

CHAPTER 444

INSURANCE

HOUSE BILL 22-1269

BY REPRESENTATIVE(S) Lontine, Amabile, Bennett, Boesenecker, Caraveo, Hooton, Jodeh, Kipp, Lindsay, McCormick, Michaelson Jenet, Sirota, Titone, Woodrow;
also SENATOR(S) Hansen, Ginal, Jaquez Lewis, Moreno, Fenberg.

AN ACT

CONCERNING REQUIREMENTS IMPOSED ON PERSONS NOT AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THIS STATE WHO ARE OFFERING COVERAGE OF HEALTH-CARE COSTS FOR COLORADO RESIDENTS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, **add** 10-16-107.4 as follows:

10-16-107.4. Health-care sharing plan or arrangement - required reporting and certification - noncompliance - information posted on division website - rules. (1) A PERSON NOT AUTHORIZED BY THE COMMISSIONER PURSUANT TO ARTICLE 3 OF THIS TITLE 10 TO OFFER INSURANCE IN THIS STATE THAT OFFERS OR INTENDS TO OFFER A PLAN OR ARRANGEMENT TO FACILITATE PAYMENT OR REIMBURSEMENT OF HEALTH-CARE COSTS OR SERVICES FOR RESIDENTS OF THIS STATE, REGARDLESS OF WHETHER THE PERSON IS DOMICILED IN THIS STATE OR ANOTHER STATE, SHALL SUBMIT TO THE COMMISSIONER BY OCTOBER 1, 2022, AND BY MARCH 1 EACH YEAR THEREAFTER:

(a) THE FOLLOWING INFORMATION:

(I) THE TOTAL NUMBER OF INDIVIDUALS AND HOUSEHOLDS THAT PARTICIPATED IN THE PLAN OR ARRANGEMENT IN THIS STATE IN THE IMMEDIATELY PRECEDING CALENDAR YEAR;

(II) THE TOTAL NUMBER OF EMPLOYER GROUPS THAT PARTICIPATED IN THE PLAN OR ARRANGEMENT IN THIS STATE IN THE IMMEDIATELY PRECEDING CALENDAR YEAR, SPECIFYING THE TOTAL NUMBER OF PARTICIPATING INDIVIDUALS IN EACH PARTICIPATING EMPLOYER GROUP;

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

(III) IF THE PERSON OFFERS A PLAN OR ARRANGEMENT IN OTHER STATES, THE TOTAL NUMBER OF PARTICIPANTS IN THE PLAN OR ARRANGEMENT NATIONALLY;

(IV) ANY CONTRACTS THE PERSON HAS ENTERED INTO WITH PROVIDERS IN THIS STATE THAT PROVIDE HEALTH-CARE SERVICES TO PLAN OR ARRANGEMENT PARTICIPANTS;

(V) THE TOTAL AMOUNT OF FEES, DUES, OR OTHER PAYMENTS COLLECTED BY THE PERSON IN THE IMMEDIATELY PRECEDING CALENDAR YEAR FROM INDIVIDUALS, EMPLOYER GROUPS, OR OTHERS WHO PARTICIPATED IN THE PLAN OR ARRANGEMENT IN THIS STATE, SPECIFYING THE PERCENTAGE OF FEES, DUES, OR OTHER PAYMENTS RETAINED BY THE PERSON FOR ADMINISTRATIVE EXPENSES;

(VI) THE TOTAL DOLLAR AMOUNT OF REQUESTS FOR REIMBURSEMENT OF HEALTH-CARE COSTS OR SERVICES SUBMITTED IN THIS STATE IN THE IMMEDIATELY PRECEDING CALENDAR YEAR BY PARTICIPANTS IN THE PLAN OR ARRANGEMENT OR PROVIDERS THAT PROVIDED HEALTH-CARE SERVICES TO PLAN OR ARRANGEMENT PARTICIPANTS;

