

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0075.02 Kristen Forrestal x4217

HOUSE BILL 20-1349

HOUSE SPONSORSHIP

Roberts and Kennedy, McCluskie

SENATE SPONSORSHIP

Donovan, Fenberg, Gonzales

House Committees

Health & Insurance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE COLORADO OPTION PLAN TO BE IMPLEMENTED BY
102 EXECUTIVE AGENCIES IN ORDER TO CREATE MORE AFFORDABLE
103 HEALTH BENEFIT PLANS FOR HEALTH CARE CONSUMERS IN THIS
104 STATE.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Beginning January 1, 2022, the bill requires a health insurance carrier (carrier) that offers an individual health benefit plan in this state to offer a Colorado option plan in the Colorado counties where the carrier

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.

offers the individual health benefit plan. The commissioner of insurance (commissioner) is required to develop and implement a Colorado option plan that must:

- ! Be offered to Colorado residents who purchase health insurance in the individual market;
- ! Implement a standardized plan that:
 - ! Allows consumers to easily compare health benefit plans; and
 - ! Provides first-dollar, predeductible coverage for certain services;
- ! Include the essential health benefits package;
- ! Provide different, specific levels of coverage;
- ! Include a hospital reimbursement rate formula;
- ! Require hospital participation;
- ! Require a minimum medical loss ratio of 85%; and
- ! Require carriers and pharmacy benefit management firms to pass rebate savings through to consumers and document the savings and pass-through in a form and manner determined by the commissioner.

The Colorado option advisory board (board) is created to advise and make recommendations to the commissioner on all aspects of the Colorado option plan.

The bill authorizes the commissioner to promulgate rules to develop, implement, and operate the Colorado option plan, including:

- ! Expanding the Colorado option plan to the small group market;
- ! Establishing a hospital reimbursement rate formula; and
- ! Requiring carriers to offer the Colorado option plan in specific counties.

If a hospital refuses to participate in the Colorado option plan, the department of public health and environment may issue a warning, impose fines, or suspend, revoke, or impose conditions on the hospital's license.

The commissioner, in consultation with the board, is required to evaluate the Colorado option plan beginning July 1, 2024, and each year thereafter.

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

2 **SECTION 1.** In Colorado Revised Statutes, 10-16-107, **add** (3.7)
3 as follows:

4 **10-16-107. Rate filing regulation - benefits ratio - rules.**

1 (3.7) (a) THE COMMISSIONER SHALL DENY ANY RATE IN THE INDIVIDUAL,
2 SMALL GROUP, OR LARGE GROUP MARKET THAT REFLECTS A COST SHIFT
3 BETWEEN THE COLORADO OPTION PLAN DESCRIBED IN SECTION
4 10-16-1205 AND THE PLAN FOR WHICH THE RATES ARE SUBMITTED AND
5 MAY CONSIDER THE TOTAL COST OF HEALTH CARE IN MAKING THIS
6 DETERMINATION.

7 (b) THE COMMISSIONER MAY ADOPT RULES AS NECESSARY TO
8 IMPLEMENT THIS SUBSECTION (3.7).

9 **SECTION 2.** In Colorado Revised Statutes, **add** part 12 to article
10 16 of title 10 as follows:

11 PART 12

12 COLORADO AFFORDABLE HEALTH CARE OPTION

13 **10-16-1201. Short title.** THE SHORT TITLE OF THIS PART 12 IS THE
14 "COLORADO AFFORDABLE HEALTH CARE OPTION ACT".

15 **10-16-1202. Legislative declaration.** (1) THE GENERAL
16 ASSEMBLY HEREBY FINDS AND DECLARES THAT:

17 (a) ENSURING THAT ALL PEOPLE HAVE ACCESS TO AFFORDABLE
18 HEALTH CARE IS A CHALLENGE THAT HAS VEXED PUBLIC OFFICIALS AND
19 POLICY EXPERTS FOR DECADES DESPITE SEEMINGLY CONSTANT EFFORTS TO
20 ADDRESS THE ISSUE;

21 (b) ALTHOUGH GREAT STRIDES HAVE BEEN MADE IN INCREASING
22 ACCESS TO HEALTH CARE COVERAGE THROUGH FEDERAL LEGISLATION,
23 NOT ENOUGH HAS BEEN ACCOMPLISHED TO ADDRESS THE AFFORDABILITY
24 OF HEALTH INSURANCE IN COLORADO, PARTICULARLY IN THE STATE'S
25 RURAL AREAS;

26 (c) TO ADDRESS THE ISSUE, IN 2019 THE GENERAL ASSEMBLY
27 PASSED LEGISLATION THAT DIRECTED THE DEPARTMENT OF HEALTH CARE

1 POLICY AND FINANCING AND THE DIVISION TO DESIGN A STATE OPTION FOR
2 HEALTH CARE COVERAGE THAT WOULD BE MORE AFFORDABLE THAN
3 CURRENT OPTIONS AVAILABLE IN THE INDIVIDUAL AND SMALL GROUP
4 MARKETS; AND

5 (d) IN THEIR FINAL REPORT FOR COLORADO'S PUBLIC OPTION,
6 ISSUED NOVEMBER 15, 2019, THE DEPARTMENT OF HEALTH CARE POLICY
7 AND FINANCING AND THE DIVISION RECOMMENDED THAT COLORADO
8 ESTABLISH A STATE OPTION FOR HEALTH CARE COVERAGE OFFERED BY
9 PRIVATE HEALTH INSURERS AND SOLD IN THE INDIVIDUAL MARKET, BOTH
10 ON AND OFF THE EXCHANGE.

