

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 17-0301.02 Yelana Love x2295

SENATE BILL 17-249

SENATE SPONSORSHIP

Smallwood and Williams A.,

HOUSE SPONSORSHIP

Ginal,

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE CONTINUATION OF THE DIVISION OF INSURANCE,**
102 **AND, IN CONNECTION THEREWITH, IMPLEMENTING THE**
103 **RECOMMENDATIONS CONTAINED IN THE 2016 SUNSET REPORT**
104 **BY THE DEPARTMENT OF REGULATORY AGENCIES.**

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/>.)

Sunset Process - Senate Business, Labor, and Technology Committee. The bill implements the recommendations of the department of regulatory agencies' sunset review and report on the functions of the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
April 10, 2017

SENATE
Amended 2nd Reading
April 7, 2017

division of insurance (division) by:

- ! Continuing the functions of the division for 13 years, until 2030 (**sections 1 and 2** of the bill);
- ! Establishing a separate sunset date for the regulation of preneed funeral contracts in 2022 (**section 4**);
- ! Reassigning certain duties related to health maintenance organizations from the executive director of the department of public health and environment to the commissioner of insurance (commissioner) (**sections 5 through 11**);
- ! Repealing the "Certified Capital Company Act", effective July 1, 2025 (**section 12**);
- ! Removing the exemption of policies with more than 4 automobiles from consumer protection provisions (**section 13**);
- ! Eliminating the requirement that an insurer authorized to transact business in Colorado file a schedule of insurance rates for required minimum coverages by July 1, 2003 (**section 14**);
- ! Expanding the definition of "enrollee" to include certain individuals with non-HMO or prepaid plans (**section 15**);
- ! Revising the definition of "participating provider" to include providers in other states that are part of the carrier's managed care network since consumers may use contracted providers in other states when Colorado insurance protections are applicable (**section 15**);
- ! Repealing the 35% surcharge above the modified community rate that an insurance carrier is permitted to impose on small employers that previously purchased self-funded health benefit coverage or a health benefit plan that was not a small group plan (**section 16**);
- ! Repealing the requirement for a one-time training course that was to be completed by January 1, 2009 (**section 17**);
- ! Changing a reference to the location of the definition of health care providers from the statutes governing reimbursement to providers of health care services to refer to statutes governing the statewide managed care system (**section 18**); and
- ! Clarifying that all bail agents licensed by the division are exempt from the private investigator licensing statute (**section 19**).

Section 3 of the bill requires the division to study the compliance of preneed funeral contract sellers with Colorado law and report the findings of the study to the legislature not later than September 1, 2017.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-34-104, **amend**
3 (23)(a) introductory portion; **repeal** (12)(a)(IX); and **add** (23)(a)(VIII)
4 and (31) as follows:

5 **24-34-104. General assembly review of regulatory agencies**
6 **and functions for repeal, continuation, or reestablishment - legislative**
7 **declaration - repeal.** (12) (a) The following agencies, functions, or both,
8 will repeal on July 1, 2017:

9 (IX) ~~The functions of the division of insurance in the department~~
10 ~~of regulatory agencies specified in article 1 of title 10, C.R.S., other than~~
11 ~~the functions of the division related to the licensing of bail bonding~~
12 ~~agents.~~

13 (23) (a) The following agencies, functions, or both, ~~will~~ ARE
14 SCHEDULED FOR repeal on September 1, 2022:

15 (VIII) THE REGULATION OF PRENEED FUNERAL CONTRACTS IN
16 ACCORDANCE WITH ARTICLE 15 OF TITLE 10.

17 (31) (a) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, ARE
18 SCHEDULED FOR REPEAL ON SEPTEMBER 1, 2030:

19 (I) THE FUNCTIONS OF THE DIVISION OF INSURANCE IN THE
20 DEPARTMENT OF REGULATORY AGENCIES SPECIFIED IN ARTICLE 1 OF TITLE
21 10, OTHER THAN THE FUNCTIONS OF THE DIVISION RELATED TO THE
22 LICENSING OF BAIL BONDING AGENTS AND THE REGULATION OF PRENEED
23 FUNERAL CONTRACTS.

