

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 19-0513.02 Christy Chase x2008

HOUSE BILL 19-1168

HOUSE SPONSORSHIP

McCluskie and Rich, Buckner, Esgar, Kennedy, McLachlan, Roberts, Soper, Becker, Bird, Caraveo, Cutter, Duran, Exum, Froelich, Garnett, Gonzales-Gutierrez, Gray, Herod, Hooton, Jackson, Jaquez Lewis, Kipp, Lontine, Michaelson Jenet, Mullica, Singer, Sirota, Snyder, Valdez A., Valdez D., Weissman, Will

SENATE SPONSORSHIP

Donovan and Rankin,

House Committees

Health & Insurance
Appropriations

Senate Committees

Health & Human Services
Finance
Appropriations

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF THE COLORADO REINSURANCE**
102 **PROGRAM TO PROVIDE REINSURANCE PAYMENTS TO HEALTH**
103 **INSURERS TO AID IN PAYING HIGH-COST INSURANCE CLAIMS,**
104 **AND, IN CONNECTION THEREWITH, AUTHORIZING THE**
105 **COMMISSIONER OF INSURANCE TO SEEK APPROVAL FROM THE**
106 **FEDERAL GOVERNMENT TO WAIVE APPLICABLE FEDERAL**
107 **REQUIREMENTS, REQUEST FEDERAL FUNDS, OR BOTH, TO**
108 **ENABLE THE STATE TO IMPLEMENT THE PROGRAM, MAKING THE**
109 **PROGRAM CONTINGENT UPON WAIVER OR FUNDING APPROVAL,**
110 **AND MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does

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

SENATE
Amended 2nd Reading
April 30, 2019

HOUSE
3rd Reading Unamended
April 8, 2019

HOUSE
Amended 2nd Reading
April 5, 2019

1 WHERE PREMIUMS ARE CONSIDERABLY HIGHER THAN IN METROPOLITAN
2 AREAS OF THE STATE AND THERE IS A LACK OF COMPETITION AMONG
3 HEALTH CARE PROVIDERS AND CARRIERS;

4 (d) BECAUSE OF THE FINANCIAL BURDEN HIGH-COST HEALTH
5 INSURANCE PLACES ON CONSUMERS IN RURAL AREAS, A CONSIDERABLE
6 NUMBER OF THESE COST-BURDENED CONSUMERS MAY NOT PURCHASE
7 HEALTH INSURANCE, EXACERBATING THE PROBLEMS OF FEW CARRIERS,
8 FEW PLAN OPTIONS, AND HIGH HEALTH INSURANCE COSTS IN RURAL
9 REGIONS, AS WELL AS INCREASING THE NUMBER OF UNINSURED
10 COLORADANS; AND

11 (e) COLORADO HAS HISTORICALLY BEEN A NATIONAL LEADER IN
12 HEALTH CARE INNOVATION, AND IT IS IMPORTANT TO USE THAT
13 INNOVATIVE SPIRIT TO ADDRESS THE RISING COSTS OF HEALTH CARE IN THE
14 STATE BY DIRECTING THE COMMISSIONER OF INSURANCE TO CREATE A
15 REINSURANCE PROGRAM THAT WILL:

16 (I) MAKE PRIVATE HEALTH INSURANCE IN THE INDIVIDUAL
17 MARKET MORE ACCESSIBLE AND AFFORDABLE;

18 (II) ENCOURAGE PARTICIPATION AND COMPETITION BY CARRIERS
19 THROUGHOUT THE STATE, BUT PARTICULARLY IN RURAL AREAS OF THE
20 STATE, IN ORDER TO GIVE CONSUMERS THE ABILITY TO SEEK VALUE IN
21 HEALTH INSURANCE COVERAGE;


22 (III) DECREASE COSTS OF CARE, LEADING TO LOWER PREMIUMS
23 AND RESTRAINING, IF NOT DECREASING, THE GROWTH IN FEDERAL
24 SPENDING COMMITMENTS IN THE INDIVIDUAL MARKET; AND

25 (IV) SUPPORT AND EMPOWER, AND INCREASE ACCESS TO
26 AFFORDABLE, HIGH-VALUE HEALTH INSURANCE FOR, CONSUMERS WHO ARE
27 INELIGIBLE FOR PREMIUM TAX CREDIT SUBSIDIES WHILE MINIMIZING ANY

1 POTENTIAL NEGATIVE EFFECTS ON ACCESS TO AFFORDABLE, HIGH-VALUE
2 INSURANCE FOR CONSUMERS WHO ARE ELIGIBLE FOR PREMIUM TAX CREDIT
3 SUBSIDIES AND COST SHARING REDUCTIONS.

4 **10-16-1103. Definitions.** AS USED IN THIS PART 11, UNLESS THE
5 CONTEXT OTHERWISE REQUIRES:

6 (1) "ATTACHMENT POINT" MEANS THE AMOUNT SET BY THE
7 COMMISSIONER PURSUANT TO SECTION 10-16-1105 (2) FOR CLAIMS COSTS
8 INCURRED BY AN ELIGIBLE CARRIER FOR A COVERED PERSON'S COVERED
9 BENEFITS IN A BENEFIT YEAR, ABOVE WHICH THE CLAIMS COSTS FOR
10 BENEFITS ARE ELIGIBLE FOR REINSURANCE PAYMENTS UNDER THE
11 REINSURANCE PROGRAM.

12 
13 (2) "BENEFIT YEAR" MEANS THE CALENDAR YEAR FOR WHICH AN
14 ELIGIBLE CARRIER PROVIDES COVERAGE THROUGH AN INDIVIDUAL HEALTH
15 BENEFIT PLAN.

16 (3) "COINSURANCE RATE" MEANS THE RATE SET BY THE
17 COMMISSIONER PURSUANT TO SECTION 10-16-1105 (2) AT WHICH THE
18 REINSURANCE PROGRAM WILL REIMBURSE AN ELIGIBLE CARRIER FOR
19 CLAIMS INCURRED FOR A COVERED PERSON'S COVERED BENEFITS IN A
20 BENEFIT YEAR, WHICH CLAIMS EXCEED THE ATTACHMENT POINT BUT ARE
21 BELOW THE REINSURANCE CAP.

