

## CHAPTER 293

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**INSURANCE**


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**HOUSE BILL 08-1390**

BY REPRESENTATIVE(S) McGihon, Carroll M., Carroll T., Ferrandino, Green, Labuda, Mitchell V., Roberts, Stafford, and Todd;  
also SENATOR(S) Isgar, Bacon, Boyd, Gibbs, Groff, Morse, Sandoval, Shaffer, Tapia, Tupa, Veiga, Williams, and Windels.

**AN ACT****CONCERNING THE COVERCOLORADO PROGRAM.**

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

**SECTION 1.** 10-8-509 (3), Colorado Revised Statutes, is amended to read:

**10-8-509. Administering carrier.** (3) The administering carrier shall serve for a period of ~~three years~~ DETERMINED BY THE BOARD, subject to removal for cause. ~~At least one year~~ Prior to the expiration of ~~each three-year~~ THE period of service, the board shall invite all interested parties, including the current administering carrier, to submit bids to serve as the administering carrier for the succeeding ~~three-year~~ period. ~~Selection of the administering carrier for the succeeding period shall be made at least six months prior to the end of the current three-year period.~~

**SECTION 2.** 10-8-530 (1), (1.3), (1.5) (a), (1.5) (b) (I) (A), (1.5) (b) (I) (B), (1.5) (b) (III), (1.5) (c), (1.5) (d), (1.5) (e), (1.5) (h), and (4) (b), Colorado Revised Statutes, are amended, and the said 10-8-530 (1.5) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

**10-8-530. Funding of program - rules - repeal.** (1) (a) The program shall be funded ~~by~~ FROM the following SOURCES, AND ON AND AFTER JANUARY 1, 2009, THOSE FUNDING SOURCES SHALL CONSTITUTE, AS NEARLY AS POSSIBLE, THE PERCENTAGES OF TOTAL FUNDING FOR THE PROGRAM AS SPECIFIED IN PARAGRAPH (b) OF THIS SUBSECTION (1):

~~(a)~~ (I) Moneys transmitted pursuant to section 38-13-116.5 (2.7), C.R.S.;

~~(b)~~ (II) Premiums charged pursuant to section 10-8-512;

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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.*

~~(c)~~ (III) Moneys remaining in the CoverColorado cash fund, created pursuant to this section, as it existed prior to July 1, 1997;

~~(d)~~ (IV) Special fees assessed against insurers as provided in subsection (1.5) of this section;

~~(e)~~ (V) Any moneys accepted through gifts, grants, or donations received by the board for operation of the program, including contributions received pursuant to the premium tax credit allocation provisions of section 10-8-534.

(b) (I) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (d) OF THIS SUBSECTION (1), MONEYS TRANSMITTED TO THE PROGRAM PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL CONSTITUTE, AS NEARLY AS POSSIBLE, TWENTY-FIVE PERCENT OF THE TOTAL FUNDING FOR THE PROGRAM FOR A GIVEN CALENDAR YEAR.

(II) MONEYS CHARGED, ACCEPTED, OR AVAILABLE FOR THE PROGRAM PURSUANT TO SUBPARAGRAPH (II), (III), OR (V) OF PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL CONSTITUTE, AS NEARLY AS POSSIBLE, FIFTY PERCENT OF THE TOTAL FUNDING FOR THE PROGRAM FOR A GIVEN CALENDAR YEAR.

(III) MONEYS COLLECTED FROM SPECIAL FEES ASSESSED AGAINST INSURERS PURSUANT TO SUBPARAGRAPH (IV) OF PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL CONSTITUTE, AS NEARLY AS POSSIBLE, TWENTY-FIVE PERCENT OF THE TOTAL FUNDING FOR THE PROGRAM FOR A GIVEN CALENDAR YEAR, AND IN NO CASE SHALL THE SPECIAL FEES CONSTITUTE MORE THAN TWENTY-FIVE PERCENT OF THE TOTAL FUNDING FOR THE PROGRAM IN ANY GIVEN CALENDAR YEAR. THE SPECIAL FEES MAY CONSTITUTE LESS THAN TWENTY-FIVE PERCENT OF THE TOTAL FUNDING FOR THE PROGRAM IN A CALENDAR YEAR IF THE PROGRAM EXPERIENCES UNEXPECTED GROWTH.

