

RECOMMENDATIONS FOR 2006

INTERIM COMMITTEE ON AUTO INSURANCE

**Report to the
Colorado General Assembly**

**Research Publication No. 540
December 2005**

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December 2005

To Members of the Sixty-fifth General Assembly:

Submitted herewith is the final report of the Interim Committee on Auto Insurance. This committee was created pursuant to HJR05-1606. The purpose of the committee is to study the Colorado automobile insurance system.

At its meeting on November 15, 2005, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2005 session was approved.

Respectfully Submitted

/s/ Senator Joan Fitz-Gerald
Chairman

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INTERIM COMMITTEE ON AUTO INSURANCE

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EXECUTIVE SUMMARY

Committee Charge

The Committee on Automobile Insurance was created pursuant to House Joint Resolution 05-1026 to study the Colorado automobile insurance system, specifically the impact of switching from a no-fault system to a tort-based system.

Committee Activities

The committee held six meetings over the interim in an effort to understand the impact on the automobile insurance market, the health care market, and consumers of repealing Colorado's no-fault automobile insurance law and replacing it with a tort liability system. No-fault required an individual's insurer to immediately pay for injuries and damage resulting from an automobile accident regardless of who caused the accident. Under tort, financial responsibility lies with the person who caused the accident or their insurer, and payments to victims need not be made until fault is determined. The committee heard testimony from automobile insurance companies and their agents; first-responders and other trauma care providers; health insurers, hospitals, and other health care providers; consumers and consumer advocates; and the state's Commissioner of Insurance. The committee also received presentations from organizations such as the Insurance Research Council, and the National Conference of State Legislatures.

A key discussion item was how to measure the impact of switching from no-fault to tort on consumers. Information provided by the Insurance Commissioner supported assertions that the tort system has reduced premium rates, expanded consumer choice in the types of policies available, and increased industry competition as more insurers entered the Colorado market. Experts with knowledge about the automobile insurance industry confirmed that these outcomes should be expected in moving from no-fault to tort. However, committee members and others raised several questions and concerns about whether data from Colorado actually supported these conclusions. Multiple discussions in the committee attempted to clarify how premium rates had changed after repealing no-fault.

The committee heard repeated testimony that consumers may not have fully understood how repealing no-fault would affect reimbursement of injury-related costs resulting from an automobile accident. In many cases, the testimony came directly from individuals involved in automobile accidents who had assumed that costs would be covered in the same manner as they were under the no-fault system. Consumer advocates and others testified that many consumers are still unaware of or unfamiliar with the coverage choices available to them and the appropriate level of coverage. For example, consumers appear unfamiliar with the benefits of medical payments coverage which can pay coinsurance or deductibles for medical care received as a result of an automobile accident,

regardless of fault. The committee considered several options designed to help consumers know more about the coverage they are buying.

The committee also heard testimony from accident victims and medical care providers expressing concern that medical claims resulting from an automobile accident are not being paid in a timely fashion. In large part, these delays were simply the result of insurers waiting until fault is established before paying claims. Representatives of the state's trauma system testified about the delays they experienced in obtaining reimbursement for their costs, leading the committee to consider additional funding sources for trauma care.

Committee Recommendations

As a result of committee discussion and deliberation, the committee recommends six bills for consideration in the 2006 legislative session.

Bill A — Requiring that emergency medical care coverage be included in automobile insurance policies. Bill A would require that all insurance policies issued in the state provide coverage for reasonable, necessary, and accident-related emergency medical care, regardless of who is at fault. Once fault is established, the bill allows an insurer to recover from the at-fault driver any emergency care costs paid for another person injured in the accident, but not until after the injured person is fully compensated for his or her accident-related injuries. This new coverage would apply before medical payments coverage or health insurance benefits for auto-accident-related injuries and would also apply to coinsurance or deductibles.

Bill B — Requiring that automobile insurance carriers offer medical payments coverage in connection with an automobile insurance policy issued in Colorado. Bill B requires automobile insurers to offer medical payments coverage for all policies issued in the state. Medical payments coverage is optional first-party protection for injuries sustained in an automobile accident; it covers up to \$5,000 in medical care expenses for accident-related injuries, regardless of fault. To ensure that medical payments coverage has been offered, the bill requires that rejection of the offer be made in writing.

Bill C — Requiring that an insurer make certain disclosures to consumers regarding the content of automobile insurance policies. Bill C would require automobile insurers to use a uniform disclosure form when issuing policies to Colorado consumers. The bill also requires the insurer to provide a clear explanation of the individual's policy and obtain written consent when issuing optional coverages.

Bill D — Applying health insurance prompt pay provisions to claims made as a result of a motor vehicle accident. Bill D would require that prompt pay provisions for health insurance expenses apply to claims made as a result of injury from an automobile accident. The bill further permits health insurers to seek reimbursement from the at-fault party.

Bill E — Creating of the Colorado consumer insurance board. Bill E proposes a Consumer Insurance Council to advise the Division of Insurance and the Insurance Commissioner on policy issues, prepare information for legislative hearings, and annually review the performance of the commissioner.

Bill F — Claims practices for bodily injury to a third-party claimant arising out of the use of a motor vehicle. Bill F adds provisions to state law regarding third-party claimants in motor vehicle accidents including: benefit disclosure requirements, prompt determination of liability, presumptive liability when payment for property damage is made, and fair and consistent methods for determining bodily injury loss. The bill creates a penalty for the willful nonpayment of third party claims and allows the assignment of legal liability coverage for third-party bodily injury to a hospital or other health care provider. Finally, the bill adds the violation of these requirements to the unfair claims settlement practices act.

STATUTORY AUTHORITY AND RESPONSIBILITIES

In 2003, Colorado's 30-year-old no-fault insurance system was repealed and the state reverted to a tort-based liability system. In the wake of this transition, the General Assembly adopted House Joint Resolution 05-1026 to study the impact of the switch on the Colorado automobile insurance system. In the no-fault system, an individual's insurer was responsible for payment for injuries and damage resulting from an automobile accident, regardless of who was at fault in the accident. Under tort, financial responsibility for those costs lies with the person who caused the accident, or their insurer, and payments to accident victims need not be paid until fault is determined.

The resolution noted the impact of the change to a tort-based system on the way medical expenses are paid in the event of automobile accident-related injuries and on the premium rates Colorado consumers pay for coverage. The resolution further expressed concern that the elimination of the no-fault system had resulted in gaps in coverage and created problems with the availability and delivery of health care services for accident victims.

Pursuant to the resolution, the Interim Committee on Automobile Insurance was charged with studying matters relating to the Colorado automobile insurance system, specifically the outcome of repealing no-fault automobile insurance and replacing it with a tort-based system.

COMMITTEE ACTIVITIES

The Interim Committee on Automobile Insurance held six meetings during the 2005 legislative interim with the goal of better understanding the current automobile insurance system and devising solutions to system inadequacies. The committee generally focused on medical care coverage since it is the principal coverage component distinguishing no-fault from tort liability systems of automobile insurance. Accordingly, the focal point of the committee was to review the policy implications of eliminating mandatory personal injury protection (PIP) coverage in favor of replacing it with optional medical payments coverage.

The central concern of the committee was ensuring a balance between the stated cost-savings of the current tort liability system and adequate medical care coverage, such as that found under no-fault. The committee heard from all system stakeholders including automobile insurance policyholders, automobile insurance carriers, health and medical care providers, and health insurance carriers. The committee also received input from several professional policy and research groups and from the Division of Insurance, which is the state regulatory agency in charge of overseeing the Colorado automobile and health insurance systems. This section summarizes the deliberations of the committee, grouping issues based on state law before and after July 1, 2003.

Background

In 2003, the Colorado law making no-fault automobile insurance compulsory was allowed to expire. Effective July 1, 2003, all automobile policies issued in Colorado were governed by a tort liability system of automobile insurance. Policies issued prior to July 1, 2003, were allowed to remain in effect, but only until the expiration of the policy period. Fundamentally, the system change replaced a first-party, no-fault arrangement of medical care coverage with an assignment of liability to the at-fault driver.

Under no-fault, all drivers were required to carry PIP coverage, which provided first-party protection for medical and rehabilitative expenses incurred as a result of an automobile accident. PIP also reimbursed an injured driver for a portion of wages lost as a result of an automobile accident. In an automobile accident, an individual's PIP coverage paid benefits regardless of fault; hence PIP became synonymous with no-fault and was the single coverage type that distinguished Colorado's no-fault system from one of tort liability. Since determination of fault was unnecessary, PIP coverage was viewed as a more efficient method of benefit delivery as medical care payments were provided quickly because the time and costs associated with claim litigation was avoided.

Prompting the change to a tort liability system were concerns over the rapid rise in PIP payments in Colorado. A 2003 study authored by the Insurance Research Council (IRC) found that PIP losses increased by 122 percent from 1997 to 2002, more than any

other no-fault state in the country. Critics argued that policyholder fraud, together with inflated claims and health care over-utilization, resulted in soaring PIP costs. Combined, these factors were blamed for eliminating the perceived efficiencies of the no-fault system.

Under the tort liability system, fault is assessed and an at-fault driver's liability policy covers medical care expenses for other individuals injured as a result of an automobile accident. Proponents of this system argue that tort liability is preferable to no-fault because it more fairly assigns payment liability and encourages policyholders to drive more safely over fear of being responsible for another party's injuries. While the committee heard testimony that the shift to tort has been successful in eliminating many of the problems found under no-fault, they also heard that the new system has problems of its own. For example, Colorado's tort liability system allows an insured driver to purchase medical payments protection that provides first-party coverage, but this optional protection is not universal among drivers and provides less coverage than PIP under the former no-fault system. Collectively, testimony indicated that the lack of medical payments coverage for many insured drivers, the reduced policy limits of medical payments coverage when compared to PIP, and lengthy delays in determining fault have resulted in a shift of payment for automobile accidents from automobile insurance policies to health insurance policies.

Further, while automobile insurance liability coverage is compulsory, health care insurance is not. This has caused an increasing reliance on Medicaid and self-pay for at-fault drivers without medical payments coverage or with coverage that has reached its policy limits. Often, and particularly when self-pay is the only payment option, the health care provider is forced to write-off these expenses due to the inability of the patient to pay. The result has been an increase in financial difficulty for trauma centers, rehabilitation facilities, and other health care providers who treat a high proportion of automobile insurance accident victims.

Pre-2003: Coverage and Costs of Colorado's Personal Injury Protection (PIP) Under No-Fault

Medical care coverage under no-fault. Prior to July 1, 2003, Colorado operated under a modified no-fault system where all policyholders were required to have at least \$100,000 in PIP coverage and automobile insurance carriers were governed by prompt payment requirements. Under this system, an individual forfeited certain rights to sue, most notably for non-economic damages, in exchange for the timely payment of benefits. A pure no-fault system would require an automobile accident victim to surrender all rights to sue regardless of the damage amount. Colorado's system was considered modified because it allowed for lawsuits under tort once a claim reached a monetary threshold of \$2,500. Since each party in an accident received benefits from his or her own insurance carrier regardless of fault, no-fault was regarded as a more efficient system of benefit delivery than tort liability where benefits are frequently delayed until fault can be established. Proponents of this system contended that it combined the best elements of no-fault and tort liability as it paid claims quickly and controlled litigation costs, while still requiring an at-fault party to assume liability for the most severe injuries.

Policyholder premium costs under no-fault. Colorado’s modified no-fault automobile insurance system had been in place for nearly 30 years when the legislature allowed it to expire in 2003. This was partly in response to steep increases in automobile insurance premium costs. Based on data provided by the National Conference of State Legislatures (NCSL), premium costs for Colorado policyholders increased \$290.95 during the 10-year period beginning in 1992 and ending in 2002. This marked the largest premium increase for any state during this period, comparing unfavorably to the national average premium increase of only \$168.24. Most of the premium increase in Colorado was attributed to a substantial rise in PIP premium costs between 1999 and 2002. The table below compares premium increases in no-fault states between 1992 and 2002.

Comparison of Automobile Insurance Premium Increase in Modified No-Fault States Between 1992 and 2002 ¹		
State	Premium Increase	Difference Between State Amount and U.S. Average ²
Colorado	\$290.65	\$122.31
New York	\$290.38	\$122.04
Minnesota	\$260.46	\$92.12
North Dakota	\$259.69	\$91.35
Utah	\$247.87	\$79.53
Kansas	\$246.99	\$78.65
Kentucky	\$231.84	\$63.50
Michigan	\$206.20	\$37.86
Florida	\$191.34	\$23.00
New Jersey	\$163.97	-\$4.37
Pennsylvania	\$154.04	-\$14.30
Massachusetts	\$100.09	-\$68.25
Hawaii	-\$259.65	-\$427.99
¹ <i>Modified No-Fault States are PIP states with monetary or verbal thresholds for lawsuits.</i>		
² <i>Nationwide period average increase equaled \$168.34.</i>		
<i>Premium increase data provided by the National Conference of State Legislatures</i>		

During committee hearings, committee members were given several reasons for premium increases under PIP, including over-utilization of health care, inflated treatment costs, escalation of fraudulent claims, and increases in litigation. With no need to determine liability, first-party benefit systems like PIP were seen by many as particularly vulnerable to medical treatment over-utilization. In part, this was true because by automatically assigning liability to one carrier, there was no incentive to deny liability for an accident. In addition, the law required coverage for all “reasonable and necessary care,” a standard that the Colorado Commissioner of Insurance and others testified to the committee allowed for excessive or questionable treatments, such as aromatherapy and “spa” and “fish tank” therapies.

Another suggested cause for rising premiums was an increase in fraud. The Insurance Commissioner outlined a common fraud scheme whereby four or five people riding an automobile would pull out in front of another driver and quickly slam on the brakes, causing an accident. Under the driver's PIP policy, each individual would receive medical treatment and under Colorado's low monetary threshold the four or five individuals perpetrating the fraud would then file suit for non-economic damages such as pain and suffering. The resulting award was then pocketed by these individuals for the staged accident. Low tort thresholds also led to higher attorney and administrative costs due to increases in litigation in an insurance system that was formerly immune to most legitimate lawsuits. These suits increased even for legitimate claims as the average automobile injury required \$6,000 to \$9,000 in medical treatment that more than doubled the statutory monetary threshold of \$2,500. While this threshold may have been sufficient when originally enacted, rapid and inflationary rises in medical care costs had made the limit inadequate to cover most medical care costs by the late 1990s.