11 (2) THE GENERAL ASSEMBLY THEREFORE DECLARES ITS INTENT TO
12 ESTABLISH AN AFFORDABLE HEALTH CARE OPTION, TO BE KNOWN AS THE
13 "COLORADO OPTION PLAN", THROUGH A PARTNERSHIP AMONG STATE
14 GOVERNMENT, CARRIERS, AND HOSPITALS FOR THE PURPOSE OF:

15 (a) INCREASING THE AVAILABILITY OF AFFORDABLE HEALTH
16 INSURANCE STATEWIDE TO ANY RESIDENT SEEKING COVERAGE IN THE
17 INDIVIDUAL MARKET;

18 (b) INCREASING CONSUMER CHOICE BY HAVING AT LEAST TWO
19 CARRIERS OFFERING HEALTH BENEFIT PLANS IN EVERY COUNTY;

20 (c) RAISING THE MEDICAL LOSS RATIO FROM EIGHTY PERCENT TO
21 EIGHTY-FIVE PERCENT, NOT INCLUDING INSURANCE PRODUCERS'
22 COMMISSIONS, ONLY FOR INDIVIDUALS WHO PURCHASE THE COLORADO
23 OPTION PLAN;

24 (d) SETTING HOSPITAL REIMBURSEMENT RATES FOR ONLY THOSE
25 WHO PURCHASE THE COLORADO OPTION PLAN THROUGH A PUBLIC AND
26 TRANSPARENT FORMULA THAT SUPPORTS INDEPENDENT HOSPITALS,
27 PROMOTES SUSTAINABILITY, HELPS TO STABILIZE RURAL HOSPITALS, AND

1 ADDRESSES COLORADO'S HIGH-PROFIT OUTLIER HOSPITALS; AND

2 (e) REQUIRING THAT ALL COMPENSATION AND REBATES FROM
3 PRESCRIPTION DRUG MANUFACTURERS PAID TO CARRIERS OR PHARMACY
4 BENEFIT MANAGEMENT FIRMS BE PASSED THROUGH AS SAVINGS TO
5 POLICYHOLDERS.

6 (3) IN ESTABLISHING THE COLORADO OPTION PLAN, THE GENERAL
7 ASSEMBLY ALSO DECLARES ITS DESIRE TO HAVE A STRONG AND
8 INDEPENDENT ADVISORY BOARD THAT WILL MONITOR, ADVISE, AND
9 OVERRULE DECISIONS MADE IN INSTITUTING AND ADMINISTERING THE
10 COLORADO OPTION PLAN.

11 **10-16-1203. Definitions.** AS USED IN THIS PART 12, UNLESS THE
12 CONTEXT OTHERWISE REQUIRES:

13 (1) "BOARD" MEANS THE COLORADO OPTION ADVISORY BOARD
14 CREATED IN SECTION 10-16-1204.

15 (2) "COLORADO OPTION PLAN" MEANS THE COLORADO OPTION
16 PLAN DESCRIBED IN SECTION 10-16-1205.

17 (3) "CRITICAL ACCESS HOSPITAL" MEANS A HOSPITAL THAT IS
18 FEDERALLY CERTIFIED OR UNDERGOING FEDERAL CERTIFICATION AS A
19 CRITICAL ACCESS HOSPITAL PURSUANT TO 42 CFR 485, SUBPART F.

20 (4) "HEALTH SYSTEM" MEANS A CORPORATION OR OTHER
21 ORGANIZATION THAT OWNS, CONTAINS, OR OPERATES THREE OR MORE
22 HOSPITALS.

23 (5) "HOSPITAL" MEANS A HOSPITAL LICENSED OR CERTIFIED
24 PURSUANT TO SECTION 25-1.5-103 (1)(a); EXCEPT THAT "HOSPITAL" DOES
25 NOT INCLUDE PSYCHIATRIC HOSPITALS, GENERAL HOSPITALS THAT ARE
26 CERTIFIED AS LONG-TERM CARE HOSPITALS, AND INPATIENT
27 REHABILITATION FACILITIES.

1 (6) "INSURANCE PRODUCER" HAS THE MEANING SET FORTH IN
2 SECTION 10-2-103 (6).

3 (7) "MEDICARE" MEANS FEDERAL INSURANCE OR ASSISTANCE
4 PROVIDED BY THE "HEALTH INSURANCE FOR THE AGED ACT", TITLE XVIII
5 OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, 42 U.S.C. SEC.
6 1395 ET SEQ.

7 (8) "MEDICARE REIMBURSEMENT RATES" MEANS THE SCHEDULE
8 OF REIMBURSEMENT RATES FOR PARTICULAR HEALTH CARE SERVICES
9 PROVIDED UNDER MEDICARE.

10 (9) "REBATE" MEANS A REBATE, DISCOUNT, MARKET-SHARE
11 ALLOWANCE, REMUNERATION, COMPENSATION, OR OTHER PAYMENT OR
12 PRICE CONCESSION PROVIDED BY A PRESCRIPTION DRUG MANUFACTURER
13 TO A PHARMACY BENEFIT MANAGEMENT FIRM OR CARRIER.

14 (10) "SMALL GROUP MARKET" MEANS THE MARKET FOR SMALL
15 GROUP SICKNESS AND ACCIDENT INSURANCE AS THE TERM IS DEFINED IN
16 SECTION 10-16-102 (63).

17 (11) "STANDARDIZED PLAN" MEANS A HEALTH BENEFIT PLAN THAT
18 HAS A DEFINED BENEFIT DESIGN AND COST-SHARING STRUCTURE FOR
19 COVERED HEALTH CARE SERVICES.