22 (4) "COMMISSIONER" MEANS THE COMMISSIONER OF INSURANCE,
23 THE COMMISSIONER'S DEPUTIES, OR THE DIVISION OF INSURANCE, AS
24 APPROPRIATE.

25 (5) "ELIGIBLE CARRIER" MEANS A CARRIER THAT:

26 (a) OFFERS INDIVIDUAL HEALTH BENEFIT PLANS THAT COMPLY
27 WITH THE FEDERAL ACT; AND

1 (b) INCURS CLAIMS COSTS FOR A COVERED PERSON'S COVERED
2 BENEFITS IN THE APPLICABLE BENEFIT YEAR.

3 (6) "HOSPITAL" MEANS A HOSPITAL LICENSED OR CERTIFIED BY THE
4 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO
5 SECTION 25-1.5-103 (1)(a).

6 (7) "MEDICAID" MEANS FEDERAL INSURANCE OR ASSISTANCE AS
7 PROVIDED BY TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", AS
8 AMENDED, AND THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLES
9 4, 5, AND 6 OF TITLE 25.5.

10 (8) "MEDICARE" MEANS FEDERAL INSURANCE OR ASSISTANCE
11 PROVIDED BY THE "HEALTH INSURANCE FOR THE AGED ACT", TITLE XVIII
12 OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, 42 U.S.C. SEC.
13 1395 ET SEQ.

14
15 (9) "PAYMENT PARAMETERS" MEANS THE ATTACHMENT POINT,
16 REINSURANCE CAP, AND COINSURANCE RATE FOR THE REINSURANCE
17 PROGRAM.

18
19 (10) "REINSURANCE CAP" MEANS THE AMOUNT SET BY THE
20 COMMISSIONER PURSUANT TO SECTION 10-16-1105 (2) FOR CLAIMS COSTS
21 INCURRED BY AN ELIGIBLE CARRIER FOR A COVERED PERSON'S COVERED
22 BENEFITS, ABOVE WHICH AMOUNT THE CLAIMS COSTS FOR BENEFITS ARE
23 NO LONGER ELIGIBLE FOR REINSURANCE PAYMENTS.

24 (11) "REINSURANCE PAYMENT" MEANS AN AMOUNT PAID TO AN
25 ELIGIBLE CARRIER UNDER THE REINSURANCE PROGRAM.

26 (12) "REINSURANCE PROGRAM" OR "PROGRAM" MEANS THE
27 COLORADO REINSURANCE PROGRAM ESTABLISHED UNDER SECTION

1 10-16-1105.

2 (13) "STATE INNOVATION WAIVER" MEANS A WAIVER OF ONE OR
3 MORE REQUIREMENTS OF THE FEDERAL ACT AUTHORIZED BY SECTION 1332
4 OF THE FEDERAL ACT, CODIFIED IN 42 U.S.C. SEC. 18052, AND APPLICABLE
5 FEDERAL REGULATIONS.

6 **10-16-1104. Commissioner powers and duties - rules - study**

7 **and report.** (1) THE COMMISSIONER HAS ALL POWERS NECESSARY TO
8 IMPLEMENT THIS PART 11 AND IS SPECIFICALLY AUTHORIZED TO:

9 (a) ENTER INTO CONTRACTS AS NECESSARY OR PROPER TO CARRY
10 OUT THE PROVISIONS AND PURPOSES OF THIS PART 11, INCLUDING
11 CONTRACTS FOR THE ADMINISTRATION OF THE REINSURANCE PROGRAM
12 AND WITH APPROPRIATE ADMINISTRATIVE STAFF, CONSULTANTS, AND
13 LEGAL COUNSEL;

14 (b) TAKE LEGAL ACTION AS NECESSARY TO AVOID THE PAYMENT
15 OF IMPROPER CLAIMS UNDER THE REINSURANCE PROGRAM;

16 (c) ESTABLISH ADMINISTRATIVE AND ACCOUNTING PROCEDURES
17 FOR THE OPERATION OF THE REINSURANCE PROGRAM;

18 (d) ESTABLISH PROCEDURES AND STANDARDS FOR CARRIERS TO
19 SUBMIT CLAIMS UNDER THE REINSURANCE PROGRAM;

20 (e) ESTABLISH OR ADJUST THE PAYMENT PARAMETERS IN
21 ACCORDANCE WITH SECTION 10-16-1105 (2) FOR EACH BENEFIT YEAR;

22 (f) ASSESS SPECIAL FEES AGAINST HOSPITALS AND, IF
23 APPLICABLE, CARRIERS FOR THE CONTINUOUS OPERATION OF THE
24 REINSURANCE PROGRAM, AS PROVIDED IN SECTION 10-16-1108;

25 (g) APPLY FOR A STATE INNOVATION WAIVER, FEDERAL FUNDS, OR
26 BOTH, IN ACCORDANCE WITH SECTION 10-16-1109, FOR THE
27 IMPLEMENTATION AND OPERATION OF THE REINSURANCE PROGRAM;

1 (h) APPLY FOR, ACCEPT, ADMINISTER, AND EXPEND GIFTS, GRANTS,
2 AND DONATIONS AND ANY FEDERAL OR STATE FUNDS THAT MAY BECOME
3 AVAILABLE FOR THE REINSURANCE PROGRAM; AND

4 (i) ADOPT RULES AS NECESSARY TO IMPLEMENT, ADMINISTER, AND
5 ENFORCE THIS PART 11, INCLUDING RULES NECESSARY TO ALIGN STATE
6 LAW WITH ANY FEDERAL PROGRAM AND RULES. THE RULES SHALL BE
7 ADOPTED IN ACCORDANCE WITH THE "STATE ADMINISTRATIVE
8 PROCEDURE ACT", ARTICLE 4 OF TITLE 24, INCLUDING THE REQUIREMENT
9 TO ESTABLISH A REPRESENTATIVE GROUP OF PARTICIPANTS PURSUANT TO
10 SECTION 24-4-103 (2).