Insurance carrier profitability under PIP. Even as automobile insurance premium costs were rapidly rising in Colorado between the late 1990s and 2002, insurance carriers were struggling after consecutive unprofitable years. This was not only problematic for carriers but also threatened policyholders who relied on the solvency of insurers to pay benefits when necessary. By 2003, concern over the financial health of insurance carriers writing automobile insurance policies in Colorado was peaking.

One primary gauge of vitality in the insurance industry is the financial health of insurance carriers measured in profitability. Insurance carriers earn profits primarily in two ways: premiums paid by policyholders and returns on the investments insurers make using policyholder premiums. According to NCSL testimony, between 1999 and 2002, the average Colorado policyholder premium for the PIP portion of a policy rose from \$163.28 to \$224.03. However, even with this increase, automobile insurance carriers were still losing money on premium receipts. In 2002, PIP was costing Colorado insurers an average of \$240.47 while actual premiums were only generating \$224.03. This meant that for the 2002 policy period, automobile insurers on average paid out \$16.44 more in claims than they received premium payments from policyholders.

Without positive premium earnings, insurance carriers had little money to invest in the bond market. Plus, declines in interest rates had caused bond profits to tumble in the late 1990s so that investments were earning insignificant rates of return. Unlike life insurers who were profiting under long term investments in the stock market, automobile insurance carriers generally invest in less risky bonds since the time period between premium receipt and claim payment is significantly shorter than the same time period for life insurers. According to testimony provided by NCSL, Colorado automobile insurers lost 3.2 percent on net investments in both 2001 and 2002 while the industry nationwide earned a positive aggregate rate of return of 2.0 percent in 2001 and 4.1 percent in 2002.

Nationally, even while insurers in most no-fault states were experiencing similar losses on the PIP portion of policies, these losses were largely offset by profits in the property damage component of automobile insurance. This was not true in Colorado where

negligible property damage profits failed to make up for losses sustained from PIP. Two factors contribute to losses on insurance policies for automobile insurers: claim frequency and claim severity. While claim frequency remained constant during the late 1990s and up to 2002, claim severity experienced noteworthy increases. Since claim severity is measured as the cost of medical care treatment per claim for PIP policies, this increase in claim severity only reinforced arguments that fraudulent claims, medical treatment over-utilization, and inflated claim costs under PIP was to blame.

Post 2003: Implications of Colorado's Transition to a Tort Liability System of Automobile Insurance.

Unable to reach a compromise to fix existing PIP problems, legislators allowed the Colorado no-fault automobile insurance system to expire in 2003. The statutory provisions that remained established a tort liability system of automobile insurance. Under this system, the at-fault driver's insurer pays for automobile accident costs. Once fault is determined, a party not at-fault may sue for both economic and non-economic damages. Under tort liability, there are no damage thresholds and suits can be brought regardless of the claim amount.

Medical care coverage under tort liability. Beginning July 1, 2003, mandatory no-fault PIP coverage was no longer being offered on new or renewed automobile insurance policies. Instead, drivers could choose to purchase optional medical payments coverage with a minimum statutory benefit of \$5,000, substantially less than the \$50,000 in medical coverage and \$50,000 in rehabilitative benefits provided for under PIP.

Medical payments coverage (commonly referred to as "med-pay") provides first-party medical care benefits for the party at-fault. As such, it attempts to replace PIP protection to a limited extent. However, med-pay is optional and not all insured drivers elect to purchase this protection. In a survey of automobile insurance policyholders, the Consumers United Association (CUA) found that 42 percent of policyholders did not elect to purchase medical payments coverage and another 21 percent were not sure if they had medical payments coverage. These same policyholders would have been required to purchase PIP protection under no-fault.

In addition to being optional, med-pay coverage is significantly less comprehensive than coverage under a PIP policy with identical policy limits. Med-pay coverage is limited to care that is considered "medically necessary" while the standard under PIP was "reasonable and necessary" care. Consequently, fewer medical care options and treatments are available under med-pay coverage than PIP. The table below outlines the differences in policy coverage under PIP and med-pay.

FIRST-PARTY MEDICAL CARE COVERAGE		
Effective	Before July 1, 2003	After July 1, 2003
System	No-Fault	Tort Liability
First Party Coverage	PIP	MED-PAY
Statutory Requirements	Required Coverage	Optional Coverage
Coverage Amount	\$100,000 ¹	\$5,000 ²
Compensation Standard	Reasonable and Necessary	Medically Necessary
¹ Under PIP, \$100,000 in coverage included \$50,000 for medical care and \$50,000 for rehabilitative expenses.		
² \$5,000 in medical payments coverage is the minimum statutory amount for policyholders electing this coverage.		

Policyholder premium costs under tort liability. Based on data provided by the Colorado Division of Insurance, an actuarial study estimated that automobile insurance premium rates in Colorado declined 10 to 14 percent since the repeal of no-fault. These findings were consistent with the 15 percent rate decrease estimated by NCSL. Based on actual rate filings, the maximum rate decrease was 59.84 percent while the highest rate increase was 10.50 percent.

However, the committee also saw other data indicating that fewer than 1 percent of all insurance carriers actually reduced rates by at least 15 percent after factoring in rate increases occurring immediately prior to the July 1, 2003, transition date and additional rate increases that occurred after July 1, 2005. In response to this data, officials from the Division of Insurance noted that increases in costs for liability, uninsured motorist, and medical payments coverage were expected to offset some of the savings anticipated from the elimination of PIP.

The primary difficulty in comparing PIP rates to rates under tort liability is that each dollar in premium pays for different levels of policy coverage. An attempt to address this problem was found in an analysis provided to the committee by the Rocky Mountain Insurance Information Association (RMIIA). RMIIA compared the price of six-month automobile insurance policies in June of 2003 under PIP with policies with identical medical payment coverage limits issued after June of 2003 for various geographical regions in the state. The analysis concluded that premiums went down anywhere from 17.3 percent for a basic policy in Fort Collins to 39.1 percent for a more comprehensive policy in Pueblo. However, the Consumers United Association survey found that premiums increased for roughly 49 percent of all policyholders who purchased medical payments coverage after the elimination of PIP. Twenty-three percent stated that their costs were unchanged and an additional 26 percent said they experienced a decrease in insurance premiums.

Insurance carrier profitability under tort liability. One important question for the committee was how the transition to tort affected the financial health and economic vitality of the automobile insurance industry in Colorado. As one positive indication, the Insurance Commissioner noted an increase in the number of carriers issuing policies in Colorado. However, other aspects of the question remained essentially unanswered simply because of a lack of up-to-date data. Current and complete insurance carrier financial information are generally not available because benefits from prior years continue to be paid after year's end, and often for several years into the future. Since the transition occurred just over two years ago and given that many PIP policies remained in effect after the transition date, accurate data for automobile insurers will not be available for some time to come.

Spillover Effects of the Transition to a Tort Liability System of Automobile Insurance

Impact on health care insurers, Medicaid, and non-covered at-fault accident victims. The committee found that one outcome of the current tort liability system is a substantial portion of Colorado drivers are without primary insurance coverage for medical care treatment needed as a result of an automobile accident. While policy coverage has decreased, naturally there has been no corresponding reduction in the number of injury-causing automobile accidents. Under no-fault, the law required \$50,000 in medical care and \$50,000 in rehabilitation benefits for all Colorado drivers who complied with the state's mandatory PIP requirements, regardless of whether they were at-fault in an accident. Under the current system, the law requires liability coverage to protect all accident victims except the person that caused the accident. An at-fault driver is only covered if he or she purchased medical payments coverage. Assuming that the information provided by CUA is an accurate measure of statewide coverage numbers, a considerable number of drivers found at-fault are currently without medical care coverage.

Given a lack of adequate coverage, a number of automobile accident victims have found it gradually more difficult to pay for health care services. Increasingly, accident victims are relying on secondary payment sources to fill this gap, mainly health insurance and Medicaid. One health insurer, Rocky Mountain Health Plan (RMHP), noted that during the last two years they have paid an additional 1,425 automobile accident claims that would have been paid by an automobile insurer under the old no-fault system. The total cost for these claims was more than \$3.78 million. A representative of Kaiser Permanente told committee members that his health insurance plans have also experienced an increase in liability since the transition to tort, leading to a 1.5 percent increase in monthly premiums for health insurance. A representative from Anthem Insurance noted that the tort system has shifted the costs of automobile accidents from the insured driver to the business owner who typically pays the majority of employee health care coverage. Thus, the majority of increases in health insurance premiums caused by the tort liability system will be absorbed by the business community.

Another problem with relying on health insurance plans to cover the medical costs of automobile accidents is that not all drivers have health insurance. While PIP coverage for automobile drivers was compulsory, medical payments coverage and health insurance is not. According to the latest data from the United States Census Bureau for calendar year 2004, 18.5 percent of Colorado residents, or roughly 863,058 people, do not have health insurance. For those who have insurance, health plans typically don't provide as much coverage as PIP policies once did because of deductible and co-insurance requirements.

In some instances, Medicaid will provide coverage for individuals lacking health insurance. However, census data indicates that only 6.9 percent, or approximately 321,897 Colorado residents, received Medicaid assistance in 2004. The remainder of accident victims without health insurance or unable to qualify for Medicaid must pay for medical care out-of-pocket or rely on either the state's indigent care program or other sources of funding. Based on data provided by the Colorado Health and Hospital Association (CHHA), the percent of automobile injuries covered by the Colorado Indigent Care Plan or paid for out-of-pocket have increased by 5.4 percent and 2.1 percent.

To address consumer-related policy issues, the committee proposed Bill A requiring carriers to include emergency medical care coverage in their Colorado policies; Bill B requiring that insurance carriers offer medical payments coverage to consumers; Bill C requiring that insurers make certain additional disclosures to consumers; Bill E creating a consumer board to work with the Insurance Commissioner; and Bill F establishing benefit disclosure requirements, prompt determination of liability, presumptive liability when payment for property damage is made, and methods for determining bodily injury loss for third-party claimants in motor vehicle accidents.

Impact on health care providers. The lack of coverage and the inability to pay health care related expenses has also had an impact on a broad-based spectrum of health care providers. Aside from treatment for automobile accident victims in traditional hospital settings, the Insurance Research Council noted that in 2002, 38 percent of all victims also received treatment from chiropractors, 34 percent from physical therapists, 45 percent from emergency rooms, and 18 percent from alternative health care providers. Additionally, seriously injured accident victims are typically sent immediately to trauma centers to receive advanced, life-saving care.

Under no-fault, the process for health care provider reimbursement was quite simple since PIP covered the medical expenses of the injured policyholder. Further, the high mandatory PIP level covered most or all medical expenses. Since med-pay coverage is optional, the only mandatory medical coverage is found in the liability policy of the at-fault driver who must compensate the other injured parties for health care. In other words, PIP required coverage for both the at-fault driver and the driver not at-fault while tort protects everyone except the at-fault driver. As such, the sources listed in the previous section, like health insurers and Medicaid, have been relied on to fill this gap coverage. According to CHHA data, since the elimination of no-fault automobile insurance policies, medical providers in Colorado have experienced a nearly 12 percent reduction in the number of automobile accident-related injuries covered under automobile insurance while managed

care plans have encountered a 2.6 percent increase and Medicaid has seen a 4.7 percent increase in coverage.

If the third-party is a health insurance carrier, the provider can expect reimbursement at a managed care discount according to the Medical Director of one Colorado health care provider. Medicaid also typically reimburses providers at a discount. These factors have contributed to a reduction in the profitability of many health care providers, especially trauma centers where automobile accidents constitute nearly 60 percent of all admissions, according to the National Foundation for Trauma Care. Based on committee testimony, this has led some providers to quit offering trauma care services. Moreover, for individuals without health insurance and for those who do not qualify under Medicaid, health care providers are often writing-off the substantial cost of medical care treatment.

Further, while PIP was governed by prompt pay requirements that provided for rapid reimbursement of expenses, the tort liability system is not. Under the present system, payment for automobile-related injuries is delayed, often considerably, until fault is established. This has caused a significant increase in the administrative costs of providers who are now forced to submit reimbursement requests for payment with little assurance that the automobile insurer will actually pay for costs associated with the accident. Frequently, additional paperwork and administrative expense must then be devoted to filling-out and filing more forms to other payment providers with the hope of finally being reimbursed for the care they administered.

If no payment source can be identified, health care providers frequently attempt to receive reimbursement directly from the accident victim. In most cases the victim does not have the means to self-pay the often enormous cost of health care treatment. Still, in order to recover at least a portion of their losses, health care providers have increasingly engaged in collection efforts against accident victims. Attorney costs have also increased, as liens are filed against future insurance proceeds in the event that the accident victim they have treated is found not to have caused the accident. The combination of these factors have greatly cut into the profits of health care providers and have also made many providers reluctant to treat automobile accident victims.

The committee recommended Bill D clarifying that the state's prompt-pay requirements also apply to health insurance companies that pay medical bills for injuries sustained as a result of an automobile accident. Under the bill, a health insurer may seek reimbursement for payments made if it is later determined that another party is liable for payment.

Data Limitations

It is important to recognize that the full impact of the shift to a tort liability system of automobile insurance has yet to be determined. This is true because a number of no-fault policies remained in effect until after July 1, 2003, and these injuries may still be covered under PIP. Consequently, no clear delineation exists for data identified as “before tort and after tort” as some injury and payment information attributed to the tort liability system may actually reflect injuries covered under no-fault automobile insurance policies.

SUMMARY OF RECOMMENDATIONS

As a result of the committee's activities, the following bills are recommended to the Colorado General Assembly.

Bill A — Concerning a Requirement That Emergency Medical Care Coverage be Included in Automobile Insurance Policies

Under current law, all individual automobile insurance policies must provide bodily injury and property damage liability coverage. If the policyholder is at fault in an accident the policyholder's bodily injury coverage pays medical costs and some associated expenses to other individuals injured in the accident. The policyholder's property damage liability coverage pays for accident damages to other individuals' vehicle and property. Current law requires individuals to carry bodily injury coverage in the amount of \$25,000 per person injured and \$50,000 per accident occurrence. The required coverage for property damage liability is \$15,000.