(c) (I) ON AND AFTER JANUARY 1, 2009, THE BOARD SHALL SUBMIT AN ANNUAL REPORT TO THE STATE TREASURER SPECIFYING THE FOLLOWING INFORMATION:

(A) INCURRED CLAIMS AND ADMINISTRATIVE EXPENSES OF THE PROGRAM IN THE IMMEDIATELY PRECEDING CALENDAR YEAR;

(B) THE EXPECTED ANNUAL PROGRAM ENROLLMENT GROWTH, CLAIMS EXPENSES, AND OTHER ACTUARIAL CONSIDERATIONS OF THE PROGRAM; AND

(C) THE AMOUNT NEEDED FROM THE UNCLAIMED PROPERTY TRUST FUND TO PROVIDE TWENTY-FIVE PERCENT OF THE TOTAL FUNDING FOR THE PROGRAM FOR THE CURRENT CALENDAR YEAR, BASED ON THE PROJECTED OPERATING REVENUES OF THE PROGRAM AND THE PROJECTED CASH BALANCE OF ALL PROGRAM ACCOUNTS.

(II) AFTER RECEIPT OF THE REPORT REQUIRED BY THIS PARAGRAPH (c), THE STATE TREASURER SHALL TRANSMIT THE AMOUNT SPECIFIED IN SUB-SUBPARAGRAPH (C) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) TO THE PROGRAM IN TWELVE EQUAL MONTHLY INSTALLMENTS. THE MONEYS TRANSMITTED BY THE STATE TREASURER SHALL BE USED TO PAY CLAIMS AND ADMINISTRATIVE EXPENSES OF THE PROGRAM

AND TO MAINTAIN RESERVES FOR CLAIMS INCURRED BUT NOT REPORTED AND A SURPLUS EQUAL TO FIVE PERCENT OF PROJECTED ANNUAL CLAIMS. NO PART OF THE MONEYS TRANSMITTED BY THE STATE TREASURER SHALL BE USED TO PAY FOR THE ADMINISTRATIVE EXPENSES OR LOSSES OF ANY DEPENDENTS WHO HAVE CHOSEN COVERAGE UNDER THE PROGRAM.

(d) IF THE PROGRAM EXPERIENCES UNEXPECTED GROWTH, AND IF THE LOSSES FOR THE PROGRAM FOR CLAIMS AND ADMINISTRATIVE EXPENSES EXCEED THE PROJECTED LOSSES FOR THE PROGRAM IN THAT CALENDAR YEAR, THE BOARD SHALL CALCULATE THE EXCESS LOSSES AND REPORT THE AMOUNT OF EXCESS LOSSES TO THE STATE TREASURER WITHIN NINETY DAYS AFTER THE END OF THE CALENDAR YEAR IN WHICH THE EXCESS LOSSES ARE INCURRED. UPON RECEIPT OF THE BOARD'S REPORT ON THE PROGRAM'S EXCESS LOSSES, THE STATE TREASURER SHALL MAKE A SUPPLEMENTAL TRANSMITTAL OF MONEYS FROM THE UNCLAIMED PROPERTY TRUST FUND TO THE PROGRAM TO COVER THE EXCESS LOSSES.

(e) AS USED IN THIS SECTION:

(I) "TOTAL FUNDING FOR THE PROGRAM" MEANS THE AMOUNT NEEDED IN A GIVEN CALENDAR YEAR TO FUND PROJECTED CLAIMS, ADMINISTRATIVE EXPENSES, RESERVES FOR CLAIMS INCURRED BUT NOT REPORTED, AND A SURPLUS EQUAL TO FIVE PERCENT OF THE PROJECTED ANNUAL CLAIMS OF THE PROGRAM.