11 (2) (a) IF THE REINSURANCE PROGRAM IS APPROVED PURSUANT TO
12 SECTION 10-16-1109, THE COMMISSIONER, DURING IMPLEMENTATION OF
13 THE PROGRAM, SHALL EVALUATE THE EFFECT OF THE PROGRAM ON ACCESS
14 TO AFFORDABLE, HIGH-VALUE HEALTH INSURANCE FOR CONSUMERS WHO
15 ARE ELIGIBLE FOR PREMIUM TAX CREDIT SUBSIDIES AND COST SHARING
16 REDUCTIONS AND MINIMIZE ANY POTENTIAL NEGATIVE EFFECTS ON THOSE
17 CONSUMERS.

18 (b) AFTER THE SECOND FULL YEAR OF OPERATION OF THE
19 PROGRAM, THE COMMISSIONER SHALL COMPLETE A STUDY THAT
20 EVALUATES:

21 (I) THE EFFECTS OF THE PROGRAM ON ACCESS TO AFFORDABLE,
22 HIGH-VALUE HEALTH INSURANCE FOR CONSUMERS WHO ARE ELIGIBLE FOR
23 PREMIUM TAX CREDIT SUBSIDIES AND COST SHARING REDUCTIONS; AND

24 (II) HEALTH PLAN AFFORDABILITY, INCLUDING COST SHARING AND
25 PREMIUMS.

26 (c) THE COMMISSIONER SHALL ISSUE A REPORT ON THE STUDY
27 WITHIN ONE HUNDRED TWENTY DAYS AFTER THE END OF THE SECOND FULL

1 YEAR OF OPERATION OF THE PROGRAM, POST THE REPORT ON THE
2 DIVISION'S WEBSITE, AND SUBMIT THE REPORT TO THE GOVERNOR, THE
3 SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES OR ITS SUCCESSOR
4 COMMITTEE, AND THE HOUSE OF REPRESENTATIVES HEALTH AND
5 INSURANCE COMMITTEE OR ITS SUCCESSOR COMMITTEE.

6 **10-16-1105. Reinsurance program - creation - enterprise**
7 **status - subject to waiver or funding approval - operation - payment**
8 **parameters - calculation of reinsurance payments - eligible carrier**
9 **requests - definition.** (1) (a) THERE IS HEREBY CREATED IN THE
10 DIVISION THE COLORADO REINSURANCE PROGRAM TO PROVIDE
11 REINSURANCE PAYMENTS TO ELIGIBLE CARRIERS. IMPLEMENTATION AND
12 OPERATION OF THE REINSURANCE PROGRAM IS CONTINGENT UPON
13 APPROVAL OF THE STATE INNOVATION WAIVER OR FEDERAL FUNDING
14 REQUEST SUBMITTED BY THE COMMISSIONER IN ACCORDANCE WITH
15 SECTION 10-16-1109.

16 (b) (I) THE REINSURANCE PROGRAM CONSTITUTES AN ENTERPRISE
17 FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION
18 AS LONG AS THE COMMISSIONER, ON BEHALF OF THE PROGRAM, RETAINS
19 AUTHORITY TO ISSUE REVENUE BONDS AND THE PROGRAM RECEIVES LESS
20 THAN TEN PERCENT OF ITS TOTAL REVENUES IN GRANTS, AS DEFINED IN
21 SECTION 24-77-102 (7), FROM ALL COLORADO STATE AND LOCAL
22 GOVERNMENTS COMBINED. SO LONG AS IT CONSTITUTES AN ENTERPRISE
23 PURSUANT TO THIS SECTION, THE PROGRAM IS NOT A DISTRICT FOR
24 PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

25 (II) SUBJECT TO APPROVAL BY THE GENERAL ASSEMBLY, EITHER
26 BY BILL OR JOINT RESOLUTION, AND AFTER APPROVAL BY THE GOVERNOR
27 PURSUANT TO SECTION 39 OF ARTICLE V OF THE STATE CONSTITUTION, THE

1 COMMISSIONER, ON BEHALF OF THE REINSURANCE PROGRAM, IS HEREBY
2 AUTHORIZED TO ISSUE REVENUE BONDS FOR THE EXPENSES OF THE
3 PROGRAM, SECURED BY REVENUES OF THE PROGRAM.

4 (c) IF THE STATE INNOVATION WAIVER OR FEDERAL FUNDING
5 REQUEST SUBMITTED BY THE COMMISSIONER PURSUANT TO SECTION
6 10-16-1109 IS APPROVED, THE COMMISSIONER SHALL IMPLEMENT AND
7 OPERATE THE REINSURANCE PROGRAM IN ACCORDANCE WITH THIS
8 SECTION.

9 (d) THE COMMISSIONER SHALL COLLECT OR ACCESS DATA FROM
10 EACH ELIGIBLE CARRIER AS NECESSARY TO DETERMINE REINSURANCE
11 PAYMENTS, ACCORDING TO THE DATA REQUIREMENTS UNDER SUBSECTION
12 (3)(c) OF THIS SECTION.

13 (e) (I) ON A QUARTERLY BASIS DURING THE APPLICABLE BENEFIT
14 YEAR;

15 (A) EACH ELIGIBLE CARRIER SHALL REPORT TO THE COMMISSIONER
16 ITS CLAIMS COSTS THAT EXCEED THE ATTACHMENT POINT FOR THAT
17 BENEFIT YEAR;

18 (B) EACH HOSPITAL THAT IS SUBJECT TO THE SPECIAL FEES
19 ASSESSED PURSUANT TO SECTION 10-16-1108 SHALL REPORT TO THE
20 COMMISSIONER THE AMOUNT THE HOSPITAL IS RESPONSIBLE FOR FUNDING
21 IN THE BENEFIT YEAR; AND

22 (C) IF SPECIAL FEES ARE ASSESSED AGAINST CARRIERS PURSUANT
23 TO SECTION 10-16-1108 (1)(b), EACH CARRIER THAT IS SUBJECT TO THE
24 SPECIAL FEES SHALL REPORT TO THE COMMISSIONER ON ITS COLLECTED
25 ASSESSMENTS IN THAT BENEFIT YEAR.