For automobile insurance policies issued on or after January 1, 2007, this legislation establishes emergency medical care coverage as a third type of required coverage. Emergency medical care coverage applies regardless of fault, covers emergency medical treatment administered immediately after an accident, and has no dollar limit for coverage. If emergency medical care coverage is paid for a driver found not to be at fault, that driver's insurance company has subrogation rights against the at-fault party's insurance carrier once the injured party has been fully compensated for all accident-related injuries. Emergency medical care coverage is primary to health insurance and covers all medical or health insurance policy deductibles and co-insurance.

Because Bill A establishes a new type of required coverage, the Division of Insurance in the Department of Regulatory Agencies will need to establish standards to review the rate filings of all insurance companies writing automobile policies in the state. This effort is expected to require \$11,503 and 0.2 FTE in FY 2006-07.

Bill B — Concerning the Requirement That Automobile Insurance Carriers Offer Medical Payments Coverage in Connection with an Automobile Insurance Policy Issued in Colorado

Under current law, medical payments coverage is an optional coverage for automobile insurance policyholders. Medical payments coverage provides the insured first party protection by paying medical care expenses for injuries occurring as a result of an automobile accident. If an insured elects to purchase medical payments coverage and the insurance carrier offers such coverage, the policy must provide protection in the amount of \$5,000.

The bill retains provisions that require medical payments coverage to be primary to health insurance, that the coverage requirement equal \$5,000, and that the purchase of medical payments coverage is optional.

This legislation modifies current law by requiring all automobile insurance carriers writing policies in the state to offer medical payments coverage as part of their product line. To ensure that an offer has been made, a policyholder who elects not to purchase medical payments coverage must do so in writing. In the event that an offer is not made and the insured does not have medical payments coverage, coverage is presumed and the insurance carrier will be required to pay medical payments coverage benefits up to \$5,000, for injuries incurred as a result of an automobile accident.

Effective January 1, 2007, Bill B would require the Division of Insurance to promulgate new rules. However, this function will not require any additional appropriation.

Bill C — Concerning the Requirement That an Insurer Make Certain Disclosures to Consumers Regarding the Content of Automobile Insurance Policies

This legislation adds new disclosure requirements for insurance carriers authorized to write automobile insurance policies in the state, requires written consent from policyholders in some instances, and requires the Commissioner of Insurance to promulgate by rule a uniform automobile insurance disclosure form.

As follows, the new disclosures require insurance carriers to provide policyholders a clear explanation of:

- the insurance coverage and products purchased;
- the amount of coverage per insurance product purchased; and
- the applicability of coverage depending on whether the policyholder is at-fault or not-at-fault in an automobile accident.

Under current law, an insurance carrier is required to receive the consent of the insured when an enhanced or optional coverage is added to an automobile insurance policy at a cost to the policyholder. A record of this consent is required to be kept on file by the insurance carrier for three years. This legislation requires the consent to be in writing and that written consent is reflected in the record.

Finally, this legislation requires the Commissioner of Insurance to establish a uniform disclosure form by rule. This form shall include general information about automobile insurance, information about the policyholder's required coverage, and an explanation of available or chosen optional coverages. The Division of Insurance must promulgate new rules to implement Bill C, but no additional appropriation is required.

Bill D — Concerning the Application of the Health Insurance Prompt Pay Provisions to Claims Made as a Result of a Motor Vehicle Accident

This legislation applies prompt pay requirements to health insurance companies that pay medical bills for injuries sustained as result of an automobile accident. A health insurer may seek reimbursement for payments made if it is later determined that another party is liable for payment.

Under current law, all health insurance benefits must be paid promptly unless a claim is made as a result of an automobile or a work-related injury governed by workers' compensation law. Prompt payment for all other health insurance benefits is required for all "clean claims." An insurance carrier is required to pay clean claims within 30 days if the claim is submitted electronically and 45 days if it is submitted in any other manner. Section C.R.S. 10-16-106.5(4)(b) describes circumstances where a claim is not considered clean. In these situations, insurance carriers are given additional time to pay, deny, or a settle a claim.

Bill D removes the prompt payment requirement exception for automobile injuries paid under a health insurance policy by requiring that clean claims and claims requiring additional information be paid within a prescribed statutory time frame. It will not affect the workload of any state or local government agencies.

Bill E — Concerning the Creation of the Colorado Consumer Insurance Board for the Purpose of Providing Counsel to the Division of Insurance.

Bill E creates an 11-member Colorado Consumer Insurance Board to represent the public interest of insurance policyholders by providing the Insurance Commissioner guidance and oversight in the performance of his or her statutory duties and responsibilities. Specifically, the board is authorized to:

- provide policy guidance regarding rule-making matters, legislative projects, and priorities of the Division of Insurance;
- gather information, formulate policy positions and prepare analysis and testimony for the commissioner for use at public hearings;
- review the performance of the commissioner; and
- hire contractors to carry out the duties of the board.

The bill gives the board wide latitude in the depth of its activities, making it difficult to accurately estimate the fiscal impact. There are certain firm costs for both the Division of Insurance and the board, but the majority of the expenses will depend on the specific activities of the board. Overall, the bill is expected to cost \$254,436 in FY 2006-07 and \$813,924 in FY 2007-08, mainly to contract for administrative, actuarial, economic, and other services. The first-year costs will be paid partially from the General Fund (\$204,825) and partially from the Division of Insurance Cash Fund (\$49,611). It

should be noted that the Department of Regulatory Agencies, where the board will likely be housed, has estimated that the board could drive costs as high as \$1,729,119 in FY 2006-07 and as much as \$1,478,744 per year thereafter.

Bill F — Concerning Claims Practices for Bodily Injury to a Third-Party Claimant Arising Out of the Use of a Motor Vehicle.

Bill F establishes several new requirements for automobile insurance carriers related to both claim handling practices and claim settlements. These requirements are specific to the bodily injury/property damage liability component of an automobile insurance policy.

Specifically, the bill requires an insurance carrier to:

- clearly disclose to a third-party claimant the per party and per accident benefit limits of the insurance policy;
- promptly determine the liability of the insured;
- presume liability and pay benefits for bodily injury when benefits have been paid for property; and
- establish a fair and consistent methodology for valuing bodily injury claims and keep a record of this methodology for review by the Insurance Commissioner, the injured third-party, and a health care provider that has an assignment.

An insurance carrier found to intentionally fail to pay a compensable third-party claim, shall also be required to pay a penalty to the claimant in an amount equal to 50 percent of the nonpayment amount. Any penalty amount, including interest or attorney fees and court costs associated with insurance carrier defense of nonpayment, shall not apply against the limits of a liability policy and cannot be used as factors in any subsequent rate filing. Both the third-party claimant and the third-party claimant's health care provider shall possess a legal right to file a claim against an insurer for nonpayment.

Bill F also establishes additional circumstances whereby an insurance carrier is engaging in unfair claims settlement practices. These circumstances occur when an insurer:

- fails to promptly determine liability in accordance with existing statute once a third-party claim has been filed;
- denies liability without having substantial evidence to support such claim; and
- delays payment to either a third-party claimant or health care provider with assignment once reasonable certainty exists that the insurer is liable.

Unrelated to insurance carrier requirements, the bill also requires health care providers to charge the lesser of either the customary charge for a specific medical service or the average amount for that service reimbursed to the provider for care covered under the liability component of an automobile insurance policy.

Bill F will require the promulgation of new rules by the Division of Insurance, but no additional appropriation for this function should be required.

RESOURCE MATERIALS

The resource materials listed below were provided to the committee or developed by Legislative Council staff during the course of the meetings. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver, (303- 866-2055). For a limited time, the meeting summaries and materials developed by Legislative Council Staff are available on our web site at:

http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2005/05interim.htm.

Meeting Summaries	Topics Discussed
July 27, 2005	Introductory comments by the chair and committee members. Testimony on the switch from no-fault to tort from the Division of Insurance, Colorado Consumer Insurance Council, Colorado Health Institute, and the public.
August 9, 2005	Testimony from hospitals, medical care providers, and health insurers regarding the impact of the switch from no-fault to tort on their business. Public testimony was also provided.
August 23, 2005	Presentation from the National Conference of State Legislatures and automobile insurance providers. Testimony from Defense Lawyers Association and Trail Lawyers Association.
September 21, 2005	Responses from the Insurance Commissioner to questions raised by the committee at the July 27, 2005, meeting. Presentations from consumer advocates, state trauma care providers, and the Colorado Health Institute.
October 5, 2005	Discussion of possible legislation.
October 19, 2005	Consideration of proposed legislation.

Memoranda and Reports

Legislative Council Staff memoranda:

July 21, 2005 Duties of the Insurance Commissioner

August 18, 2005 Funding for Trauma Care

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

Bill A

DRAFT

LLS NO. 06-0191.01 Christy Chase

SENATE BILL

SENATE SPONSORSHIP

Tochtrop,

HOUSE SPONSORSHIP

Carroll M., Cerbo, and Coleman

Senate Committees

House Committees

A BILL FOR AN ACT

101 CONCERNING A REQUIREMENT THAT EMERGENCY MEDICAL CARE
102 COVERAGE BE INCLUDED IN AUTOMOBILE INSURANCE POLICIES.

Bill Summary

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

Interim Committee on Auto Insurance. Adds emergency medical care coverage as part of the required coverages to be included in all automobile insurance policies issued in Colorado. Specifies that the coverage is for all reasonable, necessary, and accident-related emergency

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.

medical care provided by a first responder at the scene of or immediately after a motor vehicle accident or provided by or at a hospital. Requires the coverage to be provided regardless of fault. If the injured person for whom emergency medical care coverage is provided is found not at fault in causing the accident, allows the carrier that paid emergency medical care coverage to recover the amount paid from the party at fault in the accident after the injured person is fully compensated for injuries resulting from the accident.

Makes the emergency medical care coverage primary to any medical payments or health insurance coverage and applies to coinsurance or deductible amounts required under the insured's health coverage plan.

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 coverage.** (1) Subject to the limitations
5 and exclusions authorized by this part 6, the basic coverage required for
6 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
12 interest and costs, of fifteen thousand dollars in any one accident; AND

13 (b) (I) EMERGENCY MEDICAL CARE COVERAGE FOR BODILY
14 INJURY ARISING OUT OF THE USE OF THE MOTOR VEHICLE WITH BENEFITS
15 FOR ALL REASONABLE, NECESSARY, AND ACCIDENT-RELATED EMERGENCY
16 MEDICAL CARE PROVIDED BY A FIRST RESPONDER AT THE SCENE OF OR
17 IMMEDIATELY AFTER A MOTOR VEHICLE ACCIDENT OR PROVIDED BY OR AT
18 A HOSPITAL. EMERGENCY MEDICAL CARE COVERAGE SHALL BE PROVIDED
19 REGARDLESS OF THE FAULT OF THE INJURED PERSON. IF THE INJURED

1 PERSON FOR WHOM EMERGENCY MEDICAL CARE COVERAGE IS PAID IS
2 FOUND NOT AT FAULT IN THE ACCIDENT, THE INSURER THAT PAID THE
3 COVERAGE SHALL BE SUBROGATED TO THE RIGHTS OF THE INJURED PERSON
4 AGAINST THE AT-FAULT PERSON, TO THE EXTENT OF THE PAYMENTS MADE,
5 AFTER THE INJURED PERSON IS FULLY COMPENSATED FOR INJURIES
6 SUSTAINED IN THE ACCIDENT.

7 (II) EMERGENCY MEDICAL CARE COVERAGE SHALL BE PRIMARY
8 TO ANY MEDICAL PAYMENTS COVERAGE OR HEALTH INSURANCE BENEFITS
9 OF A PERSON INJURED IN A MOTOR VEHICLE ACCIDENT AND SHALL APPLY
10 TO ANY COINSURANCE OR DEDUCTIBLE AMOUNT REQUIRED BY THE
11 INJURED PERSON'S HEALTH COVERAGE PLAN, AS DEFINED IN SECTION
12 10-16-102 (22.5).

13 (III) AS USED IN THIS PARAGRAPH (b):

14 (A) "EMERGENCY MEDICAL CARE" MEANS MEDICAL CARE
15 PROVIDED WHEN ANY ACTUAL OR SELF-PERCEIVED EVENT OCCURS THAT
16 THREATENS LIFE, LIMB, OR THE WELL-BEING OF AN INDIVIDUAL IN A
17 MANNER THAT CREATES A NEED FOR IMMEDIATE MEDICAL CARE.

18 (B) "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 INCLUDES,
21 BUT IS NOT LIMITED TO, A PERSON OR ENTITY PROVIDING AMBULANCE
22 SERVICE, INCLUDING AIR AMBULANCE SERVICE, AN EMERGENCY MEDICAL
23 TECHNICIAN, AS DEFINED IN SECTION 25-3.5-103 (8), C.R.S., AND ANY
24 SERVICE AGENCY, AS DEFINED IN SECTION 25-3.5-103 (11.5), C.R.S., OR
25 OTHER PERSON OR ENTITY THAT PROVIDES EMERGENCY MEDICAL CARE AT
26 THE SCENE OF OR IMMEDIATELY AFTER AN AUTOMOBILE ACCIDENT. "FIRST
27 RESPONDER" DOES NOT INCLUDE A HOSPITAL.

1 **SECTION 2. Effective date - applicability.** This act shall take
2 effect January 1, 2007, and shall apply to automobile insurance policies
3 issued on or after said date.

4 **SECTION 3. Safety clause.** The general assembly hereby finds,
5 determines, and declares that this act is necessary for the immediate
6 preservation of the public peace, health, and safety.

DRAFT

Bill A

Colorado Legislative Council Staff

STATE FISCAL IMPACT

Drafting Number: LLS 06-0191
Prime Sponsor(s): Sen. Tochtrop
Rep. M. Carroll

Date: December 11, 2005
Bill Status: Interim Committee on Automobile Insurance
Fiscal Analyst: Gary J. Estenson (303-866-4976)

TITLE: CONCERNING A REQUIREMENT THAT EMERGENCY MEDICAL CARE COVERAGE BE INCLUDED IN AUTOMOBILE INSURANCE POLICIES.