(VII) THE TOTAL DOLLAR AMOUNT OF REQUESTS FOR REIMBURSEMENT OF HEALTH-CARE COSTS OR SERVICES THAT WERE SUBMITTED IN THIS STATE AND WERE DETERMINED TO QUALIFY FOR REIMBURSEMENT UNDER THE PLAN OR ARRANGEMENT IN THE IMMEDIATELY PRECEDING CALENDAR YEAR;

(VIII) THE TOTAL AMOUNT OF PAYMENTS MADE TO PROVIDERS IN THIS STATE IN THE IMMEDIATELY PRECEDING CALENDAR YEAR FOR HEALTH-CARE SERVICES PROVIDED TO OR RECEIVED BY A PLAN OR ARRANGEMENT PARTICIPANT;

(IX) THE TOTAL AMOUNT OF REIMBURSEMENTS MADE TO PLAN OR ARRANGEMENT PARTICIPANTS IN THIS STATE IN THE IMMEDIATELY PRECEDING CALENDAR YEAR FOR HEALTH-CARE SERVICES PROVIDED TO OR RECEIVED BY A PLAN OR ARRANGEMENT PARTICIPANT;

(X) THE TOTAL NUMBER OF REQUESTS FOR REIMBURSEMENT OF HEALTH-CARE COSTS OR SERVICES SUBMITTED IN THIS STATE IN THE IMMEDIATELY PRECEDING CALENDAR YEAR THAT WERE DENIED, EXPRESSED AS A PERCENTAGE OF TOTAL REIMBURSEMENT REQUESTS SUBMITTED IN THAT CALENDAR YEAR, AND THE TOTAL NUMBER OF REIMBURSEMENT REQUEST DENIALS THAT WERE APPEALED;

(XI) THE TOTAL AMOUNT OF HEALTH-CARE EXPENSES SUBMITTED IN THIS STATE BY PLAN OR ARRANGEMENT PARTICIPANTS OR PROVIDERS IN THE IMMEDIATELY PRECEDING CALENDAR YEAR THAT QUALIFY FOR REIMBURSEMENT PURSUANT TO THE PLAN OR ARRANGEMENT CRITERIA BUT THAT, AS OF THE END OF THAT CALENDAR YEAR, HAVE NOT BEEN REIMBURSED, EXCLUDING ANY AMOUNTS THAT THE PLAN OR ARRANGEMENT PARTICIPANTS INCURRING THE HEALTH-CARE COSTS MUST PAY BEFORE RECEIVING REIMBURSEMENT UNDER THE PLAN OR ARRANGEMENT;

(XII) THE ESTIMATED NUMBER OF PLAN OR ARRANGEMENT PARTICIPANTS THE PERSON IS ANTICIPATING IN THIS STATE IN THE NEXT CALENDAR YEAR, SPECIFYING THE ESTIMATED NUMBER OF INDIVIDUALS, HOUSEHOLDS, EMPLOYER GROUPS, AND

EMPLOYEES;

(XIII) THE SPECIFIC COUNTIES IN THIS STATE IN WHICH THE PERSON:

(A) OFFERED A PLAN OR ARRANGEMENT IN THE IMMEDIATELY PRECEDING CALENDAR YEAR; AND

(B) INTENDS TO OFFER A PLAN OR ARRANGEMENT IN THE NEXT CALENDAR YEAR;

(XIV) OTHER STATES IN WHICH THE PERSON OFFERS A PLAN OR ARRANGEMENT;

(XV) A LIST OF ANY THIRD PARTIES, OTHER THAN A PRODUCER, THAT ARE ASSOCIATED WITH OR ASSIST THE PERSON IN OFFERING OR ENROLLING PARTICIPANTS IN THIS STATE IN THE PLAN OR ARRANGEMENT, COPIES OF ANY TRAINING MATERIALS PROVIDED TO A THIRD PARTY, AND A DETAILED ACCOUNTING OF ANY COMMISSIONS OR OTHER FEES OR REMUNERATION PAID TO A THIRD PARTY IN THE IMMEDIATELY PRECEDING CALENDAR YEAR FOR:

(A) MARKETING, PROMOTING, OR ENROLLING PARTICIPANTS IN A PLAN OR ARRANGEMENT OFFERED BY THE PERSON IN THIS STATE; OR

(B) OPERATING, MANAGING, OR ADMINISTERING A PLAN OR ARRANGEMENT OFFERED BY THE PERSON IN THIS STATE;

(XVI) THE TOTAL NUMBER OF PRODUCERS THAT ARE ASSOCIATED WITH OR ASSIST THE PERSON IN OFFERING OR ENROLLING PARTICIPANTS IN THIS STATE IN THE PLAN OR ARRANGEMENT, THE TOTAL NUMBER OF PARTICIPANTS ENROLLED IN THE PLAN OR ARRANGEMENT THROUGH A PRODUCER, COPIES OF ANY TRAINING MATERIALS PROVIDED TO A PRODUCER, AND A DETAILED ACCOUNTING OF ANY COMMISSIONS OR OTHER FEES OR REMUNERATION PAID TO A PRODUCER IN THE IMMEDIATELY PRECEDING CALENDAR YEAR FOR MARKETING, PROMOTING, OR ENROLLING PARTICIPANTS IN A PLAN OR ARRANGEMENT OFFERED BY THE PERSON IN THIS STATE;

(XVII) COPIES OF ANY CONSUMER-FACING AND MARKETING MATERIALS USED IN THIS STATE IN PROMOTING THE PERSON'S PLAN OR ARRANGEMENT, INCLUDING PLAN OR ARRANGEMENT AND BENEFIT DESCRIPTIONS AND OTHER MATERIALS THAT EXPLAIN THE PLAN OR ARRANGEMENT;

(XVIII) THE NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER OF AN INDIVIDUAL SERVING AS A CONTACT PERSON FOR THE PERSON IN THIS STATE;

(XIX) A LIST OF ANY PARENT COMPANIES, SUBSIDIARIES, AND OTHER NAMES THAT THE PERSON HAS OPERATED UNDER AT ANY TIME WITHIN THE IMMEDIATELY PRECEDING FIVE CALENDAR YEARS; AND

(XX) AN ORGANIZATIONAL CHART FOR THE PERSON AND A LIST OF THE OFFICERS AND DIRECTORS OF THE PERSON;

(b) A CERTIFICATION BY AN OFFICER OF THE PERSON THAT, TO THE BEST OF THE PERSON'S GOOD-FAITH KNOWLEDGE AND BELIEF, THE INFORMATION SUBMITTED IS

ACCURATE AND SATISFIES THE REQUIREMENTS OF THIS SUBSECTION (1).

(2)(a) IF THE PERSON SUBJECT TO THE REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION FAILS TO SUBMIT THE INFORMATION OR CERTIFICATION REQUIRED BY SAID SUBSECTION, THE SUBMISSION IS INCOMPLETE. THE COMMISSIONER SHALL MAKE A DETERMINATION OF COMPLETENESS NO LATER THAN FORTY-FIVE DAYS AFTER THE SUBMISSION. IF THE COMMISSIONER HAS NOT INFORMED THE PERSON OF ANY DEFICIENCIES IN THE SUBMISSION WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE SUBMISSION, THE SUBMISSION IS CONSIDERED COMPLETE.

(b)(I) IF THE COMMISSIONER DETERMINES THAT A PERSON FAILS TO COMPLY WITH THE REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION, THE COMMISSIONER SHALL:

(A) NOTIFY THE PERSON THAT THE SUBMISSION IS INCOMPLETE AND ENUMERATE IN THE NOTIFICATION EACH DEFICIENCY FOUND IN THE PERSON'S SUBMISSION; AND

(B) ALLOW THE PERSON THIRTY DAYS AFTER NOTICE OF THE INCOMPLETE SUBMISSION TO REMEDY THE DEFICIENCY FOUND IN THE SUBMISSION.

