

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Proposed Amended Regulation 4-2-19

CONCERNING INDIVIDUAL HEALTH BENEFIT PLANS ISSUED TO SELF-EMPLOYED BUSINESS GROUPS OF ONE

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Section 1: Authority

This regulation is promulgated pursuant to **Sections §§** 10-1-109(1), 10-16-105.2(1)(c)(I) and (3), 10-16-108.5(8), and 10-16-109, C.R.S.

Section 2: **BasisScope** **And Purpose**

The purpose of this regulation is to establish and implement rules concerning health benefit plans marketed and/or newly issued to self-employed business groups of one, **on or after October 1, 2004**. In some cases such plans are exempt from Colorado's small group guarantee issue laws, pursuant to **Section§** 10-16-105.2(1)(c), (d) and (3), C.R.S. **The purpose of the 2004 amendment to this regulation is to bring the regulation into compliance with recent statutory changes.**

Section 3: Applicability **And Scope**

This amended regulation shall apply to individual health benefit plans marketed and/or newly issued to self-employed business groups of one, **on or after October 1, 2004**.

Section 4: Definitions

- A. "Self-employed business group of one" means, pursuant to **Section §** 10-16-105(1)(c)(I), C.R.S., that type of business group of one that includes only a self-employed person who has no employees, or a sole proprietor who is not offering or sponsoring health care coverage to his or her employees.
- B. "Health benefit plan" shall have the same meaning as defined in **Section§** 10-16-102(21)(a), which includes high deductible health savings account (HSA) plans.

Section 5: Rules

- A. An individual health benefit plan marketed and/or newly issued ~~on or after October 1, 2004~~, to a self-employed business group of one, together with the dependents of the self-employed business group of one, shall be regulated as an individual health benefit plan instead of a small group health plan if the carrier issuing such policy, the policy itself, and the application for coverage meet all the following conditions:
1. Pursuant to **Section**§ 10-16-105.2(1)(c)(I)(A), C.R.S., the carrier issuing the policy determines whether or not the applicant is a self-employed business group of one. A carrier shall meet this requirement by having all applicants fill out the “Determination of Self-Employed Business Group of One Form” available from the **Colorado** Division of **Insurance**. A copy of the completed form shall be kept on file with each application. In addition, pursuant to **Section**§ 10-16-102(6)(c), C.R.S., a carrier may require all business group of one applicants to supply certain tax and withholding documents in order to determine if an applicant meets the definition of a business group of one. Applicants who answer “yes” to all the questions in the form and, if required by the carrier, who can document their answers shall be considered to have met the test of a self-employed business group of one. An applicant who does not meet this test falls into one of two categories. Either:
 - a.) The applicant is a small employer that is not a self-employed business group of one and thus any plan sold to such person is subject to the small group laws of Colorado, pursuant to **Section**§ 10-16-105.2(1)(a), C.R.S.; or
 - b.) The applicant is neither a small employer, nor a self-employed business group of one, nor any other person covered by the small group laws of Colorado (see **Section**§ 10-16-105.2(1), C.R.S.) and thus any plan sold to such person is not subject to this regulation but is subject to the other laws of Colorado relating to individual health benefit plans.
 2. Pursuant to **Section**§ 10-16-105.2(1)(c)(I)(B), C.R.S., the carrier issuing the individual health benefit plan accepts or rejects a self-employed business group of one who applies for coverage and, if such person is applying for family coverage, his/her entire family (all dependents), unless the applicant waives coverage for a family member who has other coverage in effect. A carrier shall meet this family coverage requirement by:
 - a.) Asking each self-employed business group of one applicant requesting coverage for himself/herself and one or more dependents for the names of all his/her dependents;
 - b.) Where the applicant waives coverage for a family member, keeping on file with the application a signed statement from the applicant that he/she is waiving coverage for a dependent because that person already has other coverage in effect and shall state what that coverage is and when it became effective; and
 - c.) Where a self-employed business group of one is rejected for individual coverage because one or more family members fail to meet normal and actuarially-based underwriting criteria, the carrier shall clearly state this as part of the reason for the denial and shall notify the applicant in writing of the availability of coverage for his/her whole family under a small group policy.
 3. If, pursuant to **Section** 5-A-(2) of this regulation, a carrier rejects an application by a self-employed business group of one for coverage under an individual **health benefit** plan, and if that same carrier sells coverage in both the individual and small group markets, then pursuant to **Section**§ 10-16-105.2(1)(c)(I)(C), C.R.S., the carrier notifies the applicant of the availability of small group coverage both through the small group market and through the carrier. The notice shall inform the applicant of his/her guarantee issue

rights as detailed in **Section**§ 10-16-105(7.3)(a) and (c), C.R.S. This notice shall be in writing and shall be included as part of the denial of individual coverage letter. A copy of the denial letter and the notice concerning the availability of small group coverage shall be maintained by the carrier in the file with the original application.

