

CHAPTER 230

INSURANCE

SENATE BILL 04-094

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 also REPRESENTATIVE(S) Spradley, Hall, Boyd, Brophy, Butcher, Cadman, Carroll, Clapp, Crane, Fairbank, Harvey, Hefley, Hoppe, Jahn, Johnson R., Larson, Madden, Marshall, May M., McCluskey, McFadyen, Merrifield, Miller, Paccione, Pommer, Rhodes, Romano F, Rose, Schultheis, Sinclair, Stafford, Stengel, White, Wiens, Williams S., and Williams T.

AN ACT

CONCERNING THE IMPLEMENTATION OF HEALTH SAVINGS ACCOUNTS, AND, IN CONNECTION THEREWITH, ELIMINATING MEDICAL SAVINGS ACCOUNTS FOR BASIC HEALTH BENEFIT PLANS FOR SMALL EMPLOYERS AND CONVERTING THE TAX PROVISIONS FOR MEDICAL SAVINGS ACCOUNTS TO APPLY TO HEALTH SAVINGS ACCOUNTS.

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

SECTION 1. 10-16-105 (7.2) (b), (7.3) (c) (II), and (7.3) (c) (III), Colorado Revised Statutes, are amended to read:

10-16-105. Small group sickness and accident insurance - guaranteed issue - mandated provisions for basic and standard health benefit plans - rules.
 (7.2) The commissioner shall promulgate rules to implement a basic health benefit plan and a standard health benefit plan to be offered by each small employer carrier as a condition of transacting business in this state. The commissioner shall survey small group carriers to determine the range of health benefit plans available annually. The commissioner shall implement a basic plan that approximates the lowest level of coverage offered in small group health benefit plans and shall implement a standard plan that approximates the average level of coverage offered in small group health benefit plans. In determining such levels of coverage, the commissioner shall consider such factors as coinsurance, copayments, deductibles, out-of-pocket maximums, and covered benefits. The commissioner shall amend the rules to implement the basic and standard plans no more frequently than once every two years. Such rules shall be in conformity with the provisions of article 4 of title 24, C.R.S., and shall incorporate the following:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(b) (I) ~~The~~ A basic health benefit plan ~~shall~~ MAY reflect a basic health benefit plan that does not include coverage pursuant to the mandatory coverage provisions of section 10-16-104 (4), (5), (8), (9), (10), and (12);

(II) ~~In addition to the basic plan pursuant to subparagraph (I) of this paragraph (b);~~ A basic health benefit plan may reflect one of the following options in addition to the requirements of subparagraph (I) of this paragraph (b): A HEALTH BENEFIT PLAN THAT IS A HIGH DEDUCTIBLE PLAN THAT WOULD QUALIFY FOR A HEALTH SAVINGS ACCOUNT PURSUANT TO 26 U.S.C. SEC. 223; EXCEPT THAT A CARRIER MAY APPLY DEDUCTIBLE AMOUNTS FOR MANDATORY HEALTH BENEFITS FOR MAMMOGRAPHY, PROSTATE SCREENING, CHILD SUPERVISION SERVICES, OR PROSTHETIC DEVICES PURSUANT TO SECTION 10-16-104 (4), (10), (11), AND (14) IF SUCH MANDATORY BENEFITS ARE NOT CONSIDERED BY THE FEDERAL DEPARTMENT OF TREASURY TO BE PREVENTIVE OR TO HAVE AN ACCEPTABLE DEDUCTIBLE AMOUNT; OR

(A) ~~Coverage that meets the requirements for a high deductible health plan for the purposes of qualifying for a federal medical savings account; except that health maintenance organization basic health benefit plans shall reflect a sharing of higher consumer costs through higher copayments instead of deductible amounts. Such health insurance shall be offered in conjunction with a medical savings account, as defined in section 39-22-504.7, C.R.S., or an account or other mechanism as defined in federal law that is comparable to a medical savings account, which account or mechanism shall reflect an employer contribution of not less than one hundred percent of the amount of the premium paid by the employer for each individual employee up to seventy-five percent of the amount of the deductible; except that a business group of one may not contribute more than the business group of one's net income to a medical savings account or more than sixty-five percent of the deductible amount of the plan. A medical savings account may be accessed through a debit card system.~~

