

**First Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 19-0513.02 Christy Chase x2008

**HOUSE BILL 19-1168**

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**HOUSE SPONSORSHIP**

**McCluskie and Rich**, Buckner, Esgar, Kennedy, McLachlan, Roberts, Soper

**SENATE SPONSORSHIP**

**Donovan and Rankin**,

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**House Committees**

Health & Insurance  
Appropriations

**Senate Committees**

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**A BILL FOR AN ACT**

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

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does*

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.

*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>.)*

The bill authorizes the commissioner of insurance to apply to the secretary of the United States department of health and human services for a state innovation waiver, for federal funding, or both, to allow the state to implement and operate a reinsurance program to assist health insurers in paying high-cost insurance claims. The state cannot implement the program absent waiver or funding approval from the secretary. The program is established as an enterprise for purposes of section 20 of article X of the state constitution. The division of insurance is to include an update regarding the program in its annual "SMART Act" report, and the program is subject to sunset review and repeal in 5 years.

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*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 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,

1 WHERE PREMIUMS ARE CONSIDERABLY HIGHER THAN IN METROPOLITAN  
2 AREAS OF THE STATE AND THERE IS A LACK OF COMPETITION AMONG  
3 HEALTH CARE PROVIDERS AND CARRIERS;

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

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

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

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

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

25 (IV) SUPPORT AND EMPOWER, AND INCREASE ACCESS TO  
26 AFFORDABLE, HIGH-VALUE HEALTH INSURANCE FOR, CONSUMERS WHO ARE  
27 INELIGIBLE FOR PREMIUM TAX CREDIT SUBSIDIES WHILE MINIMIZING ANY

1 POTENTIAL NEGATIVE EFFECTS ON ACCESS TO AFFORDABLE, HIGH-VALUE  
2 INSURANCE FOR CONSUMERS WHO ARE ELIGIBLE FOR PREMIUM TAX CREDIT  
3 SUBSIDIES AND COST SHARING REDUCTIONS.

4 **10-16-1103. Definitions.** AS USED IN THIS PART 11, UNLESS THE  
5 CONTEXT OTHERWISE REQUIRES:

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

12 (2) "BEHAVIORAL HEALTH CARE SERVICES" MEANS SERVICES FOR  
13 THE PREVENTION, DIAGNOSIS, AND TREATMENT OF, AND THE RECOVERY  
14 FROM, BEHAVIORAL, MENTAL HEALTH, OR SUBSTANCE USE DISORDERS.

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

18 (4) "COINSURANCE RATE" MEANS THE RATE SET BY THE  
19 COMMISSIONER PURSUANT TO SECTION 10-16-1105 (2) AT WHICH THE  
20 REINSURANCE PROGRAM WILL REIMBURSE AN ELIGIBLE CARRIER FOR  
21 CLAIMS INCURRED FOR A COVERED PERSON'S COVERED BENEFITS IN A  
22 BENEFIT YEAR, WHICH CLAIMS EXCEED THE ATTACHMENT POINT BUT ARE  
23 BELOW THE REINSURANCE CAP.

24 (5) "COMMISSIONER" MEANS THE COMMISSIONER OF INSURANCE,  
25 THE COMMISSIONER'S DEPUTIES, OR THE DIVISION OF INSURANCE, AS  
26 APPROPRIATE.

27 (6) "ELIGIBLE CARRIER" MEANS A CARRIER THAT:

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

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

5 (7) "FEE SCHEDULE" MEANS THE FEE SCHEDULE ESTABLISHED BY  
6 THE COMMISSIONER PURSUANT TO SECTION 10-16-1105 (5).

7 (8) "MEDICARE" MEANS FEDERAL INSURANCE OR ASSISTANCE  
8 PROVIDED BY THE "HEALTH INSURANCE FOR THE AGED ACT", TITLE XVIII  
9 OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, 42 U.S.C. SEC.  
10 1395 ET SEQ.

