

CHAPTER 258

INSURANCE

HOUSE BILL 13-1245

BY REPRESENTATIVE(S) McCann, Court, Fields, Fischer, Ginal, Hamner, Hullinghorst, Labuda, Lebsock, Melton, Mitsch Bush, Pabon, Pettersen, Rosenthal, Young, Exum, Kraft-Tharp, Lee, Schafer, Stephens;
also SENATOR(S) Steadman, Aguilar, Giron, Guzman, Heath, Jones, Kefalas, Newell, Nicholson, Tochtrop, Todd, Morse.

AN ACT**CONCERNING FUNDING MECHANISMS FOR THE COLORADO HEALTH BENEFIT EXCHANGE.**

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

SECTION 1. In Colorado Revised Statutes, 10-22-103, **amend** (5) and **add** (6), (7), (8), (9), (10), and (11) as follows:

10-22-103. Definitions. As used in this article, unless the context otherwise requires:

(5) ~~"Secretary" means the secretary of the United States department of health and human services~~ "GROUP HEALTH PLAN" MEANS AN EMPLOYEE WELFARE BENEFIT PLAN AS DEFINED IN 29 U.S.C. SEC. 1002 (1) OF THE FEDERAL "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974" TO THE EXTENT THAT THE PLAN PROVIDES HEALTH CARE SERVICES, INCLUDING ITEMS AND SERVICES PAID FOR AS HEALTH CARE SERVICES, TO EMPLOYEES OR THEIR DEPENDENTS DIRECTLY OR THROUGH INSURANCE REIMBURSEMENT OR OTHERWISE. A "GROUP HEALTH PLAN" INCLUDES A GOVERNMENT OR CHURCH PLAN.

(6) "HEALTH BENEFIT PLAN" HAS THE SAME MEANING SET FORTH IN SECTION 10-16-102; EXCEPT THAT THE TERM INCLUDES A DENTAL PLAN.

(7) "INSURER" MEANS ANY ENTITY THAT PROVIDES GROUP HEALTH PLANS OR INDIVIDUAL HEALTH BENEFIT PLANS SUBJECT TO INSURANCE REGULATION IN THIS STATE, AS WELL AS ANY ENTITY THAT DIRECTLY OR INDIRECTLY PROVIDES STOP-LOSS OR EXCESS LOSS INSURANCE TO A SELF-INSURED GROUP HEALTH PLAN INCLUDING A PROPERTY AND CASUALTY INSURANCE COMPANY.

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

(8) "MEDICAID" MEANS FEDERAL INSURANCE OR ASSISTANCE AS PROVIDED BY TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED.

(9) "MEDICARE" MEANS FEDERAL INSURANCE OR ASSISTANCE AS PROVIDED BY TITLE XVIII OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED.

(10) "NUMBER OF LIVES INSURED" MEANS THE NUMBER OF EMPLOYEES AND RETIRED EMPLOYEES AND INDIVIDUAL POLICYHOLDERS OR SUBSCRIBERS IN THE INDIVIDUAL AND GROUP MARKETS ON MARCH 1 OF THE PREVIOUS CALENDAR YEAR FOR WHICH A SPECIAL FEE IS BEING ASSESSED. FOR INSURERS PROVIDING STOP-LOSS, EXCESS LOSS, OR REINSURANCE, "NUMBER OF LIVES INSURED" DOES NOT INCLUDE EMPLOYEES, RETIRED EMPLOYEES, OR INDIVIDUAL POLICYHOLDERS OR SUBSCRIBERS WHO HAVE BEEN COUNTED BY THE PRIMARY INSURER OR PRIMARY REINSURER.

(11) "SECRETARY" MEANS THE SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES.

SECTION 2. In Colorado Revised Statutes, 10-22-106, **add** (3) and (4) as follows:

10-22-106. Powers and duties of the board. (3) THE BOARD MAY CREATE A SEPARATE PROGRAM THAT SHARES RESOURCES AND INFRASTRUCTURE WITH THE EXCHANGE TO OFFER ANCILLARY PRODUCTS.