20 **10-16-1204. Colorado option advisory board - creation -**
21 **membership - terms - duties - commissioner rules.** (1) (a) (I) THERE
22 IS HEREBY CREATED THE COLORADO OPTION ADVISORY BOARD FOR THE
23 PURPOSE OF MAKING RECOMMENDATIONS TO DEVELOP, IMPLEMENT, AND
24 OPERATE THE COLORADO OPTION PLAN IN THE BEST INTERESTS OF ALL
25 COLORADANS. THE BOARD CONSISTS OF NINE VOTING MEMBERS. THE
26 EXECUTIVE DIRECTOR OF THE EXCHANGE OR THE EXECUTIVE DIRECTOR'S
27 DESIGNEE SHALL SERVE AS A VOTING MEMBER OF THE BOARD. ON OR

1 BEFORE JULY 15, 2020:

2 (A) THE GOVERNOR SHALL APPOINT FOUR VOTING
3 NONLEGISLATIVE MEMBERS TO THE BOARD, TWO OF WHOM ARE
4 REPRESENTATIVES OF CONSUMERS WHO HAVE THE HIGHEST BARRIERS TO
5 ACCESSING HEALTH CARE, ONE OF WHOM HAS EXPERTISE OR EXPERIENCE
6 IN THE PROVISION OF HEALTH CARE TO UNINSURED AND LOW-INCOME
7 POPULATIONS, AND ONE OF WHOM HAS EXPERIENCE OR EXPERTISE IN
8 HEALTH CARE FINANCE.

9 (B) THE PRESIDENT OF THE SENATE, THE MINORITY LEADER OF THE
10 SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, AND THE
11 MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES SHALL EACH
12 APPOINT ONE VOTING NONLEGISLATIVE MEMBER TO THE BOARD. THE
13 MEMBERS APPOINTED BY LEGISLATORS SHALL INCLUDE A MEMBER WITH
14 EXPERIENCE OR EXPERTISE IN VALUE-BASED PURCHASING AND PLAN
15 DESIGN, A MEMBER WITH EXPERIENCE OR EXPERTISE IN THE PROVISION OF
16 HEALTH CARE SERVICES IN RURAL AREAS, A MEMBER WITH EXPERIENCE OR
17 EXPERTISE IN HOSPITAL ADMINISTRATION, AND A MEMBER FROM AN
18 EMPLOYEE ORGANIZATION THAT REPRESENTS EMPLOYEES IN THE HEALTH
19 CARE INDUSTRY.

20 (II) NO MORE THAN FOUR VOTING MEMBERS OF THE BOARD MAY
21 BE FROM THE HEALTH CARE INDUSTRY, INCLUDING HOSPITALS, CARRIERS,
22 INSURANCE PRODUCERS, AND PROVIDERS. THE MEMBERS MUST PUBLICLY
23 DISCLOSE WHETHER THEY HAVE ANY FINANCIAL INTEREST IN THE
24 IMPLEMENTATION OF THE COLORADO OPTION PLAN.

25 (III) THE PERSONS MAKING THE APPOINTMENTS TO THE BOARD
26 SHALL COORDINATE APPOINTMENTS TO ENSURE THAT:

27 (A) THE MAJORITY OF THE MEMBERS DO NOT HAVE A FINANCIAL

1 INTEREST IN THE HEALTH CARE INDUSTRY;

2 (B) THE MEMBERS REFLECT THE GEOGRAPHIC, ETHNIC, RACIAL,
3 AND ECONOMIC DIVERSITY OF THE STATE;

4 (C) THE MEMBERS AS A WHOLE HAVE DEMONSTRATED EXPERIENCE
5 AND EXPERTISE IN MOST AREAS OUTLINED IN SUBSECTION (1)(a)(IV) OF
6 THIS SECTION; AND

7 (D) AT LEAST THREE VOTING MEMBERS OF THE BOARD ARE FROM
8 RURAL AREAS OF THE STATE.

9 (IV) THE MEMBERS OF THE BOARD MUST HAVE EXPERIENCE OR
10 EXPERTISE IN MOST OF THE FOLLOWING AREAS, AND EACH INDIVIDUAL
11 APPOINTED TO THE BOARD MUST HAVE DEMONSTRATED EXPERIENCE OR
12 EXPERTISE IN AT LEAST TWO OF THE FOLLOWING AREAS:

13 (A) INDIVIDUAL HEALTH INSURANCE COVERAGE;

14 (B) VALUE-BASED PURCHASING AND PLAN DESIGN;

15 (C) HEALTH CARE CONSUMER NAVIGATION AND ASSISTANCE IN
16 ACCESSING HEALTH CARE;

17 (D) HEALTH CARE FINANCE;

18 (E) THE PROVISION OF HEALTH CARE SERVICES IN RURAL AREAS;

19 (F) THE PROVISION OF HEALTH CARE SERVICES TO UNINSURED AND
20 LOW-INCOME POPULATIONS;

21 (G) HEALTH CARE ACTUARIAL ANALYSIS;

22 (H) AS A MEMBER OF AN EMPLOYEE ORGANIZATION THAT
23 REPRESENTS EMPLOYEES IN THE HEALTH CARE INDUSTRY;

24 (I) HEALTH CARE DELIVERY SYSTEMS;

25 (J) REPRESENTING CONSUMERS IN THE DEVELOPMENT OF HEALTH
26 CARE POLICY;

27 (K) HOSPITAL ADMINISTRATION; OR

1 (L) INSURANCE BROKERAGE.

2 (V) (A) EXCEPT AS PROVIDED IN SUBSECTION (1)(a)(V)(B) OF THIS
3 SECTION, THE TERMS OF OFFICE OF THE VOTING MEMBERS OF THE BOARD
4 ARE THREE YEARS, AND MEMBERS OF THE BOARD MAY SERVE A MAXIMUM
5 OF TWO CONSECUTIVE THREE-YEAR TERMS.