11 (9) "MEDICARE REIMBURSEMENT RATES" MEANS THE SCHEDULE  
12 OF REIMBURSEMENT RATES FOR PARTICULAR HEALTH CARE SERVICES  
13 PROVIDED UNDER MEDICARE.

14 (10) "PAYMENT PARAMETERS" MEANS THE ATTACHMENT POINT,  
15 REINSURANCE CAP, COINSURANCE RATE, AND FEE SCHEDULE FOR THE  
16 REINSURANCE PROGRAM.

17 (11) "PRIMARY CARE SERVICES" MEANS HEALTH SERVICES  
18 REGARDING FAMILY MEDICINE, GENERAL PRACTICE, GENERAL INTERNAL  
19 MEDICINE, PEDIATRICS, GENERAL OBSTETRICS AND GYNECOLOGY, ORAL  
20 HEALTH, OR MENTAL HEALTH THAT ARE PROVIDED BY HEALTH CARE  
21 PROFESSIONALS.

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

27 (13) "REINSURANCE PAYMENT" MEANS AN AMOUNT PAID TO AN

1 ELIGIBLE CARRIER UNDER THE REINSURANCE PROGRAM.

2 (14) "REINSURANCE PROGRAM" OR "PROGRAM" MEANS THE  
3 COLORADO REINSURANCE PROGRAM ESTABLISHED UNDER SECTION  
4 10-16-1105.

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

9 **10-16-1104. Commissioner powers and duties - rules - study**  
10 **and report.** (1) THE COMMISSIONER HAS ALL POWERS NECESSARY TO  
11 IMPLEMENT THIS PART 11 AND IS SPECIFICALLY AUTHORIZED TO:

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

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

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

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

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

25 (f) ESTABLISH A FEE SCHEDULE, IN ACCORDANCE WITH SECTION  
26 10-16-1105 (5), SETTING THE AMOUNT THAT PROVIDERS WILL BE  
27 REIMBURSED FOR SERVICES PROVIDED TO COVERED PERSONS WHOSE

1 CLAIMS COSTS FOR COVERED BENEFITS IN THE APPLICABLE BENEFIT YEAR  
2 EXCEED THE APPLICABLE ATTACHMENT POINT AND FOR WHICH AN  
3 ELIGIBLE CARRIER SUBMITS A CLAIM FOR REINSURANCE PAYMENTS UNDER  
4 THE PROGRAM;

5 (g) APPLY FOR A STATE INNOVATION WAIVER, FEDERAL FUNDS, OR  
6 BOTH, IN ACCORDANCE WITH SECTION 10-16-1108, FOR THE  
7 IMPLEMENTATION AND OPERATION OF THE REINSURANCE PROGRAM;

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

11 (i) ADOPT RULES AS NECESSARY TO IMPLEMENT, ADMINISTER, AND  
12 ENFORCE THIS PART 11, INCLUDING RULES NECESSARY TO ALIGN STATE  
13 LAW WITH ANY FEDERAL PROGRAM AND RULES AS SPECIFIED IN SECTION  
14 10-16-1105 (5)(d) TO EXCLUDE CERTAIN HOSPITALS FROM THE FEE  
15 SCHEDULE. THE RULES SHALL BE ADOPTED IN ACCORDANCE WITH THE  
16 "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24,  
17 INCLUDING THE REQUIREMENT TO ESTABLISH A REPRESENTATIVE GROUP  
18 OF PARTICIPANTS PURSUANT TO SECTION 24-4-103 (2).