(II) IF THE PERSON DOES NOT REMEDY THE DEFICIENCY WITHIN THE THIRTY-DAY PERIOD, THE COMMISSIONER MAY LEVY A FINE NOT TO EXCEED FIVE THOUSAND DOLLARS PER DAY.

(III) IF THE PERSON DOES NOT REMEDY THE DEFICIENCY OR DEFICIENCIES WITHIN THIRTY DAYS AFTER THE INITIAL FINE IS LEVIED, THE COMMISSIONER MAY ISSUE A CEASE-AND-DESIST ORDER IN ACCORDANCE WITH SECTION 10-3-904.5.

(3) ON OR BEFORE APRIL 1, 2023, AND ON OR BEFORE EACH OCTOBER 1 THEREAFTER, THE COMMISSIONER SHALL:

(a) PREPARE A WRITTEN REPORT SUMMARIZING THE INFORMATION SUBMITTED BY PERSONS PURSUANT TO SUBSECTION (1) OF THIS SECTION; AND

(b) POST ON THE DIVISION'S WEBSITE THE REPORT AND ACCURATE AND EVIDENCE-BASED INFORMATION ABOUT THE PERSONS WHO SUBMITTED INFORMATION PURSUANT TO SUBSECTION (1) OF THIS SECTION, INCLUDING HOW CONSUMERS MAY FILE COMPLAINTS.

(4) THE COMMISSIONER MAY ADOPT RULES AS NECESSARY TO IMPLEMENT THIS SECTION.

(5) THIS SECTION DOES NOT APPLY TO:

(a) DIRECT PRIMARY CARE AGREEMENTS AS DEFINED IN ARTICLE 23 OF TITLE 6;
OR

(b) OTHER CONSUMER PAYMENT ARRANGEMENTS IDENTIFIED BY THE COMMISSIONER BY RULE, INCLUDING CONSUMER PAYMENT PLANS OFFERED DIRECTLY BY A PROVIDER TO A PATIENT OR THE PARTY RESPONSIBLE FOR PAYMENT ON BEHALF OF THE PATIENT.

SECTION 2. In Colorado Revised Statutes, 10-3-904.5, **amend** (1)(a) as follows:

10-3-904.5. Emergency cease-and-desist orders - issuance. (1) The commissioner may issue an emergency cease-and-desist order ex parte if:

(a) The commissioner believes that:

(I) An unauthorized person is engaging in the business of insurance in violation of the provisions of section 10-3-105 or 10-3-903 or is in violation of a rule promulgated by the commissioner; ~~and~~ OR

(II) A PERSON IS FAILING TO REMEDY OR HAS NOT REMEDIED A DEFICIENCY OR DEFICIENCIES IN THE SUBMISSION REQUIRED PURSUANT TO SECTION 10-16-107.4(1) WITHIN THE THIRTY DAYS AFTER THE COMMISSIONER LEVIES AN INITIAL FINE PURSUANT TO SECTION 10-16-107.4 (2)(b)(II); AND

SECTION 3. Appropriation. (1) For the 2022-23 state fiscal year, \$84,568 is appropriated to the department of regulatory agencies. 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 department may use this appropriation as follows:

(a) \$39,097 for use by the division of insurance for personal services, which amount is based on an assumption that the division will require an additional 0.5 FTE;

(b) \$6,875 for use by the division of insurance for operating expenses;

(c) \$19,714 for the purchase of legal services; and

(d) \$18,882 for the purchase of information technology services.

(2) For the 2022-23 state fiscal year, \$19,714 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of regulatory agencies under subsection (1)(c) of this section and is based on an assumption that the department of law will require an additional 0.1 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of regulatory agencies.

(3) For the 2022-23 state fiscal year, \$18,882 is appropriated to the office of the governor for use by the office of information technology. This appropriation is from reappropriated funds received from the department of regulatory agencies under subsection (1)(d) of this section. To implement this act, the office may use this appropriation to provide information technology services for the department of regulatory agencies.

SECTION 4. Applicability. This act applies to conduct occurring on or after the effective date of this act.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and

declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 8, 2022