

CHAPTER 136

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 96-1264

BY REPRESENTATIVES Tool and Sullivan;
also SENATORS Feeley, Hernandez, Johnson, Matsunaka, L. Powers, Schroeder, and Weddig.

AN ACT

CONCERNING HEALTH CARE COVERAGE PURCHASING ARRANGEMENTS, AND, IN CONNECTION THEREWITH, CREATING CERTIFICATION REQUIREMENTS FOR AND WAIVERS OF CERTAIN SMALL GROUP HEALTH CARE COVERAGE REFORM REQUIREMENTS FOR HEALTH CARE COVERAGE COOPERATIVES.

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

SECTION 1. 6-18-102, Colorado Revised Statutes, 1992 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

6-18-102. Definitions. As used in this article, unless the context otherwise requires:

(2.3) "CASE CHARACTERISTICS" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTIONS 10-8-602 (3.2) AND 10-16-102 (10), C.R.S.

(2.5) "CLASS OF BUSINESS" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTIONS 10-8-602 (3.5) AND 10-16-102 (11), C.R.S.

(18.5) "SMALL EMPLOYER CARRIER" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTIONS 10-8-602 (12) AND 10-16-102 (41), C.R.S.

(20) "WAIVERED HEALTH CARE COVERAGE COOPERATIVE" MEANS A COOPERATIVE THAT HAS BEEN APPROVED TO RECEIVE A WAIVER FROM THE EXECUTIVE DIRECTOR PURSUANT TO SECTION 6-18-207.5.

SECTION 2. 6-18-201 (2) (b), Colorado Revised Statutes, 1992 Repl. Vol., as

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

amended, is amended, and the said 6-18-201 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

6-18-201. Health care coverage cooperatives - establishment - fees.

(2) (b) Any person or entity operating or holding itself out as a cooperative conducting business pursuant to this part 2 on or after January 1, 1994, shall apply for and obtain a certificate of authority to operate as a cooperative pursuant to sections 6-18-202 and 6-18-203.

(5) EXCEPT AS ALLOWED BY SECTION 6-18-401, THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING SHALL NOT PARTICIPATE IN THE FORMATION OR ADMINISTRATION OF A HEALTH CARE COVERAGE COOPERATIVE CREATED PURSUANT TO THIS ARTICLE.

SECTION 3. 6-18-202 (1) (a) (II), Colorado Revised Statutes, 1992 Repl. Vol., as amended, is amended to read:

6-18-202. Issuance of certificate of authority by executive director for cooperative to purchase health care coverage. (1) (a) (II) A cooperative shall be required to post a bond running to the people of the state of Colorado for the benefit of members of the cooperative and their eligible employees

A FIDELITY OR EMPLOYEE DISHONESTY BOND or deposit with the executive director a certificate of deposit or securities in a minimum amount equal to at least two months' premiums held by the cooperative OR ITS ADMINISTRATOR as of its annual renewal date in order to be granted a certificate of authority under this section. IF A COOPERATIVE CONTRACTS WITH AN OUTSIDE ADMINISTRATOR FOR ALL PREMIUM HANDLING FUNCTIONS, THE COOPERATIVE ITSELF WILL NOT BE REQUIRED TO POST A BOND IN ORDER TO COMPLY WITH THE PROVISIONS OF THIS SUBPARAGRAPH (II) IF THE COOPERATIVE SUBMITS TO THE EXECUTIVE DIRECTOR EVIDENCE THAT SUCH ADMINISTRATOR HAS OBTAINED A BOND IN THE REQUIRED AMOUNT.

SECTION 4. 6-18-206 (1) (e), Colorado Revised Statutes, 1992 Repl. Vol., as amended, is amended to read:

6-18-206. Powers, duties, and responsibilities of cooperatives. (1) Each cooperative organized pursuant to this part 2 shall:

(e) EXCEPT FOR GROUPS OVER FIFTY, offer to all members and their eligible employees the standard and basic health benefit plans promulgated pursuant to section 10-8-606, C.R.S.;

SECTION 5. Part 2 of article 18 of title 6, Colorado Revised Statutes, 1992 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

6-18-207.5. Requirements for waived health care coverage cooperatives.