24 (b) THIS SUBSECTION (31) IS REPEALED, EFFECTIVE SEPTEMBER 1,
25 2032.

26 **SECTION 2.** In Colorado Revised Statutes, 10-1-103, **amend**
27 (6)(b)(I)(D) as follows:

1 **10-1-103. Division of insurance - subject to repeal - repeal of**
2 **functions.** (6) (b) (I) (D) EXCEPT AS OTHERWISE PROVIDED IN SECTION
3 24-34-104 (31)(a)(I), the functions of the division of insurance are
4 repealed, effective ~~July 1, 2017~~ SEPTEMBER 1, 2030, pursuant to this
5 section and section 24-34-104. ~~C.R.S.~~

6 **SECTION 3.** In Colorado Revised Statutes, ~~10-1-215~~, **amend (1)**
7 as follows:

8 **10-1-215. Fines and penalties.** (1) Fines and penalties levied as
9 a result of a market conduct action or other action enforcing this part 2
10 shall be consistent, reasonable, and justified. EVERY FINE OR PENALTY
11 MUST RELATE TO THE GENERAL BUSINESS PRACTICES AND COMPLIANCE
12 ACTIVITIES OF INSURERS AND NOT TO CLEARLY INFREQUENT OR
13 UNINTENTIONAL RANDOM ERRORS THAT DO NOT CAUSE SIGNIFICANT
14 CONSUMER HARM.

15 **SECTION 4.** In Colorado Revised Statutes, **add** 10-15-122 as
16 follows:

17 **10-15-122. Study of contract sellers - report - repeal.** (1) THE
18 DIVISION SHALL STUDY WHETHER ALL CONTRACT SELLERS IN COLORADO
19 ARE IN COMPLIANCE WITH THIS ARTICLE 15 AND, IF APPLICABLE,
20 DETERMINE STRATEGIES TO GAIN COMPLIANCE FROM CONTRACT SELLERS
21 WHO ARE NOT CURRENTLY IN COMPLIANCE. NO LATER THAN SEPTEMBER
22 1, 2017, THE DIVISION SHALL REPORT THE FINDINGS OF THE STUDY TO THE
23 HOUSE OF REPRESENTATIVES BUSINESS AFFAIRS AND LABOR COMMITTEE
24 AND THE SENATE BUSINESS, LABOR, AND TECHNOLOGY COMMITTEE, OR
25 ANY SUCCESSOR COMMITTEES.

26 (2) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2018.

27 **SECTION 5.** In Colorado Revised Statutes, **add** 10-15-123 as

1 follows:

2 **10-15-123. Repeal of article.** THIS ARTICLE 15 IS REPEALED,
3 EFFECTIVE SEPTEMBER 1, 2022. BEFORE ITS REPEAL, THE DEPARTMENT OF
4 REGULATORY AGENCIES SHALL REVIEW THE REGULATION OF PRENEED
5 FUNERAL CONTRACTS IN ACCORDANCE WITH SECTION 24-34-104.

6 **SECTION 6.** In Colorado Revised Statutes, 10-16-402, **amend**
7 (1)(b) introductory portion, (2) introductory portion, and (2)(b); and
8 **repeal** (1)(a) and (1)(c) as follows:

9 **10-16-402. Issuance of certificate of authority - denial.**

10 (1) (a) ~~Upon receipt of an application for issuance of a certificate of~~
11 ~~authority, the commissioner shall forthwith transmit copies of such~~
12 ~~application and accompanying documents to the executive director.~~

13 (b) ~~The executive director~~ COMMISSIONER shall determine whether
14 the applicant for a certificate of authority, with respect to health care
15 services to be furnished:

16 (c) ~~Within thirty days of receipt of the application for issuance of~~
17 ~~a certificate of authority, the executive director shall certify to the~~
18 ~~commissioner whether the proposed health maintenance organization~~
19 ~~meets the requirements of paragraph (b) of this subsection (1). If the~~
20 ~~executive director certifies that the health maintenance organization does~~
21 ~~not meet such requirements, the executive director shall specify in what~~
22 ~~respects it is deficient.~~

