

## CHAPTER 194

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**INSURANCE**

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**SENATE BILL 18-132**

BY SENATOR(S) Smallwood, Baumgardner, Cooke, Coram, Crowder, Gardner, Hill, Jahn, Lambert, Lundberg, Marble, Martinez Humenik, Neville T., Priola, Scott, Sonnenberg, Tate, Grantham;  
also REPRESENTATIVE(S) Kennedy, Bridges, Esgar, Exum, Ginal, Gray, Hamner, Jackson, Lee, Lontine, Lundeen, McKean, McLachlan, Michaelson Jenet, Neville P., Pettersen, Reyher, Saine, Singer, Wilson, Winkler, Young.

**AN ACT**

**CONCERNING A WAIVER OF FEDERAL LAW TO PERMIT INSURANCE CARRIERS TO OFFER CATASTROPHIC HEALTH PLANS TO ANY INDIVIDUAL RESIDING IN COLORADO, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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

**SECTION 1. Legislative declaration.** (1) The general assembly finds and determines that:

(a) Under section 1332 of the federal "Patient Protection and Affordable Care Act", Pub.L. 111-148, states are permitted to apply to the secretary of the United States department of health and human services for a waiver of certain requirements of the federal act with respect to health insurance coverage in order to allow states to pursue innovative strategies for providing their residents with access to high-quality affordable health care coverage;

(b) Section 1303 (e) of the federal act permits the offering of catastrophic health plans but limits those plans to individuals under the age of thirty or meeting a hardship requirement;

(c) A waiver under section 1332 of the federal act, often referred to as a "1332 waiver" or "state innovation waiver", to allow a state to waive the restrictions in section 1303 (e) of the federal act regarding catastrophic health plans may be an opportunity for a state to lower premiums for consumers, improve market stability, and increase consumer choice; and

(d) It is important for the state to pursue efforts to reduce health insurance

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

premiums for consumers, improve stability in the insurance market, and increase consumer choice by applying for a state innovation waiver to permit insurance carriers to offer catastrophic health plans to all Coloradans regardless of age or hardship.

**SECTION 2.** In Colorado Revised Statutes, **add** 10-16-116.5 as follows:

**10-16-116.5. State innovation waiver for nonemployer catastrophic health plans - notice of decision by secretary - effect of secretary's decision - notice to revisor of statutes - definitions - rules - state measurement for accountable, responsive, and transparent (SMART) government act report - repeal.**

(1) (a) THE COMMISSIONER SHALL CONDUCT AN ACTUARIAL ANALYSIS TO DETERMINE IF THE SALE OF CATASTROPHIC HEALTH PLANS TO PERSONS THIRTY YEARS OF AGE AND OLDER WHO DO NOT MEET A HARDSHIP REQUIREMENT WOULD RESULT IN A REDUCTION IN THE TOTAL AMOUNT OF ADVANCED PREMIUM TAX CREDITS RECEIVED BY COLORADO RESIDENTS OR WOULD INCREASE THE AVERAGE PREMIUMS OF INDIVIDUAL HEALTH PLANS IN COLORADO. IF THE ACTUARIAL ANALYSIS DEMONSTRATES THAT THE TOTAL AMOUNT OF ADVANCED PREMIUM TAX CREDITS RECEIVED BY COLORADO RESIDENTS WILL NOT DECLINE AND THE AVERAGE PREMIUMS OF INDIVIDUAL HEALTH PLANS IN COLORADO WILL NOT INCREASE, THEN THE COMMISSIONER SHALL APPLY TO THE SECRETARY FOR A FIVE-YEAR STATE INNOVATION WAIVER IN ACCORDANCE WITH SECTION 1332 OF THE FEDERAL ACT AND 45 CFR 155 TO WAIVE SECTION 1303 (e) OF THE FEDERAL ACT AND 45 CFR 156.155 TO ENABLE INSURANCE CARRIERS IN THE STATE TO OFFER CATASTROPHIC HEALTH PLANS TO ANY INDIVIDUAL RESIDING IN COLORADO FOR PLAN YEARS STARTING ON OR AFTER JANUARY 1, 2020. THE WAIVER APPLICATION MUST CLEARLY STATE THAT:

(I) OFFERING CATASTROPHIC HEALTH PLANS TO INDIVIDUALS THIRTY YEARS OF AGE AND OLDER AND INDIVIDUALS WHO DO NOT MEET A HARDSHIP REQUIREMENT IS CONTINGENT ON APPROVAL OF THE WAIVER REQUEST;

(II) HEALTH BENEFIT PLANS ISSUED IN ACCORDANCE WITH THE WAIVER MAY ONLY BE OFFERED AND SOLD THROUGH THE HEALTH BENEFIT EXCHANGE; AND

(III) HEALTH BENEFIT PLANS ISSUED IN ACCORDANCE WITH THE WAIVER ARE NOT ELIGIBLE FOR ADVANCED PREMIUM TAX CREDITS.

