

CHAPTER 449

INSURANCE

SENATE BILL 22-040

BY SENATOR(S) Smallwood and Winter, Buckner, Cooke, Donovan, Gardner, Ginal, Hansen, Holbert, Jaquez Lewis, Kolker, Lee, Liston, Lundeen, Scott, Sonnenberg, Woodward;
also REPRESENTATIVE(S) Will and Lontine, Duran, Esgar, Jodeh, Kipp, Lynch, McCluskie, Michaelson Jenet, Ortiz, Pico, Ricks, Soper.

AN ACT

CONCERNING ACTUARIAL REVIEWS OF PROPOSED LEGISLATION THAT MAY IMPOSE A NEW HEALTH BENEFIT MANDATE ON HEALTH BENEFIT PLANS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, **add** 10-16-155 as follows:

10-16-155. Actuarial reviews of proposed health-care legislation - division to contract with third parties - required considerations - confidentiality - limits on expenditures - repeal. (1) ON OR BEFORE NOVEMBER 1, 2022, THE DIVISION SHALL RETAIN BY CONTRACT ONE OR MORE ENTITIES THAT HAVE EXPERIENCE IN ACTUARIAL REVIEWS, HEALTH-CARE POLICY, AND HEALTH EQUITY, REFERRED TO IN THIS SECTION AS THE "CONTRACTORS", FOR THE PURPOSE OF PERFORMING ACTUARIAL REVIEWS OF LEGISLATIVE PROPOSALS THAT MAY IMPOSE A NEW HEALTH BENEFIT COVERAGE MANDATE ON HEALTH BENEFIT PLANS OR REDUCE OR ELIMINATE COVERAGE MANDATED UNDER HEALTH BENEFIT PLANS, REFERRED TO IN THIS SECTION AS "LEGISLATIVE PROPOSALS". AT LEAST ONE OF THE CONTRACTORS MUST BE AN ACTUARY OR AN ACTUARIAL FIRM WITH EXPERIENCE IN ANALYZING HEALTH INSURANCE PREMIUMS. THE CONTRACTORS, UNDER THE DIRECTION OF THE DIVISION, SHALL CONDUCT ACTUARIAL REVIEWS OF UP TO SIX LEGISLATIVE PROPOSALS, REGARDLESS OF THE NUMBER OF LEGISLATIVE PROPOSALS THAT ARE REQUESTED FOR EACH REGULAR LEGISLATIVE SESSION BY MEMBERS OF THE GENERAL ASSEMBLY.

(2) BEFORE SEPTEMBER 1, 2022, THE DIVISION SHALL CONVENE A MEETING TO OBTAIN INPUT AND RECOMMENDATIONS FROM STAKEHOLDERS, INCLUDING REPRESENTATIVES OF THE HEALTH-CARE INDUSTRY, CONSUMER ADVOCATES, AND

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

OTHER INTERESTED INDIVIDUALS, CONCERNING THE METHODOLOGY FOR CONDUCTING THE ANALYSIS DESCRIBED IN SUBSECTION (4) OF THIS SECTION.

(3) (a) A MEMBER OF THE GENERAL ASSEMBLY WHO REQUESTS AN ACTUARIAL REVIEW OF A LEGISLATIVE PROPOSAL SHALL SUBMIT THE REQUEST TO THE DIVISION NO LATER THAN SEPTEMBER 1 OF THE YEAR PRECEDING THE REGULAR LEGISLATIVE SESSION IN WHICH THE LEGISLATIVE PROPOSAL WILL BE PROPOSED.

(b) FOR EACH REGULAR LEGISLATIVE SESSION:

(I) UP TO TWO MEMBERS OF THE MAJORITY PARTY OF THE HOUSE OF REPRESENTATIVES MAY SUBMIT A REQUEST FOR AN ACTUARIAL REVIEW. IF MORE THAN TWO REQUESTS ARE SUBMITTED, THE DIVISION SHALL NOTIFY THE MAJORITY LEADER OF THE HOUSE OF REPRESENTATIVES, WHO SHALL SELECT THE TWO PROPOSALS THAT THE CONTRACTORS REVIEW.

(II) ONE MEMBER OF THE MINORITY PARTY OF THE HOUSE OF REPRESENTATIVES MAY SUBMIT UP TO ONE REQUEST FOR AN ACTUARIAL REVIEW. IF MORE THAN ONE REQUEST IS SUBMITTED, THE DIVISION SHALL NOTIFY THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES, WHO SHALL SELECT THE PROPOSAL THAT THE CONTRACTORS REVIEW.

(III) UP TO TWO MEMBERS OF THE MAJORITY PARTY OF THE SENATE MAY SUBMIT A REQUEST FOR AN ACTUARIAL REVIEW. IF MORE THAN TWO REQUESTS ARE SUBMITTED, THE DIVISION SHALL NOTIFY THE MAJORITY LEADER OF THE SENATE, WHO SHALL SELECT THE TWO PROPOSALS THAT THE CONTRACTORS REVIEW.