(1) LIMITED TO THE PROVISIONS OF THIS SUBSECTION (1), THE EXECUTIVE DIRECTOR SHALL PROMULGATE RULES SETTING FORTH THE APPLICATION PROCEDURE FOR COOPERATIVES SEEKING A WAIVER UNDER THE PROVISIONS OF THIS SECTION THAT:

(a) ESTABLISH FAIR, EFFECTIVE, AND TIMELY PROCEDURES FOR ADDRESSING

CONSUMER, CONTRACTOR, AND HEALTH PLAN GRIEVANCES INCLUDING BUT NOT LIMITED TO A REQUIREMENT THAT HEALTH PLANS PROVIDE THE COOPERATIVE WRITTEN NOTIFICATION OF ALL GRIEVANCES FILED WITH THE HEALTH PLANS AND AT LEAST A QUARTERLY SUMMARY OF SUCH GRIEVANCES. THIS REQUIREMENT SHALL IN NO WAY BE CONSIDERED AN EXEMPTION FOR PARTICIPATING CARRIERS FROM ANY REQUIREMENTS OF TITLE 10, C.R.S., CONCERNING GRIEVANCE PROCEDURES.

(b) DEMONSTRATE THAT THE COOPERATIVE PROVIDES COVERAGE IN EVERY GEOGRAPHIC AREA IN WHICH ITS PARTICIPATING CARRIERS ARE AUTHORIZED TO DO BUSINESS BY THE DIVISION OF INSURANCE;

(c) ESTABLISH RULES SUCH THAT SMALL EMPLOYERS THAT PURCHASE FULLY INSURED PRODUCTS THROUGH THE COOPERATIVE ARE NOT PERMITTED TO OFFER THEIR EMPLOYEES COMPARABLE FULLY INSURED OR SELF-INSURED PRODUCTS THROUGH ANY MEANS OTHER THAN THE COOPERATIVE.

(d) ENSURE THAT THE COOPERATIVE WILL AT ALL TIMES COMPLY WITH THE PROVISIONS OF SECTION 6-18-206 (3) (g). IN DEVELOPING RULES AND MAKING DETERMINATIONS PURSUANT TO THIS PARAGRAPH (d) THE EXECUTIVE DIRECTOR SHALL CONSULT WITH THE COMMISSIONER OF INSURANCE.

(e) ENSURE THAT THE COOPERATIVE WILL ESTABLISH A LIMITED SET OF STANDARDIZED BENEFIT PACKAGES, INCLUDING AT A MINIMUM THE BASIC AND STANDARD BENEFIT PLANS FOR EMPLOYERS WITH FIFTY OR FEWER EMPLOYEES, THAT ALL PARTICIPATING CARRIERS MUST OFFER. THESE PACKAGES MAY INCLUDE A RANGE OF COST-SHARING LEVELS. THESE BENEFIT PACKAGES MAY INCLUDE SOME VARIATIONS FOR DIFFERENCES IN DELIVERY SYSTEMS SUCH AS HEALTH MAINTENANCE ORGANIZATIONS, POINT OF SERVICE PLANS, PREFERRED PROVIDER PLANS, AND FEE FOR SERVICE PLANS.

(f) ENSURE THAT THE COOPERATIVE WILL GIVE EACH COVERED EMPLOYEE THE OPPORTUNITY TO CHOOSE AMONG ALL AVAILABLE CARRIERS THAT CONTRACT WITH THE COOPERATIVE.

(2) A WAIVER SHALL BE IN EFFECT FOR A PERIOD OF NOT LESS THAN TEN YEARS FROM THE DATE OF ISSUE, UNLESS THE EXECUTIVE DIRECTOR DETERMINES THAT THE WAIVERED COOPERATIVE IS IN VIOLATION OF SUBSECTION (1) OF THIS SECTION. IN SUCH A CASE, THE WAIVER MAY BE PHASED OUT OVER A PERIOD OF THREE YEARS BY THE EXECUTIVE DIRECTOR IN A MANNER THAT IS CONSISTENT WITH THE MARKET VIABILITY OF THE COOPERATIVE.