(4) THE BOARD MAY ENTER INTO AN AGREEMENT WITH THE DEPARTMENT OF PERSONNEL AND ADMINISTRATION TO AUTHORIZE ADMINISTRATIVE LAW JUDGES EMPLOYED BY THE OFFICE OF ADMINISTRATIVE COURTS TO HEAR AND DECIDE MATTERS ARISING FROM ELIGIBILITY AND OTHER DETERMINATIONS MADE BY THE EXCHANGE CONSISTENT WITH APPLICABLE STATE AND FEDERAL LAW.

SECTION 3. In Colorado Revised Statutes, 10-22-107, **amend** (1) and (7) as follows:

10-22-107. Legislative health benefit exchange implementation review committee - creation - duties. (1) For the purposes of guiding implementation of an exchange in Colorado, making recommendations to the general assembly, and ensuring that the interests of Coloradans are protected and furthered, there is hereby created the legislative health benefit exchange implementation review committee. The committee shall meet on or before August 1, 2011, and thereafter at the call of the chair ~~as often as~~ AT LEAST TWO TIMES DURING EACH CALENDAR YEAR, BUT NO MORE THAN five times during each calendar year. The committee may use the legislative council staff to assist its members in researching any matters.

(7) THE BOARD SHALL SEND THE COMMITTEE AN ANNUAL REPORT THAT CONTAINS THE FINANCIAL AND OPERATIONAL PLANS OF THE EXCHANGE. The committee shall review the financial and operational plans of the exchange.

SECTION 4. In Colorado Revised Statutes, **amend** 10-22-108 as follows:

10-22-108. Moneys for implementation, operation, and sustainability of the exchange. Moneys received by the board for the implementation of this article, AND

FOR BUILDING RESERVES FOR THE OPERATION AND SUSTAINABILITY OF THE EXCHANGE PURSUANT TO SECTION 10-22-109, must be transferred directly to the exchange for the purposes of this article. The board shall deposit any moneys received in a banking institution within or outside the state. Moneys from the general fund shall not be used for the implementation of this article, except for the sums specified in section 10-22-107 (3) and for legislative staff agency services. The account of the banking institution must be insured by the federal deposit insurance corporation and compliant with the ~~"Savings and Loan Association Public Deposit Protection Act"~~, article 47 10.5 of title 11, C.R.S.

SECTION 5. In Colorado Revised Statutes, **add** 10-22-109, 10-22-110, and 10-22-111 as follows:

10-22-109. Funding for the operation of the exchange and reserves - special fees - rules. (1) ON AND AFTER JANUARY 1, 2014, AMONG OTHER FUNDING SOURCES DERIVED THROUGH THE OPERATION OF THE EXCHANGE, FUNDING FOR THE EXCHANGE MAY BE FROM THE FOLLOWING SOURCES:

(a) SPECIAL FEES ASSESSED AGAINST INSURERS AS PROVIDED IN SUBSECTION (2) OF THIS SECTION;

(b) ANY MONEYS ACCEPTED THROUGH GIFTS, GRANTS, OR DONATIONS RECEIVED BY THE BOARD FOR OPERATION, RESERVES, AND SUSTAINABILITY OF THE EXCHANGE, INCLUDING CONTRIBUTIONS RECEIVED PURSUANT TO THE PREMIUM TAX CREDIT ALLOCATION IN SECTION 10-22-110; AND

(c) MONEYS FROM THE UNCLAIMED PROPERTY TRUST FUND TRANSMITTED PURSUANT TO SECTION 38-13-116.5 (2.9), C.R.S.

(2) (a) ON AND AFTER JANUARY 1, 2014, THROUGH DECEMBER 31, 2016, THE BOARD SHALL ASSESS SPECIAL FEES AGAINST INSURERS IN AN AMOUNT NECESSARY TO PROVIDE FUNDING FOR THE EXCHANGE. THE BOARD SHALL DETERMINE THE AMOUNT OF THE SPECIAL FEES BASED ON THE BOARD-APPROVED FINANCIAL PLAN AND ANTICIPATED BUDGETARY NEEDS FOR THE UPCOMING YEAR TO COMPLY WITH THIS ARTICLE AND ASSOCIATED FEDERAL REQUIREMENTS. THE SPECIAL FEES MUST NOT EXCEED ONE DOLLAR AND EIGHTY CENTS PER NUMBER OF LIVES INSURED PER MONTH; EXCEPT THAT THE SPECIAL FEES ASSESSED FOR LIVES INSURED UNDER DENTAL PLANS MUST NOT EXCEED EIGHTEEN CENTS PER NUMBER OF LIVES INSURED PER MONTH. THE BOARD SHALL USE SPECIAL FEES ASSESSED PURSUANT TO THIS SECTION FOR THE OPERATING EXPENSES OF THE EXCHANGE, THE RESERVES OF THE EXCHANGE, AND RELATED AGREEMENTS.