6 (B) IN ORDER TO ENSURE STAGGERED TERMS, THE INITIAL TERM OF
7 OFFICE OF TWO OF THE VOTING MEMBERS APPOINTED BY THE GOVERNOR
8 AND THE MEMBERS APPOINTED BY THE MINORITY LEADER OF THE SENATE
9 AND THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES IS TWO
10 YEARS. AFTER SERVING AN INITIAL TWO-YEAR TERM, THESE MEMBERS
11 MAY SERVE UP TO TWO ADDITIONAL, CONSECUTIVE THREE-YEAR TERMS.

12 (b) (I) THE GOVERNOR SHALL APPOINT A REPRESENTATIVE OF
13 EACH OF THE FOLLOWING TO SERVE AS NONVOTING, EX OFFICIO MEMBERS
14 OF THE BOARD:

15 (A) THE OFFICE OF THE GOVERNOR;

16 (B) A STATEWIDE ASSOCIATION OF PROFESSIONAL NURSES;

17 (C) A STATEWIDE ASSOCIATION REPRESENTING PHYSICIANS;

18 (D) A STATEWIDE ASSOCIATION OF HOSPITALS; AND

19 (E) A STATEWIDE ASSOCIATION OF CARRIERS.

20 (II) THE COMMISSIONER, THE EXECUTIVE DIRECTOR OF THE
21 DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, AND THE
22 ADMINISTRATOR OF THE ALL-PAYER HEALTH CLAIMS DATABASE
23 ESTABLISHED PURSUANT TO SECTION 25.5-1-204, OR THEIR DESIGNEES,
24 SHALL ALSO SERVE AS NONVOTING, EX OFFICIO MEMBERS.

25 (c) MEMBERS OF THE BOARD MAY BE REMOVED BY THEIR
26 RESPECTIVE APPOINTING AUTHORITIES FOR CAUSE, INCLUDING
27 INCOMPETENCY, NEGLIGENCE OF DUTY, OR MALFEASANCE IN OFFICE OR ANY

1 OTHER CAUSE, AND AS MAY BE DEFINED BY THE BYLAWS OF THE BOARD.

2 (d) IF A VACANCY OCCURS ON THE BOARD, THE APPOINTING
3 AUTHORITY FOR THE VACATED POSITION SHALL FILL THE VACANCY BY
4 APPOINTMENT FOR THE REMAINDER OF THE UNEXPIRED TERM. IF A
5 MEMBER IS APPOINTED TO FILL A VACANCY AND SERVES FOR MORE THAN
6 HALF OF THE UNEXPIRED TERM, THE MEMBER IS ELIGIBLE TO SERVE ONE
7 MORE TERM.

8 (2) THE COMMISSIONER SHALL CONVENE THE BOARD AND PROVIDE
9 TECHNICAL AND ADMINISTRATIVE SUPPORT TO ASSIST THE BOARD IN
10 CARRYING OUT ITS RESPONSIBILITIES PURSUANT TO THIS PART 12. THE
11 BOARD SHALL ELECT A CHAIR AND VICE-CHAIR FROM AMONG THE VOTING
12 MEMBERS OF THE BOARD. THE BOARD SHALL MEET AT LEAST QUARTERLY,
13 HOLD PUBLIC MEETINGS, AND ALLOW THE OPPORTUNITY FOR PUBLIC
14 TESTIMONY. THE BOARD SHALL ESTABLISH BYLAWS TO GUIDE ITS
15 OPERATION, INCLUDING THE AUTHORITY TO GO INTO EXECUTIVE SESSION
16 TO DISCUSS CONFIDENTIAL OR PROPRIETARY INFORMATION.

17 (3) BOARD MEMBERS MAY RECEIVE A PER DIEM AND
18 REIMBURSEMENT FOR TRAVEL AND OTHER NECESSARY EXPENSES WHILE
19 ENGAGED IN THE PERFORMANCE OF OFFICIAL DUTIES OF THE BOARD.

20 (4) BOARD MEMBERS ARE SUBJECT TO PART 4 OF ARTICLE 6,
21 ARTICLE 18, AND PART 2 OF ARTICLE 72 OF TITLE 24.

22 (5) THE BOARD SHALL ADVISE THE COMMISSIONER ON THE
23 DEVELOPMENT, IMPLEMENTATION, AND OPERATION OF THE COLORADO
24 OPTION PLAN, INCLUDING:

25 (a) A STANDARDIZED PLAN AS THE COLORADO OPTION PLAN;

26 (b) HOW PASS-THROUGH FUNDS FROM ANY FEDERAL WAIVERS
27 RECEIVED PURSUANT TO SECTION 25.5-1-129 (7) SHOULD BE ALLOCATED;

1 (c) ANY FEDERAL WAIVER APPLICATION REQUIRED IN SECTION
2 25.5-1-129 (7);

3 (d) VALUE-BASED PAYMENTS AND PLAN DESIGN IN THE COLORADO
4 OPTION PLAN;

5 (e) ON OR BEFORE JANUARY 1, 2023, THE TIMING AND FEASIBILITY
6 OF OFFERING THE COLORADO OPTION PLAN IN THE SMALL GROUP MARKET;

7 (f) THE EVALUATION OF THE COLORADO OPTION PLAN, INCLUDING
8 DATA AND METRICS TO AID THE COMMISSIONER OR AN INDEPENDENT
9 THIRD-PARTY CONTRACTOR IF THE COMMISSIONER CONTRACTS WITH A
10 THIRD-PARTY PURSUANT TO SECTION 10-16-1207; AND

11 (g) OPPORTUNITIES TO LEVERAGE THE COLORADO OPTION PLAN TO
12 PROMOTE INNOVATION THAT IMPROVES THE QUALITY OF, ACCESS TO, AND
13 AFFORDABILITY OF HEALTH CARE.

14 (6) THE BOARD MAY OVERRIDE A DECISION OF THE COMMISSIONER
15 CONCERNING THE DEVELOPMENT, IMPLEMENTATION, AND OPERATION OF
16 THE COLORADO OPTION PLAN BY AN AFFIRMATIVE VOTE OF AT LEAST
17 SEVEN OF THE VOTING MEMBERS OF THE BOARD.

