

CHAPTER 204

INSURANCE

HOUSE BILL 19-1168

BY REPRESENTATIVE(S) McCluskie and Rich, Buckner, Esgar, Kennedy, McLachlan, Roberts, Soper, 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, Becker, Arndt, Buentello, Galindo, Melton, Tipper, Titone;
also SENATOR(S) Donovan and Rankin, Bridges, Coram, Crowder, Fenberg, Fields, Ginal, Gonzales, Pettersen, Rodriguez, Story, Todd, Winter, Garcia.

AN ACT

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

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

SECTION 1. In Colorado Revised Statutes, **add** part 11 to article 16 of title 10 as follows:

**PART 11
COLORADO REINSURANCE PROGRAM**

10-16-1101. Short title. THE SHORT TITLE OF THIS PART 11 IS THE "COLORADO REINSURANCE PROGRAM ACT".

10-16-1102. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) ALL COLORADANS DESERVE ACCESS TO HIGH-QUALITY, AFFORDABLE HEALTH CARE TO HELP SUPPORT THEIR WELL-BEING AND ECONOMIC SECURITY;

(b) INCREASING COSTS OF HEALTH CARE IN COLORADO HAVE LED TO PREMIUM

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

INCREASES FOR HEALTH INSURANCE IN THE INDIVIDUAL MARKET THAT HAVE CREATED A FINANCIAL BURDEN FOR SOME COLORADANS PURCHASING INSURANCE IN THE INDIVIDUAL MARKET;

(c) THAT BURDEN IS HEIGHTENED IN RURAL AREAS OF THE STATE, WHERE PREMIUMS ARE CONSIDERABLY HIGHER THAN IN METROPOLITAN AREAS OF THE STATE AND THERE IS A LACK OF COMPETITION AMONG HEALTH CARE PROVIDERS AND CARRIERS;

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

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

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

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

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

(IV) SUPPORT AND EMPOWER, AND INCREASE ACCESS TO AFFORDABLE, HIGH-VALUE HEALTH INSURANCE FOR, CONSUMERS WHO ARE INELIGIBLE FOR PREMIUM TAX CREDIT SUBSIDIES WHILE MINIMIZING ANY POTENTIAL NEGATIVE EFFECTS ON ACCESS TO AFFORDABLE, HIGH-VALUE INSURANCE FOR CONSUMERS WHO ARE ELIGIBLE FOR PREMIUM TAX CREDIT SUBSIDIES AND COST SHARING REDUCTIONS.

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

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

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

(3) "COINSURANCE RATE" MEANS THE RATE SET BY THE COMMISSIONER

PURSUANT TO SECTION 10-16-1105(2) AT WHICH THE REINSURANCE PROGRAM WILL REIMBURSE AN ELIGIBLE CARRIER FOR CLAIMS INCURRED FOR A COVERED PERSON'S COVERED BENEFITS IN A BENEFIT YEAR, WHICH CLAIMS EXCEED THE ATTACHMENT POINT BUT ARE BELOW THE REINSURANCE CAP.

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

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

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

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

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

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

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

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

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

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

(12) "REINSURANCE PROGRAM" OR "PROGRAM" MEANS THE COLORADO REINSURANCE PROGRAM ESTABLISHED UNDER SECTION 10-16-1105.

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

10-16-1104. Commissioner powers and duties - rules - study and report.

(1) THE COMMISSIONER HAS ALL POWERS NECESSARY TO IMPLEMENT THIS PART 11 AND IS SPECIFICALLY AUTHORIZED TO:

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) THE COMMISSIONER SHALL ISSUE A REPORT ON THE STUDY WITHIN ONE HUNDRED TWENTY DAYS AFTER THE END OF THE SECOND FULL YEAR OF OPERATION OF THE PROGRAM, POST THE REPORT ON THE DIVISION'S WEBSITE, AND SUBMIT THE REPORT TO THE GOVERNOR, THE SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES OR ITS SUCCESSOR COMMITTEE, AND THE HOUSE OF REPRESENTATIVES HEALTH AND INSURANCE COMMITTEE OR ITS SUCCESSOR COMMITTEE.