(II) "UNEXPECTED GROWTH" MEANS AN INCREASE IN PROGRAM ENROLLMENT OR CLAIMS EXPENSES IN A CALENDAR YEAR OF MORE THAN ONE HUNDRED FIFTEEN PERCENT OF THE AMOUNT OF THE PROJECTED GROWTH IN PROGRAM ENROLLMENT OR CLAIMS EXPENSES FOR THAT CALENDAR YEAR.

(1.3) (a) The board shall report to the state treasurer annually, based on the projected operating revenues of the program, combined with the projected cash balance of all program accounts, if the program's moneys will not be adequate over the next twenty-four-month period to provide for the projected claims, administrative expenses, reserves for claims incurred but not reported, and surplus equal to ten percent of projected annual claims. The report shall be substantiated by the actuarial evaluations required by paragraph (c) of subsection (1.5) of this section. Based on this report, the state treasurer shall transmit to the board the amount necessary to meet the projected claims, administrative expenses, reserves for claims incurred but not reported, and surplus equal to ten percent of projected annual claims, pursuant to and within the limitations of section 38-13-116.5 (2.7), C.R.S. The moneys transmitted by the state treasurer shall be used to pay the administrative expenses and the losses related to eligible individuals. No part of the moneys transmitted by the state treasurer shall be used to pay for the administrative expenses or losses of any dependents who have chosen coverage under the program.

(b) THIS SUBSECTION (1.3) IS REPEALED, EFFECTIVE JANUARY 1, 2009.

(1.5) (a) (I) The program may assess against insurers such special fees as may be reasonable and necessary for the operation of the program. The special fees shall be assessed on a prospective, per capita basis, with the amount of the special fee assessed to each insurer equal to the number of Colorado lives insured by the insurer under a policy issued and delivered in the state of Colorado, multiplied by the per

capita assessment. Special fees shall be assessed only when it is determined that the amounts available to be transferred to the program pursuant to paragraph (a) of subsection (1) of this section and contributions received pursuant to the premium tax credit allocation provisions of section 10-8-534, will not be adequate over the next twenty-four-month period to provide for the projected claims, administrative expenses, reserves for claims incurred but not reported, and surplus equal to ten percent of projected claims. All special fees collected shall be used to pay the administrative expenses and the losses related to eligible individuals. No part of the special fees shall be used to pay for the administrative expenses or losses of any dependents who have chosen coverage under the program. In the event that any insurer fails to pay its special fee to the program in accordance with the time frames set forth by rule, the commissioner is authorized to utilize all powers conferred on the commissioner by the insurance laws of this state to enforce payment of the special fees.

(II) THIS PARAGRAPH (a) IS REPEALED, EFFECTIVE JANUARY 1, 2009.

(a.5) (I) ON AND AFTER JANUARY 1, 2009, THE PROGRAM SHALL ASSESS SPECIAL FEES AGAINST INSURERS IN AN AMOUNT NECESSARY TO PROVIDE THE PERCENTAGE OF TOTAL FUNDING FOR THE PROGRAM SPECIFIED IN PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION. THE AMOUNT OF THE SPECIAL FEES SHALL BE DETERMINED BY THE BOARD BASED ON THE INCURRED CLAIMS AND ADMINISTRATIVE EXPENSES OF THE PROGRAM IN THE IMMEDIATELY PRECEDING CALENDAR YEAR, THE EXPECTED ANNUAL PROGRAM GROWTH, AND OTHER ACTUARIAL CONSIDERATIONS OF THE PROGRAM.

(II) SPECIAL FEES ASSESSED PURSUANT TO THIS SUBSECTION (1.5) SHALL BE USED TO PAY THE ADMINISTRATIVE EXPENSES AND LOSSES RELATED TO ELIGIBLE INDIVIDUALS IN THE PROGRAM. NO PART OF THE SPECIAL FEES SHALL BE USED TO PAY FOR THE ADMINISTRATIVE EXPENSES OR LOSSES OF ANY DEPENDENTS WHO HAVE CHOSEN COVERAGE UNDER THE PROGRAM.