19 (2) IF THE REINSURANCE PROGRAM IS APPROVED PURSUANT TO  
20 SECTION 10-16-1108, THE COMMISSIONER, DURING IMPLEMENTATION OF  
21 THE PROGRAM, SHALL EVALUATE THE EFFECT OF THE PROGRAM ON ACCESS  
22 TO AFFORDABLE, HIGH-VALUE HEALTH INSURANCE FOR CONSUMERS WHO  
23 ARE ELIGIBLE FOR PREMIUM TAX CREDIT SUBSIDIES AND COST SHARING  
24 REDUCTIONS AND MINIMIZE ANY POTENTIAL NEGATIVE EFFECTS ON THOSE  
25 CONSUMERS. WITHIN ONE HUNDRED TWENTY DAYS FOLLOWING THE END  
26 OF THE SECOND FULL YEAR OF OPERATION OF THE PROGRAM, THE  
27 COMMISSIONER SHALL COMPLETE A STUDY OF AND ISSUE A REPORT ON THE

1 EFFECTS OF THE PROGRAM ON ACCESS TO AFFORDABLE, HIGH-VALUE  
2 HEALTH INSURANCE FOR CONSUMERS WHO ARE ELIGIBLE FOR PREMIUM  
3 TAX CREDIT SUBSIDIES AND COST SHARING REDUCTIONS. THE  
4 COMMISSIONER SHALL POST THE REPORT ON THE DIVISION'S WEBSITE AND  
5 SUBMIT THE REPORT TO THE GOVERNOR, THE SENATE COMMITTEE ON  
6 HEALTH AND HUMAN SERVICES OR ITS SUCCESSOR COMMITTEE, AND THE  
7 HOUSE OF REPRESENTATIVES HEALTH AND INSURANCE COMMITTEE OR ITS  
8 SUCCESSOR COMMITTEE.

9 **10-16-1105. Reinsurance program - creation - enterprise**  
10 **status - subject to waiver or funding approval - operation - payment**  
11 **parameters - calculation of reinsurance payments - eligible carrier**  
12 **requests - fee schedule - rules - definition.** (1) (a) THERE IS HEREBY  
13 CREATED IN THE DIVISION THE COLORADO REINSURANCE PROGRAM TO  
14 PROVIDE REINSURANCE PAYMENTS TO ELIGIBLE CARRIERS.  
15 IMPLEMENTATION AND OPERATION OF THE REINSURANCE PROGRAM IS  
16 CONTINGENT UPON APPROVAL OF THE STATE INNOVATION WAIVER OR  
17 FEDERAL FUNDING REQUEST SUBMITTED BY THE COMMISSIONER IN  
18 ACCORDANCE WITH SECTION 10-16-1108.

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



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

7           (c) IF THE STATE INNOVATION WAIVER OR FEDERAL FUNDING  
8 REQUEST SUBMITTED BY THE COMMISSIONER PURSUANT TO SECTION  
9 10-16-1108 IS APPROVED, THE COMMISSIONER SHALL IMPLEMENT AND  
10 OPERATE THE REINSURANCE PROGRAM IN ACCORDANCE WITH THIS  
11 SECTION.

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

16           (e) (I) ON A QUARTERLY BASIS DURING THE APPLICABLE BENEFIT  
17 YEAR, EACH ELIGIBLE CARRIER SHALL REPORT TO THE COMMISSIONER ITS  
18 CLAIMS COSTS THAT EXCEED THE ATTACHMENT POINT FOR THAT BENEFIT  
19 YEAR AND SHALL ATTEST TO THE COMMISSIONER THAT THE CARRIER PAID  
20 CLAIMS ABOVE THE ATTACHMENT POINT AT THE RATES SPECIFIED IN THE  
21 FEE SCHEDULE.

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

1 ELIGIBLE CARRIER.

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

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

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

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

18 (b) FOR THE 2021 BENEFIT YEAR AND EACH BENEFIT YEAR  
19 THEREAFTER, AFTER A STAKEHOLDER PROCESS, THE COMMISSIONER SHALL  
20 ESTABLISH AND PUBLISH THE PAYMENT PARAMETERS FOR THE APPLICABLE  
21 BENEFIT YEAR BY MARCH 15 OF THE YEAR IMMEDIATELY PRECEDING THE  
22 APPLICABLE BENEFIT YEAR. IN SETTING THE PAYMENT PARAMETERS  
23 UNDER THIS SUBSECTION (2)(b), THE COMMISSIONER SHALL CONSIDER THE  
24 FOLLOWING FACTORS AS THEY APPLY IN EACH GEOGRAPHIC RATING AREA  
25 IN THE STATE:

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

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

3 (III) PARTICIPATION AND COMPETITION BY PROVIDERS; AND

4 (IV) RATES IN THE INDIVIDUAL MARKET.