(b) THE BOARD SHALL USE ANY MONEY RECEIVED PURSUANT TO SECTION 10-8-536 (2), AS ENACTED IN HOUSE BILL 13-1115, ENACTED IN 2013, FROM THE RESERVES OF COVERCOLORADO, AS CREATED BY PART 5 OF ARTICLE 8 OF TITLE 10, AND ANY MONEYS RECEIVED FROM THE UNCLAIMED PROPERTY TRUST FUND TO OFFSET THE AMOUNT OF THE FEES ASSESSED AGAINST INSURERS PURSUANT TO THIS SUBSECTION (2); EXCEPT THAT THE MONEY RECEIVED MUST NOT BE USED TO OFFSET THE SPECIAL FEES PAID BY DENTAL PLANS.

(c) AMOUNTS ASSESSED AGAINST INSURERS TO BE PAID TO THE EXCHANGE

PURSUANT TO THIS SUBSECTION (2) ARE NOT CONSIDERED PREMIUMS FOR ANY PURPOSE, INCLUDING THE COMPUTATION OF GROSS PREMIUM TAX OR AGENTS' COMMISSION.

(d) IF AN INSURER FAILS TO PAY THE SPECIAL ASSESSMENT FEE, THE COMMISSIONER MAY, AFTER PROPER NOTICE AND HEARING, SUSPEND OR REVOKE THE INSURER'S CERTIFICATE OF AUTHORITY TO TRANSACT INSURANCE BUSINESS IN THIS STATE.

(3) THE COMMISSIONER SHALL PROMULGATE RULES TO IMPLEMENT THIS SECTION THAT INCLUDE:

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

(b) THE PROCESS FOR DETERMINING THE ALLOCATION OF THE ASSESSMENT AMONG INSURERS, INCLUDING THE PROCESS FOR OBTAINING ACCURATE INFORMATION ABOUT THE NUMBER OF POLICIES ISSUED AND LIVES INSURED BY AN INSURER WITHIN THE SIX MONTHS PRIOR TO THE ASSESSMENT.

10-22-110. Tax credit for contributions to the exchange - allocation notice - rules. (1) (a) FOR THE TAX YEAR 2013 AND EACH TAX YEAR THEREAFTER, A CREDIT AGAINST THE TAX IMPOSED BY SECTIONS 10-3-209 AND 10-6-128 IS ALLOWED TO ANY INSURANCE COMPANY THAT BECOMES A QUALIFIED TAXPAYER BY MAKING A CONTRIBUTION TO THE EXCHANGE PURSUANT TO THIS SECTION.

(b) A QUALIFIED TAXPAYER CLAIMING A CREDIT AGAINST PREMIUM TAX LIABILITY UNDER THIS SECTION IS NOT REQUIRED TO PAY ANY ADDITIONAL RETALIATORY TAX AS A RESULT OF CLAIMING THE CREDIT.

(2) THE COMMISSIONER MAY PROMULGATE RULES NECESSARY FOR THE ADMINISTRATION OF THE TAX CREDIT ALLOWED BY SUBSECTION (1) OF THIS SECTION IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S.

(3) (a) SUBJECT TO PARAGRAPH (c) OF SUBSECTION (4) OF THIS SECTION, AN INSURANCE COMPANY SHALL BECOME A QUALIFIED TAXPAYER IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(I) THE INSURANCE COMPANY DECLARES WITH ITS QUARTERLY TAX PAYMENT DUE ON OR ABOUT JULY 31 IN THE MANNER PRESCRIBED BY THE COMMISSIONER ITS INTENT TO CONTRIBUTE TO THE EXCHANGE ON OR BEFORE OCTOBER 31 AN AMOUNT OF MONEY EQUAL TO THE PREMIUM TAXES PAID BY THE COMPANY PURSUANT TO THE JULY 31 TAX PAYMENT OR A LESSER AMOUNT AS SPECIFIED BY THE COMMISSIONER IF REQUIRED PURSUANT TO PARAGRAPH (b) OF SUBSECTION (4) OF THIS SECTION;