Table with 3 columns: Fiscal Impact Summary, FY 2006/2007, FY 2007/2008. Rows include State Expenditures, FTE Position Change, Effective Date, Appropriation Summary for FY 2006/2007, and Local Government Impact.

Summary of Legislation

Under current law, all individual automobile insurance policies must provide bodily injury and property damage liability coverage. If the policyholder is at fault in an accident the policyholder's bodily injury coverage pays medical costs and some associated expenses to other individuals injured in the accident.

For automobile insurance policies issued on or after January 1, 2007, this legislation establishes emergency medical care coverage as a third type of required coverage. Emergency medical care coverage applies regardless of fault, covers emergency medical treatment administered immediately after an accident, and has no dollar limit for coverage.

State Expenditures

The bill's fiscal impact is estimated at \$11,503 for FY 2006-07 only.

Department of Regulatory Agencies, Division of Insurance. The Division of Insurance is required to develop new standards to review the rate filings of all insurance companies writing automobile insurance policies in the state. Since emergency medical care coverage is neither a required nor optional coverage under current law, it is anticipated that it will take 408 hours to establish new rate review standards and apply them to individual rate filings during the first year of this legislation. This number is based on an average of one (1) hour of additional rate review time for 204 individual automobile insurance carriers, multiplied by two (2) FTEs.

The Department of Regulatory Agencies, Division of Insurance, anticipates a minimal amount of rule promulgation, but this is considered to be part of the division's ongoing workload. Therefore, this fiscal analysis does not include costs associated with the defining specific terms in the bill in rule.

Since emergency medical care coverage is primary to health insurance coverage, medical health insurance carriers will be required to offset this cost in their rate filings. This offset will be necessary because health insurance carriers currently incorporate these costs in their health insurance rate filings. The Division of Insurance indicates that this statutory change will require 50 additional hours of work to review health insurance rate filings. The fiscal note does not include this cost because it assumes that the workload will simply shift from reviewing health insurance rate filings where emergency medical care is a component of cost, to reviewing rate filings where it provides a reduction in cost.

State Appropriations

For FY 2006-07, the fiscal note indicates that the Department of Regulatory Agencies should receive an appropriation of \$11,503 cash funds from the Division of Insurance Cash Fund and 0.2 FTE.

Departments Contacted

Regulatory Agencies

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

Bill B

DRAFT

LLS NO. 06-0192.01 Christy Chase

HOUSE BILL

HOUSE SPONSORSHIP

Carroll M., and Coleman

SENATE SPONSORSHIP

Tochtrop,

House Committees

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE REQUIREMENT THAT AUTOMOBILE INSURANCE
102 CARRIERS OFFER MEDICAL PAYMENTS COVERAGE IN
103 CONNECTION WITH AN AUTOMOBILE INSURANCE POLICY ISSUED
104 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.)

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.

DRAFT

Interim Committee on Auto Insurance. Prohibits an automobile insurance policy from being delivered or issued for delivery in Colorado without containing a minimum amount of coverage for medical payments for bodily injury, sickness, or disease resulting from the ownership, maintenance, or use of the motor vehicle. Allows the named insured to reject medical payments coverage in writing after the insurer discloses specified information to the insured and the insured acknowledges understanding of the disclosures in writing. Presumes a minimum amount of medical payments coverage exists if the insurer fails to offer medical payments coverage or make the required disclosures to the insured or is unable to produce proof that the named insured rejected medical payments coverage in writing.

Adds the following to the list of disclosures required to be made to the insured:

- That if the insured declines medical payments coverage and the insured is not at fault in the accident, the insurer of the at-fault driver will not have to pay or reimburse the insured or passengers in the insured's motor vehicle for medical expenses incurred as a result of the accident until the claim is closed;
- That if the insured declines medical payments coverage and is relying on health insurance coverage as a substitute, the insured will be responsible for copayments, deductibles, limitations on treatment, and exclusions under the health insurance policy, and the insured should consult his or her health insurance carrier for coverage information; and
- If the insured declines medical payments coverage, passengers in the covered motor vehicle may not be covered for bodily injury resulting from an accident if the insured driver is at fault in the accident.

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

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

4 **10-4-635. Medical payments coverage - disclosure.** (1) ~~If an~~
5 ~~insurer makes available medical payments coverage in conjunction with~~
6 ~~the coverage required pursuant to section 10-4-620, such medical~~
7 ~~payments coverage shall provide for benefits of five thousand dollars, as~~

1 ~~well as any other benefit deemed appropriate by the insurer.~~ EXCEPT AS
2 OTHERWISE PROVIDED IN THIS SUBSECTION (1), NO AUTOMOBILE LIABILITY
3 OR MOTOR VEHICLE LIABILITY POLICY INSURING AGAINST LOSS RESULTING
4 FROM LIABILITY IMPOSED BY LAW FOR BODILY INJURY OR DEATH SUFFERED
5 BY ANY PERSON ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE
6 OF A MOTOR VEHICLE SHALL BE DELIVERED OR ISSUED FOR DELIVERY IN
7 THIS STATE UNLESS COVERAGE IS PROVIDED IN THE POLICY OR IN A
8 SUPPLEMENTAL POLICY FOR MEDICAL PAYMENTS WITH BENEFITS OF FIVE
9 THOUSAND DOLLARS FOR BODILY INJURY, SICKNESS, OR DISEASE
10 RESULTING FROM THE OWNERSHIP, MAINTENANCE, OR USE OF THE MOTOR
11 VEHICLE. A POLICY MAY BE ISSUED WITHOUT MEDICAL PAYMENTS
12 COVERAGE ONLY IF THE NAMED INSURED HAS RECEIVED THE DISCLOSURES
13 REQUIRED BY SUBSECTION (2) OF THIS SECTION, ACKNOWLEDGES HIS OR
14 HER UNDERSTANDING OF THE DISCLOSURES IN WRITING, AND REJECTS
15 MEDICAL PAYMENTS COVERAGE IN WRITING. IF THE INSURER FAILS TO
16 OFFER MEDICAL PAYMENTS COVERAGE, FAILS TO COMPLY WITH THE
17 DISCLOSURE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION, OR FAILS
18 TO MAINTAIN OR PROVIDE PROOF THAT THE NAMED INSURED REJECTED
19 MEDICAL PAYMENTS COVERAGE IN WRITING, THE INSURED'S POLICY SHALL
20 BE PRESUMED TO INCLUDE MEDICAL PAYMENTS COVERAGE WITH BENEFITS
21 OF FIVE THOUSAND DOLLARS. Nothing in this section shall be construed
22 to limit any other coverage amounts being made available by an insurer.

23 **SECTION 2.** 10-4-635 (2) (b) (II) and (2) (b) (IV), Colorado
24 Revised Statutes, are amended, and the said 10-4-635 (2) (b) is further
25 amended BY THE ADDITION OF THE FOLLOWING NEW
26 SUBPARAGRAPHS, to read:

1 **10-4-635. Medical payments coverage - disclosure.**

2 (2) (b) Every insurer issuing automobile insurance policies that include
3 medical payments coverage shall include in the summary disclosure form
4 required by section 10-4-111 a disclosure specifying that:

5 (II) IF THE INSURED PURCHASES MEDICAL PAYMENTS COVERAGE
6 AND ALSO HAS HEALTH INSURANCE COVERAGE, THE medical payments
7 coverage is primary to ~~any~~ THE health insurance coverage available to ~~an~~
8 THE insured when injured in an automobile accident AND WILL PROVIDE
9 COVERAGE BEFORE THE HEALTH INSURANCE COVERAGE;

10 (IV) ~~An~~ IF THE insured ~~who~~ DECLINES MEDICAL PAYMENTS
11 COVERAGE AND is injured in an automobile accident THAT IS THE FAULT
12 OF THE INSURED, THE INSURED will not receive benefits from medical
13 payments coverage for any medical expenses incurred as a result of ~~an~~
14 THE accident; ~~that is the fault of the insured unless medical payments~~
15 ~~coverage is purchased.~~

16 (V) IF THE INSURED DECLINES MEDICAL PAYMENTS COVERAGE
17 AND THE INSURED IS NOT AT FAULT IN THE ACCIDENT, THE INSURER OF THE
18 AT-FAULT DRIVER WILL NOT HAVE TO PAY OR REIMBURSE THE INSURED OR
19 PASSENGERS IN THE INSURED'S MOTOR VEHICLE FOR MEDICAL EXPENSES
20 INCURRED AS A RESULT OF THE ACCIDENT UNTIL THE CLAIM IS CLOSED;

21 (VI) IF THE INSURED DECLINES MEDICAL PAYMENTS COVERAGE
22 AND IS RELYING ON HEALTH INSURANCE COVERAGE AS A SUBSTITUTE, THE
23 INSURED WILL BE RESPONSIBLE FOR COPAYMENTS, DEDUCTIBLES,
24 LIMITATIONS ON TREATMENT, AND EXCLUSIONS UNDER THE HEALTH
25 INSURANCE POLICY, AND THE INSURED SHOULD CONSULT HIS OR HER
26 HEALTH INSURANCE CARRIER FOR COVERAGE INFORMATION; AND

1 (VII) IF THE INSURED DECLINES MEDICAL PAYMENTS COVERAGE,
2 PASSENGERS IN THE COVERED MOTOR VEHICLE MAY NOT BE COVERED FOR
3 BODILY INJURY RESULTING FROM AN ACCIDENT IF THE INSURED DRIVER IS
4 AT FAULT IN THE ACCIDENT.

5 **SECTION 3. Effective date - applicability.** This act shall take
6 effect January 1, 2007, and shall apply to automobile insurance policies
7 issued on or after said date.

8 **SECTION 4. Safety clause.** The general assembly hereby finds,
9 determines, and declares that this act is necessary for the immediate
10 preservation of the public peace, health, and safety.

DRAFT

Bill B

Colorado Legislative Council Staff
NO FISCAL IMPACT

Drafting Number: LLS 06-0192
Prime Sponsor(s): Rep. Carroll M.
Sen. Tochtrop

Date: November 22, 2005
Bill Status: Interim Committee on Automobile
Insurance
Fiscal Analyst: Gary J. Estenson (303-866-4976)

TITLE: CONCERNING THE REQUIREMENT THAT AUTOMOBILE INSURANCE CARRIERS OFFER MEDICAL PAYMENTS COVERAGE IN CONNECTION WITH AN AUTOMOBILE INSURANCE POLICY ISSUED IN COLORADO.

Summary of Assessment

Under current law, medical payments coverage is an optional coverage for automobile insurance policyholders. Medical payments coverage provides the insured first party protection by paying medical care expenses for injuries occurring as a result of an automobile accident. If an insured elects to purchase medical payments coverage and the insurance carrier offers such coverage, the policy must provide protection in the amount of \$5,000.

Effective January 1, 2007, this legislation retains provisions that require medical payments coverage to be primary to health insurance, that the coverage requirement equal \$5,000, and that the purchase of medical payments coverage is optional.

This legislation modifies current law by requiring all automobile insurance carriers writing policies in the state to offer medical payments coverage as part of their product line. To ensure that an offer has been made, a policyholder who elects not to purchase medical payments coverage must do so in writing. In the event that an offer is not made and the insured does not have medical payments coverage, coverage is presumed and the insurance carrier will be required to pay medical payments coverage benefits up \$5,000, for injuries incurred as a result of an automobile accident.

The Department of Regulatory Agencies, Division of Insurance, will be required to promulgate rules to implement the additional disclosure requirements of this legislation. However, rule promulgation will be minimal and is considered to be a part of the division's ongoing workload. Thus, the bill does not impact state or local revenues or expenditures and is assessed as having no fiscal impact.

Departments Contacted

Regulatory Agencies

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

Bill C

DRAFT

LLS NO. 06-0196.01 Kristen Forrestal

HOUSE BILL

HOUSE SPONSORSHIP

Coleman, Carroll M., and Cerbo

SENATE SPONSORSHIP

Veiga,

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE REQUIREMENT THAT AN INSURER MAKE CERTAIN**
102 **DISCLOSURES TO CONSUMERS REGARDING THE CONTENT OF**
103 **AUTOMOBILE INSURANCE POLICIES.**

Bill Summary

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

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.

DRAFT

Interim Committee on Auto Insurance. Requires an insurer or producer of automobile insurance policies, as a condition of doing business in this state, to use a uniform disclosure form when issuing an auto insurance policy to a consumer. Directs the commissioner of insurance to promulgate by rule such uniform disclosure form.

Requires an insurer offering automobile insurance to provide a clear explanation to the insured regarding the products purchased, the amount of coverage purchased, and the applicability of the coverage depending on the determination of fault of the insured, and to obtain express written consent from the insured when issuing optional or enhanced coverage. Requires an insurer or producer to keep a record of such written consent for 3 years. Moves provisions regarding disclosure requirements for automobile insurance to the same statutory section.

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

2 **SECTION 1.** 10-4-111 (1), Colorado Revised Statutes, is
3 amended, and the said 10-4-111 is further amended BY THE ADDITION
4 OF A NEW SUBSECTION, to read:

5 **10-4-111. Summary disclosure forms required.** (1) Every
6 insurer issuing policies of dwelling fire insurance, homeowners
7 insurance, or automobile insurance subject to the provisions of ~~parts 6 and~~
8 ~~7~~ PART 6 of this article shall, as a condition of doing business in this state,
9 have on file for public inspection at the division of ~~insurance~~, a summary
10 disclosure form ~~which~~ THAT contains a simple explanation of the major
11 coverages and exclusions of such policies of insurance together with a
12 recitation of general factors considered in cancellation, nonrenewal, and
13 increase in premium situations. Each summary disclosure form shall
14 provide notice in bold face letters that the policyholder should read the
15 policy for complete details, and such disclosure form shall not be
16 construed to replace any provision of the policy itself. In the event of any
17 conflict between the policy and the disclosure form, the provisions of the
18 policy shall prevail.

1 (5) IN ADDITION TO THE DISCLOSURE REQUIREMENTS IN THIS
2 SECTION, EVERY INSURER OR PRODUCER WHO ISSUES AUTOMOBILE
3 INSURANCE POLICIES PURSUANT TO PART 6 OF THIS ARTICLE SHALL
4 COMPLY WITH THE DISCLOSURE REQUIREMENTS IN SECTION 10-4-636.