18 **10-16-1205. Colorado option plan - carriers required to offer**
19 **- required components - rules.** (1) (a) BEGINNING JANUARY 1, 2022, A
20 CARRIER THAT OFFERS AN INDIVIDUAL HEALTH BENEFIT PLAN IN
21 COLORADO SHALL OFFER THE COLORADO OPTION PLAN IN THE INDIVIDUAL
22 MARKET IN EACH COUNTY WHERE THE CARRIER OFFERS AN INDIVIDUAL
23 HEALTH BENEFIT PLAN.

24 (b) THE COMMISSIONER SHALL ENSURE THAT THERE ARE AT LEAST
25 TWO CARRIERS THAT OFFER THE COLORADO OPTION PLAN IN EACH COUNTY
26 IN THE STATE. IN ORDER TO ENSURE THAT THERE ARE AT LEAST TWO
27 CARRIERS OFFERING THE COLORADO OPTION PLAN IN EACH COUNTY IN THE

1 STATE, THE COMMISSIONER MAY, BY RULE, REQUIRE CARRIERS TO OFFER
2 THE COLORADO OPTION PLAN IN SPECIFIC COUNTIES. IN DETERMINING
3 WHETHER CARRIERS ARE REQUIRED TO OFFER THE COLORADO OPTION
4 PLAN IN A SPECIFIC COUNTY, THE COMMISSIONER SHALL CONSIDER:

5 (I) EACH CARRIER'S STRUCTURE, THE NUMBER OF COVERED LIVES
6 THE CARRIER HAS IN ALL LINES OF BUSINESS IN EACH COUNTY, AND THE
7 CARRIER'S EXISTING SERVICE AREAS; AND

8 (II) ALTERNATIVE HEALTH CARE COVERAGE AVAILABLE IN EACH
9 COUNTY, INCLUDING HEALTH CARE COVERAGE COOPERATIVES AS DEFINED
10 IN SECTION 10-16-1002 (2).

11 (c) THE COMMISSIONS PAID TO INSURANCE PRODUCERS FOR THE
12 SALE OF THE COLORADO OPTION PLAN MUST BE COMPARABLE TO THE
13 AVERAGE COMMISSIONS PAID FOR THE SALE OF OTHER PLANS OFFERED IN
14 THE INDIVIDUAL MARKET.

15 (2) (a) THE COMMISSIONER SHALL ADOPT RULES TO DEVELOP,
16 IMPLEMENT, AND OPERATE THE COLORADO OPTION PLAN IN ACCORDANCE
17 WITH THIS SECTION. IN DEVELOPING THE COLORADO OPTION PLAN, THE
18 COMMISSIONER SHALL CONSIDER RECOMMENDATIONS FROM THE BOARD.
19 THE COLORADO OPTION PLAN MUST:

20 (I) BE OFFERED TO COLORADO RESIDENTS WHO PURCHASE HEALTH
21 INSURANCE IN THE INDIVIDUAL MARKET, INCLUDING THROUGH THE
22 EXCHANGE;

23 (II) IMPLEMENT A STANDARDIZED PLAN THAT:

24 (A) ALLOWS CONSUMERS TO EASILY COMPARE THE COLORADO
25 OPTION PLAN WITH OTHER HEALTH BENEFIT PLANS OFFERED IN THE
26 INDIVIDUAL MARKET; AND

27 (B) PROVIDES FIRST-DOLLAR, PREDEDUCTIBLE COVERAGE FOR

1 CERTAIN SERVICES SUCH AS PRIMARY HEALTH CARE AND BEHAVIORAL
2 HEALTH CARE, AS APPROPRIATE;

3 (III) INCLUDE THE ESSENTIAL HEALTH BENEFITS PACKAGE;

4 (IV) PROVIDE AT LEAST BRONZE AND SILVER LEVELS OF COVERAGE
5 AS DESCRIBED IN SECTION 1302 (d) OF THE FEDERAL ACT AND AS SPECIFIED
6 IN SECTION 10-16-103.4;

7 (V) REIMBURSE HOSPITALS FOR INPATIENT AND OUTPATIENT
8 SERVICES BASED ON THE FORMULA ESTABLISHED PURSUANT TO SECTION
9 10-16-1206;

10 (VI) REQUIRE THAT A MINIMUM OF EIGHTY-FIVE PERCENT OF THE
11 MONEY COLLECTED AS PREMIUMS BE SPENT ON PATIENT CARE, NOT
12 INCLUDING INSURANCE PRODUCERS' COMMISSIONS; AND

13 (VII) REQUIRE EACH CARRIER TO REDUCE COLORADO OPTION PLAN
14 PREMIUMS BY AN AMOUNT EQUAL TO ONE HUNDRED PERCENT OF THE
15 ESTIMATED REBATES THAT THE CARRIER OR A PHARMACY BENEFIT
16 MANAGEMENT FIRM ADMINISTERING OR MANAGING PRESCRIPTION DRUG
17 BENEFITS FOR THE CARRIER RECEIVED FOR PRESCRIPTION DRUGS COVERED
18 BY THE COLORADO OPTION PLAN IN THE PREVIOUS PLAN YEAR. THE
19 COMMISSIONER SHALL SPECIFY, BY RULE, THE FORM AND MANNER OF THE
20 PREMIUM REDUCTION.