(II) THE TOTAL AMOUNT OF THE TAX CREDITS GRANTED BY THE COMMISSIONER DOES NOT EXCEED FIVE MILLION DOLLARS; AND

(III) THE INSURANCE COMPANY RECEIVES AN ALLOCATION NOTICE FROM THE COMMISSIONER AND THE INSURANCE COMPANY MAKES THE CONTRIBUTION TO THE EXCHANGE AS SPECIFIED IN THE ALLOCATION NOTICE ON OR BEFORE OCTOBER 31.

(b) SUBJECT TO PARAGRAPH (c) OF SUBSECTION (4) OF THIS SECTION, AN INSURANCE COMPANY THAT BECOMES A QUALIFIED TAXPAYER MAY CLAIM THE TAX CREDIT ON ONE OR MORE SUBSEQUENT QUARTERLY OR ANNUAL TAX PAYMENTS BEGINNING ON OR ABOUT OCTOBER 31.

(c) THE BOARD SHALL PROMPTLY NOTIFY THE COMMISSIONER WHEN IT RECEIVES A CONTRIBUTION PURSUANT TO THIS SECTION OF THE AMOUNT AND DATE OF THE CONTRIBUTION AND THE NAME OF THE CONTRIBUTOR.

(4) (a) SUBJECT TO PARAGRAPH (c) OF THIS SUBSECTION (4), BY SEPTEMBER 30 OF EACH YEAR, THE COMMISSIONER SHALL:

(I) SEND AN ALLOCATION NOTICE TO EACH INSURANCE COMPANY WHOSE DECLARATION OF INTENT TO CONTRIBUTE TO THE EXCHANGE HAS BEEN ACCEPTED PURSUANT TO THIS SUBSECTION (4). THE ALLOCATION NOTICE SHALL SPECIFY THE AMOUNT OF TAX CREDITS ALLOCATED TO THE INSURANCE COMPANY AND THE AMOUNT OF CASH THE INSURANCE COMPANY MUST CONTRIBUTE TO THE EXCHANGE BY OCTOBER 31, WHICH AMOUNTS SHALL BE IDENTICAL AND NOT EXCEED THE AMOUNT OF PREMIUM TAXES PAID BY THE INSURANCE COMPANY IN ITS QUARTERLY TAX PAYMENT DUE ON OR ABOUT JULY 31; AND

(II) POST ON THE DIVISION'S WEB SITE WHETHER THE FULL AMOUNT OF TAX CREDITS AUTHORIZED TO BE ALLOCATED EACH YEAR HAS BEEN ALLOCATED.

(b) SUBJECT TO PARAGRAPH (c) OF THIS SUBSECTION (4), THE COMMISSIONER SHALL ALLOCATE NO MORE THAN A TOTAL OF FIVE MILLION DOLLARS OF PREMIUM TAX CREDITS PER YEAR. THE COMMISSIONER SHALL ALLOCATE TO AN INSURANCE COMPANY THAT HAS DECLARED ITS INTENT TO CONTRIBUTE TO THE EXCHANGE PURSUANT TO THIS SECTION TAX CREDITS IN AN AMOUNT EQUAL TO THE AMOUNT OF PREMIUM TAXES PAID BY THE INSURANCE COMPANY IN ITS QUARTERLY TAX PAYMENT DUE ON OR ABOUT JULY 31 IN THE ORDER IN WHICH THE DIVISION RECEIVES SUCH QUARTERLY TAX PAYMENTS UNTIL THE FULL AMOUNT OF CREDITS AVAILABLE PURSUANT TO THIS SECTION HAS BEEN ALLOCATED; EXCEPT THAT, IF SUCH AMOUNT OF TAXES OR THE SUM OF ALL THE TAXES FILED BY ALL THE INSURANCE COMPANIES ON ANY ONE DAY WOULD EXCEED, SINGLY OR IN THE AGGREGATE, THE ANNUAL MAXIMUM AGGREGATE AMOUNT OF TAX CREDITS AVAILABLE UNDER THIS SECTION, THE COMMISSIONER SHALL REDUCE THE ALLOCATION TO THE INSURANCE COMPANY WHOSE CONTRIBUTION FIRST EXCEEDS THE ANNUAL MAXIMUM AGGREGATE TO THE AMOUNT NEEDED TO SATISFY THE ANNUAL MAXIMUM AGGREGATE. IF THE COMMISSIONER IS UNABLE TO DETERMINE THE ORDER OF RECEIPT OF TAX PAYMENTS ON THAT DAY, THE COMMISSIONER SHALL ALLOCATE THE TAX CREDITS TO THE COMPANY OR AMONG THE COMPANIES ON A PRO RATA BASIS BASED ON THE RATIO SUCH COMPANY'S QUARTERLY TAX PAYMENT BEARS TO THE TOTAL AMOUNT OF ALL SUCH COMPANIES' QUARTERLY TAX PAYMENTS UNTIL THE FULL AMOUNT OF CREDITS AVAILABLE PURSUANT TO THIS SECTION HAS BEEN ALLOCATED.

