

HOUSE COMMITTEE OF REFERENCE AMENDMENT

## Committee on Health & Insurance.

HB22-1269 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and  
2 substitute the following:

3           **"SECTION 1.** In Colorado Revised Statutes, **add** article 27 to  
4 title 6 as follows:

## ARTICLE 27

## Medical Expense Sharing Programs

**6-27-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 27 IS THE "COLORADO MEDICAL EXPENSE SHARING ACT".

9                   **6-27-102. Legislative purpose.** THE PURPOSE OF THIS ARTICLE 27  
10          IS TO ACCOMMODATE AND PROTECT RESIDENTS OF COLORADO WITH  
11          RESPECT TO MEDICAL EXPENSE SHARING PROGRAMS BY ESTABLISHING  
12          OPERATIONAL REQUIREMENTS FOR THESE PROGRAMS.

13                   **6-27-103. Definitions.** AS USED IN THIS ARTICLE 27, UNLESS THE  
14 CONTEXT OTHERWISE REQUIRES:

15 (1) "MEDICAL EXPENSE SHARING PROGRAM" OR "PROGRAM"  
16 MEANS ANY PROGRAM, ARRANGEMENT, OR ACTIVITY OFFERED TO  
17 RESIDENTS OF THIS STATE THAT:

18 (a) FACILITATES THE SHARING AND PAYMENT OF CERTAIN MEDICAL  
19 EXPENSES INCURRED BY MEMBERS USING FUNDS CONTRIBUTED FOR  
20 SHARING BY THE MEMBERS IN AMOUNTS AND AT TIMES DETERMINED BY  
21 THE ORGANIZATION OPERATING THE PROGRAM, ALL IN ACCORDANCE WITH  
22 SHARING CRITERIA ADOPTED BY THE ORGANIZATION OR THE MEMBERS;  
23 AND

24 (b) WITH RESPECT TO ANY MEDICAL EXPENSES INCURRED BY ANY  
25 MEMBER, EXPRESSLY PROVIDES NO TRANSFER OF RISK TO OR LEGAL  
26 OBLIGATION TO PAY IMPOSED ON THE MEMBERS OF OR THE ORGANIZATION  
27 OPERATING THE PROGRAM.

28 (2) "MEMBER" MEANS AN INDIVIDUAL OR HOUSEHOLD  
29 PARTICIPATING IN A MEDICAL EXPENSE SHARING PROGRAM.

30 (3) "RELIGIOUS ORGANIZATION SHARING PROGRAM" MEANS A  
31 MEDICAL EXPENSE SHARING PROGRAM THAT:

32 (a) IS OPERATED BY AN ORGANIZATION THAT IS ORGANIZED AND  
33 OPERATED PRIMARILY FOR RELIGIOUS PURPOSES; AND

34 (b) FACILITATES THE SHARING OF MEMBER HEALTH-CARE BURDENS  
35 AND MEDICAL EXPENSES AS AN EXERCISE AND EXPRESSION OF THE  
36 MEMBERS' SINCERELY HELD RELIGIOUS BELIEFS.

#### **6-27-104. Medical expense sharing program - requirements.**

38 (1) **Notice.** ANY ORGANIZATION OPERATING A MEDICAL EXPENSE  
39 SHARING PROGRAM SHALL PROVIDE ON OR WITH ALL NEW MEMBER

1 APPLICATIONS AND PROGRAM GUIDELINES MATERIALS DISTRIBUTED BY OR  
2 ON BEHALF OF THE ORGANIZATION TO RESIDENTS OF THIS STATE A  
3 WRITTEN DISCLAIMER THAT STATES, IN SUBSTANCE:

4 **NOTICE**

5 THE ORGANIZATION FACILITATING THE SHARING OF  
6 MEDICAL EXPENSES IS NOT AN INSURANCE COMPANY, AND  
7 NEITHER THIS PROGRAM'S GUIDELINES NOR PLAN OF  
8 OPERATION CONSTITUTES AN INSURANCE POLICY OR PLAN  
9 OR THE BUSINESS OF INSURANCE. WHETHER ANYONE  
10 CHOOSES TO ASSIST YOU WITH YOUR MEDICAL BILLS WILL  
11 BE TOTALLY VOLUNTARY, AS NEITHER THIS PROGRAM NOR  
12 ANY MEMBER WILL BE LEGALLY OBLIGATED OR OTHERWISE  
13 COMPELLED BY LAW TO CONTRIBUTE TOWARD YOUR  
14 MEDICAL BILLS. IN ADDITION, SOME MEDICAL EXPENSES  
15 REQUIRED TO BE COVERED OR COMMONLY COVERED BY  
16 INSURANCE, INCLUDING PREEXISTING CONDITIONS, MAY NOT  
17 BE ELIGIBLE FOR SHARING UNDER THE PROGRAM. WHETHER  
18 YOU RECEIVE ANY PAYMENTS FOR MEDICAL EXPENSES AND  
19 WHETHER OR NOT THIS PROGRAM CONTINUES TO OPERATE,  
20 YOU ARE ALWAYS PERSONALLY RESPONSIBLE FOR THE  
21 PAYMENT OF YOUR OWN MEDICAL BILLS.

22 **(2) Member application statement.** ANY ORGANIZATION  
23 OPERATING A MEDICAL EXPENSE SHARING PROGRAM SHALL OBTAIN FROM  
24 ANY MEMBER APPLICANT WHO IS A RESIDENT OF THIS STATE, PRIOR TO THE  
25 APPLICANT BECOMING A MEMBER, A WRITTEN AFFIRMATION SIGNED BY  
26 THE APPLICANT, EITHER IN HARD COPY OR ELECTRONIC FORMAT, STATING  
27 IN SUBSTANCE THAT THE APPLICANT:

28 (a) HAS READ AND UNDERSTANDS THE NOTICE DESCRIBED IN  
29 SUBSECTION (1) OF THIS SECTION AND ACKNOWLEDGES AND AGREES TO  
30 THE TERMS AND CONDITIONS SET FORTH IN THE NOTICE;

31 (b) (I) HAS BEEN PROVIDED WITH AND HAD AN OPPORTUNITY TO  
32 REVIEW THE PROGRAM MATERIALS DESCRIBING THE TERMS AND  
33 CONDITIONS OF THE PROGRAM, INCLUDING:

34 (A) THE TYPES OF MEDICAL EXPENSES THAT ARE ELIGIBLE FOR  
35 SHARING UNDER THE PROGRAM; AND

36 (B) THE RULES FOR APPEALS OF SHARING ELIGIBILITY  
37 DETERMINATIONS MADE BY THE ORGANIZATION AND FOR FILING  
38 COMPLAINTS; AND

39 (II) ACKNOWLEDGES AND AGREES TO THE TERMS AND  
40 CONDITIONS;

41 (c) HAS BEEN PROVIDED WITH AND HAD AN OPPORTUNITY TO  
42 REVIEW THE INFORMATION THAT THE ORGANIZATION IS REQUIRED TO  
43 REPORT PURSUANT TO SUBSECTIONS (3)(a) AND (3)(b) OF THIS SECTION

1 FOR THE MOST RECENT REPORTING PERIOD;

2 (d) ACKNOWLEDGES, IF APPLICABLE, THAT A THIRD PARTY WILL  
3 RECEIVE A COMMISSION WITH RESPECT TO THE APPLICANT'S ENROLLMENT  
4 AS A MEMBER; AND

5 (e) ACKNOWLEDGES, IF APPLICABLE, THAT THE ORGANIZATION IS  
6 NOT A FEDERALLY TAX-EXEMPT ORGANIZATION DESCRIBED IN SECTION  
7 501 (c)(3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS  
8 AMENDED.

