

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 08-0380.01 Christy Chase

SENATE BILL 08-211

SENATE SPONSORSHIP

Tochtrop,

HOUSE SPONSORSHIP

(None),

Senate Committees
Health and Human Services

House Committees

A BILL FOR AN ACT

101 CONCERNING MEDICAL PAYMENTS COVERAGE IN CONNECTION WITH
102 AN AUTOMOBILE INSURANCE POLICY ISSUED IN COLORADO.

Bill Summary

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

Requires an automobile insurance policy issued or renewed on or after January 1, 2009, to contain medical payments coverage of a specified amount and for a specified period for payment of reasonable, necessary, and accident-related medical evidence-based health care and rehabilitation services provided for bodily injury arising out of the ownership, maintenance, or use of a motor vehicle. Specifies to whom medical payments coverage benefits are to be paid and the priority of

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.

payments to be made to providers for providing health care services to an injured person. Presumes that the minimum amount and period of medical payments coverage is included in an automobile insurance policy if the insurer fails to include the coverage in the policy. Specifies the reimbursement rate to be paid to providers and establishes a minimum level for such reimbursement rates.

Preserves the right of an injured person to choose his or her health care provider. Requires an insurer to honor a proper assignment of benefits to a health care provider and to promptly pay claims for medical payments coverage.

Prohibits an insurer providing benefits under medical payments coverage from recovering the cost of such benefits from an owner, user, or operator of a motor vehicle, or against any person or organization legally responsible for the acts or omissions of such person, in any action for damages. Specifies that an insurer shall not have a direct cause of action against an alleged tortfeasor for benefits paid under medical payments coverage. Preserves the rights of an insurer to recover medical payments coverage benefits when the benefits were paid by reason of fraud.

Modifies the disclosures required to be made to policyholders to clarify that, if an insured is also covered under a health insurance policy, the insured's medical payments coverage is primary to the health insurance coverage, will provide coverage before the health insurance coverage, and will apply to any coinsurance or deductible amounts required by the health insurance policy.

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

2 **SECTION 1.** 10-4-620, Colorado Revised Statutes, is amended
3 to read:

4 **10-4-620. Required coverages - legal liability - medical**
5 **payments.** (1) Subject to the limitations and exclusions authorized by
6 this part 6, the basic coverage required for compliance with this part 6 is:

7 (a) Legal liability coverage for bodily injury or death arising out
8 of the use of the motor vehicle to a limit, exclusive of interest and costs,
9 of twenty-five thousand dollars to any one person in any one accident and
10 fifty thousand dollars to all persons in any one accident and for property
11 damage arising out of the use of the motor vehicle to a limit, exclusive of

1 interest and costs, of fifteen thousand dollars in any one accident; AND

2 (b) (I) MEDICAL PAYMENTS COVERAGE OF AT LEAST TWENTY-FIVE
3 THOUSAND DOLLARS PER PERSON IN ANY ONE ACCIDENT FOR THE
4 PAYMENT OF ALL REASONABLE, NECESSARY, AND ACCIDENT-RELATED
5 HEALTH CARE EXPENSES FOR BODILY INJURY ARISING OUT OF THE
6 OWNERSHIP, MAINTENANCE, OR USE OF THE MOTOR VEHICLE. PAYMENT
7 SHALL BE MADE TO A FIRST RESPONDER, LICENSED OR CERTIFIED HOSPITAL,
8 OR LICENSED HEALTH CARE PROVIDER, AS DEFINED IN SECTION 10-4-902,
9 FOR REASONABLE, NECESSARY, AND ACCIDENT-RELATED HEALTH CARE
10 SERVICES PROVIDED TO THE INJURED PERSON WITHIN FIVE YEARS AFTER
11 THE ACCIDENT.

12 (II) IF AN INSURER FAILS TO INCLUDE MEDICAL PAYMENTS
13 COVERAGE IN A POLICY ISSUED PURSUANT TO THIS PART 6, THE INSURED'S
14 POLICY SHALL BE PRESUMED TO INCLUDE THE MINIMUM MEDICAL
15 PAYMENTS COVERAGE REQUIRED BY THIS PARAGRAPH (b). NOTHING IN
16 THIS PARAGRAPH (b) SHALL PRECLUDE AN INSURER FROM OFFERING, OR AN
17 INSURED FROM PURCHASING, MEDICAL PAYMENTS COVERAGE IN EXCESS
18 OF THE AMOUNT OR FOR A LONGER PERIOD THAN THE AMOUNT OR PERIOD
19 OF COVERAGE REQUIRED BY THIS PARAGRAPH (b).

20 (III) THE MEDICAL PAYMENTS COVERAGE BENEFITS REQUIRED BY
21 THIS PARAGRAPH (b) SHALL BE PAID TO PERSONS OR ENTITIES PROVIDING
22 REASONABLE, NECESSARY, AND ACCIDENT-RELATED HEALTH CARE AND
23 REHABILITATION SERVICES IN THE FOLLOWING PRIORITY:

24 (A) BENEFITS SHALL FIRST BE PAID TO FIRST RESPONDERS WHO
25 PROVIDE EMERGENCY MEDICAL CARE AT THE SCENE OR IMMEDIATELY
26 AFTER A MOTOR VEHICLE ACCIDENT.

