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May 20, 2019

The Honorable Steven Mnuchin
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Alex Azar
Secretary of Health and Human Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Secretary Mnuchin and Secretary Azar:

The State of Colorado respectfully requests that the U.S. Department of Treasury and the U.S. Department of Health and Human Services grant Colorado's application for a Section 1332 State Innovation Waiver as soon as possible.

As detailed in this application, Colorado is requesting that Section 1312(c)(1) of the Affordable Care Act (ACA) be waived for a period of two years beginning in the 2020 plan year to allow the state to implement a reinsurance program. This waiver adheres to the general guardrails established by Section 1332, as well as additional principles laid out in guidance from the Centers for Medicare and Medicaid (CMS), and does not affect any other provision of the ACA.

This is an urgent matter because the Colorado Division of Insurance will be reviewing health insurers' individual market rates for the 2020 plan year this summer and must finalize the approval of those rates in early fall of 2019.

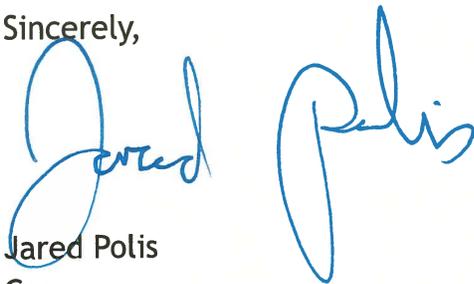
Earlier this month, the Colorado General Assembly passed and I signed House Bill 19-1168, which establishes a state-based reinsurance program to address rising health insurance premiums in our state. It was bipartisan legislation, garnering support from both Democrats and Republicans in both chambers of the Assembly. As Governor, I strongly supported this legislation and this program. As demonstrated in the detailed actuarial and economic analysis that is part of this application, the Colorado Division of Insurance estimates that in the first year the program would bring down premiums in the individual market 16 percent on average across the state, with the expectation of similar savings in year two.

Without this program, Colorado will continue to see premiums rise, leading to higher federal payments of advance premium tax credits. Those rising premiums risk wiping out the significant gains our state has made in reducing the number of uninsured.

We believe that granting the waiver will not only lower premiums, but bring more stability and predictability to the individual health insurance market. More predictability may also incentivize health insurance carriers to expand into other parts of Colorado to offer individual health insurance.

Ensuring that health care is as accessible and affordable as possible for our citizens is a goal I am sure that we all share. With your expedited approval I believe we can achieve that goal.

Sincerely,

A handwritten signature in blue ink that reads "Jared Polis". The signature is written in a cursive, flowing style.

Jared Polis
Governor



Colorado 1332 State Innovation Waiver Request Application to Develop a State Reinsurance Program

May 20, 2019

*Submitted by the Colorado Division of Insurance
part of the Department of Regulatory Agencies (DORA)*

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Attachment 1. Actuarial and economic analysis

Attachment 2. Colorado House Bill 19-1168

Attachment 3. Copy of notice sent announcing start of public comment period on draft application

Attachment 4. Questions and comments received during the April 22, 2019, public hearing

Attachment 5. Questions and comments received during the April 29, 2019, public hearing

Attachment 6. Written public comments received during the thirty (30) day public comment period

Attachment 7. Comments, issues, and concerns raised during the tribal consultation on April 25, 2019

Executive Overview

Waiver Request

The State of Colorado, through its Division of Insurance (DOI or Division), submits this 1332 State Innovation Waiver request to the Center for Medicare and Medicaid Services (CMS), a division of the United States Department of Health and Human Services (HHS), and the Department of the Treasury. This request seeks waiver of Section 1312(c)(1) under Section 1332 of the Affordable Care Act (ACA) for a period of two years beginning in the 2020 plan year, to develop a state reinsurance program. This waiver will not affect any other provision of the ACA but will result in a lower market-wide index rate, thereby lowering premiums and reducing the federal cost of the premium tax credit (PTC) and advance payments of the PTC (APTC).

Basis for Request and Goal of Reinsurance Program

While Colorado has made great strides in improving access to health insurance coverage in recent years in its individual health insurance market, premiums have continued to increase. Increases have been particularly acute in the rural areas of the state - the mountain communities, the Western Slope, the southern counties and the Eastern Plains. Certain health care costs, such as the prices charged by doctors and hospitals - are much higher in these areas for a variety of reasons - such as natural monopolies and limited availability - which in turn drives up premiums. In the last few years, Colorado's individual health insurance market has seen substantial rate instability. The average premium increase for 2017 was 20 percent, and in 2018 it was 32 percent. While the 2019 average increase was a comparatively small 5.6 percent, all of these increases are cumulative.

The creation of a state reinsurance program through a 1332 waiver will bring certainty and stability to Colorado's individual health insurance market through state-based innovation. By reimbursing insurers for high-cost claims, the reinsurance program will spread risk across the broader Colorado health insurance market, thereby lowering premiums and increasing access to affordable private coverage. This is especially important for the rural areas of the state that have seen the highest premium increases in the state. The program will increase access to health insurance, particularly in those areas, by making insurance more affordable.

The program is also expected to encourage current carriers to maintain their participation in the state's nine geographic areas, and create favorable conditions for expanding their coverage into new areas. It may also incent new carriers to enter Colorado's individual market due to the stabilization of premiums through reinsurance. In fact, a new carrier, Oscar Health, has already committed to entering Colorado's individual market for 2020 in part due to the expected reinsurance program.

Operation, Funding, and Impact of the Colorado Reinsurance Program

House Bill 19-1168 (HB19-1168), signed into law on May 17, 2019, establishes a reinsurance program to be administered by the Colorado DOI. Total funding for the reinsurance program for 2020 is estimated to be approximately \$250 million dollars. The program will be partially funded through a special assessment fee on hospitals, as well as with money from the state's general fund, including funds from the state's premium tax revenue. Through this waiver request, Colorado seeks federal pass-through funds to fund the remainder of reinsurance program. HB19-1168 makes the operation of the reinsurance program contingent on the approval of this waiver request. Both the pass-through funds and the money from the State will be used for the reinsurance payments themselves, as well as the administration of the program.

The reinsurance program will reimburse qualifying individual health insurers for a percentage of an enrollee's claims between an attachment point and a cap. In 2020, the program will reimburse claims at an average 60 percent coinsurance rate for claims between the attachment point of \$30,000 and an estimated \$400,000 cap. The program will reimburse at different percentages in different parts of the state due to language in HB19-1168 that specifies a three-tier structure for reducing the costs of claims. The three-tier structure is designed to encourage carriers into the parts of the state with less carrier participation and to provide greater relief in areas of the state with higher health care costs and health insurance premiums - our rural and mountain areas - as compared to areas with somewhat lower costs and premiums - the metropolitan areas and those areas along the Front Range (corresponding to the cities along Interstate 25). The DOI will set these program parameters through administrative rule. The Division estimates that the reinsurance program, as part of the waiver proposal, will result in a statewide average premium decrease of 16 percent in 2020.

In order to promote more cost-effective health care coverage and to be prudent with federal taxpayer funds by restraining growth in federal spending commitments, HB19-1168 stipulates that Colorado's Insurance Commissioner shall require each health insurance carrier eligible for the reinsurance program to file the care management protocols the carrier will use to manage claims within the payment parameters. The Commissioner shall establish by rule the deadlines for filing this information, along with the form and manner of filing.

Compliance with Section 1332

Colorado's waiver, if approved, will reduce premiums and increase affordability of health insurance in Colorado's individual health insurance market. Actuarial analysis estimates that, as a result, enrollment in the individual market will increase by approximately 2.9 percent in 2020 (see Table 1 below). The waiver will not impact the comprehensiveness of coverage in Colorado, except insofar as individuals with coverage will have more comprehensive coverage than those without. The waiver will have no material impact on premiums, comprehensiveness, or enrollment in group coverage or public programs. The reduction in individual health insurance premiums, including premiums for the second-lowest-cost silver plan, will reduce net federal

spending by approximately \$170M and \$183M, respectively, in each of the two years the waiver is in place (2020 and 2021). The state requests federal pass-through funding equal to the amount of federal savings for each year of the program. Accordingly, the waiver will not increase the federal deficit in any year of the waiver. In addition, the waiver will advance several of the principles described in the section 1332 guidance released in October 2018, including expanding access to private coverage and supporting and empowering those in need.

Table 1. Potential Impact of the Colorado Reinsurance Program on 2020 Premiums, Enrollments and Federal Deficit

	Premium Impact	Impact on Individual Market Enrollment	Net Federal Savings
Effects of Reinsurance Program	-16%	+2.9%	\$170 million

I. Colorado’s 1332 Waiver Request

Colorado’s individual health insurance market, like others across the country, has been through significant changes and challenges in the past few years.

Since the enactment of the Affordable Care Act (ACA), Colorado has made significant improvements in access to health care coverage, with the uninsured rate decreasing from 15.8% in 2011 to 6.5% in 2017. The state was able to retain all seven of its Exchange carriers for 2018 and 2019, in large part due to the state’s efforts to work collaboratively with Colorado health insurance carriers. Yet, despite this stability in the market, premiums have continued to increase. The statewide average premium increase for 2017 was 20 percent, and in 2018 it was 32 percent. In 2019, the statewide average increase was a comparatively small 5.6 percent.

The rural areas of Colorado - the mountain communities, the Western Slope, the southern counties and the Eastern Plains - have been hit especially hard, absorbing premium increases much higher than the statewide averages. Health care costs - what doctors and hospitals charge - can be much higher in these areas, and these costs push premiums higher.

To attack this problem, Colorado seeks a waiver of Section 1312(c)(1) under Section 1332 of the ACA, for a two-year period beginning in the 2020 plan year, to develop a state reinsurance program. The waiver is intended to further stabilize the individual market, reduce rates, and to encourage insurance companies to offer plans in more parts of the state. For 2020, a new carrier, Oscar Health, has committed to entering the individual market because Colorado is working to implement a reinsurance program.

Section 1312(c)(1) requires “all enrollees in all health plans . . . offered by [an] issuer in the individual market . . . to be members of a single risk pool.” This application calls for waiving the single risk pool requirement to the extent it would otherwise require excluding expected state reinsurance payments when establishing the market-wide index rate. A lower index rate will result in lower premiums for Colorado’s second lowest-cost silver plan, resulting in a reduction in the overall APTC that the federal government is obligated to pay for subsidy-eligible consumers in Colorado. The waiver does not require changes to any other ACA provision.

As premium increases cause healthier individuals to drop coverage, the pool of people becomes sicker, older and higher risk, and therefore, more costly to insure. Healthy lives are needed to balance risk so that consumers have access to affordable coverage. Without a reinsurance program, individual health insurance premium in Colorado will continue to rise at an unsustainable rate, and more healthy lives will be left out of the pool as more residents will choose or be forced to go without health insurance, further driving up rates due to adverse selection and provider cost shifting. Operating a state-based reinsurance program will help reduce the potential for further market disruption, and is a positive step towards stabilization. The reinsurance program will lower the cost of individual premiums and is a means for insurers to manage high cost claims in a way that prevents them from leaving the market, all while decreasing federal subsidy obligations.

By mitigating high-cost individual health insurance claims, the reinsurance program will help stabilize Colorado’s individual market and make premiums more affordable. Table 1 above shows that, with the waiver and reinsurance program in place, individual market premiums, including premiums for the second lowest cost silver plan, are expected to be, on average, 16 percent lower across the state in 2020 than they would be absent the waiver.

This premium reduction will reduce federal APTC and PTC cost. The actuarial analysis shows that absent the waiver, 2020 Federal APTC and PTC spending in Colorado will be an estimated \$894M. After factoring in the waiver, total 2020 federal APTC and PTC is estimated to be \$731.2M, a savings of \$162.8M (this includes a 5 percent reduction to pass-through percentage). Similar savings are estimated for year two of the program, and for each year of the 10-year budget window.

To partially fund the reinsurance program itself, as well as its operational costs, Colorado seeks federal pass-through funds in the amount the federal savings for APTC and PTC, subject to the cap imposed by the statutory deficit neutrality requirement. In addition to Federal pass-through funds, other funding will come from a special fee assessed against Colorado hospitals of no more than \$40 million within any year. Additional funding for the reinsurance program will come from Colorado’s General Fund (through a change in state law regarding a reduction in the vendor fee - the amount of sales tax a retailer is allowed to retain for collecting state sales tax), as well as a portion of the state’s premium tax revenues.

II. Compliance with Section 1332 Guardrails

Table 2 - High-Level Guardrails Results

Guardrail	Effect of Waiver
Coverage	Increase in enrollment
Affordability (2020)	Statewide avg. premium decrease of 16%
Comprehensiveness	No change to EHBs
Deficit Neutrality (2020)	Net Federal savings of \$170 million
Deficit Neutrality (10-year)	Net Federal savings of \$2.08 billion

A. Scope of Coverage Requirement (1332(b)(1)(C)):

As previously noted, the waiver will reduce the cost of coverage in the individual market. As a result and as indicated in Table 1, enrollment in the individual market is expected to increase by approximately 2.9 percent in 2020, with a similar increase in year two. The waiver will have no material impact on the availability of other types of coverage, such as Health First Colorado (Colorado’s Medicaid program), Children’s Health Insurance Program (CHIP), and employer-based insurance, so no impact is expected on the number of individuals with those types of coverage. By lowering premiums in the individual market, the waiver will have a positive impact on vulnerable populations in Colorado who buy coverage.

B. Affordability Requirement (1332(b)(1)(B)):

As noted above, the reinsurance program will, in each year it is in effect, make the cost of individual coverage lower than it would be absent the waiver. The waiver will not affect the premiums or cost-sharing for coverage obtained through other means, such as Medicaid, CHIP, and employer-based coverage. The waiver will have a positive impact on vulnerable populations who buy coverage in the individual market since premiums will be lower.

C. Comprehensiveness Requirement (1332(b)(1)(A)):

The waiver will have no material effect on the comprehensiveness of coverage for Colorado residents. Regardless of whether the waiver is granted, all Colorado ACA-compliant plans will be required to provide coverage of essential health benefits. Similarly, the scope of benefits provided by other types of coverage such as Medicaid, CHIP, and grandfathered plans will not be impacted. The waiver is expected to increase the number of individuals with health coverage. Individuals gaining health coverage under the waiver will have coverage for more comprehensive health benefits than they would absent the waiver.

D. Deficit Neutrality Requirement (1332(b)(1)(D)):

As stated above, Colorado anticipates that individual premiums, including premiums for the second-lowest-cost silver plan, will be lower under the waiver by 16 percent, on average across the state, in 2020. Because federal APTC and PTC costs are tied to the second-lowest-cost silver plan, these lower premiums will result in lower federal spending net of revenues in each year of the waiver. Combining these factors, the waiver will produce net federal savings estimated at \$170 million in 2020 and \$183 million in 2021. Colorado requests pass-through funds in each year equal to the expected APTC/PTC savings, and not to exceed net expected savings under the waiver. As shown for selected time periods in the actuarial and economic analysis for each year, granting pass-through funding in these amounts will not result in the waiver increasing the federal deficit in any year, over the two years of the waiver, or over a 10-year budget window.

Table 3 - Impact to Federal Deficit Savings/Costs, Selected Time Periods

Category of Impact	2020	2020 - 2021	2020 - 2029
Savings in APTC	\$175 million	\$362 million	\$2.12 billion
Expected Pass-Through Funds	\$162.8 million	\$337 million	N/A*
Total Impact on Federal Deficit	\$170 million	\$353 million	\$2.08 billion

* Program is only two years, so pass-through funds will only be requested for 2020 and 2021.

III. Description of the Colorado 1332 Waiver Proposal

A. Authorizing Legislation

HB19-1168, which establishes the reinsurance program and gives the Colorado Division of Insurance (DOI or Division) the authority to implement a 1332 waiver, was signed into law by Governor Jared Polis on May 17, 2019. The goal of HB19-1168 is to stabilize premiums for health insurance in the individual market, provide greater financial certainty for consumers, and to encourage carriers to increase competition throughout the state.

HB19-1168 requires the DOI to establish, via regulation, the reinsurance program requirements and parameters, including the reinsurance program attachment point, coinsurance rate, reinsurance cap, and payment processes. The bill also gives the Division the authority to apply for a federal waiver to carry out the reinsurance program.

The reinsurance program will reimburse individual health insurers for a proportion (the coinsurance amount) of high-cost enrollee claims between a lower bound (the attachment point) and an upper bound (cap). The payment parameters for the 2020 plan year, consisting of the

coinsurance amount, the attachment point, and the cap, shall be established by the Insurance Commissioner, via emergency rule by May 24, 2019. These payment parameters can be adjusted from year-to-year based upon the claims experience, the funds available, and the anticipated claims for the coming plan year. The annual payment parameters for subsequent plan years will be established by the Commissioner, by rule, no later than March 15 of the immediately preceding year.

For 2020, Colorado is likely to set the attachment point at \$30,000, and the reinsurance cap at \$400,000, with variable coinsurance rates that correspond to the three tiers of reducing claims costs, as stipulated in the enabling legislation. The program will have three tiers based on the state’s geographic rating areas. For Tier 1, the bill specifies that the program bring down claims costs by 15 percent - 20 percent for Geographic Rating Areas 1 (Boulder), 2 (Colorado Springs) and 3 (Denver); for Tier 2, it is to bring claims costs down by 20 percent - 25 percent for Areas 4 (Fort Collins), 6 (Greeley), 7 (Pueblo) and 8 (Eastern Plains and central southern part of Colorado); and for Tier 3, by 30 percent - 35 percent for Areas 5 (Grand Junction) and 9 (Mountain Areas, Western Slope and western half of Colorado). Areas 5 and 9 are targeted for the highest claims reductions costs as they typically have the highest health care costs in Colorado and thus the highest insurance premiums.

These tiered savings will be achieved by varying the coinsurance amounts for the three tiers. The reinsurance program will pay for claims when an individual’s aggregate claims costs in a plan year reach the attachment point of \$30,000, at the coinsurance percentage, up to the designated program cap of \$400,000. For example, tier 1 areas will have a coinsurance rate of 45 percent, meaning that once a person’s total claims costs reach \$30,000 for a plan year, the reinsurance program will pay 45 percent of the claims costs (while the health insurance carrier pays the other 55 percent), up to the cap of \$400,000, at which point the carrier will again take over the payment of claims.

Table 4 - Payment Parameters for 2020 Across Three Tiers, as Specified by HB19-1168

	Tier 1			Tier 2				Tier 3	
	Area 1	Area 2	Area 3	Area 4	Area 6	Area 7	Area 8	Area 5	Area 9
Attachment Point	\$30,000			\$30,000				\$30,000	
Cap	\$400,000			\$400,000				\$400,000	
Coinsurance	45%			50%				85%	

The enabling legislation allows the DOI to adjust the payment parameters if necessary.

In addition to the federal pass-through, the enabling legislation provides for additional funding from State sources. One source will come from a special fee assessed against Colorado hospitals. This assessment must comply with 42 CFR 433.68 regarding permissible health care-related taxes, and is not to exceed the lesser of \$40 million or the maximum allowed under 42 CFR 433.68. Additional funding for the reinsurance program will come from Colorado's General Fund through a change in state law regarding a reduction in the vendor fee - the amount of sales tax a retailer is allowed to retain for collecting state sales tax. This amount is expected to be \$55 million for the first year of the program. On top of this, additional money for the reinsurance program will come from a portion of the state's premium tax revenues.

The funding may also be supplemented through specific fees assessed against Colorado health insurance carriers. The enabling legislation says that for each of the two years of the program, after carriers have filed and the Insurance Commissioner has approved rates for the year, should the Federal government suspend the fee imposed pursuant to section 9010 of the Federal act for that plan year, but the insurance carriers collect the fee, the Commissioner shall assess a special fee from the carriers in the individual market of 2.2 percent of premiums collected (unless the Federal government changes the amount of the fee specified in section 9010).

