

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0843.01 Duane Gall x4335

SENATE BILL 18-115

SENATE SPONSORSHIP

Aguilar,

HOUSE SPONSORSHIP

Pettersen,

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 CONCERNING THE PREVENTION OF SELF-DEALING IN REFERRALS FOR
102 MEDICAL SERVICES.

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://leg.colorado.gov>.)

Current law prohibits a health care provider who receives reimbursement through the state's medical assistance program (medicaid) from making referrals for medical services to an entity owned or controlled by the provider or an immediate family member of the provider. The bill extends this prohibition to include all health care providers, not only those who receive reimbursement through medicaid.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Sections 2 and 3 of the bill make the prohibited referrals a deceptive trade practice under the "Colorado Consumer Protection Act", entitling any person harmed by the violator's conduct to damages, including treble damages in a case involving bad-faith conduct. In addition to these private remedies, the Colorado attorney general is authorized to seek injunctions and civil penalties, require reimbursement of charges collected, and refer violators for investigation of insurance fraud.

Section 4 allows insurers to withhold payment of questionable charges pending investigation pursuant to the prompt payment statute.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly:

3 (a) Finds that:

4 (I) Since passage of the federal "Patient Protection and Affordable
5 Care Act of 2010", as amended, Pub.L. 111-148, uninsured Coloradans
6 who had been denied access to health insurance coverage due to
7 preexisting conditions are now able to purchase health insurance;

8 (II) However, health care costs continue to escalate, leading to
9 further increases in the price of health insurance for them and for other
10 Colorado consumers;

11 (b) Determines that:

12 (I) Medical crisis and medical debt continue to be major drivers
13 of personal bankruptcies, and the majority of those bankruptcies are filed
14 by persons who have health insurance coverage;

15 (II) In order to control costs, insurers are selling more plans in
16 which consumers bear a heavier financial responsibility for payment of
17 services through high deductibles, significant copayments, and other
18 out-of-pocket costs, forcing many consumers to make difficult financial
19 choices in order to afford health care;

20 (III) Most consumers do their best to ensure that they use

1 providers who are in their health network and otherwise make judicious,
2 cost-conscious choices when seeking health care;

3 (IV) Despite taking care to stay in-network, consumers are often
4 subject to unanticipated and costly out-of-pocket expenses in connection
5 with referrals for specialized services, equipment, supplies, or devices;

6 (V) Consumers need to be able to trust health care providers to
7 protect them from unnecessary and high health care charges and to assist
8 them in securing appropriate care through other providers when medically
9 necessary;

10 (VI) Accordingly, providers have a responsibility to protect
11 consumers and patients from assuming unnecessary financial hardship
12 due to referrals from which the providers anticipate personal financial
13 gain; and

14 (VII) Under the "Colorado Medical Assistance Act", articles 4, 5,
15 and 6 of title 25.5, Colorado Revised Statutes, cost containment through
16 control of self-referrals in the medicaid program has proven effective in
17 reducing the overall cost of medical care. The limitations on self-referrals
18 are based on a well-established body of federal laws and regulations
19 commonly known as the "Stark law".

20 (2) Based on these findings and determinations, the general
21 assembly declares that:

22 (a) The purpose of this act is to protect consumers from financial
23 harm by ensuring that providers do not have a conflict of interest when
24 making referrals for care; and

25 (b) The most appropriate method for achieving this objective is to
26 extend the proven benefits of Colorado's Stark law beyond the realm of
27 medicaid coverage so that the same protections are available to all

1 Coloradans who have purchased insurance.

2 **SECTION 2.** In Colorado Revised Statutes, 6-1-105, **add**
3 (1)(kkk) as follows:

4 **6-1-105. Deceptive trade practices.** (1) A person engages in a
5 deceptive trade practice when, in the course of the person's business,
6 vocation, or occupation, the person:

7 (kkk) VIOLATES SECTION 6-1-728.

8 **SECTION 3.** In Colorado Revised Statutes, **add** 6-1-728 as
9 follows:

10 **6-1-728. Providers - prohibition of certain referrals -**
11 **definitions - legislative declaration.** (1) AS USED IN THIS SECTION,
12 UNLESS THE CONTEXT OTHERWISE REQUIRES:

13 (a) "DESIGNATED HEALTH SERVICE" MEANS ANY OF THE
14 FOLLOWING SERVICES, EQUIPMENT, SUPPLIES, OR DEVICES:

15 (I) CLINICAL LABORATORY SERVICES;

16 (II) PHYSICAL THERAPY SERVICES;

17 (III) OCCUPATIONAL THERAPY SERVICES;

18 (IV) RADIOLOGY AND OTHER DIAGNOSTIC SERVICES;

19 (V) RADIATION THERAPY SERVICES;

20 (VI) DURABLE MEDICAL EQUIPMENT;

21 (VII) PARENTERAL OR ENTERAL NUTRIENTS, EQUIPMENT, AND
22 SUPPLIES;

23 (VIII) PROSTHETICS, ORTHOTICS, AND PROSTHETIC DEVICES;

24 (IX) HOME HEALTH SERVICES;

25 (X) OUTPATIENT PRESCRIPTION DRUGS;

26 (XI) INPATIENT AND OUTPATIENT HOSPITAL SERVICES, INCLUDING
27 NEUROMONITORING AND SURGICAL ASSISTANT SERVICES; AND

1 (XII) ANY OTHER PRODUCT OR SERVICE FOR WHICH A HEALTH
2 CARE PROVIDER OR VENDOR BILLS A PRIVATE HEALTH INSURER.