9 **(3) Reporting to members.** (a) **Financial information.** EXCEPT  
10 AS DESCRIBED IN SUBSECTION (3)(c) OF THIS SECTION, AN ORGANIZATION  
11 OPERATING A MEDICAL EXPENSE SHARING PROGRAM SHALL PROVIDE EACH  
12 MONTH TO EACH MEMBER WHO IS A RESIDENT OF THIS STATE A STATEMENT  
13 LISTING:

14 (I) THE TOTAL DOLLAR AMOUNT OF CONTRIBUTIONS IN AMOUNTS  
15 DETERMINED BY THE ORGANIZATION THAT WERE MADE BY THE MEMBERS  
16 IN THE PRIOR MONTH AND IN THE PRIOR TWELVE MONTHS;

17 (II) THE TOTAL DOLLAR AMOUNT OF MEDICAL EXPENSES INCURRED  
18 BY THE PROGRAM'S MEMBERS THAT WERE SHARED BY THE PROGRAM'S  
19 MEMBERS FROM THE CONTRIBUTIONS DESCRIBED IN SUBSECTION (3)(a)(I)  
20 OF THIS SECTION, EITHER DIRECTLY OR THROUGH THE ORGANIZATION, IN  
21 THE PRIOR MONTH AND IN THE PRIOR TWELVE MONTHS;

22 (III) THE TOTAL DOLLAR AMOUNT OF MEDICAL EXPENSES THAT  
23 WERE SUBMITTED BY THE MEMBERS FOR SHARING IN THE PRIOR MONTH  
24 AND IN THE PRIOR TWELVE MONTHS AND THAT ARE ELIGIBLE FOR SHARING  
25 IN ACCORDANCE WITH THE PROGRAM'S CRITERIA, EXCLUDING ANY  
26 AMOUNTS THAT THE MEMBERS INCURRING THE EXPENSES MUST PAY PRIOR  
27 TO RECEIVING SHARING CONTRIBUTIONS FROM OTHER MEMBERS; AND

28 (IV) THE TOTAL DOLLAR AMOUNT OF MEDICAL EXPENSES THAT  
29 HAVE BEEN SUBMITTED BY THE MEMBERS FOR SHARING AND THAT ARE  
30 ELIGIBLE FOR SHARING IN ACCORDANCE WITH THE PROGRAM'S CRITERIA  
31 BUT THAT HAD NOT YET BEEN SHARED AS OF THE END OF THE PRIOR  
32 MONTH, EXCLUDING ANY AMOUNTS THAT THE MEMBERS INCURRING THE  
33 EXPENSES MUST PAY PRIOR TO RECEIVING SHARING CONTRIBUTIONS FROM  
34 OTHER MEMBERS.

35 (b) **Related party transactions.** EXCEPT AS DESCRIBED IN  
36 SUBSECTION (3)(c) OF THIS SECTION, AN ORGANIZATION OPERATING A  
37 MEDICAL EXPENSE SHARING PROGRAM SHALL PROVIDE TO EACH MEMBER  
38 WHO IS A RESIDENT OF THIS STATE, BY MARCH 31 OF EACH YEAR, A  
39 STATEMENT IDENTIFYING, FOR EACH TRANSACTION IN THE PRIOR  
40 CALENDAR YEAR BETWEEN THE ORGANIZATION AND A DISQUALIFIED  
41 PERSON, AS DEFINED IN 26 U.S.C. SEC. 4958 (f)(1), AS AMENDED, THE  
42 NAME OF THE DISQUALIFIED PERSON AND THE TOTAL AMOUNT EARNED BY  
43 OR PAYABLE TO THE DISQUALIFIED PERSON PURSUANT TO THE

1 TRANSACTION IN THE PRIOR CALENDAR YEAR. FOR PURPOSES OF THIS  
2 SECTION, A TRANSACTION DOES NOT INCLUDE SERVICES RENDERED BY AN  
3 INDIVIDUAL AS AN OFFICER OR DIRECTOR OF THE ORGANIZATION.

4       **(c) Posting on public website.** IN LIEU OF PROVIDING ANY OF THE  
5 INFORMATION IN SUBSECTIONS (3)(a) AND (3)(b) OF THIS SECTION IN A  
6 STATEMENT TO A MEMBER WHO IS A RESIDENT OF THIS STATE, AN  
7 ORGANIZATION MAY POST THE INFORMATION ON A SINGLE PAGE ON ITS  
8 PUBLICLY ACCESSIBLE WEBSITE AND, ON A MONTHLY BASIS, PROVIDE TO  
9 THE MEMBER A LINK TO THE APPLICABLE WEB PAGE.