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

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

(II) SUBJECT TO APPROVAL BY THE GENERAL ASSEMBLY, EITHER BY BILL OR JOINT RESOLUTION, AND AFTER APPROVAL BY THE GOVERNOR PURSUANT TO SECTION 39 OF ARTICLE V OF THE STATE CONSTITUTION, THE COMMISSIONER, ON BEHALF OF THE REINSURANCE PROGRAM, IS HEREBY AUTHORIZED TO ISSUE REVENUE BONDS FOR THE EXPENSES OF THE PROGRAM, SECURED BY REVENUES OF THE PROGRAM.

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

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

(e) (I) ON A QUARTERLY BASIS DURING THE APPLICABLE BENEFIT YEAR:

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

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

(C) IF SPECIAL FEES ARE ASSESSED AGAINST CARRIERS PURSUANT TO SECTION 10-16-1108 (1)(b), EACH CARRIER THAT IS SUBJECT TO THE SPECIAL FEES SHALL

REPORT TO THE COMMISSIONER ON ITS COLLECTED ASSESSMENTS IN THAT BENEFIT YEAR.

(II) FOR EACH APPLICABLE BENEFIT YEAR, THE COMMISSIONER SHALL NOTIFY ELIGIBLE CARRIERS OF REINSURANCE PAYMENTS TO BE MADE FOR THE APPLICABLE BENEFIT YEAR NO LATER THAN JUNE 30 OF THE YEAR FOLLOWING THE APPLICABLE BENEFIT YEAR. BY AUGUST 15 OF THE YEAR FOLLOWING THE APPLICABLE BENEFIT YEAR, THE COMMISSIONER SHALL DISBURSE ALL APPLICABLE REINSURANCE PAYMENTS TO AN ELIGIBLE CARRIER.

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

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

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

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

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

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

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

(III) PARTICIPATION AND COMPETITION BY PROVIDERS; AND

(IV) RATES IN THE INDIVIDUAL MARKET.

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

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

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

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

(I) PROVIDE THE COMMISSIONER WITH ACCESS TO THE DATA WITHIN THE DEDICATED DATA ENVIRONMENT ESTABLISHED BY THE ELIGIBLE CARRIER UNDER THE FEDERAL RISK ADJUSTMENT PROGRAM UNDER 42 U.S.C. SEC. 18063; AND

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

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

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

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

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

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

(c) THE COMMISSIONER SHALL ENSURE THAT REINSURANCE PAYMENTS MADE TO AN ELIGIBLE CARRIER DO NOT EXCEED THE TOTAL AMOUNT PAID BY THE ELIGIBLE CARRIER FOR ANY ELIGIBLE CLAIM. "TOTAL AMOUNT PAID BY THE ELIGIBLE CARRIER FOR ANY ELIGIBLE CLAIM" MEANS THE AMOUNT PAID BY THE ELIGIBLE CARRIER

BASED ON THE ALLOWED AMOUNT LESS ANY DEDUCTIBLE, COINSURANCE, OR COPAYMENT, AS OF THE TIME THE DATA ARE SUBMITTED OR MADE ACCESSIBLE UNDER SUBSECTION (3)(c) OF THIS SECTION.

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

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

10-16-1106. Accounting - reports - audits. (1) THE COMMISSIONER SHALL MAINTAIN AN ACCOUNTING FOR EACH BENEFIT YEAR OF ALL:

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

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

(c) REINSURANCE PAYMENTS MADE TO ELIGIBLE CARRIERS; AND

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

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

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

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

10-16-1107. Funding for reinsurance program - sources - permitted uses - reinsurance program cash fund - calculation of total funding for program.

(1) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE REINSURANCE PROGRAM CASH FUND, WHICH CONSISTS OF:

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

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

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

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

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

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

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

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

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

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

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

(a) REINSURANCE PAYMENTS UNDER THE REINSURANCE PROGRAM; AND

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

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

FOLLOWING:

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

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

(II) THE COMMISSIONER SHALL NOT FUND THE PROGRAM THROUGH ANY TYPE OF FEE SCHEDULE, RATE SETTING, OR OTHER COST-SAVING MECHANISM IMPOSED ON HOSPITALS.