3 (b) "FINANCIAL RELATIONSHIP" MEANS AN OWNERSHIP OR
4 INVESTMENT INTEREST IN AN ENTITY FURNISHING DESIGNATED HEALTH
5 SERVICES OR A COMPENSATION ARRANGEMENT BETWEEN A PROVIDER OR
6 AN IMMEDIATE FAMILY MEMBER OF THE PROVIDER AND THE ENTITY. AN
7 OWNERSHIP OR INVESTMENT INTEREST MAY BE REFLECTED IN EQUITY,
8 DEBT, OR OTHER INSTRUMENTS.

9 (c) "IMMEDIATE FAMILY MEMBER OF THE PROVIDER" MEANS ANY
10 SPOUSE, NATURAL OR ADOPTIVE PARENT, NATURAL OR ADOPTIVE CHILD,
11 STEPPARENT, STEPCHILD, STEPBROTHER, STEPSISTER, IN-LAW, NATURAL OR
12 ADOPTIVE GRANDPARENT, OR NATURAL OR ADOPTIVE GRANDCHILD OF THE
13 PROVIDER.

14 (d) "PROVIDER" MEANS:

15 (I) A DOCTOR OF MEDICINE OR OSTEOPATHY, OR A PHYSICIAN
16 ASSISTANT, WHO IS LICENSED TO PRACTICE MEDICINE PURSUANT TO
17 ARTICLE 36 OF TITLE 12;

18 (II) A NURSE PRACTITIONER WHO IS LICENSED TO PRACTICE
19 NURSING PURSUANT TO ARTICLE 38 OF TITLE 12 AND LISTED ON THE
20 ADVANCED PRACTICE REGISTRY CREATED BY SECTION 12-38-111.5;

21 (III) A DOCTOR OF DENTAL SURGERY OR OF DENTAL MEDICINE WHO
22 IS LICENSED TO PRACTICE DENTISTRY PURSUANT TO ARTICLE 35 OF TITLE
23 12;

24 (IV) A DOCTOR OF PODIATRIC MEDICINE WHO IS LICENSED TO
25 PRACTICE PODIATRY PURSUANT TO ARTICLE 32 OF TITLE 12;

26 (V) A DOCTOR OF OPTOMETRY WHO IS LICENSED TO PRACTICE
27 OPTOMETRY PURSUANT TO ARTICLE 40 OF TITLE 12;

1 (VI) A CHIROPRACTOR WHO IS LICENSED TO PRACTICE
2 CHIROPRACTIC PURSUANT TO ARTICLE 33 OF TITLE 12; OR

3 (VII) ANY OTHER HEALTH CARE PROVIDER WHO IS AUTHORIZED TO
4 BILL HEALTH INSURERS FOR MEDICAL SERVICES.

5 (2) (a) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (2),
6 A PROVIDER ENGAGES IN A DECEPTIVE TRADE PRACTICE WHEN, IN THE
7 COURSE OF HIS OR HER BUSINESS, VOCATION, OR OCCUPATION, THE
8 PROVIDER MAKES A REFERRAL FOR A DESIGNATED HEALTH SERVICE TO AN
9 ENTITY WITH WHICH THE PROVIDER OR AN IMMEDIATE FAMILY MEMBER OF
10 THE PROVIDER HAS A FINANCIAL RELATIONSHIP.

11 (b) SUBSECTION (2)(a) OF THIS SECTION DOES NOT APPLY TO ANY
12 FINANCIAL RELATIONSHIP THAT MEETS THE REQUIREMENTS OF AN
13 EXCEPTION TO THE PROHIBITIONS ESTABLISHED BY 42 U.S.C. SEC. 1395nn,
14 AS AMENDED, OR ANY REGULATIONS PROMULGATED UNDER 42 U.S.C. SEC.
15 1395nn, AS AMENDED.

16 (c) SUBSECTION (2)(a) OF THIS SECTION DOES NOT APPLY TO A
17 FINANCIAL RELATIONSHIP OR REFERRAL FOR A DESIGNATED HEALTH
18 SERVICE IF THE FINANCIAL RELATIONSHIP OR REFERRAL FOR A DESIGNATED
19 HEALTH SERVICE WOULD NOT VIOLATE 42 U.S.C. SEC. 1395nn, AS
20 AMENDED, AND ANY REGULATIONS PROMULGATED UNDER 42 U.S.C. SEC.
21 1395nn, AS AMENDED, IF THE DESIGNATED HEALTH SERVICE WAS ELIGIBLE
22 FOR PAYMENT UNDER MEDICARE RATHER THAN THE "COLORADO MEDICAL
23 ASSISTANCE ACT", ARTICLES 4, 5, AND 6 OF TITLE 25.5.