21 (b) IN DEVELOPING THE COLORADO OPTION PLAN, THE
22 COMMISSIONER SHALL, IN CONSULTATION WITH THE BOARD, THE
23 DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, AND THE
24 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, CONSIDER:

25 (I) LOWERING COSTS TO CONSUMERS, INCLUDING PREMIUM,
26 COINSURANCE, COPAYMENT, AND DEDUCTIBLE AMOUNTS;

27 (II) INCREASING ACCESS TO HEALTH CARE;

- 1 (III) INCREASING CONSUMER CHOICE;
2 (IV) REDUCING HEALTH DISPARITIES;
3 (V) MINIMIZING COST SHIFTING, IMPACTS ON OTHER MARKETS,
4 AND IMPACTS ON THE SUBSIDIZED POPULATION;
5 (VI) IMPROVING CARE COORDINATION; AND
6 (VII) INCORPORATING VALUE-BASED PURCHASING AND PLAN
7 DESIGN TO DRIVE MARKETPLACE EFFICIENCIES.

8 (3) THE COMMISSIONER SHALL ADOPT RULES:

9 (a) TO MITIGATE ANY ADVERSE IMPACTS THE COLORADO OPTION
10 PLAN HAS ON THE PURCHASING POWER OF EXCHANGE CONSUMERS WHOSE
11 INCOME IS UP TO FOUR HUNDRED PERCENT OF THE FEDERAL POVERTY LINE;

12 (b) CONCERNING THE PREMIUM AMOUNTS FOR SILVER PLANS
13 BASED ON THE ACTUARIAL VALUE OF SILVER PLANS; AND

14 (c) IMPLEMENTING RECOMMENDATIONS THAT ARE WITHIN THE
15 COMMISSIONER'S AUTHORITY AS A RESULT OF ANY STUDY CONDUCTED
16 PURSUANT TO SECTION 10-16-1104 (2).

17 **10-16-1206. Hospital reimbursement rates - plan expansion -**
18 **rules.** (1) (a) THE COMMISSIONER SHALL, BY RULE, IMPLEMENT A
19 FORMULA THAT SETS REASONABLE CARRIER REIMBURSEMENT RATES TO
20 HOSPITALS FOR INPATIENT AND OUTPATIENT HOSPITAL SERVICES UNDER
21 THE COLORADO OPTION PLAN. THE FORMULA MUST BE STRUCTURED TO
22 HELP LOWER PREMIUMS AND OUT-OF-POCKET COSTS FOR CONSUMERS AND
23 TO INCREASE ACCESS TO HEALTH CARE IN RURAL AREAS.

24 (b) FOR THE 2022 PLAN YEAR AND EACH SUBSEQUENT PLAN YEAR,
25 THE HOSPITAL REIMBURSEMENT RATE FORMULA MUST BE BASED ON A
26 PERCENTAGE OF THE MEDICARE REIMBURSEMENT RATES OR EQUIVALENT
27 RATES FOR THE PLAN YEAR IN WHICH THE FORMULA IS IMPLEMENTED.

1 (c) NOTWITHSTANDING SUBSECTION (1)(a) OF THIS SECTION, FOR
2 THE 2022 AND 2023 PLAN YEARS, THE BASE REIMBURSEMENT RATE FOR
3 HOSPITALS IS ONE HUNDRED FIFTY-FIVE PERCENT OF THE HOSPITAL'S
4 MEDICARE REIMBURSEMENT RATE OR EQUIVALENT RATE. THE BASE
5 REIMBURSEMENT RATE FOR A HOSPITAL SHALL BE ADJUSTED AS FOLLOWS:

6 (I) A HOSPITAL THAT IS A CRITICAL ACCESS HOSPITAL OR THAT IS
7 INDEPENDENT AND NOT PART OF A HEALTH SYSTEM MUST RECEIVE A
8 TWENTY-PERCENTAGE-POINT INCREASE IN THE BASE REIMBURSEMENT
9 RATE. A HOSPITAL THAT IS A CRITICAL ACCESS HOSPITAL AND IS NOT PART
10 OF A HEALTH SYSTEM MUST RECEIVE A FORTY-PERCENTAGE-POINT
11 INCREASE IN THE BASE REIMBURSEMENT RATE.

12 (II) A HOSPITAL WITH A COMBINED PERCENTAGE OF MEDICARE
13 AND MEDICAID PATIENTS THAT EXCEEDS THE STATEWIDE AVERAGE MUST
14 RECEIVE UP TO A THIRTY-PERCENTAGE-POINT INCREASE IN ITS BASE
15 REIMBURSEMENT RATE, WITH THE ACTUAL INCREASE TO BE DETERMINED
16 BASED ON THE HOSPITAL'S PERCENTAGE SHARE OF MEDICAID AND
17 MEDICARE PATIENTS.

18 (III) A HOSPITAL THAT IS EFFICIENT IN MANAGING THE
19 UNDERLYING COST OF CARE, TAKING INTO ACCOUNT THE HOSPITAL'S
20 TOTAL MARGINS, OPERATING COSTS, AND NET PATIENT REVENUE, MUST
21 RECEIVE UP TO A FORTY-PERCENTAGE-POINT INCREASE IN ITS BASE
22 REIMBURSEMENT RATE.

23 (2) FOR THE 2024 PLAN YEAR AND EACH SUBSEQUENT PLAN YEAR,
24 THE BOARD SHALL ADVISE THE COMMISSIONER ON ADJUSTMENTS TO THE
25 FORMULA DESCRIBED IN SUBSECTION (1)(b) OF THIS SECTION AND THE
26 PERCENTAGE ADJUSTMENTS TO THE BASE REIMBURSEMENT RATE
27 SPECIFIED IN SUBSECTION (1)(c) OF THIS SECTION AND OTHER FACTORS TO

1 CONSIDER IN THE HOSPITAL REIMBURSEMENT RATE FORMULA.

2 (3) THE HOSPITAL REIMBURSEMENT RATE FORMULA DEVELOPED
3 PURSUANT TO SUBSECTION (1) OF THIS SECTION APPLIES TO HOSPITAL
4 SERVICES PROVIDED ON OR AFTER JANUARY 1, 2022, TO COVERED PERSONS
5 ENROLLED IN THE COLORADO OPTION PLAN ON OR AFTER THAT DATE.