(III) IF AN INSURER FAILS TO PAY A SPECIAL FEE TO THE PROGRAM IN ACCORDANCE WITH THE TIME PERIODS ESTABLISHED BY RULE, THE COMMISSIONER MAY USE ALL POWERS CONFERRED BY THE INSURANCE LAWS OF THIS STATE TO ENFORCE PAYMENT OF THE SPECIAL FEES.

(b) (I) The commissioner shall promulgate rules to implement this subsection (1.5), including, but not limited to:

(A) The reasonable time frames PERIODS for the ~~determination of the need for an equitable assessment and for the~~ billing and collection of ~~such~~ THE SPECIAL fees;

(B) The process for determining the ~~per capita~~ ALLOCATION OF THE assessment AMONG INSURERS, including the process for obtaining accurate information about the number of lives insured by any insurer within the six months prior to an assessment;

(III) ~~In promulgating such rules, the commissioner shall include provisions that notice of the first assessment shall be provided to the insurers no later than February 1, 2002, and that payment for such assessment shall be made no earlier than June~~

~~1, 2003.~~

~~(c) Prior to notice of the first assessment to be paid by insurers, prior to an increase in the amount of the assessment pursuant to this subsection (1.5), and prior to submission of a request for moneys from the unclaimed property trust fund pursuant to subsection (1.3) of this section, the board shall obtain at least two actuarial evaluations of the amount of the assessment or for the request of transfer of moneys from the unclaimed property trust fund.~~

~~(d) The department of regulatory agencies in cooperation with the division of insurance shall conduct a review of the efficacy of the assessment pursuant to section 24-34-104, C.R.S. Such review shall be completed by October 15, 2007. The division of insurance shall make copies of the report available to every member of the general assembly.~~

~~(e) In the event the assessment pursuant to this subsection (1.5) equals fifty percent of the administrative and claims expenses totaled that are projected for the program, the board shall conduct a review of the premium levels, benefit design, costs of administration, cost containment measures available, and any other factors that might contribute to the continued financial solvency of the program. Such review shall be presented to the members of the joint budget committee within ninety days after an assessment that equals fifty percent of the expenses of the program is made.~~

~~(h) This subsection (1.5) is repealed, effective July 1, 2008.~~

(4) (b) Any moneys received from the treasurer pursuant to paragraph (a) of subsection (1) of this section shall be collected by and deposited into the accounts of the program for the uses provided in ~~subsection (1.3)~~ SUBPARAGRAPH (II) OF PARAGRAPH (c) OF SUBSECTION (1) of this section. Any moneys that are not immediately needed to pay expenses and losses shall be invested as determined by the board in accordance with the investment guidelines set forth in its plan of operation.

**SECTION 3.** 10-8-530, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**10-8-530. Funding of program - rules - repeal.** (5) (a) PARAGRAPHS (b) TO (e) OF SUBSECTION (1) OF THIS SECTION AND PARAGRAPH (a.5) OF SUBSECTION (1.5) OF THIS SECTION ARE REPEALED, EFFECTIVE JULY 1, 2017.

(b) PRIOR TO THE REPEAL OF THE PARAGRAPHS SPECIFIED IN THIS SUBSECTION (5), THE STATE AUDITOR SHALL CONDUCT OR CAUSE TO BE CONDUCTED A REVIEW AND EVALUATION OF THE EFFICACY OF THE FUNDING STRUCTURE OF THE PROGRAM AS SPECIFIED IN THOSE PARAGRAPHS. THE STATE AUDITOR SHALL SUBMIT A REPORT TO THE GENERAL ASSEMBLY BY JANUARY 1, 2017, DETAILING ITS REVIEW AND EVALUATION OF THE FUNDING STRUCTURE OF THE PROGRAM AND MAKING A RECOMMENDATION REGARDING WHETHER THE FUNDING STRUCTURE, AS SPECIFIED IN PARAGRAPHS (b) TO (e) OF SUBSECTION (1) OF THIS SECTION AND PARAGRAPH (a.5) OF SUBSECTION (1.5) OF THIS SECTION, SHOULD BE CONTINUED, MODIFIED, OR REPEALED.