(IV) ONE MEMBER OF THE MINORITY PARTY OF THE SENATE MAY SUBMIT UP TO ONE REQUEST FOR AN ACTUARIAL REVIEW. IF MORE THAN ONE REQUEST IS SUBMITTED, THE DIVISION SHALL NOTIFY THE MINORITY LEADER OF THE SENATE, WHO SHALL SELECT THE PROPOSAL THAT THE CONTRACTORS REVIEW.

(c) ON OR BEFORE EACH SEPTEMBER 15, THE MAJORITY AND MINORITY LEADERS OF THE HOUSE OF REPRESENTATIVES AND THE SENATE SHALL NOTIFY THE DIVISION, AS MAY BE NECESSARY AS DESCRIBED IN THIS SUBSECTION (3), OF THE LEGISLATIVE PROPOSALS SUBJECT TO REVIEW UNDER SUBSECTION (1) OF THIS SECTION.

(4) AN ACTUARIAL REVIEW PERFORMED BY THE CONTRACTORS PURSUANT TO THIS SECTION MUST CONSIDER THE PREDICTED EFFECTS OF THE LEGISLATIVE PROPOSAL DURING THE FIVE AND TEN YEARS IMMEDIATELY FOLLOWING THE EFFECTIVE DATE OF THE LEGISLATIVE PROPOSAL, OR DURING ANOTHER TIME PERIOD FOLLOWING THE EFFECTIVE DATE OF THE LEGISLATIVE PROPOSAL IF SUCH CONSIDERATION IS MORE ACTUARIALLY FEASIBLE, INCLUDING:

(a) AN ESTIMATE OF THE NUMBER OF COLORADO RESIDENTS WHO WILL BE DIRECTLY AFFECTED BY THE LEGISLATIVE PROPOSAL;

(b) ESTIMATES OF CHANGES IN THE RATES OF UTILIZATION OF SPECIFIC HEALTH-CARE SERVICES THAT MAY RESULT FROM THE LEGISLATIVE PROPOSAL;

(c) ESTIMATES CONCERNING ANY CHANGES IN CONSUMER COST SHARING THAT

WOULD RESULT FROM THE LEGISLATIVE PROPOSAL;

(d) ESTIMATES OF ANY INCREASES OR DECREASES IN PREMIUMS CHARGED TO COVERED PERSONS OR EMPLOYERS FOR HEALTH BENEFIT PLANS OFFERED IN THE INDIVIDUAL, SMALL GROUP, AND LARGE GROUP MARKETS THAT WOULD RESULT FROM THE LEGISLATIVE PROPOSAL;

(e) AN ESTIMATE OF THE OUT-OF-POCKET HEALTH-CARE COST CHANGES ASSOCIATED WITH THE LEGISLATIVE PROPOSAL;

(f) AN ESTIMATE OF THE POTENTIAL LONG-TERM HEALTH-CARE COST CHANGES ASSOCIATED WITH THE LEGISLATIVE PROPOSAL;

(g) IDENTIFICATION OF ANY POTENTIAL HEALTH BENEFITS FOR INDIVIDUALS OR COMMUNITIES THAT WOULD RESULT FROM THE LEGISLATIVE PROPOSAL; AND

(h) TO THE EXTENT PRACTICABLE, THE SOCIAL AND ECONOMIC IMPACTS OF THE LEGISLATIVE PROPOSAL.

(5) AN ACTUARIAL REVIEW PERFORMED PURSUANT TO THIS SECTION MUST:

(a) PRESENT THE INFORMATION DESCRIBED IN SUBSECTION (4)(d) OF THIS SECTION IN TERMS OF PERCENTAGE INCREASE OR DECREASE AND IN TERMS OF PER-MEMBER, PER-MONTH CHARGES;

(b) PRESENT THE INFORMATION DESCRIBED IN SUBSECTION (4)(e) OF THIS SECTION IN TERMS OF DOLLAR AMOUNTS;

(c) PROVIDE, IF AVAILABLE, INFORMATION CONCERNING WHO WOULD BENEFIT FROM ANY COST CHANGES AND HEALTH BENEFITS FROM THE LEGISLATIVE PROPOSAL, AS IDENTIFIED IN SUBSECTIONS (4)(c), (4)(e), (4)(f), (4)(g), AND (4)(h) OF THIS SECTION, AND ANY DISPROPORTIONATE EFFECTS THAT THE LEGISLATIVE PROPOSAL WOULD HAVE ON COLORADANS, WHICH INFORMATION, IF AVAILABLE, MUST BE DISAGGREGATED, AT A MINIMUM, BY RACE, ETHNICITY, SEX, GENDER, AND AGE; AND

(d) INCLUDE, TO THE EXTENT PRACTICABLE, A QUALITATIVE ANALYSIS OF THE IMPACTS OF THE LEGISLATIVE PROPOSAL. FOR THE PURPOSES OF THIS SUBSECTION (5)(d), A MEMBER OF THE GENERAL ASSEMBLY WHO REQUESTS AN ACTUARIAL REVIEW OF A LEGISLATIVE PROPOSAL PURSUANT TO THIS SECTION MAY DESIGNATE ONE OR MORE PERSONS TO PROVIDE DATA TO THE CONTRACTORS IN ORDER TO INFORM A QUALITATIVE ANALYSIS OF THE LEGISLATIVE PROPOSAL.