4. A carrier issuing an individual health benefit plan to a self-employed business group of one shall abide by the disclosure requirements as described in **Section**§ 10-16-105.2(1)(c)(I)(D), C.R.S. Accordingly:
 - a.) The carrier, as part of its application form, shall require each self-employed business group of one purchasing an individual health benefit plan pursuant to **Section**§ 10-16-105.2(1)(c)(I), **C.R.S.**, to read and sign a disclosure form, as ~~prescribed~~ **required** by the **Division of Insurance**, attesting that they understand that they are forfeiting their rights to purchase a business group of one **basic**, standard, **basic**, or other health benefit plan from a small employer carrier for a period of three (3) years after the date of purchase, unless a small employer carrier voluntarily permits the purchase of a business group of one policy within that three-year period.
 - b.) The carrier must provide the applicant with a Colorado Health **Benefit** Plan Description Form for the state's Standard Health Benefit Plans, available from the **Colorado** **Division of Insurance**. Carriers may reproduce and distribute this form in order to comply with the provisions of **Section**§ 10-16-105.2(1)(c)(I)(D), C.R.S.

B. Material failure by a carrier or its representative to comply with the requirements of **Partsubsection** A of Section 5 of this regulation will result in individual ~~polices~~ **health benefit plans** sold to self-employed business groups of one becoming subject to Colorado's small group laws.

- ~~C.~~ 1. A small employer carrier may reject for coverage under a small group plan a self-employed business group of one otherwise eligible for small group coverage if, at the time of application for small group coverage, the small employer carrier determines that the self-employed person has in place, or within the immediately preceding thirty (30) days has had in place, an individual health benefit plan, other than a short-term policy, that meets the requirements of **Partsubsection** A of Section 5 of this regulation (and any applicable statutory provisions) and such individual health benefit plan has been in place for less than three (3) years.
2. The small employer carrier shall make this determination by requesting, in writing, from the individual carrier from whom the self-employed business group of one has had coverage, verification that the coverage was or was not issued pursuant to **Section**§ 10-16-105.2(1)(c)(I), C.R.S., and this regulation. The small employer carrier shall also request information as to how long the coverage was or has been in place if such coverage was issued pursuant to **Section**§ 10-16-105.2(1)(c)(I), C.R.S., and this regulation.
3. Requests for such verification shall be answered in writing, be signed by a representative of the individual carrier, and shall be responded to within five (5) business days of the date the request was received.

Section 6 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 the regulation shall not be affected.

Section 6-7 Enforcement

Noncompliance with this regulation is a violation of Section § 10-3-1104, C.R.S., including but not limited to Subsection 10-3-1104(1)(a)(I), C.R.S., and subject to the sanctions specified in Section § 10-3-1108, C.R.S., including the imposition of fines and the suspension or revocation of certificates of authority. Noncompliance with this regulation may result, after proper notice and hearing, in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance or other laws which include the imposition of fines, issuance of cease and desist orders, and/or suspensions or revocation of certificates of authority. Among others, the penalties provided in § 10-3-1108, C.R.S. may be applied.

Section 7. Severability

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

Section 8. Effective Date

This amended regulation is effective on ~~October 1, 2004~~ May 1, 2010.

Section 9. History

1. Original regulation effective November 1, 1997.
2. Amended regulation hearing September 8, 1999; effective November 1, 1999.
~~Following Sections were amended: 2, 5, 8, and Appendices A and B.~~
3. Amended regulation effective January 1, 2002.
~~Following sections were amended: 2, 3, 5, 6, and Appendices A.~~
4. Amended regulation effective October 1, 2004
Amended regulation 4-2-19, effective May 1, 2010