**SECTION 4.** Part 5 of article 8 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**10-8-536. CoverColorado long-term funding task force - members - funding plan - repeal.** (1) THERE IS HEREBY CREATED THE COVERCOLORADO LONG-TERM FUNDING TASK FORCE, REFERRED TO IN THIS SECTION AS THE "TASK FORCE", TO DEVELOP A PLAN FOR THE LONG-TERM FUNDING OF THE PROGRAM TO ENSURE ITS FUTURE FINANCIAL HEALTH AND VIABILITY.

(2) THE TASK FORCE SHALL CONSIST OF ELEVEN MEMBERS AS FOLLOWS:

(a) THE EXECUTIVE DIRECTOR OF THE PROGRAM;

(b) THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE;

(c) THE STATE TREASURER OR THE STATE TREASURER'S DESIGNEE;

(d) THREE MEMBERS OF THE BOARD, WHICH SHALL INCLUDE THE CHAIR OF THE BOARD, A CONSUMER REPRESENTATIVE DESIGNATED BY THE CHAIR OF THE BOARD, AND THE PHYSICIAN REPRESENTATIVE;

(e) THE GOVERNOR SHALL APPOINT THREE MEMBERS AS FOLLOWS:

(I) ONE REPRESENTATIVE OF THE HOSPITAL INDUSTRY;

(II) ONE REPRESENTATIVE OF AN ORGANIZATION THAT REPRESENTS PRIVATE BUSINESS; AND

(III) ONE REPRESENTATIVE OF HEALTH PLANS;

(f) THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE SHALL JOINTLY APPOINT TWO MEMBERS AS FOLLOWS:

(I) ONE REPRESENTATIVE OF CARRIERS; AND

(II) ONE REPRESENTATIVE OF A COMMUNITY HEALTH FOUNDATION.

(3) THE MEMBERS OF THE TASK FORCE SHALL BE APPOINTED AS SOON AS POSSIBLE BUT NO LATER THAN JULY 31, 2008. THE EXECUTIVE DIRECTOR OF THE PROGRAM SHALL SERVE AS THE CHAIR OF THE TASK FORCE. THE PROGRAM SHALL PROVIDE ADMINISTRATIVE AND CONSULTING STAFF TO ASSIST THE TASK FORCE.

(4) THE TASK FORCE SHALL DEVELOP A PLAN FOR FUNDING THE PROGRAM OVER AT LEAST A TEN-YEAR PERIOD. IN DEVELOPING ITS PLAN, THE TASK FORCE SHALL CONSIDER AT LEAST THE FOLLOWING:

(a) THE ANTICIPATED ENROLLMENT GROWTH OF THE PROGRAM;

(b) THE LONG-TERM VIABILITY OF FUNDING THE PROGRAM USING THE FUNDING SOURCES SPECIFIED IN SECTION 10-8-530 (1);

(c) INCREASING THE PREMIUM TAX CREDIT FOR DONATIONS TO THE PROGRAM;

(d) REVISING THE METHODOLOGY, ADMINISTRATION, AND COLLECTION OF THE ASSESSMENT AUTHORIZED IN SECTION 10-8-530 (1.5), INCLUDING THE CREATION OF AN ALL-PAYER SYSTEM THAT WOULD FUND THE PROGRAM THROUGH AN ASSESSMENT ADDED TO THE RATES PAID FOR HEALTH CARE PROVIDED AT ALL REGULATED INPATIENT AND OUTPATIENT FACILITIES; AND

(e) REDUCING CLAIMS COSTS TO THE PROGRAM BY MODIFYING BENEFIT DESIGNS, IMPLEMENTING A FEE SCHEDULE FOR SERVICES FROM HEALTH CARE PROVIDERS, IMPOSING AN ENROLLMENT LIMIT, OR OTHER COST-CONTAINMENT MEASURES.