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

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

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

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

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

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

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

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

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

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

26 (b) A CARRIER IS INELIGIBLE FOR REINSURANCE PAYMENTS FOR  
27 CLAIMS COSTS FOR A COVERED PERSON'S COVERED BENEFITS IN THE

1 APPLICABLE BENEFIT YEAR THAT EXCEED THE REINSURANCE CAP.

2 (c) THE COMMISSIONER SHALL ENSURE THAT REINSURANCE  
3 PAYMENTS MADE TO AN ELIGIBLE CARRIER DO NOT EXCEED THE TOTAL  
4 AMOUNT PAID BY THE ELIGIBLE CARRIER FOR ANY ELIGIBLE CLAIM.  
5 "TOTAL AMOUNT PAID BY THE ELIGIBLE CARRIER FOR ANY ELIGIBLE  
6 CLAIM" MEANS THE AMOUNT PAID BY THE ELIGIBLE CARRIER BASED ON  
7 THE ALLOWED AMOUNT LESS ANY DEDUCTIBLE, COINSURANCE, OR  
8 COPAYMENT, AS OF THE TIME THE DATA ARE SUBMITTED OR MADE  
9 ACCESSIBLE UNDER SUBSECTION (3)(c) OF THIS SECTION.

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

16 (5) (a) IN ORDER TO PROMOTE MORE COST-EFFECTIVE HEALTH  
17 CARE COVERAGE AND TO BE FAIR TO FEDERAL TAXPAYERS BY  
18 RESTRAINING GROWTH IN FEDERAL SPENDING COMMITMENTS, THE  
19 COMMISSIONER, BY RULE, SHALL ESTABLISH A FEE SCHEDULE BASED ON A  
20 PERCENTAGE OF MEDICARE REIMBURSEMENT RATES THAT, ALONG WITH  
21 THE FEDERAL PASS-THROUGH FUNDING DESCRIBED IN SECTION 10-16-1107  
22 (1)(a)(I), WILL REDUCE CLAIMS COSTS AS SPECIFIED IN SUBSECTION (2) OF  
23 THIS SECTION. THE FEE SCHEDULE MUST SPECIFY THE REIMBURSEMENT  
24 AMOUNT FOR A PROVIDER THAT PROVIDES SERVICES TO A COVERED  
25 PERSON WHOSE CLAIMS COSTS FOR COVERED BENEFITS IN THE APPLICABLE  
26 BENEFIT YEAR EXCEED THE APPLICABLE ATTACHMENT POINT AND FOR  
27 WHICH AN ELIGIBLE CARRIER SUBMITS A CLAIM FOR A REINSURANCE

1 PAYMENT UNDER THIS SECTION. FOR CLAIMS COSTS FOR A COVERED  
2 PERSON THAT EXCEED THE ATTACHMENT POINT, AN ELIGIBLE CARRIER  
3 SHALL ADJUST ITS PAYMENTS TO PROVIDERS FOR THOSE CLAIMS IN EXCESS  
4 OF THE ATTACHMENT POINT BASED ON THE FEE SCHEDULE ESTABLISHED  
5 UNDER THIS SUBSECTION (5). THE COMMISSIONER MAY INCLUDE IN THE  
6 FEE SCHEDULE THE REIMBURSEMENT AMOUNT TO BE PAID FOR ANY  
7 SERVICES NOT INCLUDED IN THE SCHEDULE OF MEDICARE REIMBURSEMENT  
8 RATES. THE COMMISSIONER SHALL ANNUALLY REVIEW AND ADJUST THE  
9 FEE SCHEDULE IN ORDER TO ACHIEVE THE PURPOSES SPECIFIED IN THIS  
10 SUBSECTION (5) AND SUBSECTION (2) OF THIS SECTION.