B. Federal Pass-Through Funding

The waiver is designed to improve Colorado residents' access to affordable and comprehensive coverage. The goals of the reinsurance program are to spread the risk of high-cost claimants across the broader health insurance market, thereby lowering premiums for the individual market. In doing so, the reinsurance program will incentivize individual enrollees to join or remain in the market, encourage insurer participation, and reduce overall instability. A new carrier, Oscar Health, has already committed to entering the Colorado individual insurance market for the 2020 plan year based on the fact that the state has pursued a reinsurance program.

Because the amount of APTC available for eligible consumers is tied to the second-lowest-cost silver plan available through Colorado's Marketplace, known as Connect for Health Colorado, the waiver will reduce net federal expenditures due to APTC and PTC. Through this waiver request, Colorado seeks the amount of these federal savings, net of other costs that result from the waiver. Colorado will use these funds to partially fund both the reinsurance program itself and the operational costs of the program.

IV. Waiver Implementation Timeline

The Colorado DOI will be responsible for implementing the reinsurance program, and will promulgate rules establishing the program's operating processes, requirements, payment parameters, and procedures. The Division will oversee the collection of payments from State sources, including the hospital assessment fee, review the claims submitted to the reinsurance program for payment, and distribute reinsurance payments to eligible insurers. Colorado already

has a number of initiatives designed to incentivize providers, payers, and enrollees to contain and manage health care costs and utilization for high-claims-cost individuals. In addition, the enabling legislation calls on carriers eligible for the reinsurance program to file the care management protocols the carrier will use to manage claims within the reinsurance program with the DOI.

Implementation Timeline

- 04/16/2019: The Colorado DOI releases draft Section 1332 Waiver application for public comment.
- 04/22/2019: First public hearing on draft Section 1332 Waiver application is held in Loveland, Colorado.
- 04/29/2019: Second public hearing on draft Section 1332 Waiver application is held in Denver, Colorado.
- 05/06/2019: Tribal consultation meeting on draft Section 1332 Waiver application is held in Ignacio, Colorado, on the Southern Ute Reservation.
- 05/16/2019: Public comment period on draft Section 1332 Waiver application ends.
- 05/17/2019: Colorado Reinsurance Bill HB 19-1168 becomes effective upon signature of the Governor.
- 05/20/2019: The Colorado DOI submits Section 1332 Waiver application to the federal government.
- 05/24/2019: Payment parameters for the 2020 plan year established by the Insurance Commissioner via emergency regulation.
- 06/14/2019: Carriers file two sets of initial rates with the Colorado DOI for the 2020 plan year - one set to be used if the waiver application is approved, one set if the waiver application is *not* approved.
- 07/04/2019: Anticipated date that the federal government determines the waiver application is complete.
- 07/15/2019: The Colorado DOI holds rulemaking hearing for permanent rules for the reinsurance program, including the payment parameters, for the 2020 plan year.
- 08/14/2019: Both sets of filed rates are approved by the Colorado DOI for the 2020 plan year.
- 09/15/2019: A permanent regulation containing the payment parameters for the 2020 plan year will become effective.
- Early Fall: Anticipated timeframe that the federal government grants Colorado a Section 1332 Waiver, starting with the 2020 plan year.
- 10/01/2019: Colorado DOI informs state exchange and carriers that rates reflecting an approved waiver application will be used for the 2020 plan year.
- 11/01/2019: Colorado DOI staffs the reinsurance program.
- 11/01/2019: Annual open enrollment period begins for the 2020 plan year.
- 01/01/2020: Reinsurance program begins.
- 02/28/2020: First quarterly report on the 2020 operation of the reinsurance program due to Centers for Medicare and Medicaid Services (CMS).

- 03/15/2020: Payment parameters for the 2021 plan year will be established by the Commissioner via rule.
- 06/01/2020: Colorado DOI holds six-month public forum required by 45 CFR 155.1320(c).
- 06/14/2020: Carriers file initial rates with the Colorado DOI for the 2021 plan year.
- 07/01/2020: Colorado DOI submits second quarterly 2020 report on the reinsurance program to CMS.
- 08/14/2020: Rates approved by the Colorado DOI for the 2021 plan year.
- 10/01/2020: Colorado DOI submits third quarterly 2020 report on the reinsurance program to CMS.
- 11/01/2020: Annual open enrollment period begins for the 2021 plan year.
- 12/01/2020: Colorado DOI holds six-month public forum required by 45 CFR 155.1320(c).
- 04/01/2021: Colorado DOI submits first draft annual report to the Federal government pursuant to 45 CFR 155.1324(c).
- 04/01/2021: The federal government funds the reinsurance program for the 2020 plan year.
- 05/01/2021: Colorado DOI submits its first quarterly 2021 report to the federal government.
- 06/01/2021: Insurers submit 2020 claims to the reinsurance program/
- 06/01/2021: Colorado DOI holds six-month public forum required by 45 CFR 155.1320(c).
- 06/15/2021: Carriers file rates with the Colorado DOI.
- 06/21/2021: Colorado DOI holds annual public forum required by 45 CFR 155.1320(c).
- 07/01/2021: Colorado DOI submits its second quarterly 2021 report to the federal government.
- 10/01/2021: Colorado DOI submits its third quarterly report to the federal government.
- 12/01/2021: Colorado DOI holds six-month public forum required by 45 CFR 155.1320(c).
- 12/31/2021: The reinsurance program completes reimbursement insurers for 2020 eligible claims.

V. Additional Information and Reporting

A. Administrative Burden

Waiver of Section 1312(c) will cause minimal administrative burden and expense for Colorado and for the federal government. The waiver will cause no additional administrative burden to employers and individual consumers because Section 1312(c) does not relate to the administrative functions or requirements typically undertaken by employers or individuals. Individual health insurers will experience some administrative burden and associated expense as a result of the reinsurance program; however, the benefit to insurers from the program will far exceed any resulting administrative expense.

Colorado has the resources and staff necessary to absorb the following administrative tasks that the waiver will require the state to perform:

- Administer the reinsurance program
- Distribute federal pass-through funds

- Monitor compliance with federal law
- Collect and analyze data related to the waiver
- Perform reviews of the implementation of the waiver
- Hold annual public forums to solicit comments on the progress of the waiver
- Submit annual reports (and quarterly reports if ultimately required) to the federal government

The waiver will require the federal government to perform the following administrative tasks:

- Review documented complaints, if any, related to the waiver.
- Review state reports.
- Periodically evaluate Colorado's 1332 waiver program.
- Calculate and facilitate the transfer of pass-through funds to the state.

Colorado believes that the above administrative tasks are similar to other administrative functions currently performed by the federal government, so that their impact is minimal. Waiver of Section 1312(c)(1) does not necessitate any changes to the Federally-Facilitated Marketplace or to IRS operations and will not impact how APTC and PTC payments are calculated or paid.

B. Impact on Residents Who Need to Obtain Health Care Services Out-of-State

Because Colorado shares borders with Arizona, Kansas, Oklahoma, Nebraska, New Mexico, Utah and Wyoming, insurer service areas and networks that cover border counties generally contain providers in those states, especially in areas where the closest large hospital system is located in the border state. Granting this waiver request will not impact insurer networks or service areas that provide coverage for services performed by out-of-state providers.

C. Ensuring Compliance, Waste, Fraud and Abuse

The Colorado DOI is responsible for regulating and ensuring regulatory compliance and monitoring the solvency of all issuers; performing market conduct analysis, examinations, and investigations; and providing consumer outreach and protection. The DOI investigates all complaints that fall within the agency's regulatory authority.

The State of Colorado and the DOI currently prepare comprehensive financial accounting statements annually as part of the Colorado Department of Regulatory Agencies (DORA), which is the department under which the Colorado DOI is located. Financial statements of DORA, which includes those of the DOI, are audited annually, with the most recent audit completed for the fiscal year ending in 2017. The Colorado DOI will administer the reinsurance program in accordance with its existing accounting, auditing, and reporting procedures. Auditing and reporting obligations of participating insurers will be established by rule.

DORA is audited periodically by the Colorado Office of the State Auditor. The reinsurance program will also be subject to audit by the Colorado Office of the State Auditor. The federal government is responsible for calculating the savings resulting from this waiver and for ensuring that this waiver does not increase federal spending.

D. State Reporting Requirements and Targets

The Colorado DOI will submit quarterly and annual reports as specified in 45 CFR § 155.1324. Each quarterly report will include the following:

- (1) The progress of the section 1332 waiver;
- (2) Data, similar to that contained in Attachment 1, necessary to demonstrate compliance with Section 1332(b)(1)(B) through (D) of the PPACA;
- (3) A summary of the annual post-award public forum, held in accordance with 45 CFR § 155.1320 (c), including all public comments received at the forum regarding the progress of the Colorado 1332 waiver, and any actions taken in response to comments received;
- (4) Other information the Colorado DOI determines necessary to evaluate the waiver and accurately calculate the pass-through payments to be made by CMS; and
- (5) Reports of ongoing operational challenges, if any, and plans for, and results of, corrective actions that have been taken.

The Colorado DOI will submit a draft annual report within ninety (90) days after the end of the first waiver year, and each subsequent year that the waiver is in effect. The DOI will publish the draft annual report on the Division's website within thirty (30) days of submission of the draft report to CMS. Within sixty (60) days of receipt of comments from CMS on the draft annual report, the DOI will submit the final annual report for the waiver year. That submission will include a summary of the comments received, as well as a copy of the comments submitted to the Division on the draft annual report. Once the final annual report is approved by CMS, the DOI will publish the final annual report on its website within thirty (30) days of that approval.

The annual report prepared by the Colorado DOI will include the following:

- (1) Metrics to assist evaluation of the waiver's compliance with the requirements found in section 1332(b)(I):
 - a. Actual individual market enrollment in the state
 - b. Actual average individual market premium rate (i.e., total individual market premiums divided by total member months of all enrollees).
 - c. The actual Second Lowest Cost Silver Plan (SLCSP) premium under the waiver and an estimate of the SLCSP premium as it would have been without the waiver, for a representative consumer (e.g., a 21-year old non-smoker) in each rating area.
 - d. The actual amount of APTC paid, by rating area, for the plan year.

- e. The actual number of APTC recipients for the plan year. The number should be the number summed over all 12 months and divided by 12 to provide an annualized measure.
- (2) Changes to the reinsurance program, including the funding level the program will be operating at for the next plan year, or other program changes
- (3) Notification of changes to state law that may impact the waiver
- (4) Reporting of:
 - a. Federal pass-through funding spent on reinsurance claim payments to issuers from the reinsurance program and/or operation of the reinsurance program.
 - b. The unspent balance of federal pass-through funding for the reporting year, if applicable.
- (5) The amount of state funding from issuer assessments available to the Colorado DOI to fully fund the reinsurance program for the reporting year.
- (6) A description of any incentives for providers, enrollees, and plan issuers to continue managing health care costs and claims for individuals eligible for reinsurance.
- (7) A report on the reconciliation (if any) of reinsurance payments that are duplicative of reimbursement through the HHS-operated risk adjustment program high-cost risk pooling mechanism. The report should include the reinsurance payment (before reconciliation) for high-cost claims to issuers who also receive payment through the HHS risk adjustment program under the high-cost risk pooling mechanism, the risk adjustment amount paid by HHS for those claims, and the reinsurance true-up amount applied.

Payment Schedule - The Colorado DOI will inform the CMS/HHS of the reinsurance program payment schedule by January 1, 2020.

Quarterly and other Reports - Pursuant to 45 CFR § 155.1320(b), and 45 CFR § 155.1324(a), the Division will conduct periodic reviews related to the implementation of the waiver. A report on the operation of the reinsurance program, including the plan for processing claims received, will be submitted by February 28, 2020. The Colorado DOI will report on the operation of the waiver quarterly, including, but not limited to providing reports of any ongoing operational challenges, and plans and results of associated corrective actions, no later than sixty (60) days following the end of each calendar quarter. The DOI will submit its annual report in lieu of their fourth quarter report.

The Division requests that quarterly reporting, other than the required February 28, 2020 report, commence no sooner than June 1, 2020, in order to provide some experience with the program about which to report. The DOI will submit and publish annual reports by the deadlines established in 45 CFR 155.1324(c) or the deadlines established by the terms of the waiver.

VI. Supporting Information and Miscellaneous

A. 45 CFR 155.1308(f)(4)(i) – (iii)

The supporting information required by 45 CFR 155.1208(f)(4)(i) – (iii), including the actuarial analyses and certifications, the economic analyses, the detailed deficit neutral 10-year budget plan, and the data and assumptions demonstrating that the proposed waiver is in compliance with 1332(b)(1)(A) – (B) are found in Attachment 1.

VII. Public Comment and Tribal Consultation

A. Public Comment

On April 16, 2019, the Colorado Division of Insurance (DOI or Division) initiated the required public comment period for this Section 1332 waiver application and posted the draft application and a notice of the opportunity to comment on the Division’s website at the following link: (<https://www.colorado.gov/pacific/dora/public-comment-reinsurance-program-1332-waiver-request>). On the same date, the DOI sent out notice via email to the list of interested parties and stakeholders that it maintains for such communication (see Attachment 3). The list is comprised of over 1,900 individuals and organizations with an expressed interest in insurance-related matters.

On April 22, 2019, the DOI convened a public hearing from 11:00 AM to 1:00 PM in the Thomas M. McKee Building at the Larimer County Fairgrounds and Events Complex, Loveland, Colorado. Attendance at the hearing numbered six (6) individuals. At the public hearing no testimony was given on the proposed Section 1332 waiver application. Attendees did ask questions, and were given answers, about how the reinsurance program would work, how it would be implemented, and how it would be funded. No testimony was submitted in writing at the hearing or prior to the hearing. See Attachment 4 for a summary of the questions and responses from the April 22, 2019, public hearing.

On April 29, 2019, the Division held an additional public hearing from 1:00 PM to 3:00 PM in conference room 110D at 1560 Broadway, in Denver, Colorado. Attendance at the hearing numbered 34 stakeholders/members of the public (14 in-person, 30 via webinar). At the public hearing no testimony was given on the proposed Section 1332 waiver application. Attendees did ask questions, and were given answers, about how the reinsurance program would work, how it would be implemented, and how it would be funded. No testimony was submitted in writing at the hearing or prior to the hearing. See Attachment 5 for a summary of the questions and responses from the April 29, 2019, public hearing.

The DOI received nine (9) written public comments on this waiver request. See Attachment 6 for copies of the written public comments received during the thirty (30) day public comment period. The public comment period closed on May 16, 2019 at 11:59 PM.

B. Tribal Consultation

On March 11, 2019, the Division began the process of scheduling a tribal consultation with the two federally-recognized Indian tribes in the state of Colorado: the Ute Mountain Ute and Southern Ute Indian tribes. The consultation was originally set for April 25, 2019, on the Southern Ute Reservation, but was rescheduled for May 6, 2019, due to scheduling conflicts that arose during the legislative session.

On March 22, 2019, at the Colorado Commission of Indian Affairs quarterly meeting, representatives of the Southern Ute Tribe and the Ute Mountain Ute Tribe were reminded of the upcoming tribal consultation to discuss the draft Section 1332 waiver application by the Commissioner of Insurance, who was also in attendance.

The Commissioner of Insurance and Division staff traveled to the Southern Ute Reservation in southwestern Colorado for the tribal consultation that was held on May 6, 2019. The consultation was held at the Southern Ute Environmental Programs Division offices in Ignacio, Colorado. Attendance at the tribal consultation consisted of three (3) representatives of the Southern Ute Mountain Indian Tribe, and one (1) member of the Ute Mountain Ute Indian Tribe (via phone).

See Attachment 7 for a summary of the issues, concerns, and questions raised by members of the Ute Mountain Ute and Southern Ute Indian Tribes during the May 6th consultation, and that were considered in developing the Colorado 1332 Waiver Application.

VIII. Alignment with Section 1332 Principles

Colorado's waiver, if approved, will advance several of the principles described in the October 2018 1332 guidance:

- **Provide increased access to affordable private market coverage.** The reinsurance program will reduce premiums exclusively for those purchasing private health insurance. Specifically, it will reduce premiums for private health insurance in the individual market by approximately 15% - 25% percent, depending on the geographic region of the state, for each of the two years of the program. The reinsurance program will also support competition in the health insurance market, help ensure access to private insurance coverage, and increase participation in the market.

- **Support and empower those in need.** By reducing premiums in the individual market, the waiver will target its impact at those who are not currently eligible for financial assistance and therefore generally face the largest premiums for health insurance. Individuals with incomes under 400 percent of the federal poverty (and who are not eligible for other coverage) are generally eligible for APTC, which generally limits their contribution towards individual market health insurance to a fixed percentage of their income. As a result, they are generally insulated from the impact of premium changes. But individuals with incomes over 400 percent of the poverty line are *ineligible* for the PTC and therefore must pay the full annual premium without any assistance, which may be several thousands of dollars for a single individual each year, and over ten thousand dollars a year for a family of four.
- **Foster state innovation.** The hospital funding arrangement for Colorado’s reinsurance program is an innovative funding method that will prevent the cost of the program from being passed on to consumers, Colorado businesses, and their employees in the way a reinsurance program that relies upon an assessment of health insurance companies would.

STATE OF COLORADO
SECTION 1332 STATE INNOVATION WAIVER
ACTUARIAL AND ECONOMIC ANALYSIS

MAY 2019

Prepared by
Lewis & Ellis, Inc.

Andrea Huckaba Rome, FSA, CERA, MAAA, Vice President
Michael A Brown, FSA, MAAA, Vice President

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Section 1: Introduction

The State of Colorado non-group health insurance market has sustained large rate increases over recent years due to a number of factors including changes in the risk pool and increasing costs of healthcare. In order to mitigate high prices in the non-group market, Colorado is submitting a Section 1332 State Innovation Waiver (“1332 Waiver”).

In accordance with 45 CFR 155.1308(f)(4)(i)-(iii), the 1332 Waiver application must include supporting information detailing the impact of the 1332 Waiver on health insurance coverage in the state, and the 10-year impact of a 1332 Waiver on the Federal deficit, requiring deficit neutrality. For Colorado’s 1332 Waiver to receive approval, the state must demonstrate compliance with these four “guardrails”:

- 1) Comprehensive Coverage
Provide coverage that is at least as comprehensive as the coverage defined in Section 1302(b) of the Affordable Care Act and offered through Exchanges
- 2) Affordability
Provide coverage and cost sharing protections against excessive out-of-pocket spending that are at least as affordable as the provisions of the ACA Qualified Health Plans, offered through the Exchange
- 3) Scope of Coverage
Provide coverage to at least a comparable number of its residents as the provisions currently in place required by the Affordable Care Act would provide
- 4) Deficit Neutrality
The waiver should not increase the federal deficit.

The proposed waiver would reduce premiums through the introduction of a state-based reinsurance program starting in 2020. This program, established by the state, would pay for a portion of claims for high cost members in the non-group ACA-compliant health insurance market. This portion of claims would be determined by setting parameters, defined below:

Attachment point: A threshold, above which a member’s annual total claims would be eligible for reimbursement by the reinsurance program.

Cap: The maximum of a member’s annual total claims that would be eligible for reimbursement.

Coinsurance: The percent of a member’s annual total claims (between the attachment point and the cap) paid by the reinsurance program.

The reinsurance program would pay a percentage of claims, above the attachment point and up to a cap. Covered claims would reduce the total costs paid by carriers in the non-group market. Therefore, any reductions to claims costs due to reinsurance would reduce premiums as well.

Pursuant to House Bill 19-1168, the State of Colorado has also established a three-tier requirement for the reinsurance program. To address the inequality of premiums in different geographic areas of the state, the following is required of the program:

- Rating Areas 1, 2, & 3: Claim costs shall be reduced by between 15% and 20%
- Rating Areas 4, 6, 7, & 8: Claim costs shall be reduced by between 20% and 25%
- Rating Areas 5 & 9: Claim costs shall be reduced by between 30% and 35%

To accomplish this end, the reinsurance parameters will be adjusted for the geographical areas to achieve a projected claims reduction in the required range.