6 (4) WHEN IMPLEMENTING THE HOSPITAL REIMBURSEMENT RATE
7 FORMULA PURSUANT TO THIS SECTION, THE COMMISSIONER SHALL, IN
8 COLLABORATION WITH THE BOARD, CONSULT WITH EMPLOYEE
9 MEMBERSHIP ORGANIZATIONS REPRESENTING HEALTH SYSTEMS'
10 EMPLOYEES IN COLORADO AND WITH HOSPITAL-BASED HEALTH CARE
11 PROVIDERS IN COLORADO AND, BASED ON THE CONSULTATIONS, MAY
12 MAKE CHANGES TO THE HOSPITAL REIMBURSEMENT RATE FORMULA AS
13 APPROPRIATE SO THAT REIMBURSEMENT RATES REFLECT THE COST OF
14 ADEQUATE WAGES, BENEFITS, STAFFING, AND TRAINING FOR THESE
15 EMPLOYEES TO PROVIDE QUALITY CARE.

16 (5) (a) THE COMMISSIONER MAY, UPON A DEMONSTRATION BY A
17 HOSPITAL THAT THE HOSPITAL REIMBURSEMENT RATE FOR THAT HOSPITAL
18 WILL HAVE A SIGNIFICANT ADVERSE EFFECT ON ITS FINANCIAL
19 SUSTAINABILITY AND IN CONSULTATION WITH THE DEPARTMENT OF
20 HEALTH CARE POLICY AND FINANCING AND THE BOARD, EXEMPT A
21 HOSPITAL FROM OR CHANGE THE HOSPITAL REIMBURSEMENT RATE
22 FORMULA DEVELOPED PURSUANT TO THIS SECTION FOR THE HOSPITAL.

23 (b) IF A HOSPITAL IS NOT EXEMPTED FROM PARTICIPATION IN THE
24 COLORADO OPTION PLAN OR THE REIMBURSEMENT RATE FORMULA AND
25 REFUSES TO PARTICIPATE IN THE COLORADO OPTION PLAN, THE
26 COMMISSIONER SHALL, AFTER CONSULTATION WITH THE DEPARTMENT OF
27 HEALTH CARE POLICY AND FINANCING AND THE BOARD, NOTIFY THE

1 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT OF THE HOSPITAL'S
2 REFUSAL TO PARTICIPATE.

3 (6) ON OR AFTER JANUARY 1, 2023, WITH THE AFFIRMATIVE VOTE
4 OF THE MAJORITY OF THE VOTING MEMBERS OF THE BOARD, AND IN
5 CONSULTATION WITH THE DEPARTMENT OF HEALTH CARE POLICY AND
6 FINANCING, THE COMMISSIONER MAY PROMULGATE RULES TO EXPAND THE
7 COLORADO OPTION PLAN TO THE SMALL GROUP MARKET WITH ANY
8 CHANGES TO THE COLORADO OPTION PLAN THAT THE COMMISSIONER
9 DEEMS NECESSARY. A COLORADO OPTION PLAN OFFERED IN THE SMALL
10 GROUP MARKET MUST MEET ALL THE CRITERIA REQUIRED BY SECTION
11 10-16-1205 FOR THE COLORADO OPTION PLAN OFFERED IN THE INDIVIDUAL
12 MARKET. IN EVALUATING THE EXPANSION OF THE COLORADO OPTION PLAN
13 TO THE SMALL GROUP MARKET, THE COMMISSIONER SHALL CONSIDER
14 WHETHER PARTICIPATION IN A HEALTH CARE COVERAGE COOPERATIVE, AS
15 DEFINED IN SECTION 10-16-1002 (2), WOULD MEET THE REQUIREMENTS TO
16 OFFER THE COLORADO OPTION PLAN IN THE SMALL GROUP MARKET.

17 **10-16-1207. Colorado option plan evaluation - hospital**
18 **sustainability - reports.** (1) NOTWITHSTANDING SECTION 24-1-136
19 (11)(a)(I), ON OR BEFORE JULY 1, 2024, AND ON OR BEFORE EACH JULY 1
20 THEREAFTER, THE COMMISSIONER, IN CONSULTATION WITH THE BOARD,
21 SHALL EVALUATE THE COLORADO OPTION PLAN AND REPORT ITS FINDINGS
22 TO THE HEALTH AND INSURANCE COMMITTEE AND THE PUBLIC HEALTH
23 CARE AND HUMAN SERVICES COMMITTEE OF THE HOUSE OF
24 REPRESENTATIVES AND THE HEALTH AND HUMAN SERVICES COMMITTEE OF
25 THE SENATE, OR THEIR SUCCESSOR COMMITTEES. THE COMMISSIONER
26 SHALL ALSO ANNUALLY PRESENT THE REPORT AS PART OF THE
27 DEPARTMENT OF REGULATORY AGENCIES' PRESENTATION TO THE

1 COMMITTEE OF REFERENCE AT A HEARING HELD PURSUANT TO SECTION
2 2-7-203 (2)(a) OF THE "STATE MEASUREMENT FOR ACCOUNTABLE,
3 RESPONSIVE, AND TRANSPARENT (SMART) GOVERNMENT ACT". THE
4 COMMISSIONER MAY CONTRACT WITH AN INDEPENDENT THIRD-PARTY
5 ENTITY TO CONDUCT THE EVALUATION OF THE COLORADO OPTION PLAN.
6 THE REPORT SHALL INCLUDE AN EVALUATION OF:

7 (a) THE EFFECT OF THE COLORADO OPTION PLAN ON THE
8 INDIVIDUAL MARKET AND ANY COST SHIFTING AMONG MARKETS;

9 (b) THE EFFECT OF THE COLORADO OPTION PLAN FOR INDIVIDUALS
10 WHO QUALIFY FOR PREMIUM TAX CREDITS AND COST-SHARING
11 REDUCTIONS AUTHORIZED UNDER THE FEDERAL ACT;

12 (c) THE ADEQUACY OF THE NETWORK PROVIDERS IN THE
13 COLORADO OPTION PLAN; AND

14 (d) OTHER ASPECTS OF THE COLORADO OPTION PLAN AS
15 DETERMINED BY THE COMMISSIONER.

