

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

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LIFE ACCIDENT AND HEALTH

Amended Regulation 4-2-22

INSURER ASSESSMENTS FOR COVERCOLORADO

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Section 1 Authority

This regulation is promulgated under the authority of §§ 10-1-109, 10-8-520, and 10-8-530(1.5), C.R.S.

Section 2 Scope and Purpose

CoverColorado was created by legislation in 1990 to provide access to health insurance for those Colorado residents who are termed "high risk" because they are unable to obtain health insurance or unable to obtain health insurance except at prohibitive rates or with restrictive exclusions. In order to keep up with the rising medical care costs for eligible individuals, § 10-8-530(1.5), C.R.S. was enacted to permit CoverColorado to assess special fees against certain insurers in Colorado, as necessary, to pay projected administrative expenses and losses of the program. Such special fees will be used to supplement premiums and other sources of funding, as set forth in § 10-8-530(1), C.R.S., received by the program.

The purpose of this regulation is to establish the procedures for the assessment of special fees for the CoverColorado program.

Section 3 Applicability

This regulation shall apply to insurers that are assessed special fees by CoverColorado.

Section 4 Definitions

For the purposes of this regulation, the following terms shall have the meanings set forth below:

- A. "Benefit design weighted average" means the average actuarial value of the benefits provided under all plans issued in Colorado by the insurer during the previous year, weighted by enrollment in each plan.

- B. "CoverColorado" is the Colorado program which provides health insurance for those individuals who are termed "high risk" because they are unable to obtain health insurance or are unable to obtain health insurance except at prohibitive rates or with restrictive exclusions. The program is described in §10-8-501 et seq., C.R.S.
- C. "Eligible Individual" is either:
 - 1. A resident of this state who meets the eligibility requirements set forth in §10-8-513, C.R.S.; or
 - 2. An individual who meets the eligibility requirements for a federally eligible individual, as set forth in §10-8-513.5, C.R.S.

This term does not include the dependents of eligible individuals.

- D. "Group health plan" has the same meaning as set forth in §10-16-105.5(1)(a), C.R.S.
- E. "Higher level health benefit plan design" means a health plan benefit design for which the actuarial value of the benefits is at least one hundred percent (100%) but not greater than one hundred twenty percent (120%) of the benefit design weighted average.
- F. "Insurer" is any entity that provides group or individual health benefit plans, as that phrase is defined in §10-16-102(21), C.R.S., and is subject to state insurance regulation in this state, as well as any entity, including a property and casualty insurance company, that, directly or indirectly, provides stop-loss or excess loss insurance to a self-insured group health plan.
- G. "Lower level health benefit plan design" means a health benefit plan design for which the actuarial value of the benefits is at least eighty-five percent (85%) but not greater than ninety-nine percent (99%) of the benefit design weighted average.
- H. "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 amounts need to ensure that CoverColorado maintains a surplus equal to five percent (5%) of the projected annual claims of the program.
- I. "Unexpected growth" means an increase in program enrollment or claims expenses in a calendar year of more than one hundred fifteen percent (115%) of the amount of the projected growth in program enrollment or claims expenses of that calendar year.

Section 5 Annual Report of Lives

- A. On March 1 of each year, each insurer shall report to CoverColorado, on the prescribed form:
 - 1. The total number of employees ex-employees covered under a COBRA or Colorado continuation policy, retired employees or individual policyholders or subscribers enrolled in all, of its health benefit plans offered in this state; and
 - 2. The number of employees/retired employees for whom a premium is paid and coverage is provided under an excess loss, stop-loss or reinsurance policy issued by such insurer to an employer or group health plan in this state as of January 31 of that year
- B. The Annual Report of Lives shall not include any employees, retired employees or individual policyholders or subscribers who receive health benefits through Medicare, Medicaid, the Children's Basic Health Plan (pursuant to article 8 of title 25.5, C.R.S.), or the Federal Employees Health Benefit Plan.

- C. Insurers providing stop-loss, excess loss or reinsurance are permitted to exclude from their Annual Report of Lives those employees/retired employees or individual policyholders/subscribers who have been counted by the primary carrier or primary reinsurer.