5 **SECTION 2. Repeal.** 10-4-610 (2), Colorado Revised Statutes,
6 is repealed as follows:

7 **10-4-610. Property damage protection against uninsured**
8 **motorists.** (2) ~~The provisions of section 10-4-111, including those~~
9 ~~requiring filing of a summary disclosure form with the division of~~
10 ~~insurance and availability of a summary disclosure form from the insurer's~~
11 ~~agents, which form contains a simple explanation of the policy's major~~
12 ~~coverages and exclusions and factors concerning cancellation and~~
13 ~~nonrenewal, apply to policies delivered or issued for delivery under~~
14 ~~subsection (1) of this section.~~

15 **SECTION 3. Repeal.** 10-4-635 (2), Colorado Revised Statutes,
16 is repealed as follows:

17 **10-4-635. Medical payments coverage.** (2) (a) ~~The general~~
18 ~~assembly hereby finds, determines, and declares that individuals who~~
19 ~~purchase motor vehicle insurance are faced with decisions concerning~~
20 ~~purchasing medical payments coverage and the significance of this~~
21 ~~purchase. Further, if a consumer purchases medical payments coverage,~~
22 ~~the consumer may not appreciate the significance that the coverage is~~
23 ~~primary to other coverages and applies to the payment of coinsurance or~~
24 ~~deductibles. Therefore, the general assembly declares that it is in the best~~
25 ~~interest of insurance consumers to have clear and understandable~~
26 ~~disclosures concerning the significance of purchasing medical payments~~
27 ~~coverage.~~

1 ~~(b) Every insurer issuing automobile insurance policies that~~
2 ~~include medical payments coverage shall include in the summary~~
3 ~~disclosure form required by section 10-4-111 a disclosure specifying that:~~

4 ~~(I) Medical payments coverage pays for reasonable health care~~
5 ~~expenses incurred for bodily injury caused by an automobile accident,~~
6 ~~regardless of fault, up to the policy limits chosen by the insured;~~

7 ~~(II) Medical payments coverage is primary to any health~~
8 ~~insurance coverage available to an insured when injured in an automobile~~
9 ~~accident;~~

10 ~~(III) Medical payments coverage applies to any coinsurance or~~
11 ~~deductible amount required to be paid by the person's health coverage~~
12 ~~plan, as defined in section 10-16-102 (22.5);~~

13 ~~(IV) An insured who is injured in an automobile accident will not~~
14 ~~receive benefits from medical payments coverage for any medical~~
15 ~~expenses incurred as a result of an accident that is the fault of the insured~~
16 ~~unless medical payments coverage is purchased.~~

17 ~~(c) The disclosures required by this subsection (2) shall not apply~~
18 ~~to commercial automobile insurance policies, as defined by the~~
19 ~~commissioner in rules adopted pursuant to section 10-4-641 (1).~~

20 **SECTION 4.** 10-4-636, Colorado Revised Statutes, is amended
21 to read:

22 **10-4-636. Disclosure requirements for automobile insurance**
23 **products offered - rules.** (1) (a) AN INSURER OR PRODUCER ISSUING
24 AUTOMOBILE INSURANCE POLICIES SHALL, AS A CONDITION OF DOING
25 BUSINESS IN THIS STATE, HAVE ON FILE FOR PUBLIC INSPECTION AT THE
26 DIVISION A SUMMARY DISCLOSURE FORM THAT CONTAINS AN
27 EXPLANATION OF THE MAJOR COVERAGES AND EXCLUSIONS OF SUCH

1 POLICIES OF INSURANCE TOGETHER WITH A RECITATION OF GENERAL
2 FACTORS CONSIDERED IN CANCELLATION, NONRENEWAL, AND
3 INCREASE-IN-PREMIUM SITUATIONS. EACH SUMMARY DISCLOSURE FORM
4 SHALL PROVIDE NOTICE IN BOLD FACE LETTERS THAT THE POLICYHOLDER
5 SHOULD READ THE POLICY FOR COMPLETE DETAILS, AND SUCH DISCLOSURE
6 FORM SHALL NOT BE CONSTRUED TO REPLACE ANY PROVISION OF THE
7 POLICY ITSELF.

8 (b) EVERY INSURER AND PRODUCER SHALL UPDATE DISCLOSURE
9 FORMS PERIODICALLY TO REFLECT CHANGES IN MAJOR COVERAGES AND
10 EXCLUSIONS OF SUCH POLICIES OF INSURANCE AND CHANGES IN FACTORS
11 CONSIDERED IN CANCELLATION, NONRENEWAL, AND
12 INCREASE-IN-PREMIUM SITUATIONS.

13 (c) EVERY INSURER AND PRODUCER OR HIS OR HER DESIGNATED
14 AGENT SHALL FURNISH THE REQUIRED DISCLOSURE FORM TO APPLICANTS
15 FOR INSURANCE COVERAGE AT THE TIME OF THE INITIAL INSURANCE
16 PURCHASE AND THEREAFTER ON ANY RENEWAL WHEN THERE ARE
17 CHANGES IN MAJOR COVERAGES AND EXCLUSIONS OR CHANGES IN
18 FACTORS CONSIDERED IN CANCELLATION, NONRENEWAL, AND
19 INCREASE-IN-PREMIUM SITUATIONS.

20 (d) AN INSURER OR PRODUCER WHO VIOLATES THIS SECTION
21 SHALL BE DEEMED TO HAVE ENGAGED IN UNFAIR OR DECEPTIVE ACTS OR
22 PRACTICES PROHIBITED BY SECTION 10-3-1104 (1) (a) (I) AND SHALL BE
23 SUBJECT TO THE PENALTIES PROVIDED IN SECTIONS 10-3-1108 AND
24 10-3-1109.

25 (2) IN ADDITION TO THE DISCLOSURE REQUIRED BY SUBSECTION
26 (1) OF THIS SECTION, ANY INSURER OR PRODUCER OFFERING MOTOR
27 VEHICLE COVERAGE PURSUANT TO THIS PART 6 SHALL PROVIDE A CLEAR

1 EXPLANATION TO THE INSURED REGARDING THE PRODUCTS PURCHASED,
2 THE AMOUNT OF COVERAGE PURCHASED, AND THE APPLICABILITY OF THE
3 COVERAGE DEPENDING ON THE DETERMINATION OF FAULT OF THE INSURED
4 IN AN AUTOMOBILE ACCIDENT. THE EXPLANATION SHALL BE INITIALED BY
5 THE INSURED AND KEPT ON FILE FOR THREE YEARS, SUBJECT TO
6 INSPECTION BY THE COMMISSIONER.

7 ~~(1)~~ (a) (3) An insurer or producer offering motor vehicle
8 coverage pursuant to this part 6 shall not automatically add optional or
9 enhanced coverages that will result in an increased premium to an
10 insured's policy without the express WRITTEN consent of the insured.
11 ~~Such consent may be in the same medium in which the policy is offered.~~
12 The insurer or producer, for three years, shall maintain ~~adequate evidence~~
13 A RECORD of the insured's EXPRESS WRITTEN consent, and such evidence
14 shall be subject to review by the commissioner. The insurer or producer
15 shall record:

16 ~~(1)~~ (a) Whether optional or enhanced coverage added for an
17 increased premium to an insured's policy was requested by the insured or
18 was recommended by the insurer or producer and consented to by the
19 insured; and

20 ~~(1)~~ (b) ~~To the extent practicable,~~ An explanation of why such
21 coverage was changed, TOGETHER WITH THE EXPRESS WRITTEN CONSENT
22 TO THE CHANGES BY THE INSURED.

23 ~~(b) For the purposes of this section, "adequate evidence" means:~~

24 ~~(1) Written notes or other memorializations of any oral or written~~
25 ~~communication with the insured kept within the normal course of~~
26 ~~business; or~~

1 ~~(H) A declaration page indicating which coverages are not~~
2 ~~mandatory after payment of the premium is made unless the insured~~
3 ~~disputes such coverage within a reasonable time.~~

4 ~~(c) This section shall not apply to changes in coverages mandated~~
5 ~~by law or to amended policy forms that are changed at renewal.~~

6 (4) THE DISCLOSURE FORM REQUIRED BY SUBSECTION (1) OF THIS
7 SECTION SHALL INCLUDE A DISCLOSURE SPECIFYING THAT:

8 (a) MEDICAL PAYMENTS COVERAGE PAYS FOR REASONABLE
9 HEALTH CARE EXPENSES INCURRED FOR BODILY INJURY CAUSED BY AN
10 AUTOMOBILE ACCIDENT, REGARDLESS OF FAULT, UP TO THE POLICY LIMITS
11 CHOSEN BY THE INSURED;

12 (b) MEDICAL PAYMENTS COVERAGE IS PRIMARY TO ANY HEALTH
13 INSURANCE COVERAGE AVAILABLE TO AN INSURED WHEN INJURED IN AN
14 AUTOMOBILE ACCIDENT;

15 (c) MEDICAL PAYMENTS COVERAGE APPLIES TO ANY
16 COINSURANCE OR DEDUCTIBLE AMOUNT REQUIRED TO BE PAID BY THE
17 PERSON'S HEALTH COVERAGE PLAN, AS DEFINED IN SECTION 10-16-102
18 (22.5); AND

19 (d) AN INSURED WHO IS INJURED IN AN AUTOMOBILE ACCIDENT
20 WILL NOT RECEIVE BENEFITS FROM MEDICAL PAYMENTS COVERAGE FOR
21 ANY MEDICAL EXPENSES INCURRED AS A RESULT OF AN ACCIDENT THAT IS
22 THE FAULT OF THE INSURED UNLESS MEDICAL PAYMENTS COVERAGE IS
23 PURCHASED.

24 (5) THE DISCLOSURE REQUIRED BY SUBSECTION (1) OF THIS
25 SECTION SHALL INCLUDE A DISCLOSURE OF ANY COVERAGES DELIVERED
26 OR ISSUED PURSUANT TO SECTION 10-4-610.

1 ~~(2)~~(6) (a) The commissioner may promulgate rules to address the
2 suitability of coverages for insureds, including, but not limited to,
3 administrative remedies against an insurer or producer for automatically
4 adding optional or enhanced coverages that increase the insured's
5 premium without the insured's consent, which additions may include, but
6 are not limited to, remedies for violations of section 10-3-1104 (1) (j).

7 (b) THE COMMISSIONER SHALL PROMULGATE BY RULE A UNIFORM
8 DISCLOSURE FORM THAT REFLECTS THE REQUIREMENTS OF THIS SECTION.
9 SUCH UNIFORM DISCLOSURE FORM SHALL BE USED BY INSURERS AND
10 PRODUCERS IN THIS STATE IN ORDER TO COMPLY WITH THIS SECTION.

11 ~~(3)~~ (7) Nothing in this section shall be construed to create a
12 private right of action for damages by an insured.

13 (8) THE DISCLOSURES REQUIRED BY THIS SECTION SHALL NOT
14 APPLY TO COMMERCIAL AUTOMOBILE INSURANCE POLICIES, AS DEFINED BY
15 THE COMMISSIONER IN RULES ADOPTED PURSUANT TO SECTION 10-4-641
16 (1).

17 **SECTION 5.** 10-4-641 (1), Colorado Revised Statutes, is
18 amended to read:

19 **10-4-641. Rules - medical payments coverage.** (1) The
20 commissioner shall promulgate any necessary rules for the administration
21 of medical payments coverage and coordination of benefits and the
22 implementation of section ~~10-4-635 (2)~~ 10-4-636 (4) concerning
23 disclosures required to be made regarding medical payments coverage
24 and the definition of commercial automobile insurance policies for
25 purposes of the exception allowed in section ~~10-4-635 (2) (c)~~ 10-4-636
26 (8). Medical payments coverage shall be primary to any health insurance
27 benefit of a person injured in a motor vehicle accident, and medical

1 payments coverage shall apply to any coinsurance or deductible amount
2 required by the injured person's health coverage plan, as defined in
3 section 10-16-102 (22.5).

4 **SECTION 6. Effective date - applicability.** (1) This act shall
5 take effect January 1, 2007.

6 (2) However, if a referendum petition is filed against this act or
7 an item, section, or part of this act during the 90-day period after final
8 adjournment of the general assembly that is allowed for submitting a
9 referendum petition pursuant to article V, section 1 (3) of the state
10 constitution, then the act, item, section, or part, shall not take effect unless
11 approved by the people at a biennial regular general election and shall
12 take effect on the date specified in subsection (1) or on the date of the
13 official declaration of the vote thereon by proclamation of the governor,
14 whichever is later.

15 (3) The provisions of this act shall apply to policies issued or
16 renewed on or after the applicable effective date of this act.

DRAFT

Bill C

Colorado Legislative Council Staff
NO FISCAL IMPACT

Drafting Number: LLS 06-0196

Date: December 13, 2005

Prime Sponsor(s): Rep. Coleman
Sen. Veiga

Bill Status: Interim Committee on Automobile
Insurance

Fiscal Analyst: Gary J. Estenson (303-866-4976)

TITLE: CONCERNING THE REQUIREMENT THAT AN INSURER MAKE CERTAIN DISCLOSURES TO CONSUMERS REGARDING THE CONTENT OF AUTOMOBILE INSURANCE POLICIES.

Summary of Assessment

This legislation adds new disclosure requirements for insurance carriers authorized to write automobile insurance policies in the state, requires written consent from policyholders in some instances, and requires the Commissioner of Insurance to promulgate by rule a uniform automobile insurance disclosure form.

As follows, the new disclosures require insurance carriers to provide policyholders a clear explanation of:

- the insurance coverage and products purchased;
- the amount of coverage per insurance product purchased; and
- the applicability of coverage depending on whether the policyholder is at-fault or not-at-fault in an automobile accident.

Under current law, an insurance carrier is required to receive the consent of the insured when an enhanced or optional coverage is added to an automobile insurance policy at a cost to the policyholder. A record of this consent is required to be kept on file by the insurance carrier for three years. This legislation requires the consent to be in writing and that written consent is reflected in the record.

Finally, this legislation requires the Commissioner of Insurance to establish a uniform disclosure form by rule. This form shall include general information about automobile insurance, information about the policyholder's required coverage, and an explanation of available or chosen optional coverages.