16 (2) NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), ON OR
17 BEFORE JULY 1, 2024, AND ON OR BEFORE EACH JULY 1 THEREAFTER, THE
18 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HEALTH CARE POLICY AND
19 FINANCING SHALL, IN CONSULTATION WITH THE BOARD, EVALUATE THE
20 IMPACT OF THE COLORADO OPTION PLAN ON HOSPITAL SUSTAINABILITY,
21 THE HEALTH CARE WORKFORCE, AND HEALTH CARE WAGES AND REPORT
22 THE FINDINGS TO THE HEALTH AND INSURANCE COMMITTEE AND THE
23 PUBLIC HEALTH CARE AND HUMAN SERVICES COMMITTEE OF THE HOUSE OF
24 REPRESENTATIVES AND THE HEALTH AND HUMAN SERVICES COMMITTEE OF
25 THE SENATE, OR THEIR SUCCESSOR COMMITTEES. THE EXECUTIVE
26 DIRECTOR SHALL ALSO ANNUALLY PRESENT THE REPORT AS PART OF THE
27 DEPARTMENT OF HEALTH CARE POLICY AND FINANCING'S PRESENTATION

1 TO THE COMMITTEE OF REFERENCE AT A HEARING HELD PURSUANT TO
2 SECTION 2-7-203 (2)(a) OF THE "STATE MEASUREMENT FOR
3 ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART)
4 GOVERNMENT ACT".

5 **SECTION 3.** In Colorado Revised Statutes, **add** 25-3-124 as
6 follows:

7 **25-3-124. Hospitals - Colorado option plan - hospital**
8 **reimbursement rate formula.** (1) A HOSPITAL LICENSED OR CERTIFIED
9 BY THE DEPARTMENT PURSUANT TO SECTION 25-1.5-103 (1)(a), OTHER
10 THAN A PSYCHIATRIC HOSPITAL, A GENERAL HOSPITAL THAT IS CERTIFIED
11 AS A LONG-TERM CARE HOSPITAL PURSUANT TO 42 CFR 412.23 (e), OR AN
12 INPATIENT REHABILITATION FACILITY, SHALL PARTICIPATE IN THE
13 COLORADO OPTION PLAN DESCRIBED IN PART 12 OF ARTICLE 16 OF TITLE
14 10, INCLUDING THE HOSPITAL REIMBURSEMENT RATE FORMULA
15 DEVELOPED PURSUANT TO SECTION 10-16-1206.

16 (2) (a) IF THE DEPARTMENT RECEIVES NOTICE FROM THE
17 COMMISSIONER OF INSURANCE PURSUANT TO SECTION 10-16-1206 (5)(b)
18 THAT A HOSPITAL REFUSES TO PARTICIPATE IN THE COLORADO OPTION
19 PLAN AS REQUIRED BY SUBSECTION (1) OF THIS SECTION, THE DEPARTMENT
20 SHALL ISSUE A WARNING TO THE HOSPITAL. IF THE HOSPITAL REFUSES TO
21 PARTICIPATE IN THE COLORADO OPTION PLAN AFTER RECEIPT OF THE
22 WARNING, THE DEPARTMENT:

23 (I) SHALL FINE THE HOSPITAL UP TO TEN THOUSAND DOLLARS PER
24 DAY FOR THE FIRST THIRTY DAYS THAT THE HOSPITAL REFUSES TO
25 PARTICIPATE AND UP TO FORTY THOUSAND DOLLARS PER DAY FOR EACH
26 DAY OVER THIRTY DAYS THAT THE HOSPITAL REFUSES TO PARTICIPATE;
27 AND

1 (II) MAY SUSPEND, REVOKE, OR IMPOSE CONDITIONS ON THE
2 HOSPITAL'S LICENSE.

3 (b) IN DETERMINING THE APPROPRIATE PENALTY, THE
4 DEPARTMENT SHALL CONSIDER ANY PENALTIES RECOMMENDED BY THE
5 COMMISSIONER OF INSURANCE, THE HOSPITAL'S FINANCIAL
6 CIRCUMSTANCES, AND OTHER CIRCUMSTANCES DEEMED RELEVANT BY THE
7 DEPARTMENT.

8 **SECTION 4.** In Colorado Revised Statutes, 25.5-1-129, **add**
9 (7)(a)(III) as follows:

10 **25.5-1-129. State department proposal - state option for health**
11 **care coverage - report to general assembly - waiver authorization -**
12 **legislative declaration.** (7) (a) (III) IN ANY WAIVER OR AMENDMENT TO
13 THE STATE PLAN UNDER THIS SUBSECTION (7), THE STATE DEPARTMENT
14 AND THE DIVISION SHALL RECOMMEND THAT AT LEAST EIGHTY PERCENT
15 OF PASS-THROUGH FUNDING RECEIVED AS A RESULT OF THE COLORADO
16 OPTION PLAN DESCRIBED IN PART 12 OF ARTICLE 16 OF TITLE 10 BE
17 DEDICATED TO INCREASING AFFORDABILITY FOR INDIVIDUALS AND
18 FAMILIES WITH INCOMES UP TO FOUR HUNDRED PERCENT OF THE FEDERAL
19 POVERTY LINE.

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