(6) IN PERFORMING ACTUARIAL REVIEWS OF LEGISLATIVE PROPOSALS, THE CONTRACTORS MAY UTILIZE DATA FROM THE ALL-PAYER HEALTH CLAIMS DATABASE DESCRIBED IN SECTION 25.5-1-204, DATA COLLECTED FROM CARRIERS, OR DATA FROM OTHER SOURCES. CARRIERS SHALL PROVIDE INFORMATION TO, AND OTHERWISE COOPERATE WITH, THE CONTRACTORS AND THE DIVISION FOR THE PURPOSES OF THIS SECTION.

(7) THE COMMISSIONER IS NOT REQUIRED TO COMPLY WITH THE STATE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF TITLE 24, FOR THE PURPOSES OF

HIRING CONTRACTORS BY NOVEMBER 1, 2022, AS DESCRIBED IN SUBSECTION (1) OF THIS SECTION, OR FOR CONTRACTING FOR THE COLLECTION OF DATA, BUT THE COMMISSIONER SHALL COMPLY WITH THE STATE "PROCUREMENT CODE" WHEN HIRING CONTRACTORS OR CONTRACTING FOR THE COLLECTION OF DATA AFTER NOVEMBER 1, 2022.

(8) A REQUEST FOR AN ACTUARIAL REVIEW PURSUANT TO THIS SECTION AND THE FINAL REPORT RESULTING FROM SUCH A REQUEST SHALL BE TREATED AS CONFIDENTIAL EXCEPT BY THE MEMBER OF THE GENERAL ASSEMBLY WHO MADE THE REQUEST UNTIL THE LEGISLATIVE PROPOSAL THAT IS THE SUBJECT OF THE ACTUARIAL REVIEW IS INTRODUCED IN THE REGULAR LEGISLATIVE SESSION FOLLOWING THE SUBMISSION OF THE REQUEST FOR THE ACTUARIAL REVIEW OR, IF NO SUCH LEGISLATIVE PROPOSAL IS INTRODUCED, UNTIL AFTER THE END OF THE LEGISLATIVE SESSION FOLLOWING THE SUBMISSION OF THE REQUEST.

(9) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION TO THE CONTRARY, THE DIVISION SHALL NOT ENGAGE ANY CONTRACTOR TO PERFORM AN ACTUARIAL REVIEW AS DESCRIBED IN THIS SECTION UNLESS THE DIVISION DETERMINES THAT THERE ARE ADEQUATE RESOURCES AVAILABLE WITHIN EXISTING APPROPRIATIONS TO COMPENSATE THE CONTRACTOR FOR THE ACTUARIAL REVIEW.

(10) THE DIVISION MAY SEEK, ACCEPT, AND EXPEND GIFTS, GRANTS, AND DONATIONS FOR THE PURPOSES OF THIS SECTION.

(11) THIS SECTION IS REPEALED, EFFECTIVE NOVEMBER 1, 2027.

SECTION 2. In Colorado Revised Statutes, 2-2-322, **add** (5) as follows:

2-2-322. Fiscal notes - repeal. (5) (a) IN PREPARING A FISCAL NOTE FOR ANY LEGISLATIVE PROPOSAL THAT MAY IMPOSE A NEW HEALTH BENEFIT COVERAGE MANDATE ON HEALTH BENEFIT PLANS OR MANDATE A REDUCTION OR ELIMINATION OF COVERAGE UNDER A HEALTH BENEFIT PLAN AND FOR WHICH A REPORT HAS BEEN PREPARED BY A CONTRACTOR PURSUANT TO SECTION 10-16-155, THE LEGISLATIVE SERVICE AGENCY CHARGED WITH PREPARING THE FISCAL NOTE SHALL INCLUDE A STATEMENT THAT A REPORT HAS BEEN PREPARED BY THE CONTRACTORS FOR THE LEGISLATIVE PROPOSAL PURSUANT TO SECTION 10-16-155 AND SUBMITTED TO THE DIRECTOR OF RESEARCH OF THE LEGISLATIVE COUNCIL BY THE DIVISION, INCLUDING AN INDICATION OF HOW THE CONTRACTORS' FINAL REPORT MAY BE OBTAINED IN ITS ENTIRETY.

(b) THIS SUBSECTION (5) IS REPEALED, EFFECTIVE NOVEMBER 1, 2027.

SECTION 3. Appropriation. (1) For the 2022-23 state fiscal year, \$100,000 is appropriated to the department of regulatory agencies for use by the division of insurance. This appropriation is from the division of insurance cash fund created in section 10-1-103 (3), C.R.S. To implement this act, the division may use this appropriation as follows:

(a) \$50,000 for personal services, which amount is based on an assumption that the division will require an additional 0.3 FTE; and

(b) \$50,000 for operating expenses.

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 8, 2022