Section 6 Determination of Amount of Special Fee Assessment to Each Insurer

- A. For calendar year 2009 and thereafter, CoverColorado shall, on an annual basis and by August 1 of the preceding calendar year, determine the amount of special fees needed to pay twenty-five (25%) of the total funding for the program. The total funding for the program for any calendar year 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, existing cash balances and interest earned thereon, and other actuarial considerations of the program. The projections shall not include any costs related to any dependent coverage offered by CoverColorado.
- B. The amount of special fees needed by CoverColorado pursuant to subsection 6.A. shall be assessed in an equitable manner upon insurers, as follows:
 - 1. The amount of special fees shall be divided by the total number of employees, retired employees and individual policyholders or subscribers reported by all insurers, to arrive at a per capita amount.
 - 2. The special fee assessed to each insurer shall be equal to the number of employees and retired employees or individual policyholders or subscribers reported in the month of March immediately preceding multiplied by the per capita amount
- C. In no event shall CoverColorado increase the amount of special fees to be collected from insurers in any calendar year because of unexpected growth during that calendar year. If CoverColorado's incurred administrative expenses or losses exceed the amounts collected through special fees and other sources in any calendar year, the amount needed to pay for such excess expenses and losses shall be requested from the Colorado Unclaimed Property Trust Fund in accordance with § 10-8-530(1)(d), C.R.S.

Section 7 Notice and Collection of the Assessed Special Fees

- A. Each insurer shall receive written notice of the special fee to be paid by such insurer in a calendar year no later than August 15 of the preceding calendar year. Each notice of a special fee shall include:
 - 1. The per capita amount, determined as in subsection 6.B.1 above;
 - 2. A calculation of the special fee due and owing (based on the per capita amount multiplied by the number of employees and retired employees of individual policyholders or subscribers reported in the month of March immediately preceding issuance of the notice); and
 - 3. A summary of the projections and underlying assumptions which support the need for the special fee in general and the per capita amount in particular.
- B. Each insurer shall pay the special fees to CoverColorado in four installments, with the first installment due on March 31, the second installment due on June 30, the third installment due on September 30, and the fourth installment due on December 31 of each calendar year.
- C. CoverColorado, or its designated agent, shall collect all assessed special fees and deposit the fees into the accounts specifically maintained by the CoverColorado board for this purpose. Any

amounts not immediately needed to pay the expenses and losses for eligible individuals shall be invested by the board in accordance with the investment guidelines adopted by the board and filed with the Division of Insurance as part of CoverColorado's plan of operations.

- D. If the special fees collected in any calendar year exceed the amount actually needed, the excess shall be invested by the board in accordance with the investment guidelines adopted by the board and filed with the Division of Insurance as a part of CoverColorado's plan of operations and shall, in accordance with subsection 6.A. above, be included as funds held by CoverColorado when the next projections are made.
- E. In the event that any insurer fails to pay its special fee as assessed by CoverColorado, CoverColorado shall send one notice of nonpayment thirty (30) days after March 31, June 30, September 30, or December 31. If CoverColorado has not received payment of all amounts due from an insurer within thirty (30) days after the date of the notice of nonpayment, CoverColorado shall report same to the commissioner.
- F. An insurer receiving a certificate of authority to do business in the State of Colorado market on or after the date of issuance by CoverColorado of a special fee assessment notice shall receive notice of the special fee at the time of licensure and shall be liable for a prorated amount of the special fee due and owing in the calendar year of licensure. Thereafter, a new insurer shall be liable for the special fee in the normal course of the assessment process.
- G. Any insurer withdrawing from the Colorado market after a special fee assessment notice has been issued shall be liable for a prorated amount of the assessment owing in that calendar year and shall not be liable for any assessment owing thereafter. The date of withdrawal shall be the date on which the last contract or policy of the insurer in Colorado expires, is terminated by the insurer in accordance with Colorado insurance laws or is voluntarily terminated by the policyholder/subscriber, whichever is sooner. Any insurer discontinuing a type of health coverage (e.g. small group coverage) in the Colorado market shall be liable in the calendar year of discontinuation for a prorated amount of the assessment due and owing in that calendar year, and the amount of assessment due and owing shall be calculated pursuant to subsection 6.B., regardless of any reduction in the number of employees and retired employees or individual policyholders or subscribers in that calendar year by reason of the discontinuation.

Section 8 Deferral of or Credit Against Special Fees

- A. Any insurer that believes that the payment of special fees would endanger its financial ability to fulfill its contractual obligations to its insureds may submit, no later than October 1 of the year preceding the calendar year for which payment is due, a written request for deferral of the payment of its assessed special fees to the commissioner, with a copy sent to CoverColorado. The written request for deferral shall be accompanied by certified copies of statutory annual and quarterly statements and any other documents necessary to demonstrate the claimed adverse financial position. Based on the Division of Insurance's risk-based capital guidelines, the commissioner may defer, in whole or in part, payment of the special fees owing for the coming the calendar year. The commissioner's determination regarding deferral shall be made no later than November 1 (e.g. within thirty (30) days of receipt of a written request for deferral), with written notice of the determination sent to CoverColorado. The insurer receiving the deferral shall remain liable to CoverColorado for the deferred amount, and the deferred amount shall be incrementally reassessed to the insurer over such period as is deemed reasonable by CoverColorado, in consultation with the commissioner and the insurer, but in no event longer than three (3) years.
- B. In the event a special fee assessed against an insurer is deferred, in whole or in part, the amount by which the special fee is deferred may be assessed against the other insurers in a manner consistent with the basis for assessments set forth in section 6 above (the resulting additional special fees shall be called "excess special fees"). Written notice of excess special fees shall be

