

Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0388.01 Jerry Barry

SENATE BILL 10-002

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SENATE SPONSORSHIP

Steadman and Keller,

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Looper and Primavera, Acree, Todd

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Senate Committees  
Health and Human Services

House Committees

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A BILL FOR AN ACT

101 CONCERNING THE DENIAL OF BENEFITS BY HEALTH COVERAGE PLANS,  
102 AND, IN CONNECTION THEREWITH, INCREASING RECOVERIES TO  
103 THE MEDICAID PROGRAM AND ESTABLISHING A LONG-TERM  
104 CARE OMBUDSMAN OFFICE.

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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>.)*

**Interim Committee on the Developmental Disability Waiting List. Section 1** makes legislative findings.

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.*

**Sections 2 and 3** require a health insurance company to notify any known covered person's designated representative of any denial of a benefit and of the right to appeal the denial. The designated representative could exercise certain rights during the appeal processes.

**Section 4** directs the department of health care policy and financing (department) to provide recipients of public medical benefits with information concerning the recipient's right to appeal denials of benefits by third parties.

**Section 5** provides that, by signing the application for medicaid, the applicant is designating the department as the applicant's designated representative for purposes of appealing any denial of benefits by a health insurance company paid for by medicaid.

**Section 6** requires the department or its independent contractor to notify an insurance carrier that the department is the designated representative of a medicaid recipient. The department or the department's independent contractor, if necessary, shall appeal an adverse insurance coverage decision at any level.

Any agreement with an independent contractor to review and appeal adverse coverage decisions by an insurance carrier shall require the contractor to report specified information to the department. The department will report annually the information from the independent contractor to specified committees of the general assembly, which reporting requirement is repealed July 1, 2017.

The bill expresses the intent of the general assembly that additional recoveries from third parties pursuant to the bill should be used to pay the expenses of a long-term care ombudsman office and to reduce the waiting list of persons with a developmental disability.

**Section 7** directs the department to establish a long-term care ombudsman office to assist long-term care recipients.

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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 declares that:

4 (a) There is a long waiting list for home- and community-based  
5 services for children;

6 (b) Many families receiving services under the home- and  
7 community-based services for children waivers have third-party insurance  
8 coverage, but some families have difficulty:

- 1 (I) Navigating through the waiver application process;
- 2 (II) Understanding the scope and role of any private insurance
- 3 coverage they may have; and
- 4 (III) Filing an appeal when a third-party insurance carrier denies
- 5 a claim for benefits;
- 6 (c) More successful appeals of denials of claims would result in
- 7 increased reimbursements to the medicaid program and the state;
- 8 (d) The costs of establishing and operating an ombudsman for
- 9 families seeking home- and community-based services waivers for
- 10 children could be covered by increased reimbursements from third-party
- 11 insurance carriers; and
- 12 (e) The increased reimbursements and recovered moneys from
- 13 third-party insurance carriers should be used to reduce the waiting list for
- 14 home- and community-based services for children.

15 **SECTION 2.** 10-16-113 (2), (3) (a) (III) (B), (3) (b) (IV), and (3)

16 (b) (VI) (B), Colorado Revised Statutes, are amended to read:

17 **10-16-113. Procedure for denial of benefits - internal review**

18 **- rules.** (2) Following a denial of a request for benefits by the health

19 coverage plan, ~~such~~ THE plan shall notify the covered person AND ANY

20 DESIGNATED REPRESENTATIVE OF THE COVERED PERSON KNOWN TO THE

21 HEALTH COVERAGE PLAN in writing. The content of ~~such~~ THE notification

22 and the deadlines for making ~~such~~ THE notification shall be made

23 pursuant to ~~regulations~~ RULES promulgated by the commissioner.

24 (3) (a) (III) In the event of an adverse benefit determination by a

25 health coverage plan concerning a request involving urgent care, a carrier:

26 (B) May communicate the other information required pursuant to

27 subparagraph (I) of this paragraph (a) to the covered person orally within

1 the time frame outlined in 29 CFR 2560.503-1 (f) (2) (i) so long as a  
2 written or electronic copy of such information is furnished to the covered  
3 person AND THE COVERED PERSON'S DESIGNATED REPRESENTATIVE no  
4 later than three days after the oral notification.

5 (b) (IV) The carrier shall notify the covered person AND THE  
6 COVERED PERSON'S DESIGNATED REPRESENTATIVE of his or her right to  
7 appeal a denial of benefits through a two-level internal review process  
8 and that the second level of internal review may be utilized at the option  
9 of the covered person.