26 (II) FOR EACH APPLICABLE BENEFIT YEAR, THE COMMISSIONER
27 SHALL NOTIFY ELIGIBLE CARRIERS OF REINSURANCE PAYMENTS TO BE

1 MADE FOR THE APPLICABLE BENEFIT YEAR NO LATER THAN JUNE 30 OF THE
2 YEAR FOLLOWING THE APPLICABLE BENEFIT YEAR. BY AUGUST 15 OF THE
3 YEAR FOLLOWING THE APPLICABLE BENEFIT YEAR, THE COMMISSIONER
4 SHALL DISBURSE ALL APPLICABLE REINSURANCE PAYMENTS TO AN
5 ELIGIBLE CARRIER.

6 (2) (a) FOR PURPOSES OF DETERMINING ELIGIBILITY FOR AND
7 CALCULATING REINSURANCE PAYMENTS UNDER THE REINSURANCE
8 PROGRAM FOR THE 2020 BENEFIT YEAR IN ORDER TO MAKE PRIVATE
9 HEALTH INSURANCE COVERAGE MORE ACCESSIBLE AND AFFORDABLE AND
10 ENCOURAGE INCREASED CARRIER PARTICIPATION IN RURAL PARTS OF THE
11 STATE, THE COMMISSIONER SHALL SET THE PAYMENT PARAMETERS AT
12 AMOUNTS TO ACHIEVE:

13 (I) A REDUCTION IN CLAIMS COSTS OF BETWEEN THIRTY AND
14 THIRTY-FIVE PERCENT IN GEOGRAPHIC RATING AREA NUMBERS FIVE AND
15 NINE;

16 (II) A REDUCTION IN CLAIMS COSTS OF BETWEEN TWENTY AND
17 TWENTY-FIVE PERCENT IN GEOGRAPHIC RATING AREA NUMBERS FOUR, SIX,
18 SEVEN, AND EIGHT; AND

19 (III) A REDUCTION IN CLAIMS COSTS OF BETWEEN FIFTEEN AND
20 TWENTY PERCENT IN GEOGRAPHIC RATING AREA NUMBERS ONE, TWO, AND
21 THREE.

22 (b) FOR THE 2021 BENEFIT YEAR, AFTER A STAKEHOLDER PROCESS,
23 THE COMMISSIONER SHALL ESTABLISH AND PUBLISH THE PAYMENT
24 PARAMETERS FOR THAT BENEFIT YEAR BY MARCH 15, 2020. IN SETTING
25 THE PAYMENT PARAMETERS UNDER THIS SUBSECTION (2)(b), THE
26 COMMISSIONER SHALL CONSIDER THE FOLLOWING FACTORS AS THEY APPLY
27 IN EACH GEOGRAPHIC RATING AREA IN THE STATE:

1 (I) PARTICIPATION AND COMPETITION BY CARRIERS IN THE
2 INDIVIDUAL MARKET;

3 (II) ENROLLMENT ACROSS ALL INCOME LEVELS AND MORBIDITY IN
4 THE INDIVIDUAL MARKET;

5 (III) PARTICIPATION AND COMPETITION BY PROVIDERS; AND

6 (IV) RATES IN THE INDIVIDUAL MARKET.

7 (c) IF THE AMOUNT OF MONEY FROM FUNDING SOURCES SPECIFIED
8 IN SECTION 10-16-1107 IS ANTICIPATED TO BE INADEQUATE TO FULLY
9 FUND THE PAYMENT PARAMETERS, THE COMMISSIONER SHALL
10 ESTABLISH NEW PAYMENT PARAMETERS WITHIN THE AVAILABLE MONEY.
11 THE COMMISSIONER SHALL ALLOW AN ELIGIBLE CARRIER TO REVISE AN
12 APPLICABLE RATE FILING FOR THE NEXT BENEFIT YEAR BASED ON THE
13 FINAL PAYMENT PARAMETERS ESTABLISHED PURSUANT TO THIS
14 SUBSECTION (2)(c) AND ON ACTUAL REINSURANCE PAYMENTS RECEIVED
15 BY THE ELIGIBLE CARRIER.

16 (3) (a) AN ELIGIBLE CARRIER THAT MEETS THE REQUIREMENTS OF
17 THIS SUBSECTION (3) AND SUBSECTION (4) OF THIS SECTION MAY REQUEST
18 REINSURANCE PAYMENTS FROM THE REINSURANCE PROGRAM.

19 (b) AN ELIGIBLE CARRIER MUST MAKE REQUESTS FOR
20 REINSURANCE PAYMENTS IN ACCORDANCE WITH THE REQUIREMENTS
21 ESTABLISHED BY THE COMMISSIONER.

22 (c) TO RECEIVE REINSURANCE PAYMENTS THROUGH THE
23 REINSURANCE PROGRAM, AN ELIGIBLE CARRIER MUST, BY APRIL 30 OF THE
24 YEAR FOLLOWING THE BENEFIT YEAR FOR WHICH REINSURANCE PAYMENTS
25 ARE REQUESTED:

26 (I) PROVIDE THE COMMISSIONER WITH ACCESS TO THE DATA
27 WITHIN THE DEDICATED DATA ENVIRONMENT ESTABLISHED BY THE

1 ELIGIBLE CARRIER UNDER THE FEDERAL RISK ADJUSTMENT PROGRAM
2 UNDER 42 U.S.C. SEC. 18063; AND

3 (II) SUBMIT TO THE COMMISSIONER AN ATTESTATION THAT THE
4 CARRIER HAS COMPLIED WITH THE DEDICATED DATA ENVIRONMENTS,
5 DATA REQUIREMENTS, ESTABLISHMENT AND USAGE OF MASKED ENROLLEE
6 IDENTIFICATION NUMBERS, AND DATA SUBMISSION DEADLINES.