(3) THE EXECUTIVE DIRECTOR MAY GRANT A PERMANENT WAIVER EFFECTIVE UPON EXPIRATION OF A TEN-YEAR PERIOD. IF AT ANY TIME THE EXECUTIVE DIRECTOR DETERMINES THAT A WAIVERED COOPERATIVE OPERATING UNDER A PERMANENT WAIVER IS IN VIOLATION OF SUBSECTION (1) OF THIS SECTION, THE PERMANENT WAIVER MAY BE PHASED OUT BY THE EXECUTIVE DIRECTOR OVER A PERIOD OF THREE YEARS IN A MANNER THAT IS CONSISTENT WITH THE MARKET VIABILITY OF THE COOPERATIVE.

(4) THE EXECUTIVE DIRECTOR SHALL PROMULGATE RULES FOR ANNUAL REPORTING REQUIREMENTS FOR WAIVERED COOPERATIVES. REPORTING REQUIREMENTS SHALL

BE BASED ONLY ON THE REQUIREMENTS FOR OBTAINING A WAIVER AS OUTLINED UNDER SUBSECTION (1) OF THIS SECTION. SUCH REPORTING REQUIREMENTS SHALL BE INTEGRATED WITH OTHER REPORTING REQUIREMENTS FOR COOPERATIVES OPERATING UNDER THE PROVISIONS OF THIS ARTICLE.

(5) (a) (I) ANY CARRIER DOING BUSINESS WITH A WAIVERED COOPERATIVE SHALL COMPLY WITH ALL RULES REGARDING UNDERWRITING, CLAIMS HANDLING, SALES, SOLICITATION, AND OTHER APPLICABLE REQUIREMENTS SPECIFIED PURSUANT TO TITLE 10, C.R.S.

(II) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), IF A WAIVERED COOPERATIVE REQUIRES ITS PARTICIPATING SMALL EMPLOYER CARRIERS TO OFFER A STANDARDIZED HEALTH BENEFIT PLAN THAT SUCH CARRIERS DO NOT OFFER OUTSIDE OF THE WAIVERED COOPERATIVE, SUCH CARRIERS SHALL NOT BE REQUIRED TO MARKET THAT STANDARDIZED PLAN EITHER INSIDE OR OUTSIDE THE WAIVERED COOPERATIVE IN THOSE AREAS OF THE STATE THAT ARE NOT PART OF THE WAIVERED COOPERATIVE'S GEOGRAPHIC SERVICE AREA.

(b) (I) ANY CARRIER DOING BUSINESS WITH A WAIVERED COOPERATIVE SHALL COMPLY WITH ALL APPLICABLE RULES REGARDING RATING SPECIFIED PURSUANT TO TITLE 10, C.R.S.

(II) (A) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) AND SUBJECT TO THE PROVISIONS OF SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (II), A WAIVERED COOPERATIVE AND A PARTICIPATING CARRIER MAY NEGOTIATE A PERCENTAGE DISCOUNT OFF OF WHAT WOULD OTHERWISE BE ALLOWABLE RATES UNDER SECTIONS 10-16-105 (8) (a), C.R.S., AND 6-18-207.7 FOR A PARTICULAR PLAN. THAT PERCENTAGE DISCOUNT SHALL BE APPLIED UNIFORMLY TO ALL SMALL EMPLOYER MEMBERS OF THE COOPERATIVE. PURSUANT TO SECTION 6-18-207.7, A CARRIER MAY APPLY RATING FACTORS DIFFERENTLY FOR ITS BUSINESS WITH A WAIVERED COOPERATIVE THAN FOR THE CARRIER'S OTHER BUSINESS. PARTICIPATING CARRIERS SHALL NOTIFY THE DIVISION OF INSURANCE OF A NEGOTIATED COOPERATIVE DISCOUNT AT LEAST THIRTY DAYS PRIOR TO USE.

(B) A WAIVERED COOPERATIVE MAY NEGOTIATE THE NONHEALTH CARE EXPENSE COMPONENT OF THE PREMIUM RATES CHARGED WITH PARTICIPATING HEALTH CARE COVERAGE PLANS. AS USED IN THIS SUB-SUBPARAGRAPH (B), "NONHEALTH CARE EXPENSE" INCLUDES, BUT IS NOT LIMITED TO, MARKETING EXPENSES, ACQUISITION EXPENSES, COST OF PAYING CLAIMS, COMMISSIONS, MAINTENANCE EXPENSES, OTHER ADMINISTRATION COSTS, PROFITS, AND OTHER CONTINGENCY MARGINS. "NONHEALTH CARE EXPENSE" DOES NOT INCLUDE FEES PAID TO HEALTH CARE PROVIDERS FOR HEALTH CARE SERVICES REGARDLESS OF THE METHODOLOGY OF REIMBURSEMENT OR PAYMENT.