For 2020, Colorado has set the following parameters:

	Tier 1			Tier 2				Tier 3	
	Area 1	Area 2	Area 3	Area 4	Area 6	Area 7	Area 8	Area 5	Area 9
Attachment Point	\$30,000			\$30,000				\$30,000	
Cap	\$400,000			\$400,000				\$400,000	
Coinsurance	45%			50%				85%	

The reinsurance program will be funded, contingent on approval of the 1332 Waiver, through state funding and federal pass-through funding. The state portion of the funding is outlined in the law passed by the Colorado legislature. It includes funds from the general fund, premium tax revenues, and special assessments.

The goals of the reinsurance program are to reduce the impact of high claims incurred by a small portion of the population, reduce premiums in the non-group market, and encourage enrollment of individuals who are choosing to forego insurance due to high costs of purchasing coverage. In addition to providing lower premiums to Coloradans in the non-group market, the program would also reduce federal outlays through lower premium tax credits.

As part of the 1332 Waiver, Colorado is requesting federal funding to offset the cost of the reinsurance program. Colorado’s reinsurance program will reduce premiums for those purchasing insurance coverage in the non-group market. It will similarly reduce the cost of the second lowest cost silver plan (SLCSP), which is the benchmark for the value of Advance Premium Tax Credits (APTCs). If SLCSP premiums are reduced, then APTCs are also reduced. This reduces the total amount the Federal Government will pay in APTCs. The waiver requests that Colorado receive the amount of federal savings from APTCs (“pass-through” funding), net of other costs, as a result of the reinsurance program.

The State of Colorado retained Lewis & Ellis, Inc (L&E). to analyze the potential effects of a state-based reinsurance program on the 2020 non-group Affordable Care Act (ACA) marketplace. This document has been prepared solely to support Colorado’s application for a 1332 Waiver and is not intended for any other purpose. L&E understands that this report will be made public and will be used in the waiver process. The assumptions, data, results and methods identified in this report adhere to applicable Actuarial Standards of Practice. Reliance on the information in this report should include a review of the full report and 1332 Waiver application by qualified individuals.

This report is a supplement to Colorado’s 1332 Waiver application. It addresses requirements listed in 45 CFR 155.1308(f)(4)(i)-(iii) including actuarial analysis, economic analysis, data and assumptions. Other sections of the waiver application contain non-actuarial requirements.

Section 2: Analysis Results

2.1 Impact to Guardrails

As described in Section 1, the four guardrails required for an approved 1332 Waiver are:

- 1) Comprehensive Coverage
- 2) Affordability
- 3) Scope of Coverage
- 4) Deficit Neutrality

L&E’s review has determined that Colorado’s proposed reinsurance program meets all four guardrails for 2020, and each subsequent year in the 10-year window that was reviewed. See the 10-year projection in Appendix B, Page 29. The high-level determination is shown below:

Guard Rail	Effect of 1332 Waiver
Comprehensive Coverage	2.9% increase in 2020 enrollment
Affordability	2020 Premiums reduced by 16%, a statewide average
Scope of Coverage	No change to EHBs or other coverage requirements
Deficit Neutrality	Federal savings of \$162.8M in 2020 and savings of between \$2.08B and \$1.96B in the 10-year window

Comprehensiveness, Affordability, and Scope of Coverage

The Colorado reinsurance program is expected to increase affordability of non-group market plans by decreasing premiums. The reduction in premiums is expected to increase the number of enrollees in the non-group market, which increases the scope of coverage. Finally, the reinsurance program will have no effect on Essential Health Benefits or on Actuarial Value, as these requirements have not changed. Therefore, comprehensive coverage will not be affected by the 1332 Waiver.

Deficit Neutrality

The following tables show the impact of the Colorado reinsurance program on the non-group market in 2020, and the impact to the federal budget in the subsequent 10-year window. Based on best-estimate assumptions for 2020, premium will be reduced by 16%, a statewide average, enrollment will increase by 2.9%, and \$162.8 million in federal savings will result. Note that the 16% statewide average decrease is a comparison of 2020 baseline premiums to 2020 premiums with the 1332 Waiver reinsurance program in effect. This does not suggest that an individual’s actual rate decrease from 2019 to 2020 will be 16%, as the number does not include standard renewal changes from 2019 to 2020.

The detailed impact of the Waiver for years 2021 through 2029 is shown in Appendix B, page 29. A further discussion of the four guardrails is in Appendix C. Below is the high-level impact to the 2020 non-group marketplace, compared to the projected 2020 baseline marketplace.

2020 Impact of Waiver on Premium, Enrollment and Federal Deficit

	Non-Group ACA Premium Impact	Non-Group ACA Enrollment	Federal Savings (with 5% margin)
Effect of Reinsurance	-16%	+2.9%	\$162.8 Million

Over the 10-year window, the reinsurance program provides savings to the federal government in the form of APTC savings, net of other federal revenues. The impact to the federal deficit, calculated directly and calculated assuming a 5% reduction in percentage of costs covered by pass-through funding, is shown below. Throughout this report, L&E is conservatively using results from the 5% reduction estimate.

10-Year Deficit Impact of Reinsurance Program

Impacted Federal Cash Flow	Reduction to Federal Deficit (\$ millions)
Difference in APTCs	\$2,117.0
Difference in HIT*	-\$41.8
Total (Best Estimate)	\$2,075.2
Total (5% Margin Estimate)	\$1,961.1

*It is uncertain whether the HIT will continue over the 10-years measured by this analysis. It is included in this report for conservatism.

Section 3: Data and Methodology

To project the impact of the reinsurance program in plan year 2020 through 2029 The following data and methodology was used.

3.1 Data Used

For this study, the following data sources were used:

- 2017 Non-Group Market claims and demographics in the Colorado All Payer Claims Database (APCD), provided by the Center for Improving Value in Healthcare (CIVHC)
- 2017 or 2018 Non-Group Market EDGE premium and enrollment data, provided by Colorado insurance carriers
- On-exchange 2017, 2018 and 2019 enrollment report from Connect for Health Colorado, Colorado's health insurance marketplace
- Carrier 2019 rate filings submitted in 2018
- April 2019 US Department of the Treasury Coverage Tables¹
- Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2020
- Prior Actuarial Report of Colorado Reinsurance Program, by Milliman²

¹ <https://home.treasury.gov/system/files/131/Coverage-Tables-MSR2019.pdf>

² Milliman, "Actuarial Report to the Colorado High-Risk Health Care Coverage Task Force", Nov 22, 2017. <https://www.colorado.gov/pacific/dora/reinsurance-study-high-risk-health-coverage>

3.2 Methodology

The following steps were taken to estimate the impact of a reinsurance program on Colorado’s non-group market, both for the year 2020, and for the 10-year window of 2020 to 2029:

1. A 2020 Baseline was established, using data described in Section 3.1. This baseline represents the expected premium, claims, enrollment and APTC if the reinsurance program were not established. These values are listed in the table below. A detailed methodology is provided in Appendix A.

Baseline Estimates	2019	2020
Average Annual Enrollment		
Total Non-Group ACA-Compliant	218,033	216,795
On-Exchange	169,797	170,971
APTC Enrollment	127,621	130,482
Non-APTC Enrollment	42,176	40,489
Off-Exchange	48,236	45,824
Per Member Per Month Premium		
Total Non-Group ACA-Compliant PMPM	\$586.77	\$644.91
On-Exchange Premium PMPM	\$620.35	\$680.83
Gross APTC Premium PMPM	\$658.50	\$720.19
APTC PMPM	\$541.90	\$570.98
Net APTC Premium PMPM	\$116.60	\$149.21
Non-APTC Premium PMPM	\$504.91	\$531.12
Off-Exchange Premium PMPM	\$468.57	\$512.47
Total Annual Dollars		
Total Non-Group ACA-Compliant Premium	\$1,535,222,681	\$1,677,759,161
Total APTC	\$829,893,839	\$894,031,348

2. The impact of the reinsurance program was calculated using an impact to claims to reduce premiums and increase enrollment, relative to the established 2020 baseline. L&E assumed that \$249.8 million would be spent reducing claims in the non-group market, using the parameters listed in Section 1 above. These parameters would reduce premiums in the ACA non-group market by 16%, a statewide average, and would increase enrollment by 6,378 individuals. Below is a table summarizing best-estimate results.

Baseline and Waiver Estimates	2019	2020	2020 w/ waiver
Average Annual Enrollment			
Total Non-Group ACA-Compliant	218,033	216,795	223,173
On-Exchange	169,797	170,971	172,408
APTC Enrollment	127,621	130,482	130,482
Non-APTC Enrollment	42,176	40,489	41,926
Off-Exchange	48,236	45,824	50,765
Per Member Per Month Premium			
Total Non-Group ACA-Compliant PMPM	\$586.77	\$644.91	\$541.81
On-Exchange Premium PMPM	\$620.35	\$680.83	\$571.68
Gross APTC Premium PMPM	\$658.50	\$720.19	\$608.24
APTC PMPM	\$541.90	\$570.98	\$459.03
Net APTC Premium PMPM	\$116.60	\$149.21	\$149.21
Non-APTC Premium PMPM	\$504.91	\$531.12	\$457.90
Off-Exchange Premium PMPM	\$468.57	\$512.47	\$440.36
Total Annual Dollars			
Total Non-Group ACA-Compliant Premium	\$1,535,222,681	\$1,677,759,161	\$1,451,008,358
Total APTC	\$829,893,839	\$894,031,348	\$718,741,830
APTC Savings Compared to Baseline			\$175,289,519
Cost of Reinsurance Program			\$249,829,497
Percent Funded by APTC Savings			70.2%
Percent Funded by APTC Savings, less 5%			65.2%
APTC Savings with 5% Reduction			\$162,798,044

3. The reinsurance would impact premiums state-wide in the non-group market, which would also impact the second lowest cost silver plan in each geographic rating area. This plan is the benchmark for determining advance premium tax credits for enrollees on the exchange whose annual income is below 400% of the federal poverty level (FPL). The impact to these silver plans because of the reinsurance program and the subsequent tax subsidies was calculated. The results are displayed in the table below. Detailed methodology is included in Appendix A.

	2020 Baseline	2020 Waiver
Membership APTC	130,482	130,482
Membership Non APTC	86,313	92,691
Total ACA Individual Membership	216,795	223,173
Gross Premium PMPM APTC	\$720.19	\$608.24
Gross Premium PMPM Non-APTC	\$531.12	\$457.90
Gross Premium PMPM ACA	\$644.91	\$541.81
Claims PMPM APTC	\$584.07	\$468.62
Claims PMPM Non-APTC	\$430.74	\$345.59
Claims PMPM ACA	\$523.02	\$419.64
%Reinsurance Impact to Claims		-17.8%
%Morbidity Impact to Claims		-1.9%
%Total Impact to Claims		-19.8%
Reinsurance Impact to Claims PMPM		-\$93
Morbidity Impact to Claims PMPM		-\$10
Total Impact on Claims PMPM		-\$103
Reinsurance Program Costs		\$249.8M
Total Impact to Claims		\$276.9M
Total % of Premium Impact		-16.0%
Gross Premium PMPM APTC	\$720	\$608
Net Premium PMPM APTC	\$149	\$149
Average PMPM APTC	\$571	\$459
Pass Through Funding PMPM Change		\$112
Total Pass Through Funding		\$175.3M
Pass Through Funding as % of Reinsurance Cost		70.2%
Margin for Other Cash Flows/Market Size		-5.0%
Final Federal Pass-Through %		65.2%
Final Federal Pass-Through Funding		\$162.8M
Cost to State		\$87.0M

4. In addition to the results displayed above, a series of scenarios were tested to determine the impact of various external forces on the results of the reinsurance program. These scenarios are detailed in Appendix A, page 21, and are displayed below at a high level. Savings from APTC reduction (with a 5% reduction) ranged from \$152.5 million to \$165.3 million.

Scenario Testing	1- Best Estimate	2- Good Experience	3- Poor Experience
Description (\$ millions)	Expected Trend, Expected Enrollment	Lower Trend, Improved Morbidity, Higher Enrollment	Higher Trend, No change in Morbidity, Lower Enrollment
2020 Baseline			
Total Non-Group Enrollment	216,795	219,879	213,710
Total Annual Non-Group Premiums	\$1,678	\$1,658	\$1,687
Total Annual APTCs	\$894	\$876	\$906
After Reinsurance			
Total Non-Group Enrollment	223,173	227,147	219,223
Total Annual Non-Group Premiums	\$1,451	\$1,441	\$1,450
Total Annual APTCs	\$719	\$698	\$740
Percent Change in Total Enrollment	2.9%	3.3%	2.6%
Percent Change to Premiums	-16.0%	-15.9%	-16.2%
Results			
Reinsurance Program Cost	\$249.8	\$244.7	\$253.4
Estimated Net Federal Savings (5% reduction)	\$162.8	\$165.3	\$152.9
Cost to State	\$87.0	\$79.4	\$100.5

Scenario Testing	4- Economic Downturn	5- CSRs Funded	6- Mandate Wear-Off
Description (\$ millions)	Lower Trend, Lower Enrollment, Shifted FPL distribution	Lower Silver Plan Premium	Lower enrollment, Higher morbidity
2020 Baseline			
Total Non-Group Enrollment	212,973	216,795	209,888
Total Annual Non-Group Premiums	\$1,642	\$1,597	\$1,662
Total Annual APTCs	\$892	\$832	\$904
After Reinsurance			
Total Non-Group Enrollment	218,302	223,173	216,045
Total Annual Non-Group Premiums	\$1,415	\$1,380	\$1,437
Total Annual APTCs	\$723	\$667	\$739
Percent Change in Total Enrollment	2.5%	2.9%	2.9%
Percent Change to Premiums	-15.9%	-16.0%	-16.0%
Results			
Reinsurance Program Cost	\$242.0	\$237.8	\$247.3
Estimate APTC Savings (5% reduction)	\$157.5	\$152.8	\$152.5
Cost to State	\$84.5	\$85.0	\$94.8

- The reinsurance program must also be reviewed for its impact to the federal deficit over a 10-year window. The 2020 results were projected forward from 2020 through 2029 using 2020 numbers, developed above, as a starting point. The program was assumed to be in effect for the full 10-year period. If the 1332 Waiver application were approved and implemented, there would be no increase to the federal deficit.

The results are displayed below. Note that two federal savings numbers are displayed. One is the direct estimate, calculated with Actual APTC savings less the assumed reduction in HIT. The other is the 5% Reduction Estimate, calculated by reducing the percent of reinsurance funding covered by pass through by 5%. Throughout this report, results are conservatively reported using the 5% Reduction Estimate. Details of methodology for the 10-year projection are included in Appendix A, page 24. The full-detail table is included in Appendix B, page 29.

10-Year Deficit Impact of Reinsurance Program

Impacted Federal Cash Flow	Reduction to Federal Deficit (\$ millions)
Difference in APTCs	\$2,117.0
Difference in HIT*	-\$41.8
Total (Best Estimate)	\$2,075.2
Total (5% Margin Estimate)	\$1,961.1

*It is uncertain whether the HIT will continue over the 10-years measured by this analysis. It is included in this report for conservatism.

Section 4: Disclosures and Limitations

4.1 Intended Users, Scope, and Purpose

This information has been prepared for the Colorado Division of Insurance (DOI) within the Department of Regulatory Agencies (DORA), and the State of Colorado to support their 1332 Waiver Application. Lewis & Ellis, Inc. (L&E) understands that the report will be made public. The report should be reviewed in its entirety by qualified individuals. Parties reviewing this information should retain their own actuarial experts when interpreting results. It should not be used for any other purpose.

4.2 Qualifications

Andrea Huckaba Rome and Mike Brown are the actuaries responsible for this communication. They are Fellows of the Society of Actuaries (FSA) and Members of the American Academy of Actuaries (MAAA) in good standing. They meet the Qualification Standards required to issue this report.

4.3 Risk/Uncertainty

The assumptions and results outlined in this report are inherently uncertain. Every effort was made, through scenario and sensitivity testing to review areas of uncertainty, including enrollment assumptions, change in medical costs over time, and changes in the morbidity of the non-group ACA market population. The pass-through funding assumes a 5% reduction for uncertainty and differences in calculation between the L&E model and the calculation performed by HHS and US Department of the Treasury. Actual results may vary, and L&E does not guarantee that predicted results will be realized. Any review an application of this report should be done with care by qualified professionals.

4.4 Conflicts of Interest

The responsible actuaries list above are financially independent and free from conflict related to this report and the supporting analysis performed for this study.

4.5 Data Reliance

L&E relied upon data provided by the Colorado Division of Insurance, the non-group ACA market carriers in Colorado, the Center for Improving Value in Healthcare (CIVHC), Connect for Health Colorado, the previous study performed by Milliman, and several US Federal Government data sources, listed in our data section. L&E has reviewed the data and assumptions for reasonableness but has not performed an independent audit. To the extent that information provided is inaccurate or incomplete, the analysis could be materially impacted. For a list of data sources, please see Section 3.1 of the report. Key assumptions are outlined in the methodology section.

4.6 Dates Applicable

This report was prepared in May 2019 and develops the ACA non-group marketplace experience for calendar year 2020, with and without the proposed 1332 Waiver Colorado reinsurance program. Further the report predicts, at a high level, the impact to the federal deficit from 2020 to 2029. This 10-year window is requested in the 1332 Waiver application directions. These findings should not be extrapolated or applied to any other period of time.

4.7 Subsequent Events

This report and the analysis provide herein are based on conditions specific to the ACA non-group marketplace in Colorado, as of May 2019. The report assumes no uncertain and potential future changes to the Affordable Care Act or the healthcare marketplace that could materially impact results. There are

several future developments that could materially change these results including court rulings, new regulations, additional allowed ACA exemptions, or a material change to the healthcare markets in general. In addition, any changes made to the parameters or structure of the reinsurance program could have a material impact on the outcomes outlined above. These subsequent events are not included in this report and should be carefully considered by qualified experts before applying the findings contained within this report.

4.8 Contents of Report

This document, including a main report and several appendices, constitutes the entirety of the actuarial analysis required for a 1332 Waiver application. This report supersedes any previous communications on the reinsurance program.

Appendix A: Methodology

Data

For this study, the following data sources were used:

- 2017 Non-Group Market claims and demographics in the Colorado All Payer Claims Database (APCD), provided by the Center for Improving Value in Healthcare (CIVHC)
- 2017 or 2018 Non-Group Market EDGE premium and enrollment data, provided by Colorado insurance carriers
- On-exchange 2017, 2018 and 2019 enrollment report from Connect for Health Colorado, Colorado's health insurance marketplace
- Carrier 2019 rate filings, submitted in 2018
- April 2019 US Department of the Treasury Coverage Tables
- Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2020
- Prior Actuarial Report of Colorado Reinsurance Program, by Milliman

Baseline 2020 Estimates

To create the 2020 baseline estimates, L&E performed the following steps:

1. Collected and summarized 2017 and 2018 EDGE premium and enrollment for the Colorado non-group health insurance market. The data was compared to publicly available data, data provided by Division of Insurance, and the prior reinsurance report for consistency and reasonableness.
2. Collected a full year of non-group market claims data (2017) from the Colorado All Payer Claims Database, maintained by CIVHC. This data was organized by member and claim incurral date. Claims data was used from the CIVHC instead of EDGE because, at the time, a component of the program required billed charges for each claim, which the EDGE data does not contain. When this component was removed, L&E continued using CIVHC claims data to price the reinsurance program, to be consistent with estimates provided previously.
3. Collected and summarized 2019 enrollment, using information provided by the Division of Insurance. Using the 2019 non-group rate filings, premium was calculated by using rate increases reported multiplied by the 2018 premiums. APTC estimates of enrollment and premium for 2019 were provided by the Division of Insurance.
4. 2020 Baseline Premium was projected using the following assumptions:
 - Annual Allowed Claims Trend: 5.6%
Weighted average of 2019 pricing trends used by carriers, minus 1% margin
 - Annual Morbidity Increase: 2.7%
Weighted average of 2019 annualized morbidity increases used by carriers, decreased by 0.9% for lower morbidity from 2019 to 2020.
 - Assumed Loss Ratio: 81.9% (2019) and 81.1% (2020)
Weighted average of 2019 pricing loss ratio used by carriers, and adjustment for change in health insurer tax and premium adjustment percentage.