7 (d) AN ELIGIBLE CARRIER SHALL MAINTAIN RECORDS SUFFICIENT
8 TO SUBSTANTIATE THE REQUESTS FOR REINSURANCE PAYMENTS MADE
9 PURSUANT TO THIS SECTION FOR AT LEAST SIX YEARS. AN ELIGIBLE
10 CARRIER SHALL ALSO MAKE THOSE RECORDS AVAILABLE UPON REQUEST
11 FROM THE COMMISSIONER FOR PURPOSES OF VERIFICATION,
12 INVESTIGATION, AUDIT, OR OTHER REVIEW OF REINSURANCE PAYMENT
13 REQUESTS.

14 (e) THE COMMISSIONER MAY HAVE AN ELIGIBLE CARRIER AUDITED
15 TO ASSESS THE CARRIER'S COMPLIANCE WITH THIS SECTION. THE ELIGIBLE
16 CARRIER SHALL ENSURE THAT ITS CONTRACTORS, SUBCONTRACTORS, AND
17 AGENTS COOPERATE WITH ANY AUDIT UNDER THIS SECTION.

18 (4) (a) (I) THE COMMISSIONER SHALL CALCULATE EACH
19 REINSURANCE PAYMENT BASED ON AN ELIGIBLE CARRIER'S INCURRED
20 CLAIMS COSTS FOR A COVERED PERSON'S COVERED BENEFITS IN THE
21 APPLICABLE BENEFIT YEAR. IF THE CLAIMS COSTS DO NOT EXCEED THE
22 ATTACHMENT POINT FOR THE APPLICABLE BENEFIT YEAR, THE CARRIER IS
23 NOT ELIGIBLE FOR A REINSURANCE PAYMENT.

24 (II) IF THE CLAIMS COSTS EXCEED THE ATTACHMENT POINT FOR
25 THE APPLICABLE BENEFIT YEAR, THE COMMISSIONER SHALL CALCULATE
26 THE REINSURANCE PAYMENT AS THE PRODUCT OF THE COINSURANCE RATE
27 AND THE ELIGIBLE CARRIER'S CLAIMS COSTS, UP TO THE REINSURANCE CAP.

1 (b) A CARRIER IS INELIGIBLE FOR REINSURANCE PAYMENTS FOR
2 CLAIMS COSTS FOR A COVERED PERSON'S COVERED BENEFITS IN THE
3 APPLICABLE BENEFIT YEAR THAT EXCEED THE REINSURANCE CAP.

4 (c) THE COMMISSIONER SHALL ENSURE THAT REINSURANCE
5 PAYMENTS MADE TO AN ELIGIBLE CARRIER DO NOT EXCEED THE TOTAL
6 AMOUNT PAID BY THE ELIGIBLE CARRIER FOR ANY ELIGIBLE CLAIM.
7 "TOTAL AMOUNT PAID BY THE ELIGIBLE CARRIER FOR ANY ELIGIBLE
8 CLAIM" MEANS THE AMOUNT PAID BY THE ELIGIBLE CARRIER BASED ON
9 THE ALLOWED AMOUNT LESS ANY DEDUCTIBLE, COINSURANCE, OR
10 COPAYMENT, AS OF THE TIME THE DATA ARE SUBMITTED OR MADE
11 ACCESSIBLE UNDER SUBSECTION (3)(c) OF THIS SECTION.

12 (d) AN ELIGIBLE CARRIER MAY REQUEST THAT THE COMMISSIONER
13 RECONSIDER A DECISION ON THE CARRIER'S REQUEST FOR REINSURANCE
14 PAYMENTS WITHIN THIRTY DAYS AFTER NOTICE OF THE COMMISSIONER'S
15 DECISION. A FINAL ACTION OR ORDER OF THE COMMISSIONER UNDER THIS
16 SUBSECTION (4)(d) IS SUBJECT TO JUDICIAL REVIEW IN ACCORDANCE WITH
17 SECTION 24-4-106.

18 (5) IN ORDER TO PROMOTE MORE COST-EFFECTIVE HEALTH
19 CARE COVERAGE AND TO BE FAIR TO FEDERAL TAXPAYERS BY
20 RESTRAINING GROWTH IN FEDERAL SPENDING COMMITMENTS, THE
21 COMMISSIONER SHALL REQUIRE EACH ELIGIBLE CARRIER THAT
22 PARTICIPATES IN THE PROGRAM TO FILE WITH THE COMMISSIONER, BY A
23 DATE AND IN A FORM AND MANNER SPECIFIED BY THE COMMISSIONER BY
24 RULE, THE CARE MANAGEMENT PROTOCOLS THE ELIGIBLE CARRIER WILL
25 USE TO MANAGE CLAIMS WITHIN THE PAYMENT PARAMETERS.

26 **10-16-1106. Accounting - reports - audits.** (1) THE
27 COMMISSIONER SHALL MAINTAIN AN ACCOUNTING FOR EACH BENEFIT

1 YEAR OF ALL:

2 (a) MONEY EXPENDED FOR REINSURANCE PAYMENTS AND
3 ADMINISTRATIVE AND OPERATIONAL EXPENSES;

4 (b) REQUESTS FOR REINSURANCE PAYMENTS RECEIVED FROM
5 ELIGIBLE CARRIERS;

6 (c) REINSURANCE PAYMENTS MADE TO ELIGIBLE CARRIERS; AND

7 (d) ADMINISTRATIVE AND OPERATIONAL EXPENSES INCURRED FOR
8 THE REINSURANCE PROGRAM.

9 (2) BY NOVEMBER 1 OF THE YEAR FOLLOWING THE APPLICABLE
10 BENEFIT YEAR OR SIXTY CALENDAR DAYS AFTER THE FINAL DISBURSEMENT
11 OF REINSURANCE PAYMENTS FOR THE APPLICABLE BENEFIT YEAR,
12 WHICHEVER IS LATER, THE COMMISSIONER SHALL MAKE AVAILABLE TO
13 THE PUBLIC A REPORT SUMMARIZING THE REINSURANCE PROGRAM'S
14 OPERATIONS FOR EACH BENEFIT YEAR. THE COMMISSIONER SHALL POST
15 THE REPORT ON THE DIVISION'S WEBSITE.

