROUP OF SERVICES, PROCEDURES, OR TREATMENTS DELIVERED BY A HEALTHCARE PROVIDER. HEALTHCARE SERVICE INCLUDES SERVICES RENDERED THROUGH TELEMEDICINE OR OTHER REMOTE, MOBILE, OR VIRTUAL MEANS AS MAY BE USED IN THE FUTURE.

(7) "PHARMACY" MEANS ANY ENTITY WHICH ADMINISTERS, COMPOUNDS, DELIVERS, DISPENSES, OR DISTRIBUTES PRESCRIPTION DRUGS PURSUANT TO ARTICLE 42.5 OF TITLE 12. THE TERM DOES NOT INCLUDE A HOSPITAL, AMBULATORY SURGICAL CENTER, OR OTHER PROVIDERS WHICH ADMINISTER PRESCRIPTION DRUGS AS PART OF A HEALTHCARE SERVICE AND FOR WHICH THE CHARGE FOR PRESCRIPTION DRUGS IS INCLUDED IN THEIR CHARGEMASTER OR FEE SCHEDULE.

(8) "PRESCRIPTION DRUG PRICE" IS THE PRICE FOR PRESCRIPTION DRUGS THAT CARRIERS HAVE NEGOTIATED WITH PROVIDERS, PHARMACIES, DISTRIBUTORS, OR MANUFACTURERS.

(9) "THIRD-PARTY PAYER", "THIRD-PARTY PAYOR", "PAYOR", OR "PAYER" MEANS A HEALTH INSURANCE CARRIER, SELF-INSURED EMPLOYER, OR OTHER PUBLIC OR PRIVATE THIRD PARTY, INCLUDING A THIRD-PARTY ADMINISTRATOR OR INTERMEDIARY, THAT IS RESPONSIBLE FOR PAYING ALL, OR A PORTION OF, THE CHARGES FOR HEALTHCARE SERVICES DELIVERED TO A PATIENT.

6-20-303. Provider-carrier contracts.

(1) A CONTRACT ISSUED, AMENDED, OR RENEWED ON OR AFTER APRIL 30, 2019, BY, BETWEEN, OR ON BEHALF OF A HEALTH INSURANCE PLAN AND A HEALTHCARE PROVIDER SHALL NOT CONTAIN ANY PROVISION THAT RESTRICTS THE ABILITY OF THE HEALTH INSURANCE PLAN, THIRD-PARTY PAYER, OR HEALTHCARE PROVIDER TO FURNISH PATIENTS ANY INFORMATION REQUIRED TO BE PUBLISHED UNDER

THIS ACT.

- (2) ANY CONTRACTUAL PROVISION INCONSISTENT WITH THIS SECTION SHALL BE VOID AND UNENFORCEABLE.

SECTION 3. In Colorado Revised Statutes, **add** 10-16-147 as follows:

10-16-147. Carrier disclosures - rules.

- (1) THE PURPOSE OF THIS SECTION IS TO:

(a) PROVIDE TRANSPARENCY REGARDING HOW INSURANCE CARRIERS CALCULATE PAYMENTS OR REIMBURSEMENTS TO PROVIDERS FOR HEALTHCARE SERVICES FURNISHED TO COVERED PERSONS; AND

(b) ENABLE A COVERED PERSON WHO HAS RECEIVED AND BEEN BILLED FOR A HEALTHCARE SERVICE, MEDICAL DEVICE, OR PRESCRIPTION DRUG TO DETERMINE THE AMOUNT THAT THE CARRIER WILL PAY OR REIMBURSE THE PROVIDER UNDER THE TERMS OF THE APPLICABLE HEALTH COVERAGE PLAN. IT IS RECOGNIZED THAT THE SERVICES TO BE RENDERED ARE NOT ALWAYS ESTIMABLE PRIOR TO SERVICE DELIVERY. THAT SHOULD NOT BE CONFUSED WITH THE INTENT OF THIS SECTION.

- (2) EACH CARRIER SHALL POST ON ITS WEBSITE AND PROVIDE, IN WRITING UPON REQUEST FROM A COVERED PERSON, THE FOLLOWING INFORMATION:

(a) THE SPECIFIC BASIS FOR DETERMINING THE PAYMENT OR REIMBURSEMENT TO A PROVIDER FOR A HEALTHCARE SERVICE RENDERED BY THE PROVIDER TO A COVERED PERSON UNDER THE HEALTH COVERAGE PLAN, INCLUDING:

(I) WHETHER THE PAYMENT IS BASED ON A PERCENTAGE OF THE PROVIDER'S CHARGES, A FLAT DAILY OR PER DIEM RATE, COPAYMENTS, DEDUCTIBLES, OR ANY OTHER FACTOR, VARIABLE, OR SYSTEM DEvised AND NOT LISTED HERE THAT IS USED FOR DETERMINING THE PAYMENT OR REIMBURSEMENT AMOUNT; AND

(II) HOW THE PAYMENT OR REIMBURSEMENT IS CALCULATED FOR AN IN-NETWORK VERSUS OUT-OF-NETWORK PROVIDER.

(b) ITEMS THAT APPEAR AS CHARGES ON AN EXPLANATION OF BENEFITS OR PROVIDER BILLING STATEMENT BUT FOR WHICH THE CARRIER DOES NOT PAY;

(c) DETAILED INFORMATION REGARDING COVERAGE AND NEGOTIATED PAYMENT INFORMATION BY PLAN TYPE AND PARTICIPATING PROVIDER; AND

(d) PRESCRIPTION DRUG PRICES IN A FORM AND MANNER DETERMINED BY THE COMMISSIONER.

- (3) EACH CARRIER SHALL PUBLISH ANNUALLY, UNLESS DIRECTED BY THE COMMISSIONER TO PUBLISH MORE FREQUENTLY, DETAILED INFORMATION, IN A FORM AND MANNER DETERMINED BY THE COMMISSIONER, REGARDING ALL FORMS OF REMUNERATION DERIVED FROM REBATES OR OTHER FORMS OF INCENTIVE RECEIVED AS THE RESULT OF HEALTHCARE SERVICES OR PURCHASES OF PRESCRIPTION DRUGS OR MEDICAL DEVICES.

- (4) ON OR BEFORE APRIL 30, 2019, THE COMMISSIONER SHALL PROMULGATE RULES AS ARE NECESSARY FOR THE IMPLEMENTATION, ADMINISTRATION, AND ENFORCEMENT OF THIS SECTION, AND SHALL, THEREAFTER, REVISE SUCH RULES AS ARE NECESSARY.

SECTION 4. Effective date. THIS ACT TAKES EFFECT APRIL 30, 2019.

Submitted by:

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