10      **(4) Annual audit.** AN ORGANIZATION OPERATING A MEDICAL  
11 EXPENSE SHARING PROGRAM SHALL SUBMIT TO AN ANNUAL AUDIT  
12 PERFORMED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTING FIRM IN  
13 ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AND  
14 SHALL MAKE THE AUDIT AVAILABLE TO THE PUBLIC BY PROVIDING A COPY  
15 UPON REQUEST OR BY POSTING ON A PAGE ON THE ORGANIZATION'S  
16 PUBLICLY ACCESSIBLE WEBSITE.

17      **(5) Annual public reporting.** NOT LESS THAN THIRTY DAYS  
18 AFTER AN ORGANIZATION COMMENCES OPERATING A MEDICAL EXPENSE  
19 SHARING PROGRAM, AND BY MARCH 31 OF EACH SUBSEQUENT CALENDAR  
20 YEAR IN WHICH THE ORGANIZATION CONTINUES TO OPERATE THE  
21 PROGRAM, AN ORGANIZATION SHALL POST THE FOLLOWING INFORMATION  
22 AND MATERIALS ON A SINGLE PAGE ON ITS PUBLICLY ACCESSIBLE WEBSITE  
23 AND SHALL FILE WITH THE ATTORNEY GENERAL A LINK TO THE APPLICABLE  
24 WEB PAGE:

25       (a) THE NAME OF THE ORGANIZATION, THE NAME OR NAMES USED  
26 TO IDENTIFY THE PROGRAM, THE NAME OF THE ORGANIZATION'S CHIEF  
27 EXECUTIVE OFFICER AND, IF DIFFERENT, THE NAME OF AN INDIVIDUAL IN  
28 THE ORGANIZATION SERVING AS A KEY CONTACT FOR THE ORGANIZATION,  
29 AS WELL AS A MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE  
30 NUMBER THAT CAN BE USED TO CONTACT THE OFFICER OR INDIVIDUAL,  
31 AND THE ORGANIZATION'S WEB ADDRESS FOR GENERAL INQUIRIES;

32       (b) COPIES OF ALL NEW MEMBER APPLICATION FORMS AND  
33 PROGRAM GUIDELINES USED BY THE ORGANIZATION IN THE PRIOR  
34 CALENDAR YEAR;

35       (c) A COPY OF THE ORGANIZATION'S MOST RECENT AUDITED  
36 ANNUAL FINANCIAL STATEMENTS;

37       (d) THE INFORMATION THAT THE ORGANIZATION IS REQUIRED TO  
38 REPORT PURSUANT TO SUBSECTIONS (3)(a) AND (3)(b) OF THIS SECTION  
39 WITH RESPECT TO THE PRIOR CALENDAR YEAR;

40       (e) THE TOTAL NUMBER OF MEMBERS OF THE ORGANIZATION'S  
41 MEDICAL EXPENSE SHARING PROGRAM WHO ARE RESIDENTS OF THIS STATE  
42 AS OF THE END OF THE PRIOR CALENDAR YEAR; AND

43       (f) IF THE ORGANIZATION IS DESCRIBED IN 26 U.S.C. SEC. 501

1 (c)(3), AS AMENDED, A STATEMENT INDICATING WHETHER OR NOT THE  
2 ORGANIZATION HAS ENGAGED IN ANY EXCESS BENEFIT TRANSACTION, AS  
3 DEFINED IN 26 U.S.C. SEC. 4958 (c)(1), AS AMENDED.

4       **(6) Use of name.** AN ORGANIZATION OPERATING A MEDICAL  
5 EXPENSE SHARING PROGRAM SHALL NOT OPERATE THE PROGRAM UNDER  
6 ANY NAME OTHER THAN A NAME REPORTED PURSUANT TO SUBSECTION  
7 (5)(a) OF THIS SECTION.