23 (2) The commissioner shall issue ~~or deny a certificate of authority~~
24 ~~to any person filing an application pursuant to section 10-16-401 within~~
25 ~~thirty days of receipt of the certification from the executive director.~~
26 Issuance of a certificate of authority shall be granted upon payment of the
27 application fee prescribed in section 10-16-110 (2) if the commissioner

1 is satisfied that the following conditions are met:

2 (b) The ~~executive director certifies~~ COMMISSIONER DETERMINES
3 in accordance with subsection (1) of this section that the health
4 maintenance organization's proposed plan of operation meets the
5 requirements of ~~paragraph (b) of subsection (1)~~ SUBSECTION (1)(b) of this
6 section;

7 **SECTION 7.** In Colorado Revised Statutes, 10-16-409, **amend**
8 (1)(a), (1)(b) introductory portion, and (3) as follows:

9 **10-16-409. Complaint system.** (1) (a) Every health maintenance
10 organization shall establish and maintain a complaint system ~~which~~ THAT
11 has been approved by the commissioner ~~after consultation with the~~
12 ~~executive director~~, to provide reasonable procedures for the resolution of
13 written complaints initiated by enrollees concerning health care services.

14 (b) Each health maintenance organization shall maintain WRITTEN
15 RECORDS RELATING TO ITS COMPLAINT SYSTEM in a form prescribed by the
16 commissioner, ~~after consultation with the executive director~~, for
17 examination by the commissioner, ~~or the executive director~~, which shall
18 ~~include~~ FORM MUST INCLUDE:

19 (3) The commissioner ~~or the executive director~~ may examine such
20 THE complaint system REQUIRED BY SUBSECTION (1) OF THIS SECTION,
21 subject to the limitations concerning medical records of individuals set
22 forth in section 10-16-416 (3).

23 **SECTION 8.** In Colorado Revised Statutes, 10-16-416, **amend**
24 (3), (4), and (5); and **repeal** (2) as follows:

25 **10-16-416. Examination.** (2) ~~The executive director may make~~
26 ~~an examination concerning the quality of health care services of any~~
27 ~~health maintenance organization and providers with whom such~~

1 organization has contracts, agreements, or other arrangements pursuant
2 to its health care plan as often as the executive director deems it necessary
3 for the protection of the interests of the people of this state but not less
4 frequently than once every three years.

5 (3) Every health maintenance organization and provider shall
6 submit its books and records relating to the health care plan to ~~such~~
7 ~~examinations~~ THE EXAMINATION REQUIRED BY SUBSECTION (1) OF THIS
8 SECTION and SHALL in every way facilitate ~~them~~ THE EXAMINATION.
9 Medical records of individuals and records of physicians providing
10 service under a contract to the health maintenance organization ~~shall not~~
11 ~~be~~ ARE NOT subject to ~~such~~ THE examination, although they may be
12 subject to subpoena upon a showing of good cause. For the purpose of
13 ~~examinations~~ THE EXAMINATION, the commissioner ~~and the executive~~
14 ~~director~~ may administer oaths to, and examine, the officers and agents of
15 the health maintenance organization and the principals of ~~such~~ ITS
16 providers concerning their business.

17 (4) The expenses of examinations under this section shall be
18 assessed against the organization being examined and remitted to the
19 commissioner. ~~or the executive director for whom the examination is~~
20 ~~being conducted.~~

21 (5) In lieu of ~~such~~ AN examination, the commissioner ~~or the~~
22 ~~executive director~~ may accept the report of an examination made by the
23 commissioner or the head of the health department of another state.