The Department of Regulatory Agencies, Division of Insurance will be required to promulgate by rule the uniform disclosure form required by this legislation. However, the rule promulgation will be minimal and is considered to be part of the division's ongoing workload. As such, the bill does not impact state or local revenues or expenditures and is assessed as having no fiscal impact. This legislation is effective January 1, 2007, unless a referendum petition is filed.

Departments Contacted

Regulatory Agencies

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

Bill D

DRAFT

LLS NO. 06-0197.01 Kristen Forrester

SENATE BILL

SENATE SPONSORSHIP

Veiga,

HOUSE SPONSORSHIP

Coleman, Cadman, and Carroll M.

Senate Committees

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE APPLICATION OF THE HEALTH INSURANCE PROMPT**
102 **PAY PROVISIONS TO CLAIMS MADE AS A RESULT OF A MOTOR**
103 **VEHICLE ACCIDENT.**

Bill Summary

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

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.

DRAFT

Interim Committee on Auto Insurance. Requires that the prompt pay provisions for health insurance expenses apply to claims made as a result of injuries sustained as a result of a motor vehicle accident. Allows a health insurance carrier to seek reimbursement from any party deemed to be at fault for the accident.

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

2 **SECTION 1.** 10-16-106.5 (2.5), Colorado Revised Statutes, is
3 amended to read:

4 **10-16-106.5. Prompt payment of claims - legislative**
5 **declaration.** (2.5) This section shall ~~not~~ apply to claims ~~arising under~~
6 ~~part 6 of article 4 of this title~~ MADE AS A RESULT OF INJURIES SUSTAINED
7 IN A MOTOR VEHICLE ACCIDENT REGARDLESS OF WHETHER FAULT IN SUCH
8 ACCIDENT HAS BEEN DETERMINED. A CARRIER MAY THEREAFTER SEEK
9 REIMBURSEMENT FROM ANY PARTY THAT IS DETERMINED TO BE AT FAULT
10 FOR THE ACCIDENT, TO THE EXTENT OF THAT PARTY'S LIABILITY.

11 **SECTION 2. Effective date - applicability.** (1) This act shall
12 take effect January 1, 2007.

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

22 (3) The provisions of this act shall apply to claims made on or
23 after the applicable effective date of this act.

DRAFT

Bill D

Colorado Legislative Council Staff
NO FISCAL IMPACT

Drafting Number: LLS 06-0197
Prime Sponsor(s): Sen. Veiga
Rep. Coleman

Date: December 11, 2005
Bill Status: Interim Committee on Automobile
Insurance
Fiscal Analyst: Gary J. Estenson (303-866-4976)

TITLE: CONCERNING THE APPLICATION OF THE HEALTH INSURANCE PROMPT PAY PROVISIONS TO CLAIMS MADE AS A RESULT OF A MOTOR VEHICLE ACCIDENT.

Summary of Assessment

This legislation applies prompt pay requirements to health insurance companies that pay medical bills for injuries sustained as result of an automobile accident. A health insurer may seek reimbursement for payments made if it is later determined that another party is liable for payment.

Under current law, all health insurance benefits must be paid promptly unless a claim is made as a result of an automobile or a work-related injury governed by workers' compensation law. Prompt payment for all other health insurance benefits is required for all "clean claims." An insurance carrier is required to pay clean claims within 30 days if the claim is submitted electronically and 45 days if it is submitted in any other manner. Section C.R.S. 10-16-106.5(4)(b) describes circumstances where a claim is not considered clean. In these situations, insurance carriers are given additional time to pay, deny, or a settle a claim.

This legislation removes the prompt payment requirement exception for automobile injuries paid under a health insurance policy by requiring that clean claims and claims requiring additional information be paid within a prescribed statutory time frame.

Currently, most health insurance companies apply prompt pay provisions to benefits paid for automobile injuries. Therefore, no additional complaints to the Department of Regulatory Agencies, Division of Insurance are anticipated. Additionally, this legislation will not require any rule changes. Accordingly, this bill does not affect state or local revenues or expenditures and is assessed as having no fiscal impact. This legislation is effective January 1, 2007, unless a referendum petition is filed.

Departments Contacted

Regulatory Agencies

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

Bill E

DRAFT

LLS NO. 06-0236.01 Kristen Forrestal

HOUSE BILL

HOUSE SPONSORSHIP

Coleman,

SENATE SPONSORSHIP

Tochtrop,

House Committees

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE CREATION OF THE COLORADO CONSUMER
102 INSURANCE BOARD FOR THE PURPOSE OF PROVIDING COUNSEL
103 TO THE DIVISION OF INSURANCE.

Bill Summary

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

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.

DRAFT

Interim Committee on Auto Insurance. Creates the Colorado consumer insurance board (board). Requires the governor to appoint, with the consent of the senate, 11 members to the board who represent business and consumer interests, one from each congressional district, and not more than 6 from the same political party. Requires the members, to the extent possible, to have experience in various insurance matters. Establishes that the members shall be appointed in staggered terms beginning March 1, 2007, and shall meet at least 6 times per year. Prohibits any person who has certain financial or proprietary interests in a corporation that is subject to regulation by the division or the commissioner from being appointed to the board.

Requires the board to represent the public interest of Colorado insurance users. Grants power to the board to provide policy guidance to the commissioner of insurance (commissioner), gather and prepare information to be used at hearings regarding proposed insurance legislation, annually review the performance of the commissioner, and contract with employees outside of the employ of the division or the department. Specifies that the board may participate as a party in any proceeding before the division concerning premium rate changes, rule-making, copayment or deductible amounts, tariffs, and modifications of service. Prohibits the board from being a party to any individual complaint between an insurer and individual.

Requires the commissioner to work in cooperation with the board to represent the public interest. Requires the commissioner to serve the board with notice of all rate changes for insurers regulated under title 10 of the Colorado Revised Statutes. Allows members of the public to respond in writing to any changes recommended by the board.

Requires the attorney general to advise the board in all legal matters and to provide representation in proceedings in which the board participates.

Repeals the board on July 1, 2016, subject to legislative review under the sunset law.

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

2 **SECTION 1.** Part 1 of article 1 of title 10, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 **10-1-133. Colorado consumer insurance board - creation -**
6 **appointment - attorney general to represent - repeal.** (1) (a) THERE

1 IS HEREBY CREATED THE COLORADO CONSUMER INSURANCE BOARD FOR
2 THE PURPOSE OF PROVIDING POLICY GUIDANCE TO THE COMMISSIONER;
3 ADVISING THE COMMISSIONER REGARDING INSURANCE RATE CHANGE
4 REQUESTS; REVIEWING PROPOSED LEGISLATION REGARDING INSURANCE
5 RATE CHANGES AND LEGISLATION AFFECTING THE INTERESTS OF
6 RESIDENTIAL, SMALL BUSINESS, RURAL, HEALTH, AND COMMERCIAL
7 POLICYHOLDERS, AND ADVISING THE COMMISSIONER ON THESE MATTERS;
8 AND REVIEWING THE PERFORMANCE OF THE COMMISSIONER.

9 (b) BEGINNING NO LATER THAN MARCH 1, 2007, THE GOVERNOR,
10 WITH THE CONSENT OF THE SENATE, AFTER APPROVAL BY AN ASSIGNED
11 COMMITTEE OF REFERENCE, SHALL APPOINT ELEVEN MEMBERS TO THE
12 BOARD, ONE FROM EACH CONGRESSIONAL DISTRICT, WITH NO MORE THAN
13 SIX FROM THE SAME POLITICAL PARTY. IN ORDER TO ENSURE THE
14 REPRESENTATION OF BUSINESS AND CONSUMER INTERESTS, MEMBERS
15 SHALL BE APPOINTED TO REPRESENT EACH OF THE FOLLOWING:

16 (I) ONE MEMBER WHO SHALL REPRESENT THE INSURANCE
17 INDUSTRY;

18 (II) ONE MEMBER WHO SHALL REPRESENT THE HOSPITAL
19 INDUSTRY;

20 (III) ONE MEMBER WHO SHALL REPRESENT HEALTH CARE
21 PROVIDERS;

22 (IV) ONE MEMBER WHO SHALL REPRESENT LARGE
23 CORPORATIONS;

24 (V) ONE MEMBER WHO SHALL REPRESENT SMALL BUSINESSES;

25 (VI) ONE MEMBER WHO SHALL REPRESENT LABOR
26 ORGANIZATIONS;

1 (VII) ONE MEMBER WHO SHALL REPRESENT RURAL COMMUNITIES;

2 AND

3 (VIII) FOUR MEMBERS WHO ARE CONSUMER ADVOCATES.

4 (c) THE MEMBERS SHALL, TO THE EXTENT POSSIBLE, BE PERSONS
5 WITH FIVE OR MORE YEARS OF EXPERTISE OR EXPERIENCE IN
6 CONSUMER-RELATED INSURANCE MATTERS, UNDERWRITING, CLAIMS
7 HANDLING, RATE REGULATION, AND INSURANCE LAW. IN MAKING
8 APPOINTMENTS TO THE BOARD, THE GOVERNOR SHALL ENSURE THAT THE
9 MEMBERSHIP OF THE BOARD REPRESENTS THE DIFFERENT GEOGRAPHIC
10 AREAS OF THE STATE. OF THE MEMBERS OF THE BOARD APPOINTED FOR
11 TERMS BEGINNING MARCH 1, 2007, FOUR OF SUCH MEMBERS, WITH NO
12 MORE THAN TWO FROM THE SAME POLITICAL PARTY, SHALL BE APPOINTED
13 FOR TERMS OF FOUR YEARS AND THREE SHALL BE APPOINTED FOR TERMS
14 OF TWO YEARS. THEREAFTER, MEMBERS OF THE BOARD SHALL BE
15 APPOINTED FOR TERMS OF FOUR YEARS. THE GOVERNOR SHALL NOT
16 APPOINT ANY PERSON TO MEMBERSHIP ON THE BOARD IF SUCH PERSON HAS
17 ANY CONFLICT OF INTEREST WITH SUCH PERSON'S DUTIES AS A MEMBER OF
18 THE BOARD. THE GOVERNOR MAY REMOVE ANY BOARD MEMBER FOR
19 MISCONDUCT, INCOMPETENCE, OR NEGLECT OF DUTY, SUBJECT TO THE
20 CONSENT OF THE SENATE. BOARD MEMBERS SHALL SERVE WITHOUT
21 COMPENSATION, BUT MEMBERS WHO RESIDE OUTSIDE THE COUNTIES OF
22 ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS, AND
23 JEFFERSON SHALL BE ENTITLED TO REIMBURSEMENT FOR REASONABLE
24 ACTUAL EXPENSES TO ATTEND BOARD MEETINGS IN DENVER. THE BOARD
25 SHALL MEET AT LEAST SIX TIMES PER YEAR, AND THE SCHEDULE OF
26 MEETINGS SHALL BE MADE PUBLIC THROUGHOUT THE STATE.

1 (d) NO PERSON SHALL BE APPOINTED TO THE COLORADO
2 CONSUMER INSURANCE BOARD WHO HAS ANY FINANCIAL OR PROPRIETARY
3 INTEREST, EITHER DIRECTLY OR INDIRECTLY, IN A CORPORATION THAT IS
4 SUBJECT TO REGULATION BY THE DIVISION OR THE COMMISSIONER. THIS
5 PARAGRAPH (d) SHALL NOT APPLY TO A PERSON WHOSE INTEREST DERIVES
6 SOLELY FROM OWNERSHIP OF SHARES IN A MUTUAL OR PENSION FUND.

7 (e) IT IS THE DUTY OF THE BOARD TO REPRESENT THE PUBLIC
8 INTEREST OF COLORADO POLICYHOLDERS, AND, SPECIFICALLY, THE
9 INTERESTS OF RESIDENTIAL, RURAL, SMALL BUSINESS, HEALTH, AND
10 COMMERCIAL POLICYHOLDERS, BY PROVIDING GUIDANCE AND OVERSIGHT
11 FOR THE COMMISSIONER IN THE PERFORMANCE OF HIS OR HER STATUTORY
12 DUTIES AND RESPONSIBILITIES AS SPECIFIED IN THIS TITLE. THE POWERS
13 AND DUTIES OF THE BOARD SHALL INCLUDE, BUT NOT BE LIMITED TO, THE
14 FOLLOWING:

15 (I) TO PROVIDE GENERAL POLICY GUIDANCE TO THE
16 COMMISSIONER AND THE DIVISION REGARDING RULE-MAKING MATTERS,
17 LEGISLATIVE PROJECTS, GENERAL ACTIVITIES, AND PRIORITIES OF THE
18 DIVISION;

19 (II) TO GATHER INFORMATION, FORMULATE POLICY POSITIONS,
20 AND PREPARE ANALYSIS AND TESTIMONY FOR THE COMMISSIONER FOR USE
21 AT PUBLIC HEARINGS, INCLUDING LEGISLATIVE HEARINGS, ON PROPOSED
22 LEGISLATION REGARDING INSURANCE RATE CHANGES AND LEGISLATION
23 AFFECTING THE INTERESTS OF RESIDENTIAL, SMALL BUSINESS, RURAL,
24 HEALTH, AND COMMERCIAL POLICYHOLDERS;

25 (III) TO REVIEW ANNUALLY THE PERFORMANCE OF THE
26 COMMISSIONER;

1 (IV) TO CONTRACT WITH ACTUARIES, ECONOMISTS, OR OTHER
2 EMPLOYEES OUTSIDE OF THE EMPLOY OF THE DIVISION OR THE
3 DEPARTMENT AS MAY BE NECESSARY TO CARRY OUT THE DUTIES OF THE
4 BOARD.

5 (2) THE COLORADO CONSUMER INSURANCE BOARD MAY PETITION
6 FOR, REQUEST, INITIATE, AND APPEAR AND INTERVENE AS A PARTY IN, ANY
7 PROCEEDING BEFORE THE DIVISION CONCERNING PREMIUM RATE CHANGES,
8 RULE-MAKING, COPAYMENT OR DEDUCTIBLE AMOUNTS, TARIFFS, AND
9 MODIFICATIONS OF SERVICE. NOTWITHSTANDING ANY PROVISIONS OF THIS
10 SECTION TO THE CONTRARY, THE BOARD SHALL NOT BE A PARTY TO ANY
11 INDIVIDUAL COMPLAINT BETWEEN AN INSURER AND AN INDIVIDUAL.