8       **(7) No deceptive practices.** AN ORGANIZATION OPERATING A  
9 MEDICAL EXPENSE SHARING PROGRAM SHALL NOT MAKE, ISSUE, OR  
10 CIRCULATE OR CAUSE OR AUTHORIZE TO BE MADE, ISSUED, OR CIRCULATED  
11 ANY STATEMENT OR PUBLICATION THAT EITHER REPRESENTS THAT THE  
12 PROGRAM IS INSURANCE OR MATERIALLY MISREPRESENTS THE TERMS OR  
13 CONDITIONS OF THE PROGRAM.

14       **(8) Membership cards and provider communications.** AN  
15 ORGANIZATION OPERATING A MEDICAL EXPENSE SHARING PROGRAM SHALL  
16 INCLUDE ON ANY MEMBERSHIP CARD OR SIMILAR DOCUMENT ISSUED TO  
17 MEMBERS AND IN ANY WRITTEN COMMUNICATION SENT BY THE  
18 ORGANIZATION TO A HOSPITAL, PHYSICIAN, OR OTHER HEALTH-CARE  
19 PROVIDER A STATEMENT THAT THE PROGRAM IS NOT HEALTH INSURANCE  
20 AND THAT THE MEMBER IS PERSONALLY LIABLE FOR PAYMENT OF THE  
21 MEMBER'S OR PARTICIPANT'S MEDICAL BILLS.

22       **(9) No excess benefit transactions.** AN ORGANIZATION THAT IS  
23 DESCRIBED IN 26 U.S.C. SEC. 501 (c)(3), AS AMENDED, AND THAT  
24 OPERATES A MEDICAL EXPENSE SHARING PROGRAM SHALL NOT ENGAGE IN  
25 ANY EXCESS BENEFIT TRANSACTION AS DESCRIBED IN 26 U.S.C. SEC. 4958,  
26 AS AMENDED.

27       **6-27-105. Enforcement.** (1) **Noncompliance.** (a) THE  
28 ATTORNEY GENERAL MAY ISSUE A NOTICE TO ANY ORGANIZATION  
29 OPERATING A MEDICAL EXPENSE SHARING PROGRAM IF THE ATTORNEY  
30 GENERAL DETERMINES THAT THE ORGANIZATION HAS FAILED TO COMPLY  
31 WITH THE APPLICABLE PORTIONS OF SECTION 6-27-104. IF THE FAILURE TO  
32 COMPLY CONTINUES FOR MORE THAN FORTY-FIVE DAYS AFTER THE  
33 ORGANIZATION HAS BEEN NOTIFIED OF THE ALLEGED VIOLATION, THE  
34 ATTORNEY GENERAL MAY SEEK AN ORDER IN THE DISTRICT COURT IN AND  
35 FOR THE CITY AND COUNTY OF DENVER TO ENJOIN THE VIOLATION OR  
36 IMPOSE AN ADMINISTRATIVE PENALTY OF NOT MORE THAN TWO HUNDRED  
37 FIFTY DOLLARS PER DAY THAT THE VIOLATION CONTINUED AFTER RECEIPT  
38 OF THE NOTICE.

39       (b) THIS SUBSECTION (1) DOES NOT PRECLUDE THE IMPOSITION ON  
40 ANY ORGANIZATION OR PERSON OF ANY OTHER REMEDY OR ACTION  
41 AUTHORIZED UNDER ANY OTHER APPLICABLE LAW.

42       (2) **Insurance code.** (a) A MEDICAL EXPENSE SHARING PROGRAM  
43 IS NOT SUBJECT TO ANY OF THE INSURANCE LAWS OR RULES OF COLORADO,

1        INCLUDING TITLE 10, IF:

2            (I) THE PROGRAM FACILITATES THE SHARING OF A MEMBER'S  
3        ELIGIBLE MEDICAL EXPENSES THROUGH THE TRANSFER OF FUNDS TO THE  
4        MEMBER OR TO THE APPLICABLE PROVIDER DIRECTLY FROM ONE OR MORE  
5        OTHER MEMBERS AS DESIGNATED BY THE ORGANIZATION OPERATING THE  
6        PROGRAM; AND

7            (II) THE ORGANIZATION:

8                (A) IS DESCRIBED IN 26 U.S.C. SEC. 501 (c)(3); AND  
9                (B) DOES NOT OWN THE FUNDS DESCRIBED IN SUBSECTION (2)(a)(I)

10        OF THIS SECTION.

11                (b) FOR PURPOSES OF THIS SUBSECTION (2):

12                (I) THE TRANSFER OF A MEMBER'S FUNDS FROM AN ACCOUNT HELD  
13        FOR THE BENEFIT OF, OR IN TRUST FOR, THE MEMBER OR THE PROGRAM  
14        MEMBERSHIP CONSTITUTES THE TRANSFER OF FUNDS DIRECTLY FROM THE  
15        MEMBER;

16                (II) AN ORGANIZATION IS DEEMED NOT TO OWN FUNDS HELD IN AN  
17        ACCOUNT DESCRIBED IN SUBSECTION (2)(b)(I) OF THIS SECTION; AND

18                (III) EXCEPT AS SET FORTH IN SUBSECTION (2)(b)(II) OF THIS  
19        SECTION, AN ORGANIZATION IS DEEMED TO OWN ANY FUNDS REQUIRED TO  
20        BE REPORTED AS REVENUE OR ASSETS OF THE ORGANIZATION ON THE  
21        ORGANIZATION'S AUDITED FINANCIAL STATEMENTS OR THE  
22        ORGANIZATION'S FEDERAL FORM 990 FILED WITH THE FEDERAL INTERNAL  
23        REVENUE SERVICE.

24                (3) **Religious exercise protection.** (a) NOTHING IN THIS ARTICLE  
25        SHALL BE:

26                (I) APPLIED IN A MANNER THAT FOSTERS AN EXCESSIVE  
27        GOVERNMENT ENTANGLEMENT WITH RELIGION; OR

28                (II) CONSTRUED TO LIMIT ANY PROTECTION OF RELIGIOUS  
29        EXERCISE RIGHTS UNDER FEDERAL, STATE, OR LOCAL LAW OTHERWISE  
30        APPLICABLE TO ANY ORGANIZATION OPERATING A RELIGIOUS  
31        ORGANIZATION SHARING PROGRAM OR TO ANY MEMBER OF A RELIGIOUS  
32        ORGANIZATION SHARING PROGRAM EXERCISING THE MEMBER'S RELIGIOUS  
33        BELIEFS.

34                (b) A PROVISION OF THIS ARTICLE 27 OR OF TITLE 10 THAT  
35        SUBSTANTIALLY BURDENS THE RELIGIOUS EXERCISE OF ANY  
36        ORGANIZATION OPERATING A RELIGIOUS ORGANIZATION SHARING  
37        PROGRAM OR OF ANY MEMBER OF A RELIGIOUS ORGANIZATION SHARING  
38        PROGRAM EXERCISING THE MEMBER'S RELIGIOUS BELIEFS IS ENFORCEABLE  
39        AGAINST THE ORGANIZATION OR MEMBER ONLY IF THE STATE CAN  
40        DEMONSTRATE THAT THE ENFORCEMENT IS THE LEAST RESTRICTIVE  
41        MEANS OF FURTHERING A COMPELLING GOVERNMENTAL INTEREST.

42                (4) **Administration.** THE ATTORNEY GENERAL SHALL FACILITATE  
43        THE ANNUAL FILING BY EACH APPLICABLE ORGANIZATION OF A WEBSITE

1 LINK AS SET FORTH IN SECTION 6-27-104 (5) AND MAY IMPOSE A FEE IN AN  
2 AMOUNT NOT TO EXCEED ONE HUNDRED DOLLARS FOR EACH FILING.

3 **SECTION 2. Act subject to petition - effective date.** This act  
4 takes effect October 1, 2022; except that, if a referendum petition is filed  
5 pursuant to section 1 (3) of article V of the state constitution against this  
6 act or an item, section, or part of this act within the ninety-day period  
7 after final adjournment of the general assembly, then the act, item,  
8 section, or part will not take effect unless approved by the people at the  
9 general election to be held in November 2022 and, in such case, will take  
10 effect on the date of the official declaration of the vote thereon by the  
11 governor.".

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