5. 2020 Baseline Enrollment was projected using the following assumptions:
 - Off exchange enrollment was assumed to decrease 5%. This is in line with previous years, and the assumption is based on the assumed trend and morbidity increase from 2019 to 2020.
 - Using similar reasoning as off-exchange assumptions, on-exchange enrollment was set to change -4% for enrollees not receiving advance premium tax credits.
 - The HHS Notice of Benefit and Payment Parameters for 2020 outlines a change made to the premium adjustment percent, which has an effect both on enrollment and APTC assumptions. Based on the information provided in the notice, we reduced the 2019 to 2020 enrollment change for members receiving premium tax credits from +3% to +2.2%.

6. 2020 Paid Claims were trended 3 years from 2017 to 2020, using the 5.6% allowed claims trend cited in #4 above, plus 0.5% of paid trend leveraging. These claims were used strictly for measuring the impact of reinsurance. Other claims assumptions are derived from premium and assumed loss ratios.

7. 2020 Advance Premium Tax Credits were projected using the following assumptions:
 - L&E increased the rate of the second lowest cost silver plan in each geographic rating area by the annual claims trend, 5.6%, plus the assumed morbidity increase of 2.7%.
 - It was initially assumed that federal poverty levels (FPL) and parameters for the maximum a member would pay at each FPL level would remain consistent with 2019 parameters. This was later adjusted to a 0.7% decrease from 2019 to 2020, based on the change outlined in the HHS Notice of Benefit and Payment Parameters for 2020.
 - The distribution of members by FPL were provided by the Division of Insurance, and verified for reasonableness using the US Treasury Coverage Tables.
 - Using the SLCSP, the maximum contribution assumption, and a distribution by FPL, an estimate of tax credit amount for each rating area was derived, and applied to applicable 2020 premiums, estimated in #4.

8. Below is a table summarizing the baseline estimates for 2019 and 2020.

Baseline and Waiver Estimates	2019	2020
Average Annual Enrollment		
Total Non-Group ACA-Compliant	218,033	216,795
On-Exchange	169,797	170,971
APTC Enrollment	127,621	130,482
Non-APTC Enrollment	42,176	40,489
Off-Exchange	48,236	45,824
Per Member Per Month Premium		
Total Non-Group ACA-Compliant PMPM	\$586.77	\$644.91
On-Exchange Premium PMPM	\$620.35	\$680.83
Gross APTC Premium PMPM	\$658.50	\$720.19
APTC PMPM	\$541.90	\$570.98
Net APTC Premium PMPM	\$116.60	\$149.21
Non-APTC Premium PMPM	\$504.91	\$531.12
Off-Exchange Premium PMPM	\$468.57	\$512.47
Total Annual Dollars		
Total Non-Group ACA-Compliant Premium	\$1,535,222,681	\$1,677,759,161
Total APTC	\$829,893,839	\$894,031,348

Impact of Waiver for 2020

The best-estimate impact of the Colorado reinsurance program with the stated parameters was calculated by the following method:

- Using trended non-group market 2020 claims by member by claim incurral date, the selected attachment point and cap were applied. For each eligible member whose annual paid claims meet the attachment point, any claim or partial claim falling between the attachment point and cap (chronologically) is eligible for the reinsurance program. These claims are covered up to the coinsurance specified.

An example:

Part A: Parameters

- \$30,000 Attachment Point
- \$400,000 Cap
- 50% Coinsurance (Member lives in Area 4- Fort Collins)
- A member incurred \$500,000 in annual claims

Part B: Calculation

- Member claims from \$30,000 to \$400,000 are eligible for reinsurance => \$370,000 out of \$500,000.
- Of the \$370,000 eligible claims, 50% will be covered by the program => \$185,000 out of \$370,000.
- Member's claims are reduced by $\$185,000 \div \$500,000 = 37\%$

The reduction in paid claims dollars is calculated in the above way for all members, producing a total reduction in claims for total non-group enrollees for a year. This reduction in claims is then used to estimate the cost of the program, the reduction in premium, and the change in APTC.

- Using the 2020 baseline enrollment, the impact of the reinsurance program was determined using the following methods and assumptions:
 - 2020 baseline enrollment was used as the starting point.
 - Enrollment was assumed to increase a certain percentage for every 1% reduction in claims due to the reinsurance program. The table below shows the benchmarks; claim reductions were interpolated using this chart and a line of best fit. This is consistent with the previous report; L&E found this assumption to be reasonable.
 - In general, off-exchange enrollment has proven more elastic and therefore more likely to fluctuate, as they absorb the whole of the actual rate increase without the benefit of a subsidy.

<u>Claim Reduction</u>	<u>Off-Exchange Enroll Δ</u>	<u>On-Exchange no-APTC Enroll Δ</u>
5%	3.8%	0.8%
10%	5.9%	1.8%
15%	9.5%	2.9%
20%	13.8%	4.2%
25%	19.1%	5.8%

3. Using the 2020 baseline premium, the impact of the reinsurance program was determined using the following methods and assumptions:
 - 2020 baseline premium was used as the starting point.
 - A claims component of premium was backed into, using the assumed loss ratio of 81.1%.
 - The morbidity was assumed to improve by 0.44% with each 1% of additional enrollment, over the 2020 baseline. The total enrollment increase, calculated in #2 of this section, was used.
 - The reduction in claims, calculated in #1 was applied, specific to carrier and geographic rating area.
 - The original administrative component, backed out by assuming a loss ratio of 81.1%, was added back to the premium amount.

4. Using the 2020 baseline second lowest cost silver plan (SLCSP), the impact to advance premium tax credits (APTC) was determined using the following methods and assumptions:
 - 2020 baseline SLCSP was used as the starting point.
 - The weighted average premium decrease, by area, was summarized. This decrease by area was applied to the baseline SLCSP to get an updated SLCSP. No adjustment was made for silver loading, as this was already built into the premiums for 2019. In our scenario analysis, scenario 5 reviewed the impact of silver loading. If silver loading were to become unnecessary, and silver plan premiums were to drop, what would be the impact on pass-through funding? See the next section for the scenario testing results.
 - Using updated SLCSP, the APTCs were calculated the same as described in the baseline calculations.

5. The reduction to claims multiplied by a claims PMPM estimate will provide a PMPM claims reduction. When multiplied by applicable members, this will give the cost of the reinsurance program, without administrative considerations. The reduction to premium and subsequent increase in enrollment is also included with these results.

6. Below is a table summarizing the best estimate of impact of the 1332 Waiver reinsurance program for 2020, for the parameters and assumptions outlined above.

Baseline and Waiver Estimates	2019	2020	2020 w/ waiver
Average Annual Enrollment			
Total Non-Group ACA-Compliant	218,033	216,795	223,173
On-Exchange	169,797	170,971	172,408
APTC Enrollment	127,621	130,482	130,482
Non-APTC Enrollment	42,176	40,489	41,926
Off-Exchange	48,236	45,824	50,765
Per Member Per Month Premium			
Total Non-Group ACA-Compliant PMPM	\$586.77	\$644.91	\$541.81
On-Exchange Premium PMPM	\$620.35	\$680.83	\$571.68
Gross APTC Premium PMPM	\$658.50	\$720.19	\$608.24
APTC PMPM	\$541.90	\$570.98	\$459.03
Net APTC Premium PMPM	\$116.60	\$149.21	\$149.21
Non-APTC Premium PMPM	\$504.91	\$531.12	\$457.90
Off-Exchange Premium PMPM	\$468.57	\$512.47	\$440.36
Total Annual Dollars			
Total Non-Group ACA-Compliant Premium	\$1,535,222,681	\$1,677,759,161	\$1,451,008,358
Total APTC	\$829,893,839	\$894,031,348	\$718,741,830
APTC Savings Compared to Baseline			\$175,289,519
Cost of Reinsurance Program			\$249,829,497
Percent Funded by APTC Savings			70.2%
Percent Funded by APTC Savings, less 5%			65.2%
APTC Savings with 5% Reduction			\$162,798,044

Scenario Testing

To test assumptions, and to provide a range of possible outcomes under a variety of circumstances, L&E calculated results under various scenarios apart from the previously-stated best-case scenario. The following scenarios were considered:

1. Best Estimate- Our best estimate of results based on the parameters outlined above.
2. Good Experience- Towards the end of 2019 into 2020, costs are down and more than expected are enrolling.
 - a. Lowered trend from 5.6% to 4.6%
 - b. Lowered 2019 to 2020 morbidity increase from 2.7% to 1%
 - c. Raised baseline enrollment assumptions:
 - i. APTC-eligible from +2.2% to +3.2%
 - ii. On-Exchange non-APTC from -4.0% to -2.0%
 - iii. Off-Exchange from -5.0% to -3.0%
 - d. Morbidity change with additional 1% of enrollment changed from -0.44% to -0.60%
 - e. Increased enrollment curve based on claims savings by 1%.
3. Poor Experience- Towards the end of 2019 into 2020, costs are up and fewer than expected are enrolling.
 - a. Raised trend from 5.6% to 6.6%
 - b. Raised 2019 to 2020 morbidity increase from 2.7% to 3.8%
 - c. Lowered baseline enrollment assumptions:
 - i. APTC-eligible from +2.2% to +1.2%
 - ii. On-Exchange non-APTC from -4.0% to -6.0%
 - iii. Off-Exchange from -5.0% to -7.0%
 - d. Morbidity change with additional 1% of enrollment changed from -0.44% to 0%
 - e. Lowered enrollment curve based on claims savings by 1%.
4. Economic downturn- A downturn happens before 2020 open enrollment. The market experiences lower enrollment, and lower membership FPL distribution.
 - a. Lowered trend from 5.6% to 5.1%
 - b. Lowered baseline enrollment assumptions:
 - i. APTC-eligible from +2.2% to +1.0%
 - ii. On-Exchange non-APTC from -4.0% to -6.0%
 - iii. Off-Exchange from -5.0% to -8.0%
 - c. Lowered enrollment curve based on claims savings by 1%.
 - d. Using FPL distribution by metal level, 10% of enrollment in each FPL bucket shifts down to the next lowest FPL bucket.
5. CSRs Funded- The federal government makes the decision to cover CSRs in 2020 and beyond. Silver loading is no longer needed and is removed from the rates. Advance Premium Tax Credits are lower, since the Second Lowest Cost Silver Plan (SLCSP) is lower.
 - a. 10% decrease to Silver premiums³ and SLCSPs
6. Mandate wear-off- More people in the non-group market realize they will not be penalized for letting their insurance lapse. Enrollment decreases for healthy individuals not receiving a subsidy, and morbidity increases.
 - a. Lowered baseline enrollment assumptions:
 - i. APTC-eligible from +2.2% to 0.0%

³ Bipartisan Policy Center, "Stabilizing the Individual Insurance Market: What Happened and What Next?" <https://bipartisanpolicy.org/wp-content/uploads/2018/03/BPC-Health-Stabilizing-The-Individual-Health-Insurance-Market.pdf>

- ii. On-Exchange non-APTC from -4.0% to -8.0%
- iii. Off-Exchange from -5.0% to -10.0%
- b. Raised 2019 to 2020 morbidity increase from 2.7% to 5%
- c. Morbidity change with additional 1% of enrollment changed from -0.44% to -0.10%

A high-level table of results for scenario testing is provided in Section 3.2 above. Below is a detailed scenario testing table, split between scenarios 1,2,3 and 4,5,6.

Scenario #	1- Best Estimate	2- Good Experience	3- Poor Experience
Description (\$ millions)	Expected Trend, Expected Enrollment	Lower Trend, Improved Morbidity, Higher Enrollment	Higher Trend, No change in Morbidity, Lower Enrollment
2020 Baseline			
Total Non-Group Enrollment	216,795	219,879	213,710
Exchange Enrollment	170,971	173,091	168,851
APTC Enrollment	130,482	131,758	129,205
Total Non-Group Premium PMPM	\$644.91	\$628.35	\$657.94
Exchange Premium PMPM	\$680.83	\$663.12	\$693.95
Gross APTC PMPM	\$720.19	\$702.23	\$734.15
Net APTC PMPM	\$149.21	\$148.22	\$149.99
Total Annual Non-Group Premiums	\$1,678	\$1,658	\$1,687
Total Annual APTCs	\$894	\$876	\$906
After Reinsurance			
Total Non-Group Enrollment	223,173	227,147	219,223
Exchange Enrollment	172,408	174,158	169,989
APTC Enrollment	130,482	131,758	129,205
Percent Change in Total Enrollment	2.9%	3.3%	2.6%
Reinsurance Program Cost	\$249.8	\$244.7	\$253.4
Percent Change to Premiums	-16.0%	-15.9%	-16.2%
Total Non-Group PMPM	\$541.81	\$528.69	\$551.37
Exchange Premium PMPM	\$571.68	\$557.95	\$581.55
Gross APTC PMPM	\$608.24	\$589.94	\$627.37
Net APTC PMPM	\$149.21	\$148.22	\$149.99
Total Annual Non-Group Premiums	\$1,451	\$1,441	\$1,450
Total Annual APTCs	\$719	\$698	\$740
Results			
Estimate APTC Savings	\$175.3	\$177.5	\$165.6
Estimated Net Federal Savings (5% reduction)	\$162.8	\$165.3	\$152.9
Percent of program funded by Pass Through	65.2%	67.5%	60.3%
Cost to State	\$87.0	\$79.4	\$100.5

Scenario #	4- Economic Downturn	5- CSRs Funded	6- Mandate Wear-Off
Description (\$ millions)	Lower Trend, Lower Enrollment, Shifted FPL distribution	Lower Silver Plan Premium	Lower enrollment, Higher morbidity
2020 Baseline			
Total Non-Group Enrollment	212,973	216,795	209,888
Exchange Enrollment	168,596	170,971	166,476
APTC Enrollment	128,950	130,482	127,674
Total Non-Group Premium PMPM	\$642.66	\$613.86	\$659.90
Exchange Premium PMPM	\$677.55	\$644.99	\$695.50
Gross APTC PMPM	\$722.04	\$676.71	\$735.48
Net APTC PMPM	\$145.41	\$145.41	\$145.41
Total Annual Non-Group Premiums	\$1,642	\$1,597	\$1,662
Total Annual APTCs	\$892	\$832	\$904
After Reinsurance			
Total Non-Group Enrollment	218,302	223,173	216,045
Exchange Enrollment	169,698	172,408	167,943
APTC Enrollment	128,950	130,482	127,674
Percent Change in Total Enrollment	2.5%	2.9%	2.9%
Reinsurance Program Cost	\$242.0	\$237.8	\$247.3
Percent Change to Premiums	-15.9%	-16.0%	-16.0%
Total Non-Group PMPM	\$540.18	\$515.45	\$554.11
Exchange Premium PMPM	\$569.50	\$541.59	\$584.00
Gross APTC PMPM	\$612.46	\$571.52	\$627.86
Net APTC PMPM	\$145.41	\$145.41	\$145.41
Total Annual Non-Group Premiums	\$1,415	\$1,380	\$1,437
Total Annual APTCs	\$723	\$667	\$739
Results			
Estimate APTC Savings	\$169.6	\$164.7	\$164.9
Estimate APTC Savings (5% reduction)	\$157.5	\$152.8	\$152.5
Estimated Net Federal Savings (5% reduction)	\$157.5	\$152.8	\$152.5
Percent of program funded by Pass Through	65.1%	64.3%	61.7%
Cost to State	\$84.5	\$85.0	\$94.8

Projecting Years 2021 through 2029

In accordance with 45 CFR 155.1308(f)(4)(i)-(iii), the 1332 Waiver application must include supporting information detailing the impact of the 1332 Waiver on health insurance coverage in the state, and the 10-year impact of a 1332 Waiver on the Federal deficit. Below is the methodology used to project expenses and experience for 10 years:

1. The 2020 Projection, with parameters and assumptions detailed above, was used as the starting point. For the 10-Year projections
2. The 10-Year Enrollment was projected without the 1332 Waiver Program.
 - Enrollment growth was projected using the National Health Expenditure Data developed by the Office of the Actuary in CMS⁴. L&E used Table 17, annual enrollment growth percent for direct purchase insurance.
 - Expected APTC enrollment is projected to remain flat. Here we assume that the majority of individuals that are eligible for APTC have already enrolled.
3. The 10-Year Premium was projected without the 1332 Waiver Program.
 - Premium increases were projected using Table 17 spending per enrollee annual growth rate for direct purchase insurance.
 - Expected Colorado APTC Net Premium trend from 2016 through 2020 is 1.3% using actual Net Premium and projected 2020 Net Premium. This trend is also assumed for years 2021 through 2029.
4. The 10-Year Enrollment was projected with the 1332 Waiver Program.
 - The enrollment increase due to the reduction in premium in 2020 is derived from the elasticity function as described in Appendix A- Impact of Waiver- #2 above.
 - We assume enrollment increases will continue in the following years, given the price elasticity differential between projections with and without reinsurance. However, we take the conservative approach and assume that the enrollment increase decreases 25% each year.
5. The impact of the Reinsurance Program was projected.
 - The cost of the reinsurance program was set equal to the cost required to lower the premiums the same percentage in each year. This assumption would require the reinsurance attachment point, cap and coinsurance levels to be reviewed and adjusted as needed in each subsequent year.
 - Assumed morbidity improvement uses the formula noted in Appendix A- Impact of Waiver- #3 above. This formula is applied to the expected enrollment increase in each projection year.
6. The 10-Year Premium was projected with the 1332 Waiver Program.
 - Premiums are projected to increase by the two components outlined in #5 above. The resulting impact to premium from the cost of the reinsurance program combined with the morbidity improvement make up the total decrease in baseline premiums.

⁴ <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsProjected.html>

7. A total savings to the federal government under the 1332 Waiver is calculated.
- This savings is the difference in APTC dollars paid without the 1332 Waiver less the APTC dollars paid with the 1332 Waiver.
 - L&E also considered other federal revenue that could be affected by the program, including HIT, the Exchange User Fees, and Individual mandate penalties. An analysis of these is detailed below in Appendix C. The only revenue that would impact Total Federal savings is the HIT.
 - Total Net Federal savings is shown two ways:
 - With APTC Savings, less a 5% reduction
 - With APTC Savings, less the HIT losses due to lower premium
 The 5% reduction is a more conservative approach and these results were those used throughout this report.

The results of the 10-Year projection can be viewed in Appendix B, or a summarized version in Appendix C. Total net federal savings is the value used to estimate pass-through funding that, if approved, would help fund a portion of the reinsurance program under the 1332 Waiver.

Appendix B: Detailed Tables

Second Lowest Cost Silver Plan (SLCSP), For Age 21 Nonsmoker

Colorado Rating Area	Historic* SLSP2017	Historic* SLSP2018	Historic* SLSP2019	Baseline** SLSP2020	Waiver*** SLSP2020
Area 1- Boulder	\$247	\$327	\$365	\$399	\$333
Area 2- CO Springs	\$242	\$319	\$361	\$395	\$337
Area 3- Denver	\$245	\$324	\$344	\$376	\$315
Area 4- Fort Collins	\$283	\$360	\$401	\$439	\$357
Area 5- Grand Junction	\$384	\$384	\$448	\$490	\$397
Area 6- Greeley	\$283	\$360	\$399	\$437	\$357
Area 7- Pueblo	\$289	\$353	\$361	\$395	\$327
Area 8- East	\$333	\$384	\$462	\$505	\$415
Area 9- West	\$372	\$384	\$538	\$589	\$484

*Based on KFF Subsidy Calculator

**Using Assumed Trend Increase + Increase in Morbidity

***Decreased by assumed savings in premium, with waiver

The above table shows the Second Lowest Cost Silver Plan for a selected consumer by area. Age 21 was selected as the representative age is because it is the 1.00 rate, which could be easily adjusted for age factors before applying the APTC calculations. The table shows how the plan may change under the proposed 1332 Waiver reinsurance program.