10 (VI) (B) The health coverage plan shall allow the covered person  
11 OR THE COVERED PERSON'S DESIGNATED REPRESENTATIVE to be present  
12 for the second-level internal review, either in person or by telephone  
13 conference. The covered person OR THE COVERED PERSON'S DESIGNATED  
14 REPRESENTATIVE shall have the opportunity to bring counsel, advocates,  
15 and health care professionals to the review, to prepare in advance for the  
16 review, and to present materials to the health care professional prior to the  
17 review and at the time of the review. The health coverage plan and the  
18 covered person OR THE COVERED PERSON'S DESIGNATED REPRESENTATIVE  
19 shall, upon request, provide a copy of the materials it presents at the  
20 review to the other party at least five days prior to the review. If new  
21 information is developed after the five-day deadline, such material may  
22 be presented when practicable. The health coverage plan shall notify the  
23 covered person OR THE COVERED PERSON'S DESIGNATED REPRESENTATIVE  
24 that the plan shall make an audio or video recording of the review unless  
25 neither the covered person NOR THE COVERED PERSON'S DESIGNATED  
26 REPRESENTATIVE nor the health coverage plan wants the recording made.  
27 The health coverage plan shall make such recording available to the

1 covered person OR THE COVERED PERSON'S DESIGNATED REPRESENTATIVE.  
2 If there is an external review, the audio or video recording shall, at the  
3 request of either party, be included in the material provided by the carrier  
4 to the reviewing entity.

5 **SECTION 3.** 10-16-113.5 (2) (a) (II), Colorado Revised Statutes,  
6 is amended to read:

7 **10-16-113.5. Independent external review of benefit denials -**  
8 **legislative declaration - definitions.** (2) As used in this section, unless  
9 the context otherwise requires:

10 (a) (II) The term "covered individual requesting an independent  
11 external review" shall also include the designated representative of a  
12 covered individual requesting an independent external review, INCLUDING  
13 BUT NOT LIMITED TO THE DEPARTMENT OF HEALTH CARE POLICY AND  
14 FINANCING, IF DESIGNATED, PURSUANT TO SECTION 25.5-4-205 (4) (b),  
15 C.R.S.

16 **SECTION 4.** Part 1 of article 1 of title 25.5, Colorado Revised  
17 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
18 read:

19 **25.5-1-126. Third-party benefit denials information.** THE  
20 STATE DEPARTMENT SHALL PROVIDE INFORMATION TO RECIPIENTS OF  
21 BENEFITS UNDER THIS TITLE CONCERNING THEIR RIGHT TO APPEAL A  
22 DENIAL OF BENEFITS BY A THIRD PARTY AND SHALL POST INFORMATION ON  
23 THE STATE DEPARTMENT'S WEB SITE CONCERNING RECIPIENTS' ABILITIES  
24 TO APPEAL A THIRD PARTY'S DENIAL OF BENEFITS, INCLUDING BUT NOT  
25 LIMITED TO PROVIDING A LINK TO INFORMATION ON THE INSURANCE  
26 COMMISSIONER'S WEB SITE REGARDING SUCH APPEALS.

27 **SECTION 5.** 25.5-4-205 (4), Colorado Revised Statutes, is

1 amended to read:

2 **25.5-4-205. Application - verification of eligibility -**  
3 **demonstration project - rules - repeal.** (4) (a) By signing an  
4 application for medical assistance, a person assigns to the state  
5 department, by operation of law, all rights the applicant may have to  
6 medical support or payments for medical expenses from any other person  
7 on ~~his~~ THE APPLICANT'S own behalf or on behalf of any other member of  
8 ~~his~~ THE APPLICANT'S family for whom application is made. For purposes  
9 of this subsection (4), an assignment takes effect upon the determination  
10 that the applicant is eligible for medical assistance and up to three months  
11 prior to the date of application if the applicant meets the requirements of  
12 subsection (3) of this section and shall remain in effect so long as an  
13 individual is eligible for and receives medical assistance benefits. The  
14 application shall contain a statement explaining this assignment.

15 (b) BY SIGNING AN APPLICATION FOR MEDICAL ASSISTANCE, A  
16 PERSON DESIGNATES THE STATE DEPARTMENT AS THE PERSON'S  
17 DESIGNATED REPRESENTATIVE FOR PURPOSES OF APPEALING A DENIAL OF  
18 BENEFITS BY A HEALTH COVERAGE PLAN FOR A MEDICAL TREATMENT PAID  
19 FOR BY THE MEDICAL ASSISTANCE PROGRAM PURSUANT TO SECTION  
20 10-16-113 OR 10-16-113.5, C.R.S.