(B) ~~Coverage that meets the requirements for a high deductible health plan for the purposes of qualifying for a federal medical savings account; except that a health maintenance organization may reflect a sharing of higher consumer costs through higher copayments instead of deductible amounts. Such high deductible health plan shall include all of the mandated benefits required pursuant to section 10-16-104 and may be offered in conjunction with a medical savings account or other mechanism as defined in federal law that is comparable to a medical savings account.~~

(III) A BASIC HEALTH BENEFIT PLAN MAY REFLECT A BASIC HEALTH BENEFIT PLAN THAT DOES NOT INCLUDE COVERAGE PURSUANT TO THE MANDATORY COVERAGE PROVISIONS OF SECTION 10-16-104 (4), (5), (8), (9), (10), AND (12) AND IS A HIGH DEDUCTIBLE PLAN THAT WOULD QUALIFY FOR A HEALTH SAVINGS ACCOUNT PURSUANT TO 26 U.S.C. SEC. 223; EXCEPT THAT A CARRIER MAY APPLY DEDUCTIBLE AMOUNTS FOR MANDATORY HEALTH BENEFITS FOR MAMMOGRAPHY, PROSTATE SCREENING, CHILD SUPERVISION SERVICES, OR PROSTHETIC DEVICES PURSUANT TO SECTION 10-16-104 (4), (10), (11), AND (14) IF SUCH MANDATORY BENEFITS ARE NOT CONSIDERED BY THE FEDERAL DEPARTMENT OF TREASURY TO BE PREVENTIVE OR TO HAVE AN ACCEPTABLE DEDUCTIBLE AMOUNT.

(7.3) (c) (II) ~~In the case of a small employer carrier that establishes more than one class of business, as defined in sections 10-8-602 (3.5) and 10-16-102 (11), the small employer carrier shall offer to eligible small employers at least one basic health~~

~~benefit plan and at least one standard health benefit plan for each type of plan it offers in the general market, including traditional indemnity, preferred provider, and health maintenance organization in each class of business so established. In addition to basic and standard plans, a small employer carrier may offer a high deductible plan that may be a traditional indemnity plan, a preferred provider plan, a health maintenance organization plan, or a point of service plan in each class of business established. High deductible plans offered by a small employer carrier may be offered in conjunction with a medical savings account. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business if:~~

~~(A) The criteria are not intended to discourage or prevent acceptance of small employers applying for a basic or standard health benefit plan;~~

~~(B) The criteria are not related to the health status or claim experience of the small employer;~~

~~(C) The criteria are applied consistently to all small employers applying for coverage in the class of business; and~~

~~(D) The small employer carrier provides for the acceptance of all eligible small employers into one or more classes of business.~~

~~(III) The provisions of subparagraph (II) of this paragraph (c) shall not apply to a class of business into which the small employer carrier is no longer enrolling new small businesses.~~

SECTION 2. Part 1 of article 16 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

10-16-129. Health savings accounts. ANY CARRIER AUTHORIZED TO CONDUCT BUSINESS IN THIS STATE THAT OFFERS COVERAGE PURSUANT TO PART 2, 3, OR 4 OF THIS ARTICLE MAY OFFER A HIGH DEDUCTIBLE HEALTH PLAN THAT WOULD QUALIFY FOR AND MAY BE OFFERED IN CONJUNCTION WITH A HEALTH SAVINGS ACCOUNT PURSUANT TO 26 U.S.C. SEC. 223, AS AMENDED. A CARRIER OFFERING A HIGH DEDUCTIBLE HEALTH PLAN THAT MAY BE OFFERED IN CONJUNCTION WITH A HEALTH SAVINGS ACCOUNT MAY APPLY THE DEDUCTIBLE TO MANDATORY HEALTH BENEFITS FOR MAMMOGRAPHY, PROSTATE CANCER SCREENING, CHILD HEALTH SUPERVISION SERVICES, AND PROSTHETIC DEVICES PURSUANT TO SECTION 10-16-104 (4), (10), (11), AND (14), IF SUCH MANDATORY BENEFITS ARE NOT CONSIDERED BY THE FEDERAL DEPARTMENT OF TREASURY TO BE PREVENTIVE OR TO HAVE AN ACCEPTABLE DEDUCTIBLE AMOUNT.