Enrollment by Metal Level, APTC and FPL

Baseline 2020 Enrollment	Gold	Silver	Bronze	Catastrophic	Total
On-Exchange, APTC	3,368	68,947	58,167	0	130,482
0% to 100%	791	16,202	13,668	0	30,661
100% to 150%	565	11,570	9,761	0	21,896
150% to 200%	630	12,887	10,872	0	24,389
200% to 250%	525	10,744	9,064	0	20,332
250% to 300%	380	7,782	6,565	0	14,728
300% to 400%	477	9,762	8,236	0	18,475
400%+	0	0	0	0	0
On-Exchange, nonAPTC	3,569	4,747	26,676	5,497	40,489
0% to 100%	617	0	3,562	1,116	5,296
100% to 150%	441	0	2,544	797	3,782
150% to 200%	491	0	2,833	888	4,212
200% to 250%	409	0	2,362	740	3,512
250% to 300%	297	0	1,711	536	2,544
300% to 400%	372	0	2,146	673	3,191
400%+	942	4,747	11,517	746	17,953
Off-Exchange	8,090	12,592	24,397	745	45,824
0% to 100%	1,424	2,216	4,294	131	8,064
100% to 150%	623	970	1,879	57	3,530
150% to 200%	713	1,110	2,150	66	4,039
200% to 250%	520	809	1,568	48	2,945
250% to 300%	474	738	1,429	44	2,684
300% to 400%	917	1,428	2,766	84	5,196
400%+	3,419	5,322	10,311	315	19,366
Total Enrollment	15,027	86,286	109,240	6,241	216,795

***FPL distribution from US Department of the Treasury Coverage Tables 1.2 and 1.4, Produced April 2019*

The above table shows projected enrollment by metal level, FPL and APTC status for the Baseline 2020 scenario, if the reinsurance program were not established. These are estimates created from enrollment projections and split out by anticipated FPL distribution. The distribution from the April 2019 US Department of the Treasury Coverage tables was used.

Enrollment by Metal Level, APTC and FPL, with Waiver

Waiver 2020 Enrollment	Gold	Silver	Bronze	Catastrophic	Total
On-Exchange, APTC	3,368	68,947	58,167	0	130,482
0% to 100%	791	16,202	13,668	0	30,661
100% to 150%	565	11,570	9,761	0	21,896
150% to 200%	630	12,887	10,872	0	24,389
200% to 250%	525	10,744	9,064	0	20,332
250% to 300%	380	7,782	6,565	0	14,728
300% to 400%	477	9,762	8,236	0	18,475
400%+	0	0	0	0	0
On-Exchange, nonAPTC	3,838	5,209	28,735	5,903	43,684
0% to 100%	672	0	3,980	1,199	5,851
100% to 150%	480	0	2,842	856	4,178
150% to 200%	534	0	3,166	954	4,654
200% to 250%	446	0	2,639	795	3,880
250% to 300%	323	0	1,912	576	2,810
300% to 400%	405	0	2,398	722	3,526
400%+	978	5,209	11,797	801	18,785
Off-Exchange	10,118	15,747	30,511	931	57,307
0% to 100%	1,781	2,771	5,370	164	10,085
100% to 150%	779	1,213	2,350	72	4,414
150% to 200%	892	1,388	2,689	82	5,051
200% to 250%	650	1,012	1,961	60	3,683
250% to 300%	593	922	1,787	55	3,356
300% to 400%	1,147	1,786	3,460	106	6,498
400%+	4,276	6,655	12,895	394	24,219
Total Enrollment	17,323	89,903	117,412	6,834	231,473

***FPL distribution from US Department of the Treasury Coverage Tables 1.2 and 1.4, Produced April 2019*

The above table shows projected enrollment by metal level, FPL and APTC status for the Waiver 2020 scenario, if the reinsurance program were established. These are estimates created from enrollment projections and split out by anticipated FPL distribution. The distribution from the April 2019 US Department of the Treasury Coverage tables was used

10-Year Projections, Impact to Federal Deficit										
Before Reinsurance	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Total Non-Group ACA-Compliant Avg. Enrollment	216,795	217,662	218,533	218,970	219,627	220,286	220,947	221,609	222,306	222,977
APTC Avg. Enrollment	130,482	130,482	130,482	130,482	130,482	130,482	130,482	130,482	130,482	130,482
Total Non-Group ACA-Compliant PMPM	\$644.91	\$675.81	\$704.43	\$735.58	\$768.12	\$802.80	\$840.38	\$876.69	\$916.01	\$957.08
Gross APTC PMPM	\$720.19	\$754.69	\$786.66	\$821.44	\$857.78	\$896.51	\$938.47	\$979.03	\$1,022.93	\$1,068.80
APTC PMPM	\$570.98	\$603.59	\$633.64	\$666.48	\$700.85	\$737.58	\$777.53	\$816.05	\$857.88	\$901.65
Total Premium	\$1,678 M	\$1,765 M	\$1,847 M	\$1,933 M	\$2,024 M	\$2,122 M	\$2,228 M	\$2,331 M	\$2,444 M	\$2,561 M
Total APTC	\$894 M	\$945 M	\$992 M	\$1,044 M	\$1,097 M	\$1,155 M	\$1,217 M	\$1,278 M	\$1,343 M	\$1,412 M
After Reinsurance	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Reinsurance Funding	\$250 M	\$263 M	\$275 M	\$288 M	\$301 M	\$316 M	\$332 M	\$347 M	\$364 M	\$381 M
Reduction in Premiums (Reinsurance Funding)	-14.89%	-14.89%	-14.89%	-14.89%	-14.89%	-14.89%	-14.89%	-14.89%	-14.89%	-14.89%
Reduction in Premiums (Morbidity Improvement)	-1.10%	-0.97%	-0.73%	-0.55%	-0.41%	-0.31%	-0.23%	-0.17%	-0.13%	-0.10%
Enrollment Increase	2.9%	2.2%	1.7%	1.2%	0.9%	0.7%	0.5%	0.4%	0.3%	0.2%
Total Non-Group ACA-Compliant Avg. Enrollment	223,173	228,097	231,872	234,750	236,935	238,589	239,838	240,780	241,489	242,023
APTC Avg. Enrollment	130,482	130,482	130,482	130,482	130,482	130,482	130,482	130,482	130,482	130,482
Total Non-Group ACA-Compliant PMPM	\$541.81	\$568.61	\$594.41	\$622.03	\$650.59	\$680.79	\$713.30	\$744.63	\$778.42	\$813.64
Gross APTC PMPM	\$608.24	\$634.99	\$663.79	\$694.64	\$726.54	\$760.26	\$796.57	\$831.55	\$869.28	\$908.61
APTC PMPM	\$459.03	\$483.88	\$510.77	\$539.68	\$569.60	\$601.33	\$635.62	\$668.57	\$704.23	\$741.46
Total Premium	\$1,451 M	\$1,556 M	\$1,654 M	\$1,752 M	\$1,850 M	\$1,949 M	\$2,053 M	\$2,152 M	\$2,256 M	\$2,363 M
Total APTC	\$719 M	\$758 M	\$800 M	\$845 M	\$892 M	\$942 M	\$995 M	\$1,047 M	\$1,103 M	\$1,161 M
Estimated APTC Savings	\$175 M	\$187 M	\$192 M	\$199 M	\$205 M	\$213 M	\$222 M	\$231 M	\$241 M	\$251 M
HIT Fee	2.2%	2.2%	2.2%	2.2%	2.2%	2.2%	2.2%	2.2%	2.2%	2.2%
Decrease in HIT Fee	\$5 M	\$5 M	\$4 M							
Net Federal Savings	\$170 M	\$183 M	\$188 M	\$195 M	\$202 M	\$210 M	\$218 M	\$227 M	\$236 M	\$246 M
Estimated APTC Savings (less 5% reduction)	\$163 M	\$174 M	\$179 M	\$184 M	\$190 M	\$198 M	\$206 M	\$214 M	\$222 M	\$232 M

Appendix C: Guardrail Requirements

Comprehensive Coverage

In order to meet this requirement, the waiver must demonstrate that it will provide coverage at least as comprehensive as the coverage defined in Section 1302(b) of the Affordable Care Act and offered through Exchanges. The Colorado reinsurance program will not result in any changes to Essential Health Benefits or Actuarial Value requirements, and individuals purchasing coverage should not see any change in benefits because of the 1332 Waiver. Therefore, the comprehensive coverage guardrail is met.

Affordability

In order to meet this requirement, the waiver must demonstrate that it will provide coverage and cost sharing protections against excessive out-of-pocket spending that are at least as affordable as the provisions of the ACA Qualified Health Plans, offered through the Exchange. This reinsurance program will reduce premiums across the board for the non-group market, on average for the state, 16% lower in 2020 than what they would be without the waiver. In subsequent years, as the program continues to operate, rates will be consistently lower than they would be without the program. Cost sharing is not expected to change as a result of this program and will remain within the parameters outlined by federal requirements. Therefore, since the program lowers premiums, and an individual can purchase a similar (if not identical) plan for a lower cost, the 1332 Waiver meets the affordability guardrail.

Scope of Coverage

In order to meet this requirement, the waiver must demonstrate that it would provide coverage to at least a comparable number of its residents as the provisions currently in place required by the Affordable Care Act would provide. With lowered premiums due to reinsurance, the analysis projects an enrollment increase of 2.9% in 2020 for the non-group market. In subsequent years, enrollment is expected to be higher than it would be without the reinsurance program. It is well-documented that lower premiums attract and retain healthier individuals. CMS released a fact sheet in October 2018 citing that, “Stabilizing premiums will help retain healthier people in the risk pool”⁵. Health Affairs also weighed in on the drivers of enrollment increases in 2019, citing low rate increases and lower premiums in general.⁶ Therefore, at least a comparable number of individuals would be covered, meeting the Scope of Coverage guardrail.

Deficit Neutrality

Advance Premium Tax Credits (APTC) are benchmarked to the Second Lowest Cost Silver Plan (SLCSP), by rating area. Premium decreases will similarly decrease these silver plans. In the analysis, enrollees who do not receive APTCs are more sensitive to price changes and are likely to be the new enrollees who sign

⁵ CMS Fact Sheet, “Data on 2019 Individual Health Insurance Market Conditions”, October 11, 2018. <https://www.cms.gov/newsroom/fact-sheets/data-2019-individual-health-insurance-market-conditions>

⁶ Health Affairs, “Factors Likely to Drive Enrollment On Healthcare.gov in 2019”, October 29, 2018. <https://www.healthaffairs.org/doi/10.1377/hblog20181028.337476/full/>

up for coverage when the reinsurance program reduces premiums. It is assumed that the number of enrollees receiving APTCs will remain mostly constant, as they are more shielded from price fluctuations.

Due to the combination of decreasing premiums and a consistent APTC-receiving population, it is calculated that the federal government will realize savings of \$162.8 million in the year 2020 and a total 10-year savings of between \$1.96 billion and \$2.08 billion. These projections are shown in the table below. A more detailed table is shown in Appendix B, page 29.

**Summarized 10-Year Projections,
Impact to Federal Deficit**

Before Reinsurance	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Total Non-Group ACA-Compliant Avg. Enrollment (000s)	217	218	219	219	220	220	221	222	222	223
Total Premium (\$M)	1,678	1,765	1,847	1,933	2,024	2,122	2,228	2,331	2,444	2,561
Total APTC (\$M)	894	945	992	1,044	1,097	1,155	1,217	1,278	1,343	1,412
After Reinsurance	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Total Non-Group ACA-Compliant Avg. Enrollment (000s)	223	228	232	235	237	239	240	241	241	242
Total Premium (\$M)	1,451	1,556	1,654	1,752	1,850	1,949	2,053	2,152	2,256	2,363
Total APTC (\$M)	719	758	800	845	892	942	995	1,047	1,103	1,161
Estimated APTC Savings (\$M)	175	187	192	199	205	213	222	231	241	251
Net Federal Savings (Direct, \$M)	170	183	188	195	202	210	218	227	236	246
Net Federal Savings (5% reduction, \$M)	163	174	179	184	190	198	206	214	222	232

Offsets to APTC Savings

Individual Responsibility Requirement

As part of the ACA, individuals that meet affordability requirements, but choose to forego purchasing insurance are required to pay a fee. This has been referred to as the “individual mandate”. However, as part of the Tax Cuts and Jobs Act of 2017, the individual responsibility requirement fee was set to \$0 for 2019 and all future years. Therefore, the waiver, effective in 2020, will not impact this revenue.

Exchange User Fee

Colorado operates a State-Based Exchange not using the federal platform. Therefore, this waiver will not impact Federally-Facilitated Exchange user fees. In addition, this program is not expected to impact state exchange user fees.

Health Insurance Providers Fee

Section 9010 of the ACA requires a tax on health insurance providers, the HIT. This fee was suspended in 2019 as part of the Tax Cuts and Jobs Act of 2017, but the fee may return for 2020 and subsequent years. We estimate that Colorado’s reinsurance program will have a minimal impact on the national premium growth rate, and so the potential HIT percentage will not be impacted. Therefore, the HIT

charge could be approximately 2.2% of premiums, according to an August 2018 report by Oliver Wyman⁷. This amount was held constant over the ten-year window.

L&E assumed, conservatively, that the APTC savings to the federal government would be reduced by 5% to include the impact of the HIT, changes in the market, and other minimal changes to federal fees that may occur. The 10-year projection shows the direct impact of the HIT to Net Federal Savings, and the 5% reduction impact to Net Federal Savings. In all cases the 5% reduction adequately covers the impact of HIT reductions, should they occur.

Other Federal Impacts

L&E did not estimate the impact of Cadillac tax, small business credits, income taxes, or CSR payments. It is unlikely that the reinsurance program would have a material impact on the overall savings realized by the federal government.

Additionally, L&E did not estimate the impact on other healthcare insurance markets in Colorado. Enrollment migration between group and non-group markets is not expected to significantly change as a result of the reinsurance program.

Finally, alternate scenarios were tested in the 10-year federal impact model, using the scenarios outlined above in Appendix A. Net federal savings for the 10-year period were at least \$1.84B or higher in all tested cases.

⁷ Oliver Wyman Health, “New Analysis: How the ACA’s HIT Will Impact 2020 Premiums”, August 27, 2018. <https://health.oliverwyman.com/2018/08/new-analysis--how-the-acas-hit-will-impact-2020-premiums.html>

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



HOUSE BILL 19-1168

BY REPRESENTATIVE(S) McCluskie and Rich, Buckner, Esgar, Kennedy, McLachlan, Roberts, Soper, Bird, Caraveo, Cutter, Duran, Exum, Froelich, Garnett, Gonzales-Gutierrez, Gray, Herod, Hooton, Jackson, Jaquez Lewis, Kipp, Lontine, Michaelson Jenet, Mullica, Singer, Sirota, Snyder, Valdez A., Valdez D., Weissman, Will, Becker, Arndt, Buentello, Galindo, Melton, Tipper, Titone;
also SENATOR(S) Donovan and Rankin, Bridges, Coram, Crowder, Fenberg, Fields, Ginal, Gonzales, Pettersen, Rodriguez, Story, Todd, Winter, Garcia.

CONCERNING THE CREATION OF THE COLORADO REINSURANCE PROGRAM TO PROVIDE REINSURANCE PAYMENTS TO HEALTH INSURERS TO AID IN PAYING HIGH-COST INSURANCE CLAIMS, AND, IN CONNECTION THEREWITH, AUTHORIZING THE COMMISSIONER OF INSURANCE TO SEEK APPROVAL FROM THE FEDERAL GOVERNMENT TO WAIVE APPLICABLE FEDERAL REQUIREMENTS, REQUEST FEDERAL FUNDS, OR BOTH, TO ENABLE THE STATE TO IMPLEMENT THE PROGRAM, MAKING THE PROGRAM CONTINGENT UPON WAIVER OR FUNDING APPROVAL, AND MAKING AN APPROPRIATION.

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

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.

SECTION 1. In Colorado Revised Statutes, **add** part 11 to article 16 of title 10 as follows:

PART 11
COLORADO REINSURANCE PROGRAM

10-16-1101. Short title. THE SHORT TITLE OF THIS PART 11 IS THE "COLORADO REINSURANCE PROGRAM ACT".

10-16-1102. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) ALL COLORADANS DESERVE ACCESS TO HIGH-QUALITY, AFFORDABLE HEALTH CARE TO HELP SUPPORT THEIR WELL-BEING AND ECONOMIC SECURITY;

(b) INCREASING COSTS OF HEALTH CARE IN COLORADO HAVE LED TO PREMIUM INCREASES FOR HEALTH INSURANCE IN THE INDIVIDUAL MARKET THAT HAVE CREATED A FINANCIAL BURDEN FOR SOME COLORADANS PURCHASING INSURANCE IN THE INDIVIDUAL MARKET;

(c) THAT BURDEN IS HEIGHTENED IN RURAL AREAS OF THE STATE, WHERE PREMIUMS ARE CONSIDERABLY HIGHER THAN IN METROPOLITAN AREAS OF THE STATE AND THERE IS A LACK OF COMPETITION AMONG HEALTH CARE PROVIDERS AND CARRIERS;

(d) BECAUSE OF THE FINANCIAL BURDEN HIGH-COST HEALTH INSURANCE PLACES ON CONSUMERS IN RURAL AREAS, A CONSIDERABLE NUMBER OF THESE COST-BURDENED CONSUMERS MAY NOT PURCHASE HEALTH INSURANCE, EXACERBATING THE PROBLEMS OF FEW CARRIERS, FEW PLAN OPTIONS, AND HIGH HEALTH INSURANCE COSTS IN RURAL REGIONS, AS WELL AS INCREASING THE NUMBER OF UNINSURED COLORADANS; AND

(e) COLORADO HAS HISTORICALLY BEEN A NATIONAL LEADER IN HEALTH CARE INNOVATION, AND IT IS IMPORTANT TO USE THAT INNOVATIVE SPIRIT TO ADDRESS THE RISING COSTS OF HEALTH CARE IN THE STATE BY DIRECTING THE COMMISSIONER OF INSURANCE TO CREATE A REINSURANCE PROGRAM THAT WILL:

(I) MAKE PRIVATE HEALTH INSURANCE IN THE INDIVIDUAL MARKET

MORE ACCESSIBLE AND AFFORDABLE;

(II) ENCOURAGE PARTICIPATION AND COMPETITION BY CARRIERS THROUGHOUT THE STATE, BUT PARTICULARLY IN RURAL AREAS OF THE STATE, IN ORDER TO GIVE CONSUMERS THE ABILITY TO SEEK VALUE IN HEALTH INSURANCE COVERAGE;

(III) DECREASE COSTS OF CARE, LEADING TO LOWER PREMIUMS AND RESTRAINING, IF NOT DECREASING, THE GROWTH IN FEDERAL SPENDING COMMITMENTS IN THE INDIVIDUAL MARKET; AND

(IV) SUPPORT AND EMPOWER, AND INCREASE ACCESS TO AFFORDABLE, HIGH-VALUE HEALTH INSURANCE FOR, CONSUMERS WHO ARE INELIGIBLE FOR PREMIUM TAX CREDIT SUBSIDIES WHILE MINIMIZING ANY POTENTIAL NEGATIVE EFFECTS ON ACCESS TO AFFORDABLE, HIGH-VALUE INSURANCE FOR CONSUMERS WHO ARE ELIGIBLE FOR PREMIUM TAX CREDIT SUBSIDIES AND COST SHARING REDUCTIONS.

10-16-1103. Definitions. AS USED IN THIS PART 11, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ATTACHMENT POINT" MEANS THE AMOUNT SET BY THE COMMISSIONER PURSUANT TO SECTION 10-16-1105 (2) FOR CLAIMS COSTS INCURRED BY AN ELIGIBLE CARRIER FOR A COVERED PERSON'S COVERED BENEFITS IN A BENEFIT YEAR, ABOVE WHICH THE CLAIMS COSTS FOR BENEFITS ARE ELIGIBLE FOR REINSURANCE PAYMENTS UNDER THE REINSURANCE PROGRAM.