(c) (I) THE COMMISSIONER SHALL ALLOW INSURANCE COMPANIES TO DECLARE THEIR INTENT TO CONTRIBUTE TO THE EXCHANGE PURSUANT TO THIS SECTION ON THE INSURANCE COMPANIES' QUARTERLY TAX PAYMENTS DUE ON OR ABOUT OCTOBER 31 AND SHALL SEND SUCH COMPANIES ALLOCATION NOTICES BY

FEBRUARY 1 IF:

(A) THE FULL AMOUNT OF TAX CREDITS AVAILABLE IN ANY ONE YEAR HAVE NOT BEEN FULLY ALLOCATED BY THE COMMISSIONER PURSUANT TO STATEMENTS OF INTENT FILED WITH INSURANCE COMPANIES' QUARTERLY TAX PAYMENTS DUE ON OR ABOUT JULY 31; OR

(B) THE TOTAL AMOUNT OF TAX CREDITS HAS BEEN CLAIMED, BUT ONE OR MORE INSURANCE COMPANIES FAILED TO TIMELY MAKE A CONTRIBUTION TO THE EXCHANGE.

(II) AN INSURANCE COMPANY THAT DECLARES ITS INTENT TO CONTRIBUTE TO THE EXCHANGE PURSUANT TO THIS PARAGRAPH (c) SHALL MAKE THE CONTRIBUTION TO THE EXCHANGE AS SPECIFIED IN THE ALLOCATION NOTICE ON OR BEFORE MARCH 1 AND MAY CLAIM THE TAX CREDIT ON ONE OR MORE SUBSEQUENT QUARTERLY OR ANNUAL TAX PAYMENTS DUE ON OR ABOUT MARCH 1.

(5) THE BOARD SHALL USE MONEYS CONTRIBUTED TO THE EXCHANGE PURSUANT TO THIS SECTION AND INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF THE MONEYS TO OPERATE AND SUSTAIN THE EXCHANGE AND TO BUILD RESERVES.

10-22-111. Tax exemption. THE EXCHANGE IS EXEMPT FROM ANY TAX LEVIED BY THIS STATE OR ANY OF ITS POLITICAL SUBDIVISIONS.

SECTION 6. In Colorado Revised Statutes, 38-13-116.5, **amend** (1) (b); and **add** (2.9) as follows:

38-13-116.5. Unclaimed property trust fund - creation - payments - interest - appropriations - records - rules - repeal. (1) (b) Except as provided in subsections (2), ~~and~~ (2.7), AND (2.9) of this section, the principal of the trust fund shall not be expended except to pay claims made pursuant to this article. Moneys comprising the principal of the trust fund shall not constitute fiscal year spending of the state for purposes of section 20 of article X of the state constitution and are not subject to appropriation by the general assembly.

(2.9) (a) ON JULY 1, 2013, THE STATE TREASURER SHALL TRANSMIT FIFTEEN MILLION DOLLARS TO THE COLORADO HEALTH BENEFIT EXCHANGE, CREATED IN ARTICLE 22 OF TITLE 10, C.R.S., FROM THE UNCLAIMED PROPERTY TRUST FUND.

(b) THIS SUBSECTION (2.9) IS REPEALED, EFFECTIVE JULY 1, 2014.

SECTION 7. 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 23, 2013