11 (b) (I) A HEALTH CARE PROVIDER, HEALTH CARE FACILITY,  
12 EMERGENCY SERVICE PROVIDER, OR OTHER PERSON PROVIDING HEALTH  
13 CARE SERVICES TO A COVERED PERSON FOR WHOM AN ELIGIBLE CARRIER  
14 HAS SUBMITTED A CLAIM FOR REINSURANCE PAYMENTS UNDER THIS  
15 SECTION SHALL NOT CONTRACT WITH OR OTHERWISE DEMAND PAYMENT  
16 FROM THE COVERED PERSON OR THE REINSURANCE PROGRAM FOR  
17 AMOUNTS THAT EXCEED THE APPLICABLE FEE ON THE FEE SCHEDULE  
18 ESTABLISHED PURSUANT TO SUBSECTION (5)(a) OF THIS SECTION. ANY  
19 DEMAND FOR PAYMENT OF CHARGES THAT EXCEED THE APPLICABLE FEE  
20 ON THE FEE SCHEDULE IS UNLAWFUL, VOID, AND UNENFORCEABLE AS A  
21 DEBT.

22 (II) NOTHING IN THIS SUBSECTION (5)(b) PRECLUDES A HEALTH  
23 CARE PROVIDER, HEALTH CARE FACILITY, EMERGENCY SERVICE PROVIDER,  
24 OR OTHER PERSON PROVIDING HEALTH CARE SERVICES TO A COVERED  
25 PERSON FROM BILLING OR CHARGING A COVERED PERSON FOR APPLICABLE  
26 COINSURANCE, DEDUCTIBLE, OR COPAYMENT AMOUNTS.

27 (c) THIS SUBSECTION (5) DOES NOT APPLY TO ANY PRIMARY CARE

1 SERVICES OR BEHAVIORAL HEALTH CARE SERVICES.

2 (d) THE COMMISSIONER SHALL ESTABLISH PARAMETERS, BY RULE,  
3 FOR EXEMPTING HOSPITALS THAT WILL BE AFFECTED IN AN  
4 UNSUSTAINABLE WAY BY THE REQUIREMENTS OF THIS SUBSECTION (5).

5 **10-16-1106. Accounting - reports - audits.** (1) THE  
6 COMMISSIONER SHALL MAINTAIN AN ACCOUNTING FOR EACH BENEFIT  
7 YEAR OF ALL:

8 (a) MONEY APPROPRIATED FOR REINSURANCE PAYMENTS AND  
9 ADMINISTRATIVE AND OPERATIONAL EXPENSES;

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

12 (c) REINSURANCE PAYMENTS MADE TO ELIGIBLE CARRIERS; AND

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

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

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

26 (4) ON OR BEFORE NOVEMBER 1, 2020, AND ON OR BEFORE  
27 NOVEMBER 1 EACH YEAR THEREAFTER, THE DIVISION SHALL INCLUDE AN

1 UPDATE REGARDING THE PROGRAM IN ITS REPORT TO THE MEMBERS OF THE  
2 APPLICABLE COMMITTEES OF REFERENCE IN THE SENATE AND HOUSE OF  
3 REPRESENTATIVES AS REQUIRED BY THE "STATE MEASUREMENT FOR  
4 ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART)  
5 GOVERNMENT ACT", PART 2 OF ARTICLE 7 OF TITLE 2.