(2) "BENEFIT YEAR" MEANS THE CALENDAR YEAR FOR WHICH AN ELIGIBLE CARRIER PROVIDES COVERAGE THROUGH AN INDIVIDUAL HEALTH BENEFIT PLAN.

(3) "COINSURANCE RATE" MEANS THE RATE SET BY THE COMMISSIONER PURSUANT TO SECTION 10-16-1105 (2) AT WHICH THE REINSURANCE PROGRAM WILL REIMBURSE AN ELIGIBLE CARRIER FOR CLAIMS INCURRED FOR A COVERED PERSON'S COVERED BENEFITS IN A BENEFIT YEAR, WHICH CLAIMS EXCEED THE ATTACHMENT POINT BUT ARE BELOW THE REINSURANCE CAP.

(4) "COMMISSIONER" MEANS THE COMMISSIONER OF INSURANCE, THE

COMMISSIONER'S DEPUTIES, OR THE DIVISION OF INSURANCE, AS APPROPRIATE.

(5) "ELIGIBLE CARRIER" MEANS A CARRIER THAT:

(a) OFFERS INDIVIDUAL HEALTH BENEFIT PLANS THAT COMPLY WITH THE FEDERAL ACT; AND

(b) INCURS CLAIMS COSTS FOR A COVERED PERSON'S COVERED BENEFITS IN THE APPLICABLE BENEFIT YEAR.

(6) "HOSPITAL" MEANS A HOSPITAL LICENSED OR CERTIFIED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO SECTION 25-1.5-103 (1)(a).

(7) "MEDICAID" MEANS FEDERAL INSURANCE OR ASSISTANCE AS PROVIDED BY TITLE XIX OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, AND THE "COLORADO MEDICAL ASSISTANCE ACT", ARTICLES 4, 5, AND 6 OF TITLE 25.5.

(8) "MEDICARE" MEANS FEDERAL INSURANCE OR ASSISTANCE PROVIDED BY THE "HEALTH INSURANCE FOR THE AGED ACT", TITLE XVIII OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, 42 U.S.C. SEC. 1395 ET SEQ.

(9) "PAYMENT PARAMETERS" MEANS THE ATTACHMENT POINT, REINSURANCE CAP, AND COINSURANCE RATE FOR THE REINSURANCE PROGRAM.

(10) "REINSURANCE CAP" MEANS THE AMOUNT SET BY THE COMMISSIONER PURSUANT TO SECTION 10-16-1105 (2) FOR CLAIMS COSTS INCURRED BY AN ELIGIBLE CARRIER FOR A COVERED PERSON'S COVERED BENEFITS, ABOVE WHICH AMOUNT THE CLAIMS COSTS FOR BENEFITS ARE NO LONGER ELIGIBLE FOR REINSURANCE PAYMENTS.

(11) "REINSURANCE PAYMENT" MEANS AN AMOUNT PAID TO AN ELIGIBLE CARRIER UNDER THE REINSURANCE PROGRAM.

(12) "REINSURANCE PROGRAM" OR "PROGRAM" MEANS THE COLORADO REINSURANCE PROGRAM ESTABLISHED UNDER SECTION

10-16-1105.

(13) "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.

10-16-1104. Commissioner powers and duties - rules - study and report. (1) THE COMMISSIONER HAS ALL POWERS NECESSARY TO IMPLEMENT THIS PART 11 AND IS SPECIFICALLY AUTHORIZED TO:

(a) ENTER INTO CONTRACTS AS NECESSARY OR PROPER TO CARRY OUT THE PROVISIONS AND PURPOSES OF THIS PART 11, INCLUDING CONTRACTS FOR THE ADMINISTRATION OF THE REINSURANCE PROGRAM AND WITH APPROPRIATE ADMINISTRATIVE STAFF, CONSULTANTS, AND LEGAL COUNSEL;

(b) TAKE LEGAL ACTION AS NECESSARY TO AVOID THE PAYMENT OF IMPROPER CLAIMS UNDER THE REINSURANCE PROGRAM;

(c) ESTABLISH ADMINISTRATIVE AND ACCOUNTING PROCEDURES FOR THE OPERATION OF THE REINSURANCE PROGRAM;

(d) ESTABLISH PROCEDURES AND STANDARDS FOR CARRIERS TO SUBMIT CLAIMS UNDER THE REINSURANCE PROGRAM;

(e) ESTABLISH OR ADJUST THE PAYMENT PARAMETERS IN ACCORDANCE WITH SECTION 10-16-1105 (2) FOR EACH BENEFIT YEAR;

(f) ASSESS SPECIAL FEES AGAINST HOSPITALS AND, IF APPLICABLE, CARRIERS FOR THE CONTINUOUS OPERATION OF THE REINSURANCE PROGRAM, AS PROVIDED IN SECTION 10-16-1108;

(g) APPLY FOR A STATE INNOVATION WAIVER, FEDERAL FUNDS, OR BOTH, IN ACCORDANCE WITH SECTION 10-16-1109, FOR THE IMPLEMENTATION AND OPERATION OF THE REINSURANCE PROGRAM;

(h) APPLY FOR, ACCEPT, ADMINISTER, AND EXPEND GIFTS, GRANTS, AND DONATIONS AND ANY FEDERAL OR STATE FUNDS THAT MAY BECOME AVAILABLE FOR THE REINSURANCE PROGRAM; AND

(i) ADOPT RULES AS NECESSARY TO IMPLEMENT, ADMINISTER, AND ENFORCE THIS PART 11, INCLUDING RULES NECESSARY TO ALIGN STATE LAW WITH ANY FEDERAL PROGRAM AND RULES. THE RULES SHALL BE ADOPTED IN ACCORDANCE WITH THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24, INCLUDING THE REQUIREMENT TO ESTABLISH A REPRESENTATIVE GROUP OF PARTICIPANTS PURSUANT TO SECTION 24-4-103 (2).

(2) (a) IF THE REINSURANCE PROGRAM IS APPROVED PURSUANT TO SECTION 10-16-1109, THE COMMISSIONER, DURING IMPLEMENTATION OF THE PROGRAM, SHALL EVALUATE THE EFFECT OF THE PROGRAM ON ACCESS TO AFFORDABLE, HIGH-VALUE HEALTH INSURANCE FOR CONSUMERS WHO ARE ELIGIBLE FOR PREMIUM TAX CREDIT SUBSIDIES AND COST SHARING REDUCTIONS AND MINIMIZE ANY POTENTIAL NEGATIVE EFFECTS ON THOSE CONSUMERS.

(b) AFTER THE SECOND FULL YEAR OF OPERATION OF THE PROGRAM, THE COMMISSIONER SHALL COMPLETE A STUDY THAT EVALUATES:

(I) THE EFFECTS OF THE PROGRAM ON ACCESS TO AFFORDABLE, HIGH-VALUE HEALTH INSURANCE FOR CONSUMERS WHO ARE ELIGIBLE FOR PREMIUM TAX CREDIT SUBSIDIES AND COST SHARING REDUCTIONS; AND

(II) HEALTH PLAN AFFORDABILITY, INCLUDING COST SHARING AND PREMIUMS.

(c) THE COMMISSIONER SHALL ISSUE A REPORT ON THE STUDY WITHIN ONE HUNDRED TWENTY DAYS AFTER THE END OF THE SECOND FULL YEAR OF OPERATION OF THE PROGRAM, POST THE REPORT ON THE DIVISION'S WEBSITE, AND SUBMIT THE REPORT TO THE GOVERNOR, THE SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES OR ITS SUCCESSOR COMMITTEE, AND THE HOUSE OF REPRESENTATIVES HEALTH AND INSURANCE COMMITTEE OR ITS SUCCESSOR COMMITTEE.

10-16-1105. Reinsurance program - creation - enterprise status - subject to waiver or funding approval - operation - payment parameters - calculation of reinsurance payments - eligible carrier requests - definition. (1) (a) THERE IS HEREBY CREATED IN THE DIVISION THE COLORADO REINSURANCE PROGRAM TO PROVIDE REINSURANCE PAYMENTS TO ELIGIBLE CARRIERS. IMPLEMENTATION AND OPERATION OF

THE REINSURANCE PROGRAM IS CONTINGENT UPON APPROVAL OF THE STATE INNOVATION WAIVER OR FEDERAL FUNDING REQUEST SUBMITTED BY THE COMMISSIONER IN ACCORDANCE WITH SECTION 10-16-1109.

(b) (I) THE REINSURANCE PROGRAM CONSTITUTES AN ENTERPRISE FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION AS LONG AS THE COMMISSIONER, ON BEHALF OF THE PROGRAM, RETAINS AUTHORITY TO ISSUE REVENUE BONDS AND THE PROGRAM RECEIVES LESS THAN TEN PERCENT OF ITS TOTAL REVENUES IN GRANTS, AS DEFINED IN SECTION 24-77-102 (7), FROM ALL COLORADO STATE AND LOCAL GOVERNMENTS COMBINED. SO LONG AS IT CONSTITUTES AN ENTERPRISE PURSUANT TO THIS SECTION, THE PROGRAM IS NOT A DISTRICT FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

(II) SUBJECT TO APPROVAL BY THE GENERAL ASSEMBLY, EITHER BY BILL OR JOINT RESOLUTION, AND AFTER APPROVAL BY THE GOVERNOR PURSUANT TO SECTION 39 OF ARTICLE V OF THE STATE CONSTITUTION, THE COMMISSIONER, ON BEHALF OF THE REINSURANCE PROGRAM, IS HEREBY AUTHORIZED TO ISSUE REVENUE BONDS FOR THE EXPENSES OF THE PROGRAM, SECURED BY REVENUES OF THE PROGRAM.

(c) IF THE STATE INNOVATION WAIVER OR FEDERAL FUNDING REQUEST SUBMITTED BY THE COMMISSIONER PURSUANT TO SECTION 10-16-1109 IS APPROVED, THE COMMISSIONER SHALL IMPLEMENT AND OPERATE THE REINSURANCE PROGRAM IN ACCORDANCE WITH THIS SECTION.

(d) THE COMMISSIONER SHALL COLLECT OR ACCESS DATA FROM EACH ELIGIBLE CARRIER AS NECESSARY TO DETERMINE REINSURANCE PAYMENTS, ACCORDING TO THE DATA REQUIREMENTS UNDER SUBSECTION (3)(c) OF THIS SECTION.

(e) (I) ON A QUARTERLY BASIS DURING THE APPLICABLE BENEFIT YEAR:

(A) EACH ELIGIBLE CARRIER SHALL REPORT TO THE COMMISSIONER ITS CLAIMS COSTS THAT EXCEED THE ATTACHMENT POINT FOR THAT BENEFIT YEAR;

(B) EACH HOSPITAL THAT IS SUBJECT TO THE SPECIAL FEES ASSESSED PURSUANT TO SECTION 10-16-1108 SHALL REPORT TO THE COMMISSIONER

THE AMOUNT THE HOSPITAL IS RESPONSIBLE FOR FUNDING IN THE BENEFIT YEAR; AND

(C) IF SPECIAL FEES ARE ASSESSED AGAINST CARRIERS PURSUANT TO SECTION 10-16-1108 (1)(b), EACH CARRIER THAT IS SUBJECT TO THE SPECIAL FEES SHALL REPORT TO THE COMMISSIONER ON ITS COLLECTED ASSESSMENTS IN THAT BENEFIT YEAR.

(II) FOR EACH APPLICABLE BENEFIT YEAR, THE COMMISSIONER SHALL NOTIFY ELIGIBLE CARRIERS OF REINSURANCE PAYMENTS TO BE MADE FOR THE APPLICABLE BENEFIT YEAR NO LATER THAN JUNE 30 OF THE YEAR FOLLOWING THE APPLICABLE BENEFIT YEAR. BY AUGUST 15 OF THE YEAR FOLLOWING THE APPLICABLE BENEFIT YEAR, THE COMMISSIONER SHALL DISBURSE ALL APPLICABLE REINSURANCE PAYMENTS TO AN ELIGIBLE CARRIER.

(2) (a) FOR PURPOSES OF DETERMINING ELIGIBILITY FOR AND CALCULATING REINSURANCE PAYMENTS UNDER THE REINSURANCE PROGRAM FOR THE 2020 BENEFIT YEAR IN ORDER TO MAKE PRIVATE HEALTH INSURANCE COVERAGE MORE ACCESSIBLE AND AFFORDABLE AND ENCOURAGE INCREASED CARRIER PARTICIPATION IN RURAL PARTS OF THE STATE, THE COMMISSIONER SHALL SET THE PAYMENT PARAMETERS AT AMOUNTS TO ACHIEVE:

(I) A REDUCTION IN CLAIMS COSTS OF BETWEEN THIRTY AND THIRTY-FIVE PERCENT IN GEOGRAPHIC RATING AREA NUMBERS FIVE AND NINE;

(II) A REDUCTION IN CLAIMS COSTS OF BETWEEN TWENTY AND TWENTY-FIVE PERCENT IN GEOGRAPHIC RATING AREA NUMBERS FOUR, SIX, SEVEN, AND EIGHT; AND

(III) A REDUCTION IN CLAIMS COSTS OF BETWEEN FIFTEEN AND TWENTY PERCENT IN GEOGRAPHIC RATING AREA NUMBERS ONE, TWO, AND THREE.

(b) FOR THE 2021 BENEFIT YEAR, AFTER A STAKEHOLDER PROCESS, THE COMMISSIONER SHALL ESTABLISH AND PUBLISH THE PAYMENT PARAMETERS FOR THAT BENEFIT YEAR BY MARCH 15, 2020. IN SETTING THE PAYMENT PARAMETERS UNDER THIS SUBSECTION (2)(b), THE COMMISSIONER

SHALL CONSIDER THE FOLLOWING FACTORS AS THEY APPLY IN EACH GEOGRAPHIC RATING AREA IN THE STATE:

(I) PARTICIPATION AND COMPETITION BY CARRIERS IN THE INDIVIDUAL MARKET;

(II) ENROLLMENT ACROSS ALL INCOME LEVELS AND MORBIDITY IN THE INDIVIDUAL MARKET;

(III) PARTICIPATION AND COMPETITION BY PROVIDERS; AND

(IV) RATES IN THE INDIVIDUAL MARKET.

(c) IF THE AMOUNT OF MONEY FROM FUNDING SOURCES SPECIFIED IN SECTION 10-16-1107 IS ANTICIPATED TO BE INADEQUATE TO FULLY FUND THE PAYMENT PARAMETERS, THE COMMISSIONER SHALL ESTABLISH NEW PAYMENT PARAMETERS WITHIN THE AVAILABLE MONEY. THE COMMISSIONER SHALL ALLOW AN ELIGIBLE CARRIER TO REVISE AN APPLICABLE RATE FILING FOR THE NEXT BENEFIT YEAR BASED ON THE FINAL PAYMENT PARAMETERS ESTABLISHED PURSUANT TO THIS SUBSECTION (2)(c) AND ON ACTUAL REINSURANCE PAYMENTS RECEIVED BY THE ELIGIBLE CARRIER.

(3) (a) AN ELIGIBLE CARRIER THAT MEETS THE REQUIREMENTS OF THIS SUBSECTION (3) AND SUBSECTION (4) OF THIS SECTION MAY REQUEST REINSURANCE PAYMENTS FROM THE REINSURANCE PROGRAM.

(b) AN ELIGIBLE CARRIER MUST MAKE REQUESTS FOR REINSURANCE PAYMENTS IN ACCORDANCE WITH THE REQUIREMENTS ESTABLISHED BY THE COMMISSIONER.

(c) TO RECEIVE REINSURANCE PAYMENTS THROUGH THE REINSURANCE PROGRAM, AN ELIGIBLE CARRIER MUST, BY APRIL 30 OF THE YEAR FOLLOWING THE BENEFIT YEAR FOR WHICH REINSURANCE PAYMENTS ARE REQUESTED:

(I) PROVIDE THE COMMISSIONER WITH ACCESS TO THE DATA WITHIN THE DEDICATED DATA ENVIRONMENT ESTABLISHED BY THE ELIGIBLE CARRIER UNDER THE FEDERAL RISK ADJUSTMENT PROGRAM UNDER 42 U.S.C. SEC. 18063; AND

(II) SUBMIT TO THE COMMISSIONER AN ATTESTATION THAT THE CARRIER HAS COMPLIED WITH THE DEDICATED DATA ENVIRONMENTS, DATA REQUIREMENTS, ESTABLISHMENT AND USAGE OF MASKED ENROLLEE IDENTIFICATION NUMBERS, AND DATA SUBMISSION DEADLINES.

(d) AN ELIGIBLE CARRIER SHALL MAINTAIN RECORDS SUFFICIENT TO SUBSTANTIATE THE REQUESTS FOR REINSURANCE PAYMENTS MADE PURSUANT TO THIS SECTION FOR AT LEAST SIX YEARS. AN ELIGIBLE CARRIER SHALL ALSO MAKE THOSE RECORDS AVAILABLE UPON REQUEST FROM THE COMMISSIONER FOR PURPOSES OF VERIFICATION, INVESTIGATION, AUDIT, OR OTHER REVIEW OF REINSURANCE PAYMENT REQUESTS.

(e) THE COMMISSIONER MAY HAVE AN ELIGIBLE CARRIER AUDITED TO ASSESS THE CARRIER'S COMPLIANCE WITH THIS SECTION. THE ELIGIBLE CARRIER SHALL ENSURE THAT ITS CONTRACTORS, SUBCONTRACTORS, AND AGENTS COOPERATE WITH ANY AUDIT UNDER THIS SECTION.

(4) (a) (I) THE COMMISSIONER SHALL CALCULATE EACH REINSURANCE PAYMENT BASED ON AN ELIGIBLE CARRIER'S INCURRED CLAIMS COSTS FOR A COVERED PERSON'S COVERED BENEFITS IN THE APPLICABLE BENEFIT YEAR. IF THE CLAIMS COSTS DO NOT EXCEED THE ATTACHMENT POINT FOR THE APPLICABLE BENEFIT YEAR, THE CARRIER IS NOT ELIGIBLE FOR A REINSURANCE PAYMENT.

(II) IF THE CLAIMS COSTS EXCEED THE ATTACHMENT POINT FOR THE APPLICABLE BENEFIT YEAR, THE COMMISSIONER SHALL CALCULATE THE REINSURANCE PAYMENT AS THE PRODUCT OF THE COINSURANCE RATE AND THE ELIGIBLE CARRIER'S CLAIMS COSTS, UP TO THE REINSURANCE CAP.

(b) A CARRIER IS INELIGIBLE FOR REINSURANCE PAYMENTS FOR CLAIMS COSTS FOR A COVERED PERSON'S COVERED BENEFITS IN THE APPLICABLE BENEFIT YEAR THAT EXCEED THE REINSURANCE CAP.

(c) THE COMMISSIONER SHALL ENSURE THAT REINSURANCE PAYMENTS MADE TO AN ELIGIBLE CARRIER DO NOT EXCEED THE TOTAL AMOUNT PAID BY THE ELIGIBLE CARRIER FOR ANY ELIGIBLE CLAIM. "TOTAL AMOUNT PAID BY THE ELIGIBLE CARRIER FOR ANY ELIGIBLE CLAIM" MEANS THE AMOUNT PAID BY THE ELIGIBLE CARRIER BASED ON THE ALLOWED AMOUNT LESS ANY DEDUCTIBLE, COINSURANCE, OR COPAYMENT, AS OF THE TIME THE DATA ARE SUBMITTED OR MADE ACCESSIBLE UNDER SUBSECTION

(3)(c) OF THIS SECTION.

(d) AN ELIGIBLE CARRIER MAY REQUEST THAT THE COMMISSIONER RECONSIDER A DECISION ON THE CARRIER'S REQUEST FOR REINSURANCE PAYMENTS WITHIN THIRTY DAYS AFTER NOTICE OF THE COMMISSIONER'S DECISION. A FINAL ACTION OR ORDER OF THE COMMISSIONER UNDER THIS SUBSECTION (4)(d) IS SUBJECT TO JUDICIAL REVIEW IN ACCORDANCE WITH SECTION 24-4-106.