(b) THE COMMISSIONER SHALL ENSURE THAT THE WAIVER APPLICATION SUBMITTED PURSUANT TO THIS SECTION COMPLIES WITH THE REQUIREMENTS SPECIFIED IN SECTION 1332 OF THE FEDERAL ACT AND 45 CFR 155.1308.

(2) (a) THE COMMISSIONER SHALL MAKE THE DRAFT WAIVER APPLICATION AVAILABLE FOR PUBLIC REVIEW BY POSTING A COPY ON THE DEPARTMENT'S WEBSITE ON OR BEFORE DECEMBER 1, 2018. THE COMMISSIONER SHALL SUBMIT THE WAIVER APPLICATION TO THE SECRETARY BY JANUARY 1, 2019.

(b) THE COMMISSIONER SHALL NOTIFY THE FOLLOWING OF ANY FEDERAL ACTIONS REGARDING THE WAIVER REQUEST:

(I) THE JOINT BUDGET COMMITTEE OF THE SENATE AND HOUSE OF REPRESENTATIVES OR ANY SUCCESSOR COMMITTEE;

(II) THE SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES OR ANY SUCCESSOR COMMITTEE; AND

(III) THE HOUSE OF REPRESENTATIVES COMMITTEES ON HEALTH, INSURANCE, AND ENVIRONMENT AND PUBLIC HEALTH CARE AND HUMAN SERVICES OR ANY SUCCESSOR COMMITTEES.

(3) NOTWITHSTANDING THE DEFINITION OF CATASTROPHIC PLAN IN SECTION 10-16-102 (10), ANY REQUIREMENT OR LIMITATION IMPOSED BY SECTION 10-16-103.4 OR 10-16-116, OR ANY OTHER PROVISION OF LAW, IF THE SECRETARY APPROVES THE WAIVER REQUESTED IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION, INSURANCE CARRIERS ARE PERMITTED TO OFFER CATASTROPHIC HEALTH PLANS TO ANY INDIVIDUAL RESIDING IN COLORADO.

(4) IF THE SECRETARY APPROVES THE WAIVER REQUESTED IN ACCORDANCE WITH THIS SECTION, THE COMMISSIONER SHALL PROMULGATE RULES NECESSARY TO PERMIT THE OFFERING OF CATASTROPHIC HEALTH PLANS CONSISTENT WITH THE WAIVER AND THIS SECTION.

(5) AS USED IN THIS SECTION:

(a) "CATASTROPHIC HEALTH PLAN" MEANS AN INDIVIDUAL HEALTH BENEFIT PLAN THAT DOES NOT PROVIDE A BRONZE, SILVER, GOLD, OR PLATINUM LEVEL OF COVERAGE, AS THOSE COVERAGES ARE DESCRIBED IN SECTION 10-16-103.4.

(b) "SECRETARY" MEANS THE SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES.

(c) "STATE INNOVATION WAIVER" MEANS A WAIVER OF ONE OR MORE REQUIREMENTS OF THE FEDERAL ACT AUTHORIZED BY SECTION 1332 OF THE FEDERAL ACT, CODIFIED IN 42 U.S.C. SEC. 18052, AND APPLICABLE FEDERAL REGULATIONS.

(6) IF THE SECRETARY DENIES THE WAIVER REQUESTED UNDER THIS SECTION OR, AFTER APPROVAL, DENIES AN APPLICATION TO EXTEND THE WAIVER, THIS SECTION IS REPEALED. THE COMMISSIONER SHALL NOTIFY THE REVISOR OF STATUTES IN WRITING IF THE CONDITION SPECIFIED IN THIS SUBSECTION (6) OCCURS BY E-MAILING THE NOTICE TO REVISOROFSTATUTES.GA@STATE.CO.US. THIS SECTION IS REPEALED ON THE DATE IDENTIFIED IN THE NOTICE THAT THE WAIVER OR EXTENSION WAS DENIED OR ON THE DATE OF THE NOTICE TO THE REVISOR OF STATUTES IF THE NOTICE DOES NOT SPECIFY A DIFFERENT DATE.

(7) IF THE SECRETARY APPROVES THE WAIVER, THE COMMISSIONER SHALL REPORT ON THE IMPLEMENTATION AND EFFECT OF THE WAIVER TO THE SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES AND THE HOUSE OF REPRESENTATIVES COMMITTEES ON HEALTH, INSURANCE, AND ENVIRONMENT AND PUBLIC HEALTH CARE AND HUMAN SERVICES, OR ANY SUCCESSOR COMMITTEES, DURING THE COMMITTEES' HEARINGS HELD PRIOR TO THE 2022 REGULAR SESSION OF THE GENERAL ASSEMBLY UNDER THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART) GOVERNMENT ACT", PART 2 OF ARTICLE 7 OF TITLE 2.

(8) THIS SECTION IS REPEALED, EFFECTIVE JANUARY 1, 2023.

**SECTION 3. Appropriation.** For the 2018-19 state fiscal year, \$9,200 is appropriated to the department of regulatory agencies for use by the division of insurance. This appropriation is from the division of insurance cash fund created in section 10-1-103 (3), C.R.S. To implement this act, the division may use this appropriation for personal services.

**SECTION 4. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 3, 2018