6 **10-16-1107. Funding for reinsurance program - sources -**  
7 **permitted uses - reinsurance program cash fund - calculation of total**  
8 **funding for program.** (1) (a) THERE IS HEREBY CREATED IN THE STATE  
9 TREASURY THE REINSURANCE PROGRAM CASH FUND, WHICH CONSISTS OF:

10 (I) FEDERAL PASS-THROUGH FUNDING GRANTED PURSUANT TO 42  
11 U.S.C. SEC. 18052 (a)(3) THAT IS REALIZED FROM THE PREMIUM  
12 REDUCTION PRODUCED BY THE REDUCTION IN COSTS OF CARE RESULTING  
13 FROM THE FEE SCHEDULE; AND

14 (II) ANY OTHER FEDERAL FUNDS THAT ARE MADE AVAILABLE FOR  
15 THE REINSURANCE PROGRAM.

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

22 (c) THE REINSURANCE PROGRAM CASH FUND IS PART OF THE  
23 REINSURANCE PROGRAM ENTERPRISE ESTABLISHED PURSUANT TO SECTION  
24 10-16-1105 (1)(b).

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



1 PROGRAM.

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

4 (a) REINSURANCE PAYMENTS UNDER THE REINSURANCE PROGRAM;  
5 AND

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

9 **10-16-1108. State innovation waiver - federal funding -**

10 **Colorado reinsurance program.** (1) (a) FOR PURPOSES OF

11 IMPLEMENTING AND OPERATING THE REINSURANCE PROGRAM AS SET  
12 FORTH IN THIS PART 11 FOR PLAN YEARS STARTING ON OR AFTER JANUARY  
13 1, 2020, THE COMMISSIONER MAY APPLY TO THE SECRETARY OF THE  
14 UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR:

15 (I) A FIVE-YEAR STATE INNOVATION WAIVER IN ACCORDANCE  
16 WITH SECTION 1332 OF THE FEDERAL ACT, CODIFIED AT 42 U.S.C. SEC.  
17 18052, AND 45 CFR 155.1300;

18 (II) FEDERAL FUNDS FOR THE REINSURANCE PROGRAM; OR

19 (III) A STATE INNOVATION WAIVER AND FEDERAL FUNDS.

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

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

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

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

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

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

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

17 **10-16-1109. Repeal of part - notice to revisor of statutes.**

18 (1) (a) THE COMMISSIONER SHALL NOTIFY THE REVISOR OF STATUTES IN  
19 WRITING, BY E-MAIL SENT TO REVISOROFSTATUTES.GA@STATE.CO.US,  
20 UPON RECEIPT FROM THE SECRETARY OF THE UNITED STATES  
21 DEPARTMENT OF HEALTH AND HUMAN SERVICES OF NOTICE OF APPROVAL  
22 OR DENIAL OF THE WAIVER OR FUNDING REQUESTED UNDER SECTION  
23 10-16-1108.

24 (b) (I) IF THE NOTICE FROM THE COMMISSIONER STATES THAT THE  
25 WAIVER OR FUNDING WAS DENIED, THIS PART 11 IS REPEALED, EFFECTIVE  
26 UPON THE DATE IDENTIFIED IN THE NOTICE THAT THE WAIVER OR FUNDING  
27 WAS DENIED OR, IF THE NOTICE DOES NOT SPECIFY THAT DATE, UPON THE

1 DATE OF THE NOTICE OF DENIAL TO THE REVISOR OF STATUTES.

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

8 (2) THIS PART 11 IS REPEALED, EFFECTIVE SEPTEMBER 1, 2024.  
9 BEFORE THE REPEAL, THIS PART 11 IS SCHEDULED FOR REVIEW IN  
10 ACCORDANCE WITH SECTION 24-34-104.

11 **SECTION 2.** In Colorado Revised Statutes, 24-34-104, **add**  
12 (25)(a)(XX) as follows:

13 **24-34-104. General assembly review of regulatory agencies**  
14 **and functions for repeal, continuation, or reestablishment - legislative**  
15 **declaration - repeal.** (25) (a) The following agencies, functions, or both,  
16 are scheduled for repeal on September 1, 2024:

17 (XX) THE COLORADO REINSURANCE PROGRAM AUTHORIZED  
18 UNDER PART 11 OF ARTICLE 16 OF TITLE 10.

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

26 **SECTION 4. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.