12 (3) THE COMMISSIONER SHALL REPRESENT THE PUBLIC INTEREST
13 AND, TO THE EXTENT CONSISTENT THEREWITH, THE SPECIFIC INTERESTS OF
14 RESIDENTIAL, RURAL, HEALTH, COMMERCIAL, AND SMALL BUSINESS
15 CONSUMERS BY WORKING IN COOPERATION WITH THE COLORADO
16 CONSUMER INSURANCE BOARD REGARDING MATTERS THAT INVOLVE
17 PROPOSED CHANGES IN AN INSURER'S RATES, COPAYMENT, OR DEDUCTIBLE
18 AMOUNTS, AND IN MATTERS THAT INVOLVE RULE-MAKING THAT HAVE AN
19 IMPACT ON THE PREMIUM RATES, COPAYMENTS, AND DEDUCTIBLE
20 AMOUNTS; THE PROVISIONS OF SERVICES OR THE PREMIUM RATES TO
21 CONSUMERS, AND THE FACTORS THAT AFFECT RATES, COPAYMENTS, OR
22 DEDUCTIBLE AMOUNTS. THE COMMISSIONER SHALL SERVE THE COLORADO
23 CONSUMER INSURANCE BOARD WITH NOTICES OF ALL RATE CHANGES FOR
24 ANY INSURER REGULATED UNDER THIS TITLE.

25 (4) THE COMMISSIONER SHALL ALLOW MEMBERS OF THE PUBLIC
26 TO RESPOND IN WRITING TO ANY CHANGES RECOMMENDED BY THE
27 COLORADO CONSUMER INSURANCE BOARD.

1 (5) IT IS THE DUTY OF THE ATTORNEY GENERAL TO ADVISE THE
2 COLORADO CONSUMER INSURANCE BOARD IN ALL LEGAL MATTERS AND TO
3 PROVIDE REPRESENTATION IN PROCEEDINGS IN WHICH THE BOARD
4 PARTICIPATES.

5 (6) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2016. PRIOR
6 TO SUCH REPEAL, THE BOARD SHALL BE REVIEWED AS PROVIDED FOR IN
7 SECTION 24-34-104, C.R.S.

8 **SECTION 2.** 24-34-104, Colorado Revised Statutes, is amended
9 BY THE ADDITION OF A NEW SUBSECTION to read:

10 **24-34-104. General assembly review of regulatory agencies**
11 **and functions for termination, continuation, or reestablishment.**

12 (47) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, SHALL TERMINATE
13 ON JULY 1, 2016: THE COLORADO CONSUMER INSURANCE BOARD,
14 CREATED PURSUANT TO SECTION 10-1-133, C.R.S.

15 **SECTION 3. Effective date.** This act shall take effect at 12:01
16 a.m. on the day following the expiration of the ninety-day period after
17 final adjournment of the general assembly that is allowed for submitting
18 a referendum petition pursuant to article V, section 1 (3) of the state
19 constitution (August 9, 2006, if adjournment sine die is on May 10,
20 2006); except that, if a referendum petition is filed against this act or an
21 item, section, or part of this act within such period, then the act, item,
22 section, or part, if approved by the people, shall take effect on the date of
23 the official declaration of the vote thereon by proclamation of the
24 governor.

DRAFT

Bill E

Colorado Legislative Council Staff

STATE FISCAL IMPACT

Drafting Number: LLS 06-0236
Prime Sponsor(s): Rep. Coleman
Sen. Tochtrop

Date: December 19, 2005
Bill Status: Interim Committee on Auto Insurance
Fiscal Analyst: Amy Larsen (303-866-3488)

TITLE: CONCERNING THE CREATION OF THE COLORADO CONSUMER INSURANCE BOARD FOR THE PURPOSE OF PROVIDING COUNSEL TO THE DIVISION OF INSURANCE.

Table with 3 columns: Fiscal Impact Summary, FY 2006/2007, FY 2007/2008. Rows include State Revenues, State Expenditures, FTE Position Change, Effective Date, Appropriation Summary for FY 2006/2007, and Local Government Impact.

*This amount is included in the General Fund expenditure total.

Summary of Legislation

This Interim Committee on Auto Insurance bill creates the Colorado Consumer Insurance Board (board). The Governor, with the consent of the Senate, shall appoint 11 members to the board representing various interests and having expertise in insurance by March 1, 2007. The duty of the board is to represent the public interest of insurance policyholders by providing the Insurance Commissioner guidance and oversight in the performance of his statutory duties and responsibilities. Specific powers and duties of the board include the following:

- providing general policy guidance regarding rule-making matters, legislative projects, and priorities of the Division of Insurance;

Bill E

- gathering information, formulating policy positions and preparing analysis and testimony for the commissioner for use at public hearings;
- reviewing the performance of the commissioner; and
- hiring contractors to carry out the duties of the board.

State Revenues

General Fund revenues are anticipated to decrease \$49,611 in FY 2006-07 and \$132,049 in FY 2007-08. The Department of Regulatory Agencies, Division of Insurance, is funded from a diversion of premium tax revenue that would otherwise be credited to the General Fund. Since this bill requires increased expenditures from the Division of Insurance Cash Fund, a corresponding negative General Fund revenue impact is expected.

State Expenditures

This bill creates the Colorado Consumer Insurance Board (board) and specifies that it is to provide guidance and oversight to the Insurance Commissioner in the performance of his or her statutory duties. This language gives the board broad latitude in the depth of its activities. While there are certain firm costs associated with this bill for both the Division of Insurance and the board, **the majority of the expenses will depend on the specific activities of the board.**

Total estimated expenditures for this bill are \$254,436 in FY 2006-07 and \$813,924 in FY 2007-08. It should be noted that the bill is not clear as to the organizational structure of the board nor its funding mechanism. At this time, the fiscal note assumes that the board will be "housed" under the Department of Regulatory Agencies and that expenses of the board (\$204,825 in FY 2006-07) will be paid through the General Fund. The remaining \$49,611 in expenses will be paid from the Division of Insurance Cash Fund. Table 1 shows the estimated costs under Bill E.

Table 1.		
Estimated Expenditures for the Department of Regulatory Agencies		
	FY 2006/07	FY 2007/08
Division of Insurance		
Personal Services	\$46,106 and 1.0 FTE	\$115,629 and 2.8 FTE
Operating & One-time Costs	\$3,505	\$16,420
Subtotal for Division of Insurance	\$49,611	\$132,049
Colorado Consumer Insurance Board		
Contract Services	\$150,000	\$500,000
Legal Services - transfer to Dept. of Law	\$52,205	\$174,015
Meeting Expenses	\$2,620	\$7,860
Subtotal for board expenses	\$204,825	\$681,875
Total Expenses	\$254,436	\$813,924

Colorado Consumer Insurance Board. The board is expected to incur expenses of \$204,825 in FY 2006-07 and \$681,875 in FY 2007-08. These expenses are based on the 11-member board holding 2 meetings in the first year and 6 meetings in subsequent years due to the March 1, 2007, start date. The following assumptions were made:

- the board will contract for administrative, actuary, economics and other services to carry out its duties (estimated at \$500,000 per full fiscal year, but this is highly dependent on the decisions of the board - see further description below);
- the Office of the Attorney General will advise the board in all legal matters estimated to take 2,700 hours per full fiscal year (legal hours are also highly dependent on the activities of the board); and
- the board will have 5 out-of-town members.

As noted above, the bill allows the board to contract with experts to carry out its duties. Thus, the decisions of the board as to the level of guidance and oversight it wishes to give to the commissioner will determine the type of contractors it hires and the extent of its work. In addition, the bill does not authorize the board to have regular employees for ongoing administrative and other tasks. The fiscal note assumes contractors will be hired to provide necessary services totaling \$150,000 in FY 2006-07 and \$500,000 in FY 2007-08. These are rough estimates and will vary greatly depending on the board's activities.

Department of Regulatory Agencies, Division of Insurance. The division is expected to incur expenses of \$49,611 in FY 2006-07 and \$132,049 in FY 2007-08 as a result of this bill. Following is a description of the anticipated expenses:

- the board will recommend, and the commissioner will accept, 5 changes to rule in the first year and 15 in the second and subsequent years (100 hours of division time are estimated for each rule change);
- the division will provide the board a simple report with summary information on all rate filings (18,000 per year) and the board will request full information on 25 percent of those resulting in estimated printing and postage costs of \$8,910 starting in FY 2007-08;
- the division will provide information to the board to assist in its review of the commissioner's performance requiring 100 hours in FY 2007-08 and subsequent years; and
- the division will receive, handle, sort, file, track, and make available to the public written public comments on changes recommended by the board requiring 0.6 FTE in FY 2006-07 and 2.0 FTE in FY 2007-08 (this cost is highly dependent on the activities of the board).

In addition, the division is expected to revise three regulations to allow the board to review rate filings requiring 260 hours in FY 2006-07 only. Costs involved with legislative projects are expected to be determined in specific future legislation, and costs associated with the Commissioner's responsibility to communicate with and take into account the board's recommendations on proposed legislation are not estimated at this time.

Bill E

Note: The Department of Regulatory Agencies identified a maximum cost resulting from this bill of \$1,729,119 in FY 2006-07 and ongoing expenses of \$1,478,744 for both the Division of Insurance and board expenses. The primary difference in these figures compared to the fiscal note assumptions is the activity level of the board including the number of board recommended rule changes, the number of full rate filings the board requests, and the amount of legal representation the board needs. Further detail about these differences can be found in the Legislative Council Fiscal Note Section.

Department of Law. Expenditures for the department are anticipated to be \$52,205 cash funds exempt and 0.4 FTE in FY 2006-07, and \$174,015 cash funds exempt and 1.3 FTE in FY 2007-08. The bill specifies that it is the duty of the Attorney General to advise the board in all legal matters and to provide representation in proceedings in which the board participates. Thus, the activities of the board will determine the amount of legal advice or counsel and representation the board will require. If the board decides to be involved in every hearing and all other matters of the division, legal expenses could equal that of the division (\$554,478 in FY 2005-06). However, the fiscal note assumes the board's need for legal hours to be significantly lower, or 810 hours in FY 2006-07 (810 hours X \$64.45 = \$52,205) increasing to 2,700 hours in FY 2007-08 (2,700 hours X \$64.45 = \$174,015) and subsequent years.

State Appropriations

The fiscal note indicates the following appropriations for FY 2006-07:

- Department of Regulatory Agencies, Colorado Consumer Insurance Board - \$204,825 General Fund;
- Department of Regulatory Agencies, Division of Insurance - \$49,611 from the Division of Insurance Cash Fund and 1.0 FTE; and
- Department of Law - \$52,205 cash fund exempt and 0.4 FTE.

Departments Contacted

Law Regulatory Agencies

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

Bill F

DRAFT

LLS NO. 06-0209.01 Kristen Forrestal

HOUSE BILL

HOUSE SPONSORSHIP

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SENATE SPONSORSHIP

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House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING CLAIMS PRACTICES FOR BODILY INJURY TO A**
102 **THIRD-PARTY CLAIMANT ARISING OUT OF THE USE OF A MOTOR**
103 **VEHICLE.**

Bill Summary

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

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.

DRAFT

Interim Committee on Auto Insurance. Requires an insurer to make benefit disclosures to a 3rd-party claimant in a motor vehicle accident. Requires an insurer to promptly determine legal liability for bodily injury resulting from a motor vehicle accident. Makes a presumption for legal liability for 3rd-party bodily injury once payment has been made for property damage resulting from a motor vehicle accident.

Requires an insurer to establish a fair and consistent method for determining the bodily injury loss of a 3rd party. Creates a penalty for the willful nonpayment of a 3rd-party claim resulting from a motor vehicle accident. Excludes payment of a penalty, interest, attorney fees, and court costs from legal liability coverage and from rate filing, claims experience, or show of loss by the insured.

Allows for the assignment of legal liability coverage for 3rd-party bodily injury to a licensed hospital or other health care provider. Includes an injured 3rd-party entitled to coverage as a result of a motor vehicle accident in the definition of "claimant" for the purposes of prompt payment of direct benefits.

Declares certain actions by an insurer to be unfair claim settlement practices.

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

2 **SECTION 1.** Part 6 of article 4 of title 10, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 **10-4-644. Claims practices for bodily injury to third parties**
6 **arising out the use of a motor vehicle - legislative declaration -**
7 **disclosure.** (1) THE GENERAL ASSEMBLY FINDS, DETERMINES, AND
8 DECLARES THAT:

9 (a) PATIENTS AND HEALTH CARE PROVIDERS ARE ENTITLED TO
10 RECEIVE REIMBURSEMENT FROM INSURERS IN A TIMELY MANNER;

11 (b) HEALTH INSURANCE CARRIERS SHOULD NOT PAY PATIENT AND
12 PROVIDER CLAIMS THAT ARE THE LEGAL RESPONSIBILITY OF AN AT-FAULT
13 DRIVER AND THE AT-FAULT DRIVER'S AUTO INSURER;

1 (c) HEALTH INSURANCE RATES HAVE INCREASED AFTER THE
2 REPEAL OF MOTOR VEHICLE NO-FAULT INSURANCE BECAUSE HEALTH
3 CARRIERS HAVE BEEN PAYING AUTO INSURANCE CLAIMS OF WHICH VERY
4 FEW HAVE BEEN REIMBURSED BY THE AUTO INSURERS;

5 (d) THE PUBLIC POLICY OF THIS STATE IS TO PROMPTLY
6 DETERMINE LIABILITY IN AN AUTO ACCIDENT AND TO PROMPTLY PAY FOR
7 PROPERTY DAMAGE RESULTING FROM AN AUTO ACCIDENT; THEREFORE,
8 THE POLICY OF THIS STATE SHALL INCLUDE THE PROMPT PAYMENT FOR
9 BODILY INJURIES OF A THIRD PARTY RESULTING FROM AN AUTO ACCIDENT
10 WHERE LIABILITY IS REASONABLY CLEAR BY THE THIRD-PARTY INSURER;

11 (e) UNNECESSARY DELAYS IN THE PAYMENT OF ROUTINE AND
12 UNCONTESTED CLAIMS WHERE LIABILITY HAS BECOME REASONABLY
13 CLEAR REPRESENT AN UNWARRANTED DRAIN ON HEALTH CARE PROVIDERS'
14 RESOURCES AS WELL AS A WASTE OF PATIENTS' TIME AND MONEY;

15 (f) IT IS IN THE INTERESTS OF THE PEOPLE IN COLORADO THAT THE
16 GENERAL ASSEMBLY IMPOSE REASONABLE STANDARDS FOR THE TIMELY
17 PAYMENT OF HEALTH CARE CLAIMS TO THIRD PARTIES INJURED IN MOTOR
18 VEHICLE ACCIDENTS.