16 (3) THE REINSURANCE PROGRAM IS SUBJECT TO AUDIT BY THE
17 STATE AUDITOR. THE COMMISSIONER SHALL ENSURE THAT ALL OF THE
18 REINSURANCE PROGRAM'S CONTRACTORS, SUBCONTRACTORS, AND AGENTS
19 COOPERATE WITH THE AUDIT.

20 (4) ON OR BEFORE NOVEMBER 1, 2020, AND ON OR BEFORE
21 NOVEMBER 1, 2021, THE DIVISION SHALL INCLUDE AN UPDATE REGARDING
22 THE PROGRAM IN ITS REPORT TO THE MEMBERS OF THE APPLICABLE
23 COMMITTEES OF REFERENCE IN THE SENATE AND HOUSE OF
24 REPRESENTATIVES AS REQUIRED BY THE "STATE MEASUREMENT FOR
25 ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART)
26 GOVERNMENT ACT", PART 2 OF ARTICLE 7 OF TITLE 2.

27 **10-16-1107. Funding for reinsurance program - sources -**

1 **permitted uses - reinsurance program cash fund - calculation of total**
2 **funding for program.** (1) (a) THERE IS HEREBY CREATED IN THE STATE

3 TREASURY THE REINSURANCE PROGRAM CASH FUND, WHICH CONSISTS OF:

4 (I) FEDERAL PASS-THROUGH FUNDING GRANTED PURSUANT TO 42
5 U.S.C. SEC. 18052 (a)(3) OR ANY OTHER FEDERAL FUNDS THAT ARE MADE
6 AVAILABLE FOR THE REINSURANCE PROGRAM; ==

7 (II) SPECIAL FEES ASSESSED AGAINST HOSPITALS AND, IF
8 APPLICABLE, CARRIERS AS PROVIDED IN SECTION 10-16-1108;

9 (III) THE FOLLOWING AMOUNTS TRANSFERRED FROM THE GENERAL
10 FUND TO THE REINSURANCE PROGRAM CASH FUND, BUT ONLY IF HOUSE
11 BILL 19-1245 IS ENACTED AT THE FIRST REGULAR SESSION OF THE
12 SEVENTY-SECOND GENERAL ASSEMBLY AND BECOMES LAW:

13 (A) FIFTEEN MILLION DOLLARS, TRANSFERRED TO THE FUND ON
14 JUNE 30, 2020; AND

15 (B) FORTY MILLION DOLLARS, TRANSFERRED TO THE FUND ON
16 JUNE 30, 2021;

17 (IV) AN AMOUNT OF PREMIUM TAX REVENUES DEPOSITED IN THE
18 FUND PURSUANT TO SECTION 10-3-209 (4)(a)(III); AND

19 (V) ANY MONEY THE GENERAL ASSEMBLY APPROPRIATES TO THE
20 FUND FOR THE PROGRAM.

21 (b) ALL MONEY DEPOSITED OR PAID INTO OR APPROPRIATED TO THE
22 REINSURANCE PROGRAM CASH FUND, INCLUDING INTEREST OR INCOME
23 EARNED ON THE INVESTMENT OF MONEY IN THE FUND, IS CONTINUOUSLY
24 AVAILABLE AND APPROPRIATED TO THE DIVISION TO BE EXPENDED IN
25 ACCORDANCE WITH THIS PART 11. ANY INTEREST OR INCOME EARNED ON
26 THE INVESTMENT OF MONEY IN THE FUND SHALL BE CREDITED TO THE
27 FUND.

1 (c) THE REINSURANCE PROGRAM CASH FUND IS PART OF THE
2 REINSURANCE PROGRAM ENTERPRISE ESTABLISHED PURSUANT TO SECTION
3 10-16-1105 (1)(b).

4 (2) THE COMMISSIONER MAY SEEK, ACCEPT, AND EXPEND GIFTS,
5 GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE
6 OPERATION, RESERVES, AND SUSTAINABILITY OF THE REINSURANCE
7 PROGRAM.

8 (3) THE COMMISSIONER MAY EXPEND MONEY RECEIVED FROM THE
9 SOURCES SPECIFIED IN SUBSECTIONS (1) AND (2) OF THIS SECTION FOR:

10 (a) REINSURANCE PAYMENTS UNDER THE REINSURANCE PROGRAM;
11 AND

12 (b) ADMINISTRATIVE AND OPERATING EXPENSES OF THE
13 REINSURANCE PROGRAM, THE COMMISSIONER, AND THE DIVISION UNDER
14 THIS PART 11.

15 **10-16-1108. Special assessments against hospitals and carriers**
16 **- rules - enforcement.** (1) (a) (I) FOR THE 2020 AND 2021 BENEFIT
17 YEARS, AS APPLICABLE, THE COMMISSIONER MAY ASSESS SPECIAL FEES
18 AGAINST HOSPITALS, SUBJECT TO THE FOLLOWING:

19 (A) FEES ASSESSED AGAINST HOSPITALS MUST COMPLY WITH AND
20 NOT VIOLATE 42 CFR 433.68 AND, IN ANY YEAR, MUST NOT EXCEED THE
21 LESSER OF FORTY MILLION DOLLARS OR THE MAXIMUM AMOUNT ALLOWED
22 UNDER 42 CFR 433.68;

23 (B) NO HOSPITAL SYSTEM SHALL BE RESPONSIBLE FOR FUNDING,
24 ON A YEARLY BASIS, MORE THAN TWENTY-FIVE PERCENT OF THE TOTAL
25 FUNDING REQUIRED FOR THE PROGRAM.

