

CHAPTER 140

**INSURANCE**

**SENATE BILL 97-109**

BY SENATOR Schroeder;  
also REPRESENTATIVE Schauer.

**AN ACT**

CONCERNING THE ADMINISTRATIVE AUTHORITY OF THE DIVISION OF INSURANCE TO OBTAIN INFORMATION RELATED TO THE FINANCIAL AFFAIRS OF INSURERS, AND, IN CONNECTION THEREWITH, AMENDING STATUTES REQUIRING FILING OF INFORMATION WITH THE DIVISION OF INSURANCE AND DEFINING THE DIVISION'S AUTHORITY WITH REGARD TO FINANCIAL EXAMINATIONS.

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

**SECTION 1.** 8-44-113 (4), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is RECREATED AND REENACTED, WITH AMENDMENTS, to read:

**8-44-113. Data from insurance carriers and self-insured employers related to workers' compensation - studies related to workers' compensation system - repeal.** (4) (a) SELF-INSURED EMPLOYERS SHALL CONTINUE UNDER THE AUTHORITY OF THE EXECUTIVE DIRECTOR AS PROVIDED IN PART 2 OF THIS ARTICLE.

(b) THE EXECUTIVE DIRECTOR ANNUALLY SHALL COLLECT DATA FROM SELF-INSURED EMPLOYERS COMPARABLE TO THE DATA COLLECTED FROM INSURERS BY THE COMMISSIONER OF INSURANCE FOR PURPOSES OF UPDATING THE 1993 COLORADO WORKERS' COMPENSATION CLOSED CLAIM STUDY. THE GENERAL ASSEMBLY INTENDS THAT THIS DATA COLLECTION REQUIREMENT BE NO MORE BURDENSOME THAN NECESSARY AND THAT EACH ELEMENT OF THE DATA COLLECTED AND ALL ELEMENTS OF DATA BE NO MORE INCLUSIVE THAN THE CORRESPONDING ELEMENT OF DATA AND ALL ELEMENTS COLLECTED BY THE COMMISSIONER OF INSURANCE. IN ADDITION:

(I) ELEMENTS OF DATA REQUIRED TO BE COLLECTED PURSUANT TO THIS PARAGRAPH (b) THAT HAVE BEEN PREVIOUSLY REPORTED BY SELF-INSURED EMPLOYERS TO THE EXECUTIVE DIRECTOR SHALL BE EXTRACTED FROM THE DEPARTMENT'S DATA BASE AND FORWARDED TO THE COMMISSIONER RATHER THAN

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

REQUIRED TO BE REPORTED PURSUANT TO THIS SECTION.

(II) DATA SHALL BE COLLECTED ON CLOSED INDEMNITY CLAIMS ONLY.

(III) DATA SHALL BE COLLECTED ANNUALLY ON NOVEMBER 15 OF EACH YEAR.

(IV) DATA SHALL BE COLLECTED ON A RANDOM-SAMPLE BASIS. THE NUMBER OF CLAIMS SELECTED FOR DATA COLLECTION SHALL BE NO GREATER THAN THAT ESTABLISHED BY THE COMMISSIONER FOR PURPOSES OF THE REPORT PURSUANT TO THIS PARAGRAPH (b).

**SECTION 2.** 10-16-107 (2) and (3) (e), Colorado Revised Statutes, 1994 Repl. Vol., are amended to read:

**10-16-107. Rate regulation - approval of policy forms - benefit certificates - evidences of coverage - loss ratio guarantees.** (2) No policy of sickness and accident insurance or subscription certificate or membership certificate or other evidence of health care coverage shall be delivered or issued for delivery in this state, nor shall any endorsement, rider, or application ~~which~~ THAT becomes a part of any such policy, contract, or evidence of coverage be used, until the insurer has filed a certification with the commissioner that such policy, endorsement, rider, or application conforms, to the best of the insurer's good faith knowledge and belief, to Colorado law pursuant to section 10-16-107.2 and ~~a copy~~ COPIES of the ~~premium rates or dues~~ and ~~a copy~~ of the classification of risks or subscribers pertaining thereto are filed with the commissioner.

(3) (e) (I) No schedule of charges or rates for enrollee coverage for health care services, or amendments thereto, may be used by a health maintenance organization until a copy of such schedule ~~of charges or rates~~, or amendments ~~thereto~~, has been filed with the commissioner AT LEAST thirty days prior to its effective date, except individual group rates ~~which~~ THAT shall be filed concurrent with or prior to the effective date.