(5) IN ORDER TO PROMOTE MORE COST-EFFECTIVE HEALTH CARE COVERAGE AND TO BE FAIR TO FEDERAL TAXPAYERS BY RESTRAINING GROWTH IN FEDERAL SPENDING COMMITMENTS, THE COMMISSIONER SHALL REQUIRE EACH ELIGIBLE CARRIER THAT PARTICIPATES IN THE PROGRAM TO FILE WITH THE COMMISSIONER, BY A DATE AND IN A FORM AND MANNER SPECIFIED BY THE COMMISSIONER BY RULE, THE CARE MANAGEMENT PROTOCOLS THE ELIGIBLE CARRIER WILL USE TO MANAGE CLAIMS WITHIN THE PAYMENT PARAMETERS.

10-16-1106. Accounting - reports - audits. (1) THE COMMISSIONER SHALL MAINTAIN AN ACCOUNTING FOR EACH BENEFIT YEAR OF ALL:

(a) MONEY EXPENDED FOR REINSURANCE PAYMENTS AND ADMINISTRATIVE AND OPERATIONAL EXPENSES;

(b) REQUESTS FOR REINSURANCE PAYMENTS RECEIVED FROM ELIGIBLE CARRIERS;

(c) REINSURANCE PAYMENTS MADE TO ELIGIBLE CARRIERS; AND

(d) ADMINISTRATIVE AND OPERATIONAL EXPENSES INCURRED FOR THE REINSURANCE PROGRAM.

(2) BY NOVEMBER 1 OF THE YEAR FOLLOWING THE APPLICABLE BENEFIT YEAR OR SIXTY CALENDAR DAYS AFTER THE FINAL DISBURSEMENT OF REINSURANCE PAYMENTS FOR THE APPLICABLE BENEFIT YEAR, WHICHEVER IS LATER, THE COMMISSIONER SHALL MAKE AVAILABLE TO THE PUBLIC A REPORT SUMMARIZING THE REINSURANCE PROGRAM'S OPERATIONS FOR EACH BENEFIT YEAR. THE COMMISSIONER SHALL POST THE REPORT ON THE DIVISION'S WEBSITE.

(3) THE REINSURANCE PROGRAM IS SUBJECT TO AUDIT BY THE STATE AUDITOR. THE COMMISSIONER SHALL ENSURE THAT ALL OF THE REINSURANCE PROGRAM'S CONTRACTORS, SUBCONTRACTORS, AND AGENTS COOPERATE WITH THE AUDIT.

(4) ON OR BEFORE NOVEMBER 1, 2020, AND ON OR BEFORE NOVEMBER 1, 2021, THE DIVISION SHALL INCLUDE AN UPDATE REGARDING THE PROGRAM IN ITS REPORT TO THE MEMBERS OF THE APPLICABLE COMMITTEES OF REFERENCE IN THE SENATE AND HOUSE OF REPRESENTATIVES AS REQUIRED BY THE "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART) GOVERNMENT ACT", PART 2 OF ARTICLE 7 OF TITLE 2.

10-16-1107. Funding for reinsurance program - sources - permitted uses - reinsurance program cash fund - calculation of total funding for program. (1) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE REINSURANCE PROGRAM CASH FUND, WHICH CONSISTS OF:

(I) FEDERAL PASS-THROUGH FUNDING GRANTED PURSUANT TO 42 U.S.C. SEC. 18052 (a)(3) OR ANY OTHER FEDERAL FUNDS THAT ARE MADE AVAILABLE FOR THE REINSURANCE PROGRAM;

(II) SPECIAL FEES ASSESSED AGAINST HOSPITALS AND, IF APPLICABLE, CARRIERS AS PROVIDED IN SECTION 10-16-1108;

(III) THE FOLLOWING AMOUNTS TRANSFERRED FROM THE GENERAL FUND TO THE REINSURANCE PROGRAM CASH FUND, BUT ONLY IF HOUSE BILL 19-1245 IS ENACTED AT THE FIRST REGULAR SESSION OF THE SEVENTY-SECOND GENERAL ASSEMBLY AND BECOMES LAW:

(A) FIFTEEN MILLION DOLLARS, TRANSFERRED TO THE FUND ON JUNE 30, 2020; AND

(B) FORTY MILLION DOLLARS, TRANSFERRED TO THE FUND ON JUNE 30, 2021;

(IV) AN AMOUNT OF PREMIUM TAX REVENUES DEPOSITED IN THE FUND PURSUANT TO SECTION 10-3-209 (4)(a)(III); AND

(V) ANY MONEY THE GENERAL ASSEMBLY APPROPRIATES TO THE

FUND FOR THE PROGRAM.

(b) ALL MONEY DEPOSITED OR PAID INTO OR APPROPRIATED TO THE REINSURANCE PROGRAM CASH FUND, INCLUDING INTEREST OR INCOME EARNED ON THE INVESTMENT OF MONEY IN THE FUND, IS CONTINUOUSLY AVAILABLE AND APPROPRIATED TO THE DIVISION TO BE EXPENDED IN ACCORDANCE WITH THIS PART 11. ANY INTEREST OR INCOME EARNED ON THE INVESTMENT OF MONEY IN THE FUND SHALL BE CREDITED TO THE FUND.

(c) THE REINSURANCE PROGRAM CASH FUND IS PART OF THE REINSURANCE PROGRAM ENTERPRISE ESTABLISHED PURSUANT TO SECTION 10-16-1105 (1)(b).

(2) THE COMMISSIONER MAY SEEK, ACCEPT, AND EXPEND GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC SOURCES FOR THE OPERATION, RESERVES, AND SUSTAINABILITY OF THE REINSURANCE PROGRAM.

(3) THE COMMISSIONER MAY EXPEND MONEY RECEIVED FROM THE SOURCES SPECIFIED IN SUBSECTIONS (1) AND (2) OF THIS SECTION FOR:

(a) REINSURANCE PAYMENTS UNDER THE REINSURANCE PROGRAM;
AND

(b) ADMINISTRATIVE AND OPERATING EXPENSES OF THE REINSURANCE PROGRAM, THE COMMISSIONER, AND THE DIVISION UNDER THIS PART 11.

10-16-1108. Special assessments against hospitals and carriers - rules - enforcement. (1) (a) (I) FOR THE 2020 AND 2021 BENEFIT YEARS, AS APPLICABLE, THE COMMISSIONER MAY ASSESS SPECIAL FEES AGAINST HOSPITALS, SUBJECT TO THE FOLLOWING:

(A) FEES ASSESSED AGAINST HOSPITALS MUST COMPLY WITH AND NOT VIOLATE 42 CFR 433.68 AND, IN ANY YEAR, MUST NOT EXCEED THE LESSER OF FORTY MILLION DOLLARS OR THE MAXIMUM AMOUNT ALLOWED UNDER 42 CFR 433.68; AND

(B) NO HOSPITAL SYSTEM SHALL BE RESPONSIBLE FOR FUNDING, ON A YEARLY BASIS, MORE THAN TWENTY-FIVE PERCENT OF THE TOTAL FUNDING

REQUIRED FOR THE PROGRAM.

(II) THE COMMISSIONER SHALL NOT FUND THE PROGRAM THROUGH ANY TYPE OF FEE SCHEDULE, RATE SETTING, OR OTHER COST-SAVING MECHANISM IMPOSED ON HOSPITALS.

(b) (I) FOR ANY BENEFIT YEAR STARTING ON OR AFTER JANUARY 1, 2020, IF, AFTER CARRIERS HAVE FILED AND THE COMMISSIONER HAS APPROVED RATES FOR THE BENEFIT YEAR, THE FEDERAL GOVERNMENT SUSPENDS THE FEE IMPOSED PURSUANT TO SECTION 9010 OF THE FEDERAL ACT FOR THAT BENEFIT YEAR, THE COMMISSIONER SHALL ASSESS AGAINST CARRIERS A SPECIAL FEE OF TWO AND TWO-TENTHS PERCENT OF PREMIUMS COLLECTED BY CARRIERS, OR A SPECIAL FEE IN AN AMOUNT EQUAL TO THE AMOUNT OF THE FEE IMPOSED BY THE FEDERAL GOVERNMENT PURSUANT TO SECTION 9010 OF THE FEDERAL ACT IF THAT FEE AMOUNT IS DIFFERENT THAN THE AMOUNT SPECIFIED IN THIS SUBSECTION (1)(b)(I), FOR THE PERIOD THAT CARRIERS COLLECTED THE FEE IMPOSED PURSUANT TO SECTION 9010 OF THE FEDERAL ACT.

(II) THIS SUBSECTION (1)(b) DOES NOT APPLY TO PLANS OR BENEFITS PROVIDED UNDER MEDICARE, MEDICAID, OR THE "CHILDREN'S BASIC HEALTH PLAN" ESTABLISHED UNDER ARTICLE 8 OF TITLE 25.5.

(c) THE COMMISSIONER SHALL USE THE SPECIAL FEES ASSESSED PURSUANT TO THIS SUBSECTION (1) TO PAY THE ADMINISTRATIVE AND OPERATING EXPENSES OF THE REINSURANCE PROGRAM, INCLUDING REINSURANCE PAYMENTS AND EXPENSES OF THE PROGRAM, THE COMMISSIONER, AND THE DIVISION.

(d) THE COMMISSIONER SHALL TRANSMIT SPECIAL FEES COLLECTED PURSUANT TO THIS SUBSECTION (1) TO THE STATE TREASURER FOR DEPOSIT IN THE REINSURANCE PROGRAM CASH FUND CREATED IN SECTION 10-16-1107.

(2) THE COMMISSIONER SHALL PROMULGATE RULES TO IMPLEMENT THIS SECTION, INCLUDING:

(a) THE REASONABLE TIME PERIODS FOR THE BILLING AND COLLECTION OF THE SPECIAL FEES; AND

(b) DETERMINING THE AMOUNT OF THE ASSESSMENT ON HOSPITALS IN ACCORDANCE WITH SUBSECTION (1)(a) OF THIS SECTION.

(3) A HOSPITAL SHALL PAY THE SPECIAL FEES IMPOSED PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION FROM ITS GENERAL REVENUES AND IS PROHIBITED FROM:

(a) COLLECTING AN ASSESSMENT FROM CONSUMERS AS ANY TYPE OF SURCHARGE ON ITS FEES;

(b) PASSING THE SPECIAL FEES ON TO CONSUMERS AS ANY TYPE OF INCREASE TO FEES OR CHARGES FOR SERVICES; OR

(c) OTHERWISE PASSING THE SPECIAL FEE ON TO CONSUMERS IN ANY MANNER.

(4) IF THE FEDERAL CENTERS FOR MEDICARE AND MEDICAID SERVICES IN THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES INFORMS THE STATE THAT THE STATE WILL NOT BE IN COMPLIANCE WITH 42 CFR 433 AS A RESULT OF THE SPECIAL FEES ASSESSED ON HOSPITALS PURSUANT TO THIS SECTION, THE COMMISSIONER SHALL REDUCE THE AMOUNT OF THE SPECIAL FEES AS NECESSARY TO AVOID ANY REDUCTION IN THE HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE COLLECTED PURSUANT TO SECTION 25.5-4-402.4.

(5) IF A HOSPITAL OR CARRIER, IF APPLICABLE, FAILS TO PAY A SPECIAL FEE TO THE COMMISSIONER 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.

10-16-1109. State innovation waiver - federal funding - Colorado reinsurance program. (1) (a) FOR PURPOSES OF IMPLEMENTING AND OPERATING THE REINSURANCE PROGRAM AS SET FORTH IN THIS PART 11 FOR PLAN YEARS STARTING ON OR AFTER JANUARY 1, 2020, THE COMMISSIONER MAY APPLY TO THE SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR:

(I) A TWO-YEAR STATE INNOVATION WAIVER IN ACCORDANCE WITH SECTION 1332 OF THE FEDERAL ACT, CODIFIED AT 42 U.S.C. SEC. 18052, AND

45 CFR 155.1300;

(II) FEDERAL FUNDS FOR THE REINSURANCE PROGRAM; OR

(III) A STATE INNOVATION WAIVER AND FEDERAL FUNDS.

(b) AN APPLICATION FOR A STATE INNOVATION WAIVER OR FOR FEDERAL FUNDS MUST CLEARLY STATE THAT OPERATION OF THE REINSURANCE PROGRAM IS CONTINGENT ON APPROVAL OF THE WAIVER OR FUNDING REQUEST.

(c) THE COMMISSIONER SHALL ENSURE THAT A WAIVER APPLICATION SUBMITTED PURSUANT TO THIS SECTION COMPLIES WITH THE REQUIREMENTS SPECIFIED IN SECTION 1332 OF THE FEDERAL ACT, CODIFIED AT 42 U.S.C. SEC. 18052, AND 45 CFR 155.1308.

(d) THE COMMISSIONER SHALL INCLUDE IN A WAIVER APPLICATION A REQUEST FOR A PASS-THROUGH OF FEDERAL FUNDING IN ACCORDANCE WITH SECTION 1332 (a)(3) OF THE FEDERAL ACT, 42 U.S.C. SEC. 18052 (a)(3), TO ALLOW THE STATE TO OBTAIN AND USE, FOR PURPOSES OF HELPING FUND THE REINSURANCE PROGRAM, ANY FEDERAL FUNDS THAT WOULD, ABSENT THE WAIVER, BE USED TO PAY ADVANCE PAYMENT TAX CREDITS AND COST-SHARING REDUCTIONS AUTHORIZED UNDER THE FEDERAL ACT.

(2) THE COMMISSIONER SHALL NOTIFY THE FOLLOWING IN WRITING OF ANY FEDERAL ACTIONS REGARDING THE WAIVER OR FUNDING REQUEST:

(a) THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY;

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

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

10-16-1110. Repeal of part - notice to revisor of statutes.

(1) (a) THE COMMISSIONER SHALL NOTIFY THE REVISOR OF STATUTES IN WRITING, BY E-MAIL SENT TO REVISOROFSTATUTES.GA@STATE.CO.US, UPON RECEIPT FROM THE SECRETARY OF THE UNITED STATES DEPARTMENT OF

HEALTH AND HUMAN SERVICES OF NOTICE OF APPROVAL OR DENIAL OF THE WAIVER OR FUNDING REQUESTED UNDER SECTION 10-16-1109.

(b) (I) IF THE NOTICE FROM THE COMMISSIONER STATES THAT THE WAIVER OR FUNDING WAS DENIED, THIS PART 11 IS REPEALED, EFFECTIVE UPON THE DATE IDENTIFIED IN THE NOTICE THAT THE WAIVER OR FUNDING WAS DENIED OR, IF THE NOTICE DOES NOT SPECIFY THAT DATE, UPON THE DATE OF THE NOTICE OF DENIAL TO THE REVISOR OF STATUTES.

(II) IF THE NOTICE FROM THE COMMISSIONER STATES THAT THE WAIVER OR FUNDING WAS APPROVED, THIS SUBSECTION (1) IS REPEALED, EFFECTIVE UPON THE DATE IDENTIFIED IN THE NOTICE THAT THE WAIVER OR FUNDING WAS APPROVED OR, IF THE NOTICE DOES NOT SPECIFY THAT DATE, UPON THE DATE OF THE NOTICE OF APPROVAL TO THE REVISOR OF STATUTES.

(2) THIS PART 11 IS REPEALED, EFFECTIVE SEPTEMBER 1, 2023.

SECTION 2. In Colorado Revised Statutes, 10-3-209, **amend** (4)(a) as follows:

10-3-209. Tax on premiums collected - exemptions - penalties - repeal. (4) (a) The division of insurance shall transmit all taxes, penalties, and fines it collects under this section to the state treasurer for deposit in the general fund; except that the state treasurer shall deposit amounts in the specified cash funds as follows:

(I) In the division of insurance cash fund created in section 10-1-103 (3), an amount that is equal to the general assembly's appropriation from the fund to the division for its direct and indirect expenditures less the total fee revenue that is deposited in the fund; except that the amount deposited in the fund under this subparagraph (I) ~~may~~ SHALL not exceed five percent of all taxes collected under this section; ~~and~~

(II) In the wildfire emergency response fund created in section 24-33.5-1226 ~~C.R.S.~~; and the wildfire preparedness fund created in section 24-33.5-1227, ~~C.R.S.~~, the amount of the taxes, penalties, and fines that the general assembly appropriates to each of the cash funds; AND

(III) (A) FOR THE 2020-21 AND 2021-22 FISCAL YEARS, IN THE REINSURANCE PROGRAM CASH FUND CREATED IN SECTION 10-16-1107, AN

AMOUNT EQUAL TO THE AMOUNT OF PREMIUM TAXES COLLECTED PURSUANT TO THIS SECTION IN THE 2020 CALENDAR YEAR THAT EXCEEDS THE AMOUNT OF PREMIUM TAXES COLLECTED PURSUANT TO THIS SECTION IN THE 2019 CALENDAR YEAR.

(B) THIS SUBSECTION (4)(a)(III) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2023.

SECTION 3. Appropriation. For the 2019-20 state fiscal year, \$785,904 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., and is based on an assumption that the division will require an additional 3.0 FTE. To implement this act, the division may use this appropriation for the Colorado reinsurance program.

SECTION 4. 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.

KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Leroy M. Garcia
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

Attachment 3 - Notices sent announcing start of public comment period and public meetings



Consumer Protection is Our Mission.

Public Comment on Reinsurance Program / 1332 Waiver Request

Your opportunity to comment on the proposed program to address rising health insurance premiums

DRAFT - Colorado's Section 1332 Waiver Application Request to the Federal Government - posted for public comment on April 16, 2019

Public Comment Hearings - April 2019

- **April 22, Monday** - 11 a.m. - 1 p.m., Larimer County Fairgrounds and Events Complex (aka The Ranch), Thomas M. McKee Building, Loveland and Fort Collins Rooms, 5280 Arena Circle, Loveland, 80538. Public parking is available (please do not park in the permit parking lot as Larimer County Sheriffs will issue tickets).
- **April 29, Monday** - 1 p.m. - 3 p.m., in Denver, 1560 Broadway, Conference Room 110D. This meeting will also be available via online participation. Please contact David Barnes (david.barnes@state.co.us) for details on how to participate online for this meeting. If you are attending in person, recognize that parking in downtown Denver can be difficult, so please allow yourself sufficient time.

These are hearings for members of the public and interested stakeholders to offer their comments on the [draft 1332 Waiver Request](#) and the proposed Reinsurance Program.

Submitting Written Comments

Members of the public and interested stakeholders may also submit written comments on the draft 1332 Waiver Request and the proposed Reinsurance Program. **Please send an email to DORA_INS_RulesAndRecords@state.co.us with the subject "Written Comments on Reinsurance."** The comment period will close on **Thursday, May 16, 2019 at 11:59 p.m. (MDT)**, 30 days after the draft waiver request was posted, so comments must be received by this time.

What is the proposed Reinsurance Program? What is the 1332 Waiver Request?

Reinsurance Program

Reinsurance is a program designed to help Coloradans in the individual health insurance market. It would pay a percentage of expensive claims (called the "coinsurance amount") once an individual reaches a certain level (known as the "attachment point") up to a cap. For example, the program might set the attachment point at \$50,000, with a coinsurance amount of 75 percent, with a cap of \$500,000. The insurance company would pay the claims up to the attachment point. Once the person's medical costs (i.e., what is being charged by doctors and hospitals) reached the attachment point of \$50,000 in a year, the reinsurance program would pay the coinsurance amount of 75 percent of the costs after that (with the insurance company paying the other 25 percent), up to the cap of \$500,000. At that point, the insurance company would again take over the payment of the claims.

Such a program reduces the impact of the high-cost claims on the insurance pool. That, in turn, will reduce Coloradans' health insurance premiums in the individual market. In addition, the program may also provide an incentive for insurance companies to remain in the Colorado individual market, and possibly expand into areas of the state that currently have fewer companies offering individual plans.