26 == ==
27 (II) THE COMMISSIONER SHALL NOT FUND THE PROGRAM THROUGH

1 ANY TYPE OF FEE SCHEDULE, RATE SETTING, OR OTHER COST-SAVING
2 MECHANISM IMPOSED ON HOSPITALS.

3 (b) (I) FOR ANY BENEFIT YEAR STARTING ON OR AFTER JANUARY
4 1, 2020, IF, AFTER CARRIERS HAVE FILED AND THE COMMISSIONER HAS
5 APPROVED RATES FOR THE BENEFIT YEAR, THE FEDERAL GOVERNMENT
6 SUSPENDS THE FEE IMPOSED PURSUANT TO SECTION 9010 OF THE FEDERAL
7 ACT FOR THAT BENEFIT YEAR, THE COMMISSIONER SHALL ASSESS AGAINST
8 CARRIERS A SPECIAL FEE OF TWO AND TWO-TENTHS PERCENT OF PREMIUMS
9 COLLECTED BY CARRIERS, OR A SPECIAL FEE IN AN AMOUNT EQUAL TO THE
10 AMOUNT OF THE FEE IMPOSED BY THE FEDERAL GOVERNMENT PURSUANT
11 TO SECTION 9010 OF THE FEDERAL ACT IF THAT FEE AMOUNT IS DIFFERENT
12 THAN THE AMOUNT SPECIFIED IN THIS SUBSECTION (1)(b)(I), FOR THE
13 PERIOD THAT CARRIERS COLLECTED THE FEE IMPOSED PURSUANT TO
14 SECTION 9010 OF THE FEDERAL ACT.

15 (II) THIS SUBSECTION (1)(b) DOES NOT APPLY TO PLANS OR
16 BENEFITS PROVIDED UNDER MEDICARE, MEDICAID, OR THE "CHILDREN'S
17 BASIC HEALTH PLAN" ESTABLISHED UNDER ARTICLE 8 OF TITLE 25.5.

18 (c) THE COMMISSIONER SHALL USE THE SPECIAL FEES ASSESSED
19 PURSUANT TO THIS SUBSECTION (1) TO PAY THE ADMINISTRATIVE AND
20 OPERATING EXPENSES OF THE REINSURANCE PROGRAM, INCLUDING
21 REINSURANCE PAYMENTS AND EXPENSES OF THE PROGRAM, THE
22 COMMISSIONER, AND THE DIVISION.

23 (d) THE COMMISSIONER SHALL TRANSMIT SPECIAL FEES COLLECTED
24 PURSUANT TO THIS SUBSECTION (1) TO THE STATE TREASURER FOR DEPOSIT
25 IN THE REINSURANCE PROGRAM CASH FUND CREATED IN SECTION
26 10-16-1107.

27 (2) THE COMMISSIONER SHALL PROMULGATE RULES TO IMPLEMENT

1 THIS SECTION, INCLUDING:

2 (a) THE REASONABLE TIME PERIODS FOR THE BILLING AND
3 COLLECTION OF THE SPECIAL FEES; AND

4 == ==

5 (b) DETERMINING THE AMOUNT OF THE ASSESSMENT ON HOSPITALS
6 IN ACCORDANCE WITH SUBSECTION (1)(a) OF THIS SECTION.

7 (3) A HOSPITAL SHALL PAY THE SPECIAL FEES IMPOSED PURSUANT
8 TO SUBSECTION (1)(a) OF THIS SECTION FROM ITS GENERAL REVENUES AND
9 IS PROHIBITED FROM:

10 (a) COLLECTING AN ASSESSMENT FROM CONSUMERS AS ANY TYPE
11 OF SURCHARGE ON ITS FEES;

12 (b) PASSING THE SPECIAL FEES ON TO CONSUMERS AS ANY TYPE OF
13 INCREASE TO FEES OR CHARGES FOR SERVICES; OR

14 (c) OTHERWISE PASSING THE SPECIAL FEE ON TO CONSUMERS IN
15 ANY MANNER.

16 (4) IF THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID
17 SERVICES IN THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN
18 SERVICES INFORMS THE STATE THAT THE STATE WILL NOT BE IN
19 COMPLIANCE WITH 42 CFR 433 AS A RESULT OF THE SPECIAL FEES
20 ASSESSED ON HOSPITALS PURSUANT TO THIS SECTION, THE COMMISSIONER
21 SHALL REDUCE THE AMOUNT OF THE SPECIAL FEES AS NECESSARY TO
22 AVOID ANY REDUCTION IN THE HEALTHCARE AFFORDABILITY AND
23 SUSTAINABILITY FEE COLLECTED PURSUANT TO SECTION 25.5-4-402.4.

24 (5) IF A HOSPITAL OR CARRIER, IF APPLICABLE, FAILS TO PAY A
25 SPECIAL FEE TO THE COMMISSIONER IN ACCORDANCE WITH THE TIME
26 PERIODS ESTABLISHED BY RULE, THE COMMISSIONER MAY USE ALL POWERS
27 CONFERRED BY THE INSURANCE LAWS OF THIS STATE TO ENFORCE

1 PAYMENT OF THE SPECIAL FEES.

2 **10-16-1109. State innovation waiver - federal funding -**

3 **Colorado reinsurance program.** (1) (a) FOR PURPOSES OF

4 IMPLEMENTING AND OPERATING THE REINSURANCE PROGRAM AS SET

5 FORTH IN THIS PART 11 FOR PLAN YEARS STARTING ON OR AFTER JANUARY

6 1, 2020, THE COMMISSIONER MAY APPLY TO THE SECRETARY OF THE

7 UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR:

8 (I) A TWO-YEAR STATE INNOVATION WAIVER IN ACCORDANCE

9 WITH SECTION 1332 OF THE FEDERAL ACT, CODIFIED AT 42 U.S.C. SEC.

10 18052, AND 45 CFR 155.1300;

11 (II) FEDERAL FUNDS FOR THE REINSURANCE PROGRAM; OR

12 (III) A STATE INNOVATION WAIVER AND FEDERAL FUNDS.