sent to all insurers no later than January 1 of the calendar year of payment. Such excess special fees amount shall be included by the insurer in its March 31 payment of previously assessed special fees to CoverColorado. As the deferred assessment is repaid in subsequent assessments by the deferring insurer, as provided in subsection 8.A. above, each insurer that paid such excess special fees shall receive a pro rata credit for its share of previously paid excess special fees.

- C. An insurer shall be entitled to a credit, in the amount set forth in subsection 8.D. below, against special fees assessed (exclusive of excess special fees) if it meets any of the following criteria and has enrolled the required number of individuals in the health benefit plans described during the previous twelve-month period:
1. Any insurer that voluntarily and actively markets and offers, continuously over the twelve-month period preceding the calendar year in which a special fee assessment is due and owing, two different individual health benefit plans to an applicant who has a medical condition on the presumptive conditions list maintained by the CoverColorado board, with the premium for such plans no higher than 125% of the rate charged for a similarly situated (considering age and geographic location) but medically acceptable applicant. The two different plans shall be either:
 - a. The two plans that are generally available and actively marketed to the public and are the plans with the largest and next to largest premium volume of all individual health benefit plans offered by the insurer in this state; or
 - b. A lower level health benefit plan design and a higher level benefit plan design, both of which include benefits similar to other individual health benefit plans offered in the state.
 2. Any insurer that voluntarily and actively offers, continuously over the twelve-month period preceding the calendar year in which a special fee assessment is due and owing, two different small group health benefit plans to an applicant who is a business group of one under all of the following conditions:
 - a. Outside of the open enrollment periods established by §10-16-105(7.3)(i), C.R.S.; and
 - b. Without regard to the health status of the applicant or any dependents.The two different plans shall meet either of the criteria set forth in subsections 8.C.1(a) and (b) above, except that the two plans are those offered by the insurer to small groups, including business groups of one, in Colorado.
 3. Any insurer that voluntarily and actively offers, continuously over the twelve-month period preceding the calendar year in which a special fee assessment is due and owing, two different individual conversion health benefit plans to an applicant,
 - a. Without regard to the health status of the applicant; and
 - b. At a premium rate that is 10% or more below the CoverColorado rate for a similarly situated individual (considering age, sex, smoking status and geographic location).

The two different plans shall meet one of the criteria set forth in subsections 8.C.1(a) and (b) above.

- D. Under any of the criteria in subsections 8.C.1., 8.C.2. or 8.C.3. above, the insurer shall be entitled to a credit against any special fee assessment due and owing in a calendar year equal to three percent (3%) for enrolling the following number of individuals in the above-described plans during the preceding twelve-month period:
1. If the number of employees/retired employees or individual policyholders/subscribers reported by an insurer on its annual report to CoverColorado (pursuant to subsection 5.A. above) is 25,000 or less, 25 individuals;
 2. If the number of employees/retired employees or individual policyholders/subscribers reported by an insurer on its annual report to CoverColorado is more than 25, 000, but less than 75,000, 50 individuals; or
 3. If the number of employees/retired employees or individual policyholders/subscribers reported by an insurer on its annual report to CoverColorado is 75,000 or more, 100 individuals.
- E. Any insurer that believes that it is entitled to a credit shall submit a written request for credit, along with supporting documentation satisfactory to the commissioner, of compliance with subsections 8.C.1., 8 C.2. or 8.C.3. above no later than March 1 of the calendar year in which any assessment is due and owing.
- F. The commissioner shall make a determination regarding a credit within sixty (60) days of submission of a written request. All credits will be reported by the commissioner to CoverColorado.

Section 9 Severability

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

Section 10 Enforcement

Noncompliance with this regulation may result, after proper notice and hearing, in the suspension or revocation of the certificate of authority to transact insurance business in this state of any insurer which fails to pay a special fee assessment.

Section 11 Effective Date

This amended regulation shall become effective on January 1, 2010.

Section 12 History

New regulation effective on January 1, 2002.
Amended, effective July 1, 2002
Amended, effective September 1, 2008.
Amended, effective January 1, 2010.