19 (2) AN INSURER SHALL CLEARLY DISCLOSE TO AN INJURED
20 PERSON AND INFORM ANY THIRD-PARTY CLAIMANT OF THE BENEFITS THAT
21 ARE PROVIDED TO ANY ONE PERSON IN ANY ONE ACCIDENT AND TO ALL
22 PERSONS IN ANY ONE ACCIDENT THAT ARE RELATED TO LEGAL LIABILITY
23 COVERAGE FOR BODILY INJURY OR DEATH ARISING OUT OF THE USE OF THE
24 MOTOR VEHICLE.

25 (3) (a) AN INSURER SHALL PROMPTLY DETERMINE IF THE INSURED
26 IS LEGALLY LIABLE FOR THE BODILY INJURY ARISING OUT OF THE USE OF A
27 MOTOR VEHICLE.

1 (b) IF THE INSURER HAS MADE PAYMENT FOR PROPERTY DAMAGE
2 OR LOSS OF A MOTOR VEHICLE PURSUANT TO SECTION 10-4-639, THE
3 LEGAL LIABILITY OF THE INSURED SHALL BE PRESUMED AND PAYMENT FOR
4 THIRD-PARTY BODILY INJURY SHALL BE PAID BY THE INSURER.

5 (4) AN INSURER SHALL ESTABLISH A FAIR AND CONSISTENT
6 METHOD FOR DETERMINING THE BODILY INJURY LOSS OF A THIRD PARTY.
7 SUCH METHOD SHALL INCLUDE THE CONSIDERATION OF THE UNIQUE
8 CHARACTERISTICS OF THE INJURY TO THE THIRD PARTY AND A CREDIBLE
9 SOURCE OF THE VALUATION OF THE HEALTH CARE PAYMENTS FOR THE
10 INJURY. THE INSURER SHALL MAINTAIN A RECORD OF THE METHODOLOGY
11 FOR DETERMINING LOSS EVALUATION AND PROVIDE SUCH METHODOLOGY
12 UPON REQUEST TO THE COMMISSIONER, THE THIRD PARTY, AND A HEALTH
13 CARE PROVIDER WHO HAS AN ASSIGNMENT. AN INSURER MAY NOT USE
14 DIFFERENT CREDIBLE SOURCES OF VALUATION ONLY TO DETERMINE THE
15 LOWEST AMOUNT PAYABLE FOR THE BODILY INJURY LOSS OF THE THIRD
16 PARTY.

17 (5) THE AMOUNT CHARGED BY A HEALTH CARE PROVIDER SHALL
18 BE REASONABLE IF THE CHARGES ARE THE LESSER OF SUCH PROVIDER'S
19 CUSTOMARY CHARGE FOR THE SERVICE OR THE AVERAGE LEVEL OF
20 REIMBURSEMENT FOR SUCH SERVICE PURSUANT TO CURRENT NEGOTIATED
21 CONTRACTS OR PAYMENT SCHEDULES BETWEEN SUCH PROVIDER AND ANY
22 INSURERS.

23 (6) (a) THE INSURER SHALL BE LIABLE FOR A PENALTY OF FIFTY
24 PERCENT OF THE AMOUNT OF NONPAYMENT FOR THE WILLFUL
25 NONPAYMENT OF A THIRD-PARTY CLAIM IN ANY ACTION IN WHICH THE
26 CLAIMANT PREVAILS. IN ANY ACTION BROUGHT BY THE CLAIMANT FOR
27 WILLFUL NONPAYMENT OF A CLAIM, THE INSURER SHALL BEAR THE

1 BURDEN OF PROVING THAT THE WITHHOLDING OF THE PAYMENT TO THE
2 CLAIMANT WAS NOT WRONGFUL.

3 (b) ANY PAYMENT OF ANY PENALTY, INTEREST, REASONABLE
4 ATTORNEY FEES OR COURT COSTS RELATED TO THE ACTION SHALL NOT BE
5 CONSIDERED TO BE PART OF THE LEGAL LIABILITY LIMITS OF THE INSURER,
6 SHALL NOT DIMINISH THE AMOUNT OF LIABILITY OWED BY THE INSURER ON
7 BEHALF OF ITS INSURED, AND SHALL BE PAID BY THE INSURER FROM OTHER
8 SOURCES AND NOT DEDUCTED FROM THE LEGAL LIABILITY THE INSURER
9 OWES UNDER THE INSURANCE POLICY.

10 (c) ANY PAYMENT OF ANY PENALTY, INTEREST, REASONABLE
11 ATTORNEY FEES OR COURT COSTS RELATED TO THE ACTION SHALL NOT BE
12 CONSIDERED PART OF ANY RATE FILING, ANY SHOWING OF CLAIMS
13 EXPERIENCE, ANY SUPPORTING DOCUMENTATION, ANY ACTUARIAL
14 OPINION OR CERTIFICATION, OR ANY SHOWING OF LOSS BY THE INSURER.

15 (7) (a) AN INJURED THIRD PARTY OR THE THIRD PARTY'S HEALTH
16 CARE PROVIDER SHALL HAVE A DIRECT RIGHT OF ACTION AGAINST THE
17 INSURER FOR THE PAYMENT OF THE THIRD-PARTY CLAIMS FOR BODILY
18 INJURY ONLY TO THE EXTENT OF THE INSURANCE COVERAGE.

19 (b) THE PAYMENT OF A HEALTH CARE PROVIDER CLAIM FOR
20 BODILY INJURY TO A THIRD PARTY SHALL BE TREATED THE SAME AS THE
21 PAYMENT BY AN INSURER FOR A THIRD PARTY'S PROPERTY DAMAGE.

22 (c) UPON THE RECEIPT OF PAYMENT BY AN INSURER TO A HEALTH
23 CARE PROVIDER, THE HEALTH CARE PROVIDER SHALL PROVIDE A
24 STATEMENT OF THE AMOUNT RECEIVED TO THE PATIENT AT HIS OR HER
25 LAST-KNOWN MAILING OR EMAIL ADDRESS, EITHER IN WRITTEN OR
26 ELECTRONIC FORMAT.

1 (d) UPON THE REQUEST OF AN INJURED PERSON OR A
2 THIRD-PARTY CLAIMANT, AN INSURER SHALL PROMPTLY AND CLEARLY
3 DISCLOSE THE BENEFITS THAT REMAIN RELATED TO LEGAL LIABILITY
4 COVERAGE FOR BODILY INJURY OR DEATH ARISING OUT OF THE USE OF A
5 MOTOR VEHICLE TO ANY ONE PERSON IN ANY ONE ACCIDENT AND TO ALL
6 PERSONS IN ANY ONE ACCIDENT.

7 (8) NOTHING IN THIS SECTION SHALL PRECLUDE AN INJURED
8 THIRD-PARTY CLAIMANT FROM MAINTAINING AN ACTION AGAINST ANY
9 OTHER PARTY FOR ANY DAMAGES OR LIABILITY.

10 **SECTION 2.** 10-4-634 (1), Colorado Revised Statutes, is
11 amended to read:

12 **10-4-634. Assignment of payment for covered benefits.**

13 (1) ~~On and after thirty days after April 5, 2004,~~ A policy of motor vehicle
14 insurance coverage pursuant to this part 6 shall allow, but not require, an
15 insured under the policy to assign, in writing, payments due under
16 medical payments coverage OR LEGAL LIABILITY COVERAGE FOR
17 THIRD-PARTY BODILY INJURY of the policy to a licensed hospital or other
18 licensed health care provider, as defined in section 10-4-902 (3), an
19 occupational therapist as described in section 6-1-707 (1) (c), C.R.S., or
20 a massage therapist for services provided to the insured that are covered
21 under the policy.

22 **SECTION 3.** 10-4-642 (2) (a) and (2) (b), Colorado Revised
23 Statutes, are amended to read:

24 **10-4-642. Prompt payment of direct benefits - legislative**
25 **declaration - definitions.** (2) As used in this section, unless the context
26 otherwise requires:

1 (a) "Claim" means a claim for payment of medical payments
2 coverage benefits OR PAYMENT FOR THIRD-PARTY BODILY INJURY ARISING
3 OUT OF THE USE OF A MOTOR VEHICLE in accordance with the insurer's
4 policy.

5 (b) "Claimant" means a policyholder, insured, or injured person
6 entitled to medical payments benefits OR AN INJURED PERSON ENTITLED
7 TO THIRD-PARTY BODILY INJURY LEGAL LIABILITY COVERAGE as a result
8 of a motor vehicle accident or a provider with the proper assignment of
9 benefits.

10 **SECTION 4.** 10-3-1104 (1) (h), Colorado Revised Statutes, is
11 amended BY THE ADDITION OF THE FOLLOWING NEW
12 SUBPARAGRAPHS to read:

13 **10-3-1104. Unfair methods of competition and unfair or**
14 **deceptive acts or practices.** (1) The following are defined as unfair
15 methods of competition and unfair or deceptive acts or practices in the
16 business of insurance:

17 (h) Unfair claim settlement practices: Committing or
18 performing, either in willful violation of this part 11 or with such
19 frequency as to indicate a tendency to engage in a general business
20 practice, any of the following:

21 (XVIII) FAILING TO PROMPTLY DETERMINE LIABILITY IN A
22 THIRD-PARTY CLAIM PURSUANT TO SECTION 10-4-644;

23 (XIX) CLAIMING NO LIABILITY AS A DEFENSE OR PARTIAL OFFSET
24 IN THE ADJUSTMENT OF A THIRD-PARTY CLAIM WITHOUT CONDUCTING A
25 REASONABLE INVESTIGATION AND DEVELOPING SUBSTANTIAL EVIDENCE
26 IN SUPPORT OF SUCH CLAIM;

1 (XX) DELAYING PAYMENT FOR A CLAIM TO A THIRD PARTY OR A
2 HEALTH CARE PROVIDER WITH PROPER ASSIGNMENT OF BENEFITS, AFTER
3 LIABILITY HAS BECOME REASONABLY CLEAR AND PAYMENT HAS BEEN
4 MADE FOR PROPERTY DAMAGE PURSUANT TO PART 6 OF THIS ARTICLE;

5 (XXI) FAILURE TO HONOR AN ASSIGNMENT FOR LEGAL LIABILITY
6 COVERAGE FOR THIRD-PARTY BODILY INJURY AS SET FORTH IN SECTION
7 10-4-634.

8 **SECTION 5. Effective date - applicability.** (1) This act shall
9 take effect January 1, 2007.

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

19 (3) The provisions of this act shall apply to injuries sustained in
20 a motor vehicle accident on or after the applicable effective date of this
21 act.

Colorado Legislative Council Staff
NO FISCAL IMPACT

Drafting Number: LLS 06-0209

Date: November 22, 2005

Prime Sponsor(s): Rep. Cloer
Sen. Tochtrop

Bill Status: Interim Committee on Automobile
Insurance.

Fiscal Analyst: Gary J. Estenson (303-866-4976)

TITLE: CONCERNING CLAIMS PRACTICES FOR BODILY INJURY TO A THIRD-PARTY CLAIMANT ARISING OUT OF THE USE OF A MOTOR VEHICLE.

Summary of Assessment

This legislation establishes several new requirements for automobile insurance carriers related to both claim handling practices and claim settlements. These requirements are specific to the bodily injury/property damage liability component of an automobile insurance policy.

Specifically, this legislation establishes additional claims handling practices by requiring an insurance carrier to:

- clearly disclose to a third-party claimant the per party and per accident benefit limits of the insurance policy;
- promptly determine the liability of the insured;
- presume liability and pay benefits for bodily injury when benefits have been paid for property; and
- establish a fair and consistent methodology for valuing bodily injury claims and keep a record of this methodology for review by the Insurance Commissioner, the injured third-party, and a health care provider that has an assignment.

An insurance carrier found to intentionally fail to pay a compensable third-party claim, shall also be required to pay a penalty to the claimant in an amount equal to 50 percent of the nonpayment amount. Any penalty amount, including interest or attorney fees and court costs associated with insurance carrier defense of nonpayment, shall not apply against the limits of a liability policy and cannot be used as factors in any subsequent rate filing. Both the third-party claimant and the third-party claimant's health care provider shall possess a legal right to file a claim against an insurer for nonpayment.

This legislation also establishes additional circumstances whereby an insurance carrier is engaging in unfair claims settlement practices. These circumstances occur when an insurer

- fails to promptly determine liability in accordance with existing statute once a third-party claim has been filed;
- denies liability without having substantial evidence to support such claim; and
- delays payment to either a third-party claimant or health care provider with assignment once reasonable certainty exists that the insurer is liable.

Bill F

Unrelated to insurance carrier requirements, this legislation also requires health care providers to charge the lesser of either the customary charge for a specific medical service or the average amount for that service reimbursed to the provider for care covered under the liability component of an automobile insurance policy.

This bill does not affect state or local revenues or expenditures and is assessed as having no fiscal impact. The Department of Regulatory Agencies, Division of Insurance, will be required to promulgate rules to implement provisions related to additional claims handling and settlement practices and health care charges for medical treatment.

The division may experience an increase in complaints filed by third-party claimants who believe they are entitled to additional penalty payments, as provided for in this legislation. However, time spent on complaints should be insignificant, as this legislation and the rules of civil procedure require these claims to be resolved by an appropriate state court of jurisdiction. Combined, the rule making and complaint process time will be minimal, and more than offset by the reduction in third-party complaints based on the claims handling and settlement provisions of this legislation. This legislation is effective January 1, 2007, unless a referendum petition is filed.

Departments Contacted

Regulatory Agencies