24 **SECTION 9.** In Colorado Revised Statutes, 10-16-417, **amend**
25 (1) introductory portion and (1)(d) as follows:

26 **10-16-417. Suspension or revocation of certificate of authority.**

27 (1) The commissioner may suspend or revoke any certificate of authority

1 issued to a health maintenance organization pursuant to part 1 of this
2 ~~article~~ ARTICLE 16 and this part 4 if the commissioner finds that any of the
3 following conditions exist:

4 (d) ~~The executive director certifies to the commissioner~~
5 DETERMINES that:

6 (I) The health maintenance organization does not meet the
7 requirements of section 10-16-402 (1)(b); or

8 (II) The health maintenance organization is unable to fulfill its
9 obligations to furnish health care services as required under its health care
10 plan;

11 **SECTION 10.** In Colorado Revised Statutes, 10-16-419, **amend**
12 (1) and (2) as follows:

13 **10-16-419. Administrative procedures.** (1) When the
14 commissioner has cause to believe that grounds for the denial of an
15 application for a certificate of authority exist, or that grounds for the
16 suspension or revocation of a certificate of authority exist, the
17 commissioner shall notify the health maintenance organization ~~and the~~
18 ~~executive director~~ in writing specifically stating the grounds for denial,
19 suspension, or revocation and fixing a time of at least twenty days but, in
20 the case of a denial, not more than sixty days thereafter for a hearing on
21 the matter.

22 (2) ~~The executive director or such executive director's designated~~
23 ~~representative shall be in attendance at the hearing and shall participate~~
24 ~~in the proceedings. The recommendations and findings of the executive~~
25 ~~director with respect to matters relating to the quality of health care~~
26 ~~services provided in connection with any decision regarding denial,~~
27 ~~suspension, or revocation of a certificate of authority shall be conclusive~~

1 ~~and binding upon the commissioner.~~ After ~~such~~ A hearing HELD
2 PURSUANT TO SUBSECTION (1) OF THIS SECTION or upon the failure of the
3 health maintenance organization to appear at ~~such~~ THE hearing, the
4 commissioner shall take action as is deemed advisable on written
5 findings, which shall be mailed to the health maintenance organization.
6 ~~with a copy thereof to the executive director.~~

7 **SECTION 11.** In Colorado Revised Statutes, 10-16-111, **amend**
8 **(2)(a), (2)(b) introductory portion, and (2)(b)(IV) as follows:**

9 **10-16-111. Annual statements and reports - rules. (2) Health**
10 **maintenance organizations.** (a) Every health maintenance organization
11 **shall annually, on or before March 1, file a report verified by at least two**
12 **principal officers with the commissioner with a copy to the executive**
13 **director covering the preceding calendar year.**

14 **(b) Such THE report shall MUST be on forms prescribed by the**
15 **commissioner and shall include:**

16 **(IV) A summary of information compiled pursuant to section**
17 **10-16-402 (1)(b)(III) in such form as required by the executive director**
18 **COMMISSIONER;**

19 **SECTION 12.** In Colorado Revised Statutes, 10-16-420, **amend**
20 **(2) as follows:**

21 **10-16-420. Penalties and enforcement.** (2) (a) If the
22 commissioner, ~~or the executive director~~, for any reason, has cause to
23 believe that any violation of part 1 of this ~~article~~ ARTICLE 16 or OF this
24 part 4 has occurred or is threatened prior to levy of a penalty or
25 suspension or revocation of a certificate of authority, the commissioner
26 ~~or the executive director~~ shall give notice to the health maintenance
27 organization and to the representatives, or other persons who appear to be

1 involved in such suspected violation, to arrange a conference with the
2 alleged violators or their authorized representatives for the purpose of
3 attempting to ascertain the facts relating to such suspected violation, and,
4 ~~in the event~~ IF it appears that any violation has occurred or is threatened,
5 to arrive at an adequate and effective means of correcting or preventing
6 such violations.

7 (b) Proceedings under this subsection (2) ~~shall~~ ARE not be
8 governed by any formal procedural requirements, and may be conducted
9 in such manner as the commissioner ~~or the executive director may deem~~
10 DEEMS appropriate under the circumstances.