27 (B) AFTER PAYMENT OF BENEFITS TO FIRST RESPONDERS, BENEFITS

1 SHALL NEXT BE PAID TO A HOSPITAL OR TRAUMA CENTER WHOSE
2 EMERGENCY CALL PANEL PHYSICIANS PROVIDE CARE AT SUCH FACILITY
3 IMMEDIATELY AFTER A MOTOR VEHICLE ACCIDENT.

4 (C) ANY REMAINING BENEFITS SHALL BE PAID TO PROVIDERS
5 DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) WHO PROVIDE
6 SUBSEQUENT HEALTH CARE SERVICES.

7 (IV) EXCEPT AS PROVIDED IN SUBPARAGRAPH (V) OF THIS
8 PARAGRAPH (b), REASONABLE, NECESSARY, AND ACCIDENT-RELATED
9 HEALTH CARE AND REHABILITATION SERVICES PROVIDED TO A PERSON
10 CLAIMING MEDICAL PAYMENTS COVERAGE SHALL BE REIMBURSED AT THE
11 LESSER OF THE REASONABLE AND CUSTOMARY RATE OF REIMBURSEMENT
12 PAID TO HEALTH CARE PROVIDERS IN THE IMMEDIATE GEOGRAPHICAL
13 AREA OR:

14 (A) FOR EXPENSES RELATED TO SERVICES PROVIDED BY PROVIDERS
15 DESCRIBED IN SUB-SUBPARAGRAPHS (A) AND (B) OF SUBPARAGRAPH (III)
16 OF THIS PARAGRAPH (b), TWICE THE AMOUNT INDICATED BY THE 2006
17 MEDICARE RESOURCE-BASED RELATIVE VALUE SCALE FEE SCHEDULE,
18 ADJUSTED BY THE GEOGRAPHICAL PRACTICE COST INDEX; AND

19 (B) FOR EXPENSES RELATED TO SERVICES PROVIDED BY PROVIDERS
20 DESCRIBED IN SUB-SUBPARAGRAPH (C) OF SUBPARAGRAPH (III) OF THIS
21 PARAGRAPH (b), ONE AND ONE-HALF TIMES THE AMOUNT INDICATED BY
22 THE 2006 MEDICARE RESOURCE-BASED RELATIVE VALUE SCALE FEE
23 SCHEDULE, ADJUSTED BY THE GEOGRAPHICAL PRACTICE COST INDEX.

24 (V) NOTWITHSTANDING THE REIMBURSEMENT RATES SPECIFIED IN
25 SUBPARAGRAPH (IV) OF THIS PARAGRAPH (b), THE REIMBURSEMENT RATES
26 SHALL NOT BE LOWER THAN THE AMOUNT SPECIFIED ON THE FEE SCHEDULE
27 ESTABLISHED PURSUANT TO SECTION 8-42-101 (3), C.R.S., FOR THE

1 PARTICULAR SERVICE IF SUCH FEE SCHEDULE EXISTS FOR:

2 (A) THE PARTICULAR SERVICE PROVIDED;

3 (B) THE AMERICAN MEDICAL ASSOCIATION'S CURRENT
4 PROCEDURAL TERMINOLOGY CODE, ALSO KNOWN AS A "CPT CODE", FOR
5 THE PARTICULAR SERVICE PROVIDED; OR

6 (C) THE CENTERS FOR MEDICARE AND MEDICAID SERVICES HEALTH
7 CARE COMMON PROCEDURE CODING SYSTEM, ALSO KNOWN AS "HCPCS",
8 FOR THE PARTICULAR SERVICE PROVIDED.

9 (VI) NOTHING IN THIS PARAGRAPH (b) SHALL LIMIT THE ABILITY
10 OF AN INJURED PERSON TO CHOOSE OR CHANGE HIS OR HER HEALTH CARE
11 PROVIDER.

12 (VII) AN INSURER SHALL HONOR A PROPER ASSIGNMENT OF
13 MEDICAL PAYMENTS COVERAGE BENEFITS MADE PURSUANT TO SECTION
14 10-4-634 AND SHALL PROMPTLY PAY CLAIMS FOR MEDICAL PAYMENTS
15 COVERAGE IN ACCORDANCE WITH SECTION 10-4-642.