21 **SECTION 6.** 25.5-4-209 (3) (a), Colorado Revised Statutes, is  
22 amended, and the said 25.5-4-209 (3) is further amended BY THE  
23 ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

24 **25.5-4-209. Payments by third parties - copayments by**  
25 **recipients - review - appeal - repeal.** (3) (a) The rights assigned by a  
26 recipient of medical assistance to the state department pursuant to section  
27 25.5-4-205 (4) shall include the right to appeal an adverse coverage

1 decision by a third party for which the medical assistance program may  
2 be responsible for payment, including but not limited to the internal and  
3 external reviews provided for in sections 10-16-113 and 10-16-113.5,  
4 C.R.S., and a third party's reasonable appeal procedure under state and  
5 federal law. The state department or the independent contractor retained  
6 pursuant to paragraph (b) of this subsection (3) shall:

7 (I) NOTIFY THE THIRD PARTY THAT THE STATE DEPARTMENT IS THE  
8 DESIGNATED REPRESENTATIVE OF THE RECIPIENT PURSUANT TO SECTION  
9 25.5-4-205 (4) (b); AND

10 (II) Review and, if necessary, appeal AT ANY LEVEL an adverse  
11 coverage decision, except an adverse coverage decision relating to  
12 medicare, Title XVIII of the federal "Social Security Act", as amended.

13 (e) (I) ANY AGREEMENT WITH AN INDEPENDENT CONTRACTOR TO  
14 PURSUE REMEDIES PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3)  
15 ENTERED INTO OR EXTENDED AFTER THE EFFECTIVE DATE OF THIS  
16 PARAGRAPH (e) SHALL INCLUDE A REQUIREMENT THAT THE INDEPENDENT  
17 CONTRACTOR ANNUALLY REPORT TO THE STATE DEPARTMENT:

18 (A) THE NUMBER OF CLAIMS FILED;

19 (B) THE AMOUNT OF MONEY RECEIVED ON BEHALF OF THE STATE  
20 DEPARTMENT ON CLAIMS THAT ARE NOT DENIED;

21 (C) THE NUMBER OF CLAIMS FILED THAT ARE DENIED BY THE THIRD  
22 PARTY;

23 (D) THE NUMBER OF APPEALS OF DENIALS FILED ON BEHALF OF THE  
24 STATE DEPARTMENT;

25 (E) THE AMOUNT OF MONEY RECOVERED ON BEHALF OF THE STATE  
26 DEPARTMENT ON CLAIMS THAT WERE ORIGINALLY DENIED BY THE THIRD  
27 PARTY BUT WERE SUCCESSFULLY APPEALED; AND

1 (F) ANY OTHER DATA REQUESTED BY THE STATE DEPARTMENT.

2 (II) (A) WITHIN NINETY DAYS AFTER RECEIPT OF A REPORT FROM  
3 AN INDEPENDENT CONTRACTOR PURSUANT TO SUBPARAGRAPH (I) OF THIS  
4 PARAGRAPH (e), THE STATE DEPARTMENT SHALL REPORT TO THE HEALTH  
5 AND HUMAN SERVICES COMMITTEES OF THE SENATE AND THE HOUSE OF  
6 REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES, ON THE  
7 INFORMATION RECEIVED.

8 (B) THIS SUBPARAGRAPH (II) IS REPEALED, EFFECTIVE JULY 1,  
9 2017.

10 (f) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT MONEYS  
11 RECEIVED AS INCREASED RECOVERIES UNDER THIS SUBSECTION (3) DUE TO  
12 THE DESIGNATION OF THE STATE DEPARTMENT AS THE DESIGNATED  
13 REPRESENTATIVE PURSUANT TO SECTION 25.5-4-205 (4) (b) AND THE  
14 ESTABLISHMENT OF THE OMBUDSMAN SERVICES PURSUANT TO SECTION  
15 25.5-6-113 BE USED FIRST TO PAY THE COSTS ASSOCIATED WITH THE  
16 OMBUDSMAN SERVICES AND THEN TO REDUCE THE WAITING LIST FOR  
17 HOME- AND COMMUNITY-BASED SERVICES FOR CHILDREN.

18 **SECTION 7.** Part 1 of article 6 of title 25.5, Colorado Revised  
19 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
20 read:

21 **25.5-6-113. Home- and community-based services for children**  
22 **- ombudsman.** THE STATE DEPARTMENT SHALL CONTRACT WITH AN  
23 INDEPENDENT AGENCY TO PROVIDE OMBUDSMAN SERVICES TO ASSIST  
24 FAMILIES ELIGIBLE FOR HOME- AND COMMUNITY-BASED SERVICES FOR  
25 CHILDREN UNDER THIS ARTICLE IN APPLYING FOR BENEFITS AND ASSISTING  
26 IN THE APPEALS OF DENIALS OF BENEFITS BY THIRD PARTIES.

27 **SECTION 8. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.