(C) PARTICIPATING HEALTH CARE COVERAGE PLANS, INCLUDING THOSE PLANS THAT ARE UNDER CONSIDERATION FOR PARTICIPATION, MUST, UPON REQUEST, DISCLOSE TO WAIVERED COOPERATIVES A LIST AND DESCRIPTION OF ALL RELEVANT PUBLIC INFORMATION REGARDING ALL EXPENSES OF THE HEALTH PLANS, INCLUDING BUT NOT LIMITED TO: THE PLAN'S RECENT FILINGS AND PREVIOUSLY REQUIRED FILINGS WITH THE COLORADO DIVISION OF INSURANCE; FILINGS WITH THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (NAIC); HEALTH EMPLOYER DATA

INFORMATION SET (HEDIS) REPORTS REGARDING PROVIDER COMPENSATION; AND FEDERAL HEALTH CARE FINANCING ADMINISTRATION AND FEDERAL OFFICE OF PERSONNEL MANAGEMENT FILINGS RELEVANT TO PROVIDER COMPENSATION. PUBLIC INFORMATION SHALL BE PROVIDED UPON REQUEST TO A COOPERATIVE WITHIN FIFTEEN DAYS OF SUCH REQUEST.

(D) ALL HEALTH CARE PLANS PARTICIPATING IN A COOPERATIVE SHALL SIGN AN AFFIDAVIT DECLARING ALL COINSURANCE PAID BY THE INSURED PARTICIPANTS OF THE EMPLOYER MEMBERS OF A WAIVERED COOPERATIVE SHALL BE BASED ON THE HEALTH PLAN'S CONTRACTED RATE WITHIN THE HEALTH PLAN'S PROVIDER NETWORK.

(6) IF THE EXECUTIVE DIRECTOR DOES NOT ACT ON AN APPLICATION FOR A WAIVER UNDER THE PROVISIONS OF THIS SECTION WITHIN SIXTY DAYS AFTER SUBMISSION OF AN APPLICATION TO THE EXECUTIVE DIRECTOR, THE COOPERATIVE MAY REQUEST A FORMAL HEARING WITH THE EXECUTIVE DIRECTOR.

6-18-207.7. Application of rating factors inside a waived cooperative. WITH THE PRIOR APPROVAL OF THE EXECUTIVE DIRECTOR, WHO SHALL CONSULT WITH THE COMMISSIONER OF INSURANCE, A WAIVERED COOPERATIVE MAY REQUIRE ALL PARTICIPATING CARRIERS TO APPLY ALLOWABLE RATE ADJUSTMENT FACTORS AND CASE CHARACTERISTIC FACTORS TO ALL OF THAT WAIVERED COOPERATIVE'S BUSINESS IN A CONSISTENT FASHION AS DETERMINED BY THE COOPERATIVE. WHERE A WAIVERED COOPERATIVE RECEIVED SUCH APPROVAL, A PARTICIPATING CARRIER SHALL NOT BE REQUIRED TO APPLY ALLOWABLE RATE ADJUSTMENT FACTORS AND CASE CHARACTERISTIC FACTORS IN THE SAME WAY FOR ITS WAIVERED COOPERATIVE BUSINESS AS FOR ITS OTHER BUSINESS.

SECTION 6. 25.5-1-401, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

25.5-1-401. Health care coverage cooperatives - rule-making authority. The executive director may promulgate rules and regulations consistent with the provisions of sections 6-18-204, 6-18-206, and 6-18-207, 6-18-207.5, AND 6-18-207.7, C.R.S., for purposes of carrying out the executive director's duties under said sections. The executive director may promulgate rules and regulations to carry out the executive director's duties under section 6-18-202, C.R.S., so long as such rules and regulations add no additional requirements other than those specifically enumerated in said section 6-18-202, C.R.S.

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 1, 1996