11 **SECTION 13.** In Colorado Revised Statutes, **amend** 10-16-424
12 as follows:

13 **10-16-424. Commissioner's authority to contract.** The
14 ~~executive director~~ COMMISSIONER, in carrying out his OR HER obligations
15 pursuant to sections 10-16-402 (1)(b) ~~10-16-416 (2)~~, and 10-16-417 (1),
16 may contract with qualified persons ~~to make recommendations~~
17 concerning the determinations required to be made by ~~such executive~~
18 ~~director.~~ Such recommendations may be accepted in full or in part by the
19 ~~executive director~~ THE COMMISSIONER.

20 **SECTION 14.** In Colorado Revised Statutes, **add** 10-3.5-111 as
21 follows:

22 **10-3.5-111. Repeal of article.** THIS ARTICLE 3.5 IS REPEALED,
23 EFFECTIVE JULY 1, 2025.

24 **SECTION 15.** In Colorado Revised Statutes, 10-4-608, **amend**
25 (1) introductory portion; and **repeal** (1)(b) as follows:

26 **10-4-608. Exemptions.** (1) This part 6 ~~shall~~ DOES not apply to
27 any policy:

1 (b) ~~Insuring more than four automobiles;~~

2 **SECTION 16.** In Colorado Revised Statutes, **repeal** 10-4-631 as
3 follows:

4 **10-4-631. Insurers to file rate schedule.** ~~Any insurer authorized~~
5 ~~to transact or transacting business in this state shall file a schedule of~~
6 ~~insurance rates for the minimum coverages required under this part 6 no~~
7 ~~later than July 1, 2003. The commissioner shall make the information~~
8 ~~required by this section open to public inspection no later than July 1,~~
9 ~~2003.~~

10 **SECTION 17.** In Colorado Revised Statutes, 10-16-102, **amend**
11 the introductory portion, (20), and (46) as follows:

12 **10-16-102. Definitions.** As used in this ~~article~~ ARTICLE 16, unless
13 the context otherwise requires:

14 (20) "Enrollee" means:

15 (a) An individual who is or has been enrolled in a health
16 maintenance organization; ~~or~~

17 (b) An individual who is or has been enrolled in an individual or
18 group prepaid dental care plan as a principal subscriber and includes the
19 individual's dependents who are entitled to prepaid dental care services
20 under the plan solely because of their status as dependents of the principal
21 subscriber; OR

22 (c) AN INDIVIDUAL WHO IS REIMBURSED BY A PROVIDER AS
23 DESCRIBED IN SECTION 10-16-106.7 (2)(c).

24 (46) "Participating provider" means a provider, EITHER WITHIN OR
25 OUTSIDE OF COLORADO, that, under a contract with a carrier or with its
26 contractor or subcontractor, has agreed to provide health care services to
27 covered persons with an expectation of receiving payment, other than

1 coinsurance, copayments, or deductibles, directly or indirectly, from the
2 carrier.

3 **SECTION 18.** In Colorado Revised Statutes, 10-16-105.6, **repeal**
4 (3) as follows:

5 **10-16-105.6. Rate usage.** (3) ~~(a) On and after January 1, 2014,~~
6 ~~a carrier may impose on a small employer a premium surcharge of up to~~
7 ~~thirty-five percent above the modified community rate for up to twelve~~
8 ~~months if the small employer has, at any time during the past twelve~~
9 ~~months, purchased health benefit coverage as a small employer that is~~
10 ~~either self-funded or insured through a health benefit plan that is not a~~
11 ~~small group plan, except for health benefit plans sponsored by an~~
12 ~~employee leasing company, as defined in section 8-70-114 (2) (a) (V),~~
13 ~~C.R.S., pursuant to subparagraphs (II) to (IV) of paragraph (b) of this~~
14 ~~subsection (3).~~

15 ~~(b) Paragraph (a) of this subsection (3) does not apply to:~~

16 ~~(I) A small employer that has not previously sponsored a health~~
17 ~~benefit plan for its employees;~~

18 ~~(II) A small employer that had previously participated in a health~~
19 ~~benefit plan through an employee leasing company, as defined in section~~
20 ~~8-70-114 (2) (a) (V), C.R.S., if the small employer's coverage through the~~
21 ~~employee leasing company was subject to the small group laws;~~