24 (d) THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES
25 THAT, DUE TO THE STRONG STATE AND FEDERAL POLICIES OF PROTECTING
26 THE PRIVACY OF MEDICAL RECORDS, AS EMBODIED IN SECTION 13-90-107
27 (1)(d) AND THE FEDERAL "HEALTH INSURANCE PORTABILITY AND

1 ACCOUNTABILITY ACT OF 1996", AS AMENDED, PUB.L. 104-191,
2 VIOLATIONS OF THIS SECTION ARE EASILY CONCEALED. THEREFORE, IN
3 ANY ACTION UNDER THIS SECTION:

4 (I) IT SHALL BE PRESUMED THAT VIOLATIONS OF THIS SECTION
5 HAVE A SIGNIFICANT IMPACT ON THE PUBLIC AS CONSUMERS OF HEALTH
6 SERVICES; AND

7 (II) IT SHALL BE AN AFFIRMATIVE DEFENSE THAT THE CHALLENGED
8 CONDUCT DOES NOT HAVE A SIGNIFICANT PUBLIC IMPACT.

9 (3) AN ENTITY THAT PROVIDES A DESIGNATED HEALTH SERVICE AS
10 A RESULT OF A PROHIBITED REFERRAL SHALL NOT PRESENT A CLAIM OR
11 BILL TO ANY INDIVIDUAL, ANY THIRD-PARTY PAYER, THE STATE
12 DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, OR ANY OTHER
13 ENTITY FOR THE DESIGNATED HEALTH SERVICE.

14 (4) AN ENTITY THAT PROVIDES A DESIGNATED HEALTH SERVICE
15 SHALL PROVIDE TO THE DEPARTMENT OF LAW, UPON ITS REQUEST AND IN
16 THE FORM SPECIFIED BY THE DEPARTMENT, INFORMATION CONCERNING
17 THE ENTITY'S OWNERSHIP ARRANGEMENTS INCLUDING:

18 (a) THE ITEMS AND SERVICES PROVIDED BY THE ENTITY; AND

19 (b) THE NAMES AND PROVIDER IDENTIFICATION NUMBERS OF ALL
20 PROVIDERS WITH A FINANCIAL INTEREST IN THE ENTITY OR WHOSE
21 IMMEDIATE FAMILY MEMBERS HAVE A FINANCIAL INTEREST IN THE ENTITY.

22 (5) IF A PROVIDER REFERS A PATIENT FOR A DESIGNATED HEALTH
23 SERVICE IN VIOLATION OF SUBSECTION (2) OF THIS SECTION OR THE ENTITY
24 REFUSES TO PROVIDE THE INFORMATION REQUIRED IN SUBSECTION (4) OF
25 THIS SECTION, THE ATTORNEY GENERAL MAY:

26 (a) TAKE ANY ENFORCEMENT ACTION AUTHORIZED BY THIS
27 ARTICLE 1 AGAINST THE PROVIDER OR ENTITY;

1 (b) REQUIRE THE PROVIDER OR ENTITY TO REFUND PAYMENTS FOR
2 SERVICES AS A CONDITION OF SUSPENDING OR DEFERRING ENFORCEMENT
3 ACTION UNDER THIS ARTICLE 1; OR

4 (c) REFER THE MATTER FOR INVESTIGATION AS MEDICAL
5 ASSISTANCE FRAUD OR INSURANCE FRAUD.

6 **SECTION 4.** In Colorado Revised Statutes, 10-16-106.5, **amend**
7 (4)(c) as follows:

8 **10-16-106.5. Prompt payment of claims - legislative**
9 **declaration - rules.** (4) (c) (I) Absent fraud, all claims except those
10 described in ~~paragraph (a) of this subsection (4)~~ SUBSECTION (4)(a) OF
11 THIS SECTION shall be paid, denied, or settled within ninety calendar days
12 after receipt by the carrier.

13 (II) AS USED IN THIS SUBSECTION (4)(c), "FRAUD" INCLUDES A
14 REASONABLE SUSPICION THAT A CLAIM HAS BEEN SUBMITTED IN
15 VIOLATION OF SECTION 6-1-728.

16 **SECTION 5. Act subject to petition - effective date -**
17 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
18 the expiration of the ninety-day period after final adjournment of the
19 general assembly (August 8, 2018, if adjournment sine die is on May 9,
20 2018); except that, if a referendum petition is filed pursuant to section 1
21 (3) of article V of the state constitution against this act or an item, section,
22 or part of this act within such period, then the act, item, section, or part
23 will not take effect unless approved by the people at the general election
24 to be held in November 2018 and, in such case, will take effect on the
25 date of the official declaration of the vote thereon by the governor.

26 (2) This act applies to services rendered on or after the applicable
27 effective date of this act.