SECTION 3. 24-50-605, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-50-605. Group benefit plans - specifications - contracts. (5) THE DIRECTOR SHALL EVALUATE THE FEASIBILITY OF OFFERING A HIGH DEDUCTIBLE HEALTH PLAN THAT WOULD QUALIFY FOR A HEALTH SAVINGS ACCOUNT AS DESCRIBED IN 26 U.S.C. 223, AS AMENDED, FOR STATE EMPLOYEES. THE DIRECTOR SHALL FORWARD THE FINDINGS BASED ON SUCH EVALUATION TO THE MEMBERS OF THE

HEALTH, ENVIRONMENT, AND INSTITUTIONS AND BUSINESS AFFAIRS AND LABOR COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE NO LATER THAN OCTOBER 1, 2004. IN THE DIRECTOR'S FINDINGS, THE DIRECTOR SHALL LIST ANY IMPEDIMENTS TO IMPLEMENTING SUCH HIGH DEDUCTIBLE HEALTH PLANS AND ANY MEASURES TAKEN TO IMPLEMENT SUCH PLANS FOR STATE EMPLOYEES.

SECTION 4. 24-51-101 (42), Colorado Revised Statutes, is amended to read:

24-51-101. Definitions. As used in this article, unless the context otherwise requires:

(42) (a) "Salary" means compensation for services rendered to an employer and includes: Regular salary or pay; any pay for administrative, sabbatical, annual, sick, vacation, or personal leave; pay for compensatory time or holidays; payments by an employer from grants; amounts deducted from pay pursuant to tax-sheltered savings or retirement programs; AMOUNTS DEDUCTED FROM PAY FOR A HEALTH SAVINGS ACCOUNT AS DEFINED IN 26 U.S.C. SEC. 223, AS AMENDED, OR ANY OTHER TYPE OF RETIREMENT HEALTH SAVINGS ACCOUNT PROGRAM; performance or merit payments, if approved by the board; special pay for work-related injuries paid by the employer prior to termination of membership; and retroactive salary payments pursuant to court orders, arbitration awards, or litigation and grievance settlements.

(b) "Salary" does not include: Commissions; compensation for unused sick leave converted at any time to cash payments; COMPENSATION FOR UNUSED SICK, ANNUAL, VACATION, ADMINISTRATIVE, OR OTHER ACCUMULATED PAID LEAVE CONTRIBUTED TO A HEALTH SAVINGS ACCOUNT AS DEFINED IN 26 U.S.C. SEC. 223, AS AMENDED, OR A RETIREMENT HEALTH SAVINGS PROGRAM; housing allowances; uniform allowances; automobile usage; insurance premiums; dependent care assistance; reimbursement for expenses incurred; tuition or any other fringe benefits, regardless of federal taxation; bonuses for services not actually rendered, including, but not limited to, early retirement inducements, Christmas bonuses, cash awards, honorariums and severance pay, damages, except for retroactive salary payments paid pursuant to court orders or arbitration awards or litigation and grievance settlements, or payments beyond the date of a member's death.

SECTION 5. Effective date - applicability. (1) This act shall take effect July 1, 2004.

(2) This act shall apply to basic health benefit plans issued or renewed on and after July 1, 2004.

(3) This act shall apply to health savings accounts established on or after January 1, 2004.

SECTION 6. 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, 2004