16 (VIII) AS USED IN THIS PARAGRAPH (b), UNLESS THE CONTEXT
17 OTHERWISE REQUIRES:

18 (A) "FIRST RESPONDER" MEANS A PERSON OR ENTITY THAT
19 RESPONDS TO AND PROVIDES EMERGENCY MEDICAL CARE TO AN
20 INDIVIDUAL INJURED IN AN AUTOMOBILE ACCIDENT. THE TERM "FIRST
21 RESPONDER" INCLUDES, BUT IS NOT LIMITED TO, A PERSON OR ENTITY
22 PROVIDING AMBULANCE SERVICE, INCLUDING AIR AMBULANCE SERVICE,
23 AN EMERGENCY MEDICAL TECHNICIAN, AS DEFINED IN SECTION 25-3.5-103,
24 C.R.S., AND ANY SERVICE AGENCY, AS DEFINED IN SECTION 25-3.5-103,
25 C.R.S., OR OTHER PERSON OR ENTITY THAT PROVIDES EMERGENCY
26 MEDICAL CARE AT THE SCENE OF OR IMMEDIATELY AFTER AN AUTOMOBILE
27 ACCIDENT. "FIRST RESPONDER" DOES NOT INCLUDE A HOSPITAL.

1 (B) "HEALTH CARE SERVICES" MEANS ALL REASONABLE,
2 NECESSARY, AND ACCIDENT-RELATED MEDICAL EVIDENCE-BASED HEALTH
3 CARE AND REHABILITATION SERVICES PROVIDED TO A PERSON INJURED IN
4 AN AUTOMOBILE ACCIDENT WITHIN FIVE YEARS AFTER THE ACCIDENT.

5 (2) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT ANY
6 OTHER COVERAGE AMOUNTS MADE AVAILABLE BY AN INSURER.

7 **SECTION 2.** 10-4-635 (1), Colorado Revised Statutes, is
8 amended to read:

9 **10-4-635. Medical payments coverage - no tort recovery.**

10 ~~(1) If an insurer makes available medical payments coverage in~~
11 ~~conjunction with the coverage required pursuant to section 10-4-620, such~~
12 ~~medical payments coverage shall provide for benefits of five thousand~~
13 ~~dollars, as well as any other benefit deemed appropriate by the insurer.~~
14 ~~Nothing in this section shall be construed to limit any other coverage~~
15 ~~amounts being made available by an insurer~~ AN INSURER PROVIDING
16 BENEFITS UNDER MEDICAL PAYMENTS COVERAGE AS REQUIRED BY
17 SECTION 10-4-620 (1) (b) OR IN A GREATER AMOUNT THAN REQUIRED BY
18 SAID SECTION SHALL NOT HAVE A RIGHT TO RECOVER AGAINST AN OWNER,
19 USER, OR OPERATOR OF A MOTOR VEHICLE, OR AGAINST ANY PERSON OR
20 ORGANIZATION LEGALLY RESPONSIBLE FOR THE ACTS OR OMISSIONS OF
21 SUCH PERSON, IN ANY ACTION FOR DAMAGES FOR BENEFITS PAID UNDER
22 SUCH MEDICAL PAYMENTS COVERAGE. AN INSURER SHALL NOT HAVE A
23 DIRECT CAUSE OF ACTION AGAINST AN ALLEGED TORTFEASOR FOR
24 BENEFITS PAID UNDER MEDICAL PAYMENTS COVERAGE. NOTHING IN THIS
25 SECTION SHALL BE CONSTRUED TO AFFORD AN INSURER A CAUSE OF
26 ACTION AGAINST A PERSON TO WHOM OR FOR WHOM MEDICAL PAYMENTS
27 COVERAGE BENEFITS WERE PAID EXCEPT IN A CASE WHERE THE BENEFITS

1 WERE PAID BY REASON OF FRAUD.

2 **SECTION 3.** 10-4-636 (4) (b), Colorado Revised Statutes, is
3 amended to read:

4 **10-4-636. Disclosure requirements for automobile insurance**
5 **products offered - rules.** (4) The disclosure form required by
6 subsection (1) of this section shall include a disclosure specifying that:

7 (b) IF THE INSURED ALSO HAS HEALTH INSURANCE COVERAGE, THE
8 medical payments coverage:

9 (I) Is primary to ~~any~~ THE health insurance coverage available to
10 ~~an~~ THE insured when injured in an automobile accident;

11 (II) SHALL PROVIDE COVERAGE BEFORE THE HEALTH INSURANCE
12 COVERAGE; AND

13 (III) SHALL APPLY TO ANY COINSURANCE OR DEDUCTIBLE AMOUNT
14 REQUIRED BY THE HEALTH INSURANCE COVERAGE PLAN OR POLICY;

15 **SECTION 4. Effective date - applicability.** (1) This act shall
16 take effect January 1, 2009.

17 (2) However, if a referendum petition is filed against this act or
18 an item, section, or part of this act during the 90-day period after final
19 adjournment of the general assembly that is allowed for submitting a
20 referendum petition pursuant to article V, section 1 (3) of the state
21 constitution, then the act, item, section, or part, shall not take effect unless
22 approved by the people at a biennial regular general election and shall
23 take effect on the date specified in subsection (1) or on the date of the
24 official declaration of the vote thereon by proclamation of the governor,
25 whichever is later.

1 (3) The provisions of this act shall apply to automobile insurance
2 policies issued or renewed on or after the applicable effective date of this
3 act.