(II) Such ~~charges or rates~~ may be established in accordance with actuarial principles for various categories of enrollees, if ~~charges or rates~~ applicable to an enrollee shall not be individually determined based on the status of such enrollee's health. The ~~charges or rates~~ shall not be excessive, inadequate, or unfairly discriminatory. An annual certification, by a qualified actuary, to the appropriateness of the ~~charges or rates~~, based on reasonable assumptions, shall accompany the filing along with adequate supporting information. Such supporting information and any other additional background information regarding the ~~charges or rates~~ requested by the commissioner or required by regulation shall not be treated as a public record subject to part 2 of article 72 of title 24, C.R.S., or section 10-16-422.

**SECTION 3.** 10-16-416 (1), Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

**10-16-416. Examination.** (1) The commissioner may make an examination of the affairs of any health maintenance organization and providers with whom such organization has contracts, agreements, or other arrangements pursuant to its health care plan as often as the commissioner deems it necessary for the protection of the

interests of the people of this state but not less frequently than once every ~~three~~ FIVE years.

**SECTION 4.** 10-3-209, Colorado Revised Statutes, 1994 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**10-3-209. Tax on premiums collected - exemptions - penalties.** (5) FOR THE PURPOSE OF AUDITING A COMPANY'S TAX STATEMENT, THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE HAS THE POWER TO EXAMINE ANY BOOKS, PAPERS, RECORDS, AGREEMENTS, OR MEMORANDA BEARING UPON THE MATTERS REQUIRED TO BE INCLUDED IN THE TAX STATEMENT. SUCH BOOKS, PAPERS, RECORDS, AGREEMENTS, OR MEMORANDA SHALL BE MADE AVAILABLE UPON REQUEST TO THE COMMISSIONER'S OFFICE.

**SECTION 5.** 10-3-1004 (1), Colorado Revised Statutes, 1994 Repl. Vol., is amended, and the said 10-3-1004 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**10-3-1004. Defense of action by unauthorized insurer.** (1) Before any unauthorized foreign or alien insurer files or causes to be filed any pleading in any action, suit, or proceeding instituted against it, such unauthorized insurer shall either deposit, with the clerk of the court in which such action, suit, or proceeding is pending, cash or securities, or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action, or procure a certificate of authority to transact the business of insurance in this state, UNLESS ONE OR MORE OF THE FOLLOWING IS APPLICABLE:

(a) THE INSURER MAKES A SHOWING SATISFACTORY TO THE COURT AND THE COMMISSIONER THAT THERE ARE, IN THIS STATE OR IN ANOTHER STATE, CASH, SECURITIES, BOND, OR OTHER ASSETS SUFFICIENT AND AVAILABLE TO SECURE THE PAYMENT OF ANY FINAL JUDGMENT WHICH MAY BE RENDERED IN THE ACTION, SUIT, OR PROCEEDING OR THAT THE INSURANCE WAS PLACED LAWFULLY IN THE JURISDICTION IN WHICH THE TRANSACTION TOOK PLACE AND WHICH WAS NOT AN UNLAWFUL PLACEMENT UNDER THE LAWS OF THIS STATE.

(b) AT THE TIME THE INSURER FILES ANY PLEADING IN ANY ACTION, SUIT, OR PROCEEDING INSTITUTED AGAINST IT, THE INSURER IS LISTED ON THE APPROVED NONADMITTED INSURERS LIST PREPARED BY THE COMMISSIONER PURSUANT TO SUBSECTION (1) OF SECTION 10-5-108;

(c) WITH RESPECT TO A CONTRACT OF REINSURANCE, THE REINSURER HAS COMPLIED WITH THE PROVISIONS OF THIS TITLE, NECESSARY TO PERMIT THE CEDING INSURER TO TAKE CREDIT ON ITS FINANCIAL STATEMENT FOR THE REINSURANCE PURSUANT TO SUBSECTIONS (5) AND (6) OF SECTION 10-3-118; OR

(1.5) IF AN INSURER OR REINSURER ASSERTS AN EXEMPTION UNDER PARAGRAPHS (a), (b), OR (c) OF SUBSECTION (1) OF THIS SECTION, SUCH INSURER OR REINSURER SHALL NOTIFY THE COURT OF THE BASIS ON WHICH THE EXEMPTION IS SOUGHT AND SHALL FILE A COPY OF THE ASSERTION WITH THE COMMISSIONER OF INSURANCE.

**SECTION 6. Effective date - applicability.** This act shall take effect upon passage and shall apply to acts occurring on or after said date.

**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: April 24, 1997