22 ~~(III) A small employer that had previously participated in a health~~
23 ~~benefit plan sponsored by an employee leasing company, as defined in~~
24 ~~section 8-70-114 (2) (a) (V), C.R.S., and that is no longer a party to an~~
25 ~~employee leasing company; or~~

26 ~~(IV) A small employer that is currently using the services of an~~
27 ~~employee leasing company, as defined in section 8-70-114 (2) (a) (V);~~

1 ~~C.R.S., that does not offer a health benefit plan as part of its employee~~
2 ~~leasing services or, because of an action by a carrier, has ceased offering~~
3 ~~a health benefit plan to employees assigned to client locations pursuant~~
4 ~~to an employee leasing contract.~~

5 (c) ~~For purposes of determining whether a carrier may impose a~~
6 ~~premium surcharge pursuant to this subsection (3) on the small employer,~~
7 ~~the carrier may require that the small employer submit evidence of the~~
8 ~~small employer's most recent health benefit coverage.~~

9 (d) ~~A carrier shall use the premium surcharge allowed pursuant to~~
10 ~~this subsection (3) only for calculating premium amounts and shall not~~
11 ~~use the premium surcharge as a basis for accepting or rejecting a small~~
12 ~~employer's application for health benefit coverage. The carrier shall not~~
13 ~~apply the premium surcharge to a group of more than fifty employees that~~
14 ~~subsequently becomes subject to small group coverage if the group has~~
15 ~~not had a lapse of coverage greater than ninety days.~~

16 **SECTION 19.** In Colorado Revised Statutes, 10-19-113.6,
17 **amend** (1)(a) and (2)(a) as follows:

18 **10-19-113.6. Producer training requirements.** (1) (a) An
19 individual may not sell, solicit, or negotiate long-term care insurance
20 unless the individual is licensed as an insurance producer for accident and
21 health or sickness or life insurance and has completed ~~a one-time training~~
22 ~~course on or before January 1, 2009,~~ and ongoing training every
23 twenty-four months. ~~thereafter.~~ The training shall MUST meet the
24 requirements set forth in subsection (2) of this section.

25 (2) (a) ~~The one-time training required by this section shall be no~~
26 ~~less than sixteen hours, eight hours of which shall consist of long-term~~
27 ~~care, generally, and eight hours of which shall be specific to long-term~~

1 ~~care partnerships in a classroom setting.~~ The ongoing training required by
2 this section ~~shall~~ MUST be no less than five hours in a classroom setting.

3 **SECTION 20.** In Colorado Revised Statutes, 10-16-704, **amend**
4 (1.5)(a)(II) as follows:

5 **10-16-704. Network adequacy - rules - legislative declaration.**
6 (1.5) (a) (II) For purposes of the rules, "essential community providers"
7 includes providers that serve predominately low-income, medically
8 underserved individuals, such as health care providers defined in the
9 federal law and under part 4 of article 4 5 of title 25.5; ~~C.R.S.~~; except that
10 nothing in this subsection (1.5) requires any carrier to provide coverage
11 for any specific medical procedure.

12 **SECTION 21.** In Colorado Revised Statutes, 12-58.5-105,
13 **amend** (1) introductory portion and (1)(k) as follows:

14 **12-58.5-105. Exemptions.** (1) This ~~article~~ ARTICLE 58.5 does not
15 apply to:

16 (k) A person attempting to recover a fugitive when that person is
17 ~~a bail bonding agent or cash-bonding agent qualified to write bail bonds~~
18 ~~pursuant to article 23 of title 10, C.R.S., FURNISHED BAIL AND IS LICENSED~~
19 ~~UNDER ARTICLE 2 OR 23 OF TITLE 10 or is acting pursuant to a contract~~
20 ~~with or at the request of a PERSON WHO FURNISHED bail; ~~bonding agent or~~~~
21 ~~cash-bonding agent who is so qualified;~~

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