13 (b) AN APPLICATION FOR A STATE INNOVATION WAIVER OR FOR

14 FEDERAL FUNDS MUST CLEARLY STATE THAT OPERATION OF THE

15 REINSURANCE PROGRAM IS CONTINGENT ON APPROVAL OF THE WAIVER OR

16 FUNDING REQUEST.

17 (c) THE COMMISSIONER SHALL ENSURE THAT A WAIVER

18 APPLICATION SUBMITTED PURSUANT TO THIS SECTION COMPLIES WITH THE

19 REQUIREMENTS SPECIFIED IN SECTION 1332 OF THE FEDERAL ACT,

20 CODIFIED AT 42 U.S.C. SEC. 18052, AND 45 CFR 155.1308.

21 (d) THE COMMISSIONER SHALL INCLUDE IN A WAIVER APPLICATION

22 A REQUEST FOR A PASS-THROUGH OF FEDERAL FUNDING IN ACCORDANCE

23 WITH SECTION 1332 (a)(3) OF THE FEDERAL ACT, 42 U.S.C. SEC. 18052

24 (a)(3), TO ALLOW THE STATE TO OBTAIN AND USE, FOR PURPOSES OF

25 HELPING FUND THE REINSURANCE PROGRAM, ANY FEDERAL FUNDS THAT

26 WOULD, ABSENT THE WAIVER, BE USED TO PAY ADVANCE PAYMENT TAX

27 CREDITS AND COST-SHARING REDUCTIONS AUTHORIZED UNDER THE

1 FEDERAL ACT.

2 (2) THE COMMISSIONER SHALL NOTIFY THE FOLLOWING IN WRITING
3 OF ANY FEDERAL ACTIONS REGARDING THE WAIVER OR FUNDING REQUEST:

4 (a) THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY;

5 (b) THE SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES OR
6 ANY SUCCESSOR COMMITTEE; AND

7 (c) THE HOUSE OF REPRESENTATIVES COMMITTEES ON HEALTH AND
8 INSURANCE AND PUBLIC HEALTH CARE AND HUMAN SERVICES OR ANY
9 SUCCESSOR COMMITTEES.

10 **10-16-1110. Repeal of part - notice to revisor of statutes.**

11 (1) (a) THE COMMISSIONER SHALL NOTIFY THE REVISOR OF STATUTES IN
12 WRITING, BY E-MAIL SENT TO REVISOROFSTATUTES.GA@STATE.CO.US,
13 UPON RECEIPT FROM THE SECRETARY OF THE UNITED STATES
14 DEPARTMENT OF HEALTH AND HUMAN SERVICES OF NOTICE OF APPROVAL
15 OR DENIAL OF THE WAIVER OR FUNDING REQUESTED UNDER SECTION
16 **10-16-1109.**

17 (b) (I) IF THE NOTICE FROM THE COMMISSIONER STATES THAT THE
18 WAIVER OR FUNDING WAS DENIED, THIS PART 11 IS REPEALED, EFFECTIVE
19 UPON THE DATE IDENTIFIED IN THE NOTICE THAT THE WAIVER OR FUNDING
20 WAS DENIED OR, IF THE NOTICE DOES NOT SPECIFY THAT DATE, UPON THE
21 DATE OF THE NOTICE OF DENIAL TO THE REVISOR OF STATUTES.

22 (II) IF THE NOTICE FROM THE COMMISSIONER STATES THAT THE
23 WAIVER OR FUNDING WAS APPROVED, THIS SUBSECTION (1) IS REPEALED,
24 EFFECTIVE UPON THE DATE IDENTIFIED IN THE NOTICE THAT THE WAIVER
25 OR FUNDING WAS APPROVED OR, IF THE NOTICE DOES NOT SPECIFY THAT
26 DATE, UPON THE DATE OF THE NOTICE OF APPROVAL TO THE REVISOR OF
27 STATUTES.

1 (2) THIS PART 11 IS REPEALED, EFFECTIVE SEPTEMBER 1, 2023. ==

2 **SECTION 2.** In Colorado Revised Statutes, 10-3-209, **amend**

3 **(4)(a) as follows:**

4 **10-3-209. Tax on premiums collected - exemptions - penalties.**

5 **(4) (a) The division of insurance shall transmit all taxes, penalties, and**
6 **finances it collects under this section to the state treasurer for deposit in the**
7 **general fund; except that the state treasurer shall deposit amounts in the**
8 **specified cash funds as follows:**

9 **(I) In the division of insurance cash fund created in section**
10 **10-1-103 (3), an amount that is equal to the general assembly's**
11 **appropriation from the fund to the division for its direct and indirect**
12 **expenditures less the total fee revenue that is deposited in the fund;**
13 **except that the amount deposited in the fund under this subparagraph (I)**
14 **may SHALL not exceed five percent of all taxes collected under this**
15 **section; and**

16 **(II) In the wildfire emergency response fund created in section**
17 **24-33.5-1226 C.R.S., and the wildfire preparedness fund created in**
18 **section 24-33.5-1227, C.R.S., the amount of the taxes, penalties, and fines**
19 **that the general assembly appropriates to each of the cash funds;**

20 **(III) FOR THE 2020-21 FISCAL YEAR, IN THE REINSURANCE**
21 **PROGRAM CASH FUND CREATED IN SECTION 10-16-1107, THE AMOUNT OF**
22 **PREMIUM TAXES COLLECTED PURSUANT TO THIS SECTION IN THE 2020**
23 **CALENDAR YEAR THAT EXCEEDS THE AMOUNT OF PREMIUM TAXES**
24 **COLLECTED PURSUANT TO THIS SECTION IN THE 2019 CALENDAR YEAR;**
25 **AND**

26 **(IV) FOR THE 2021-22 FISCAL YEAR, IN THE REINSURANCE**
27 **PROGRAM CASH FUND CREATED IN SECTION 10-16-1107, THE AMOUNT OF**

1 PREMIUM TAXES COLLECTED PURSUANT TO THIS SECTION IN THE 2021
2 CALENDAR YEAR THAT EXCEEDS THE AMOUNT OF PREMIUM TAXES
3 COLLECTED PURSUANT TO THIS SECTION IN THE 2020 CALENDAR YEAR.

4 **SECTION 3. Appropriation.** For the 2019-20 state fiscal year,
5 \$785,904 is appropriated to the department of regulatory agencies for use
6 by the division of insurance. This appropriation is from the division of
7 insurance cash fund created in section 10-1-103 (3), C.R.S., and is based
8 on an assumption that the division will require an additional 3.0 FTE. To
9 implement this act, the division may use this appropriation for the
10 Colorado reinsurance program.

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