(5) THE TASK FORCE SHALL SUBMIT ITS PLAN TO THE GENERAL ASSEMBLY BY MARCH 31, 2009.

(6) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2009.

**SECTION 5.** 38-13-116.5 (2.7) (a), (2.7) (b), and (2.7) (d), Colorado Revised Statutes, are amended, and the said 38-13-116.5 (2.7) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

**38-13-116.5. Unclaimed property trust fund - creation - payments - interest - appropriations - records - rules - repeal.** (2.7) (a) (I) Subject to the provisions of paragraph (b) of this subsection (2.7), on and after August 4, 2004, the state treasurer shall transmit to CoverColorado the amount equal to the principal and interest in the trust fund minus:

~~(A)~~ (A) The claims paid pursuant to this article for each fiscal year;

~~(B)~~ (B) The reserve amount necessary to pay anticipated claims; and

~~(C)~~ (C) Publication and correspondence expenses pursuant to section 38-13-111 (7).

(II) THIS PARAGRAPH (a) IS REPEALED, EFFECTIVE JANUARY 1, 2009.

(a.5) (I) ON AND AFTER JANUARY 1, 2009, THE STATE TREASURER SHALL TRANSMIT TO COVERCOLORADO AN AMOUNT OF THE PRINCIPAL AND INTEREST IN THE TRUST FUND EQUAL TO THE AMOUNT REQUESTED PURSUANT TO SECTION 10-8-530 (1) (c), C.R.S., MINUS:

(A) THE CLAIMS PAID PURSUANT TO THIS ARTICLE FOR EACH FISCAL YEAR;

(B) THE RESERVE AMOUNT NECESSARY TO PAY ANTICIPATED CLAIMS; AND

(C) PUBLICATIONS AND CORRESPONDENCE EXPENSES PURSUANT TO SECTION 38-13-111 (7).

(II) UPON RECEIPT OF A REQUEST FOR A SUPPLEMENTAL TRANSMITTAL PURSUANT TO SECTION 10-8-530 (1) (d), C.R.S., THE STATE TREASURER SHALL TRANSMIT TO COVERCOLORADO AN AMOUNT OF THE PRINCIPAL AND INTEREST IN THE TRUST FUND

EQUAL TO THE AMOUNT SO REQUESTED.

(b) (I) If, based on the determination of the amount necessary by the board of CoverColorado pursuant to section 10-8-530 (1.3), C.R.S., and substantiated by the actuarial evaluations required pursuant to section 10-8-530 (1.5) (c), C.R.S., the board of CoverColorado determines that CoverColorado requires only a portion of the moneys available pursuant to paragraph (a) of this subsection (2.7), the state treasurer shall only transmit the portion required pursuant to section 10-8-530 (1.3), C.R.S.

(II) THIS PARAGRAPH (b) IS REPEALED, EFFECTIVE JANUARY 1, 2009.

~~(d) The treasurer may promulgate rules pursuant to article 4 of title 24, C.R.S., concerning the time frame for the transmittal of moneys to CoverColorado pursuant to this subsection (2.7):~~

**SECTION 6. Repeal.** 24-34-104 (39) (b) (XIII), Colorado Revised Statutes, is repealed as follows:

**24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment.** (39) (b) The following agencies, functions, or both, shall terminate on July 1, 2008:

~~(XIII) Review of the assessment imposed by section 10-8-530 (1.5), C.R.S., by the division of insurance in cooperation with the department of regulatory agencies;~~

**SECTION 7. Anticipated transfer of moneys.** The general assembly anticipates that, for the fiscal year beginning July 1, 2008, the state treasurer will reduce the amount of moneys transferred from the unclaimed property trust fund as required by section 38-13-116.5 (2.7), Colorado Revised Statutes, by eleven million one hundred sixty-four thousand eight hundred sixty-two dollars (\$11,164,862), as a result of the enactment of this act.

**SECTION 8. Effective date.** This act shall take effect July 1, 2008.

**SECTION 9. 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 27, 2008