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

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

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

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

(2) THE COMMISSIONER SHALL PROMULGATE RULES TO IMPLEMENT THIS SECTION, INCLUDING:

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

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

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

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

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

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

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

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

10-16-1109. State innovation waiver - federal funding - Colorado reinsurance program. (1) (a) FOR PURPOSES OF IMPLEMENTING AND OPERATING THE REINSURANCE PROGRAM AS SET FORTH IN THIS PART 11 FOR PLAN YEARS STARTING ON OR AFTER JANUARY 1, 2020, THE COMMISSIONER MAY APPLY TO THE SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR:

(I) A TWO-YEAR STATE INNOVATION WAIVER IN ACCORDANCE WITH SECTION 1332 OF THE FEDERAL ACT, CODIFIED AT 42 U.S.C. SEC. 18052, AND 45 CFR 155.1300;

(II) FEDERAL FUNDS FOR THE REINSURANCE PROGRAM; OR

(III) A STATE INNOVATION WAIVER AND FEDERAL FUNDS.

(b) AN APPLICATION FOR A STATE INNOVATION WAIVER OR FOR FEDERAL FUNDS MUST CLEARLY STATE THAT OPERATION OF THE REINSURANCE PROGRAM IS CONTINGENT ON APPROVAL OF THE WAIVER OR FUNDING REQUEST.

(c) THE COMMISSIONER SHALL ENSURE THAT A WAIVER APPLICATION SUBMITTED PURSUANT TO THIS SECTION COMPLIES WITH THE REQUIREMENTS SPECIFIED IN SECTION 1332 OF THE FEDERAL ACT, CODIFIED AT 42 U.S.C. SEC. 18052, AND 45 CFR 155.1308.

(d) THE COMMISSIONER SHALL INCLUDE IN A WAIVER APPLICATION A REQUEST FOR A PASS-THROUGH OF FEDERAL FUNDING IN ACCORDANCE WITH SECTION 1332 (a)(3) OF THE FEDERAL ACT, 42 U.S.C. SEC. 18052 (a)(3), TO ALLOW THE STATE TO OBTAIN AND USE, FOR PURPOSES OF HELPING FUND THE REINSURANCE PROGRAM, ANY FEDERAL FUNDS THAT WOULD, ABSENT THE WAIVER, BE USED TO PAY ADVANCE PAYMENT TAX CREDITS AND COST-SHARING REDUCTIONS AUTHORIZED UNDER THE FEDERAL ACT.

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

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

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

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

10-16-1110. Repeal of part - notice to revisor of statutes. (1) (a) THE COMMISSIONER SHALL NOTIFY THE REVISOR OF STATUTES IN WRITING, BY E-MAIL SENT TO REVISOROFSTATUTES.GA@STATE.CO.US, UPON RECEIPT FROM THE SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES OF NOTICE OF APPROVAL OR DENIAL OF THE WAIVER OR FUNDING REQUESTED UNDER SECTION 10-16-1109.

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

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

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

SECTION 2. In Colorado Revised Statutes, 10-3-209, **amend** (4)(a) as follows:

10-3-209. Tax on premiums collected - exemptions - penalties - repeal.

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

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

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

(III) (A) FOR THE 2020-21 AND 2021-22 FISCAL YEARS, IN THE REINSURANCE PROGRAM CASH FUND CREATED IN SECTION 10-16-1107, AN AMOUNT EQUAL TO THE AMOUNT OF PREMIUM TAXES COLLECTED PURSUANT TO THIS SECTION IN THE 2020 CALENDAR YEAR THAT EXCEEDS THE AMOUNT OF PREMIUM TAXES COLLECTED PURSUANT TO THIS SECTION IN THE 2019 CALENDAR YEAR.

(B) THIS SUBSECTION (4)(a)(III) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2023.

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

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

Approved: May 17, 2019