[House Bill 19-1168 \(HB19-1168\), the State Innovation Waiver Reinsurance Program](#), is currently working its way through the 2019 Colorado Legislature. This bill establishes the reinsurance program and instructs the Colorado Division of Insurance to request the 1332 waiver from the federal government. The attachment point and cap are not set by the legislation, but directs the Colorado Insurance Commissioner to establish these parameters.

1332 Waiver Request

A key element in funding the reinsurance program is what is known as pass-through funding from the federal government. Under the Affordable Care Act (ACA), for people with household incomes under 400 percent (4 times) of the Federal Poverty Level, tax credits from the federal government are available to help make health insurance in the individual market more affordable. These tax credits are tied to health insurance premiums, so that when premiums go up, tax credits go up, and when premiums go down, the tax credits also go down.

As the reinsurance program brings health insurance premiums down, the amount of money the federal government spends on tax credits will also go down. But rather than letting it pocket the money, Colorado will ask the federal government to pass that money through to the state to fund the reinsurance program and maintain the lower premiums and stability it will bring to the individual health insurance market. Section 1332 of the ACA gives states the flexibility to waive certain provisions and receive federal funding to implement state-based health care policies. It is through a request for a 1332 waiver that Colorado will request these pass-through funds.

Seven other states have requested and received a waiver to establish reinsurance programs for their individual health insurance markets.

Other Resources

- [HB19-1168 - The State Innovation Waiver Reinsurance Program](#)
- [Colorado Reinsurance Program Analysis, Addendum - from the actuarial firm of Lewis & Ellis](#)
- [Colorado Reinsurance Program Analysis - from the actuarial firm of Lewis & Ellis](#)
- [Commissioner Conway's Presentation on HB19-1168 / Reinsurance Program - from 2/27/19](#)

Contact Information

Division of Insurance, Colorado Department of Regulatory Agencies

1560 Broadway, Suite 850

Denver, CO 80202

Phone: [303-894-7499](tel:303-894-7499) | [1-800-930-3745](tel:1-800-930-3745)



Mortier - DORA, Matt <matt.mortier@state.co.us>

Colorado Reinsurance Program Draft Section 1332 Waiver Application - 30-Day Public Comment Period

1 message

Division of Insurance <DORA.Colorado.Insurance@public.govdelivery.com>
Reply-To: DORA.Colorado.Insurance@public.govdelivery.com
To: matt.mortier@state.co.us

Tue, Apr 16, 2019 at 5:05 PM

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Colorado Reinsurance Program Draft Section 1332 Waiver Application - 30-Day Public Comment Period

The Division of Insurance would like to inform the public that it has completed its draft Section 1332 Waiver Application establishing a Colorado Reinsurance Program, and that the 30-Day public comment period begins today, April 16th, and will remain open through May 16th, 2019.

The Division is requesting public comment on the draft Section 1332 Waiver Application, which can be found on the Division's website at the following link:

Division of Insurance Draft Section 1332 Waiver Application

The draft waiver application can also be found through the Division of Insurance main web page.

Comments can be submitted to the Division at the following email address: DORA_INS_RulesAndRecords@state.co.us, or via the links on the page containing the draft application.

Additionally, the Division has scheduled two public meetings to discuss and gather public input on the development and implementation of a state-wide reinsurance program and the corresponding draft Section 1332 Waiver Application.

These meetings will be held on the following dates and times:

First Public Meeting - April 22, Monday - 11 a.m. - 1 p.m., Larimer County Fairgrounds and Events Complex (aka The Ranch), Thomas M. McKee Building, Loveland and Fort Collins Rooms, 5280 Arena Circle, Loveland, 80538. Public parking is available

Second Public Meeting - April 29, Monday - 1 p.m. - 3 p.m., in Denver, 1560 Broadway, Conference Room 110D (First Floor). This meeting will also be available via online participation. This meeting will also be available via an online webinar. Go to https://attendee.gotowebinar.com/register/6558756582554805763 to register for the webinar. After registering, you will be sent details about how to listen via telephone or your computer's audio, as well as system requirements.

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Mortier - DORA, Matt <matt.mortier@state.co.us>

UPDATED Notice of Public Meetings on Colorado Reinsurance Program and 1332 Waiver Application Process: TEST

1 message

Division of Insurance <DORA.Colorado.Insurance@public.govdelivery.com>
To: matt.mortier@state.co.us, vincent.plymell@state.co.us

Fri, Apr 12, 2019 at 12:20 PM

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Notice of Public Meetings on Colorado Reinsurance Program and 1332 Waiver Application Process

The Division of Insurance would like to inform the public that is has scheduled two public meetings to discuss and gather public input on the development and implementation of a state-wide reinsurance program and the corresponding 1332 waiver application process.

These meetings will be held on the following dates and times:

First Public Meeting - April 22, Monday - 11 a.m. - 1 p.m., Larimer County Fairgrounds and Events Complex (aka The Ranch), [Thomas M. McKee Building, Loveland and Fort Collins Rooms, 5280 Arena Circle, Loveland, 80538](#). Public parking is available

Second Public Meeting - April 29, Monday - 1 p.m. - 3 p.m., in [Denver, 1560 Broadway, Conference Room 110D \(First Floor\)](#). This meeting will also be available via online participation. Please contact David Barnes (david.barnes@state.co.us) for details on how to participate online for this meeting.

Additional information concerning the meetings will be sent out as the dates of the meeting approach.

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DORA / DOI Social Media for 1332 Waiver / Reinsurance Public Comment Meetings Twitter - From 4/17/19

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Div of Insurance is hosting public meetings on the proposed reinsurance program (for indiv health insurance) on 4/22 & 4/29. Written comments will also be accepted until 5/16. Visit bit.ly/2ZkRe3p for details on the meetings, written comments & reinsurance. #CoDOI

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Colorado Department of Regulatory Agencies
Published by dora_communications@state.co.us [?] · April 17 at 4:00 PM ·

Division of Insurance is hosting public meetings on the proposed reinsurance program for the individual health insurance market on April 22 (Loveland) and April 29 (Denver). Interested parties can also submit written comments until May 16. Visit <https://bit.ly/2ZkRe3p> for details on the meetings, how to submit written comments & more info about the reinsurance program.

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Reinsurance Study / High-Risk Health Coverage

HB19-1168 Information

[HB19-1168, The State Innovation Waiver Reinsurance Program](#) was introduced in to the Colorado House of Representatives on Feb. 1, 2019. A key element of the bill is an actuarial study of the impact to health costs and health insurance premiums from the reinsurance program.

- [Public Meetings and Comment Period on Reinsurance Program and 1332 Waiver Request](#)
- [Colorado Reinsurance Program Actuarial Analysis, from actuarial firm of Lewis & Ellis - March 2019](#)
- [Addendum to Colorado Reinsurance Program Actuarial Analysis - Program Costs without Reference-Based Pricing - March 2019](#)
- [Commissioner Conway's Presentation on HB19-1168 and the Reinsurance Program - Feb. 27, 2019, House Health and Insurance Committee Hearing](#)

SB17-300 Actuarial Studies / Reports

In 2017, the Colorado Legislature passed [SB17-300](#), which directed the Division of Insurance to "explore the feasibility of maintaining healthcare coverage for high-risk individuals and reducing premiums through a reinsurance program or other high-risk programs." The information below contains the actuarial studies and reports that were the outcome of that bill, as well as information and materials from the numerous stakeholder meetings that were convened on this topic throughout 2017.

- [Milliman Inc. Final Actuarial Report to the Colorado High-Risk Health Care Coverage Task Force - Nov. 11, 2017](#)
- [Milliman Inc. Summary / Appendix of Final Actuarial Report - Jan. 4, 2018](#)
- [Milliman Inc. Addendum to Final Actuarial Report - Jan. 4, 2018](#)
- [Division of Insurance Preliminary Report Regarding SB17-300 Colorado High-Risk Health Coverage Study - Oct. 2, 2017](#)
- [Milliman Inc. Preliminary Findings - Actuarial Report to the Colorado High-Risk Health Care Coverage Task Force - Sept. 27, 2017](#)
- [High-Risk Reinsurance Proposal Summary / Fact Sheet - Jan. 5, 2018](#)

SB17-300 Stakeholder Meetings and Materials

- [6-20-17 Agenda - High-Risk Health Care Coverage Study Meeting](#)
- [6-20-17 Presentation - High-Risk Health Care Coverage Study Meeting](#)
- [7-11-17 Agenda - High-Risk Health Care Coverage Study Meeting](#)
- [7-11-17 Presentation - High Risk Health Care Coverage Study Meeting](#)
- [More >](#)

Contact Information

Division of Insurance, Colorado Department of Regulatory Agencies
1560 Broadway, Suite 850
Denver, CO 80202
Phone: [303-894-7499](tel:303-894-7499) | [1-800-930-3745](tel:1-800-930-3745)

Attachment 4

Public Hearing Summary 4-22-19

Division staff delivered a presentation on the draft Section 1332 waiver application that had been released for public comment on April 15th, as well as the reinsurance program as contained in the most recent version of HB 19-1168. No opposition was expressed to the proposed reinsurance program or the draft Section 1332 waiver by attendees. Questions were asked and answered on the state of the individual market, reinsurance programs in general, and how a reinsurance program would be implemented in Colorado. The questions asked during the public hearing are summarized below.

Attendees:

Amber Burkhart – Colorado Hospital Association
Saphia Elfituri – Connect for Health Colorado
Alyson Williams – Health District of Northern Larimer County
Melanie Herrman – Volk Insurance Benefits
Lowell Volk – Volk Insurance Benefits
Julie Mowry – Colorado Association of Health Plans

Questions:

1. How will the Division ensure the hospital fee is not passed-on to consumers?

The legislation as drafted does not allow hospitals to pass their fee on to consumers or to the insurance companies. If evidence is brought to the Division that the fee is being passed-on, the Division will take corrective action as needed.

2. Can you explain how the health insurance tax (HIT) would be utilized by the reinsurance program?

The federal government may waive the Health Insurance Tax after rates have been filed. If carriers are not required to pay the health insurance tax, carriers would not be able to retain that portion of premium as it would mean their filed rates were excessive and the premiums collected are too high for the benefits provided. If that is the case, carriers would be required to pay the health insurance tax portion of the premiums collected to the reinsurance program to help fund the program.

3. Which actuarial firm has the Division retained for the analysis?

Lewis and Ellis have been retained by the Division to conduct the required actuarial analysis, and the draft analysis is currently posted on the Division's website.

4. If the attachment is \$50,000 – how many consumers/claims hit that mark?

National studies show that 5% of claims account for 50% of total health care spend.

The Division is having Lewis and Ellis look to see what claims impact will occur at that attachment point.

5. What percentage of annual claims spend falls within the \$50,000 - \$500,000 range, and how many claims exceed the \$500,000 cap annually.

The Division will check with Lewis and Ellis to find out.

6. What is the impact on the MLR from the reinsurance program?

The Division will check with Lewis and Ellis to find out.

7. Is the attachment point based on the billed charges, or the negotiated rate?

The Division will clarify in the application that the attachment point is based upon the contractual payments made, and not based upon billed charges.

8. What if there is not enough funding allocated to meet the targets contained in the reinsurance bill (HB 19-1168)? Can the program be adjusted to hit the targets in the bill? What if the actuarial study is wrong?

That's why the payment parameters are adjustable, and the legislation allows the payment parameters to be changed year-over-year in order to meet the targets contained in the bill. If the funding is not sufficient to meet the targets, the payment parameters can be adjusted based on the dollars available to provide as much premium reduction as possible with the funding available.

9. Concern that years 3 and 4 will have big premium increases after carriers figure out what their high-cost claims experience is – don't want clients to experience a 30% or 40% increase – what if we have to make a last-minute change to rates?

DOI works with carriers year-round on rate filing questions and issues and carriers would have enough notice to adjust rates as needed. Carriers still need to ensure that the rates they file are actuarially justified. Carrier initial rates are filed in June, but not finalized until fall, which allows time for adjustment if necessary.

10. How do carriers submit rates based on an estimated amount they will be paid in the future?

The state reinsurance program is similar to the Federal reinsurance program and the risk adjustment program, so carriers are familiar with this process and the time required to receive payment, so they know how to build it into their rates and justify it actuarially.

11. What if the deadlines aren't met? Would there be more emergency regulations extending open enrollment?

If the bill passes, everything will be in place to hit the submission deadlines. The rules that would be promulgated would not have anything to do with enrollment periods, but rather with the rate filings and payment parameters.

12. Can you tell us how your conversations have been like with your federal partners? It seems like they are generally supportive – can you tell us where things are at with them?

The Division has shared drafts prior to the start of the formal 30-day comment period and has received and incorporated comments from our federal partners, which are reflected in this draft application. Working with our federal partners throughout the process ensures that they know what will be included in the final application and the structure and format of the program.

13. Is the reduction in 2020 without the program vs. with the program? Or based on 2019 premium?

The calculated premium savings are based on the projected increase from 2019 to 2020 without the program being in place compared to the projected premiums if the reinsurance program is in place.

14. Are there safeguards to ensure risk is not shifted to consumers through an increase in coinsurance and increased deductible but with a lower premium?

Colorado Insurance Regulation 4-2-39 sets rate filings requirements for health benefit plans, including the requirement that they be actuarial justified, which should prevent such a shift of risk.

15. Concern that hospitals paying for reinsurance will cause those hospitals to reduce services or cut services to stay profitable – some small hospitals have expressed concern that paying for the assessment for reinsurance will completely consume their margins – will there be an analysis of the impact on access to care of the reinsurance program?

This concern is reasonable, but the Division will need to see what is in the final bill for reporting requirements, though there is a section of the bill that allows facilities to apply for exemption from the hospital assessments if certain criteria are met, including financial hardship.

Attachment 5

Public Hearing Summary 4-29-19

Division staff and Commissioner Conway delivered a presentation on the draft Section 1332 waiver application that had been released for public comment, as well as the reinsurance program as contained in the most recent version of HB 19-1168. No opposition was expressed to the proposed reinsurance program or the draft Section 1332 waiver by attendees. Questions were asked and answered on the state of the individual market, reinsurance programs in general, and how a reinsurance program would be implemented in Colorado. The questions asked during the public hearing, and comments expressed by attendees are summarized below.

Attendees:

In-Person

Dan O'Connell – United Health Group
Jacob Wager – CIGNA
Allison Summerton – Aurora Coverage Assistance Network
Amy Goodman – Colorado Medical Society
Rebecca Weiss – Anthem
Brad Niederman – Colorado State Association of Health Underwriters
Dustin Arnette – Connect for Health Colorado
Dawn Tuttle – Kaiser Permanente
Amanda Massey – Colorado Association of Health Plans
Debra Judy – Colorado Consumer Health Initiative
Bethany Pray – Colorado Center for Law and Policy
Sara Orrange – America's Health Insurance Plans
Lila Cummings – Colorado Hospital Association
Eileen Hunt – Member of the public

Via Webinar

Tim Hebert
Jessalyn Hampton
P. Lyons
Alyson Williams
Anna Winters
R. Allan Jensen
Amanda Massey
Alison Keesler
Julie Mowry
Chandler Budlong
Antonio Briceno
Patrick Kelly
Braiden Darley
Erik Knudsen

Lucy DePretis
Robert Hughes
Erin Tilbury
Himanshu Porwal
Shauna Broadus
Lisa Wieggers
Paul Clift
Dana Bacon
Evon Holladay
Sheryl Briles-Thomson
Lori Fennessey
Karen Artell
Cindy Petersen
Dustin Arnette
Annika Clifton
Patti Meyer

Questions/Comments

1. Is it correct to assume that reinsurance will be in place for each of the regions for 2020? What numbers should we use when the program parameters aren't set yet?

Carriers will need to file two sets of rates and DOI will promulgate an emergency regulation with the payment parameters soon after the bill is passed – the regulation will set the attachment points, coinsurance rates, and caps by rating region.

2. Will the revised actuarial analysis based on the final bill and the economic analysis be released for review prior to the submission of the 1332 waiver application?

Due to the tight time-frames it is not clear if the Division will be able to release the updated actuarial analysis and economic analysis prior to submitting the waiver application.

3. Will the reinsurance program be applied to other products, such as the Peak Health Alliance or the public option if/when it becomes available?

Peak Health Alliance is an entity that negotiates rates in the ACA market, so no impact on Peak Health Alliance, but it will impact the individual, small group, and large group market products that are purchased through the health alliance. It is unknown at this time what impact the program may have on any option developed under HB 19-1004.

4. Is the attachment point per contract/individual, not per family?

Yes, the attachment point is per contract, not per family.

5. In the introduced version of the bill, the funding was set for five years, and the revised version shows the program funding being for two years?

The bill as it is now establishes a two year program.

6. The revised version of the bill appears to establish a repeal in 2023, is this correct?

Yes. If the legislature doesn't renew it or extend the legislation, the program will end in 2023.

7. What is total funding needed for the first year?

\$120 million in funding is needed for the state share, with the ability to adjust the program if the funding ends up being a different amount.

8. Is the established coinsurance amount for the consumer, or for the carrier?

The coinsurance is the amount to be paid for the claim by the program, not a coinsurance percentage paid by a policyholder.

9. To clarify: once claim costs met the cap, the claim goes back to the insurer?

Correct. The carrier will be responsible for 100% of the claim costs over the cap, while the reinsurance program would pay a portion of the claim for the costs between the attachment point and the reinsurance program cap.

10. As some of the funding is coming from the hospitals, has there been any discussion about hospitals potentially passing this on to carriers and/or consumer?

There have been discussions on this potential issue, and there are specific prohibitions in the bill against hospitals passing their portion of the funding for the reinsurance program on to carriers and/or consumers.

11. How would the DOI ensure that there is no cost-shifting by hospitals, and how would that be monitored and policed?

The DOI will be operating under the assumption that hospitals will comply with the language in the bill, and will be happy to take suggestions and continue conversations around ways to ensure that no cost shifting by hospitals takes place.

12. If a carrier sets rates based on "best guess" of what the federal pass-through will be, and if the federal pass-through isn't as much as anticipated, does that leave the state having to make up the shortfall for 2021?

Some states have received more than they anticipated, some have received less. The Division has a window in which adjustments can be made each year in case of funding shortfalls. Carriers will also have the ability to increase rates as needed if funding issues arise.

13. What is the duration of the program, as it appears to start in 2020, but ends in 2023?

The duration is based on how the payment process works. The 2021 claims to the reinsurance program would be paid in 2022 and 2023. The 2023 sunset date allows time for claims run-out.

14. Have any other states had fewer than 5 year programs approved?

Yes, several states have programs that last fewer than five years. The Division is working with our federal partners so they know the requested duration of the program before the application is submitted.

15. Does reinsurance only apply to the individual market, and is there any way it might negatively affect the small group market?

The program only applies to the individual market, and it does not appear that there would be a negative impact on the small group market. There has not been an instance of a reinsurance program negatively impacting the small group market in the other states that have implemented a reinsurance program.

16. If the state decides to have the reinsurance program extend beyond the initially approved two years, will the state have to go through the application process again?

The waiver program will be two years at least initially, so the Division would need to go back and reapply for the waiver prior to the expiration date.

17. There is concern about network access in rural areas, and it is unclear if reinsurance will be enough to motivate additional carriers to sell individual plans rural areas. If hospitals and carriers are charged a fee to fund the program, carriers might not find it advantageous to participate in the individual market. Does the Division know what claims reduction figure would encourage carriers to come into new areas or start offering individual plans?

Part of the hope of the reinsurance program is to bring additional carriers into the rural areas, into the individual market, and possibly bring new carriers into the state. It should be noted that there are no fees being placed upon carriers to fund this program in the current version of the bill.

18. If the court case in Texas is successful in striking-down the ACA, this program goes away?

Yes.

19. The bill has different reimbursement rates for different areas. Why not a statewide reimbursement rate? A single statewide rate would still represent a significant savings for the rural areas.

The intent is to achieve greater rate reduction in the areas of the state hit hardest by recent rate increases.

20. Why do the numbers discussed today differ from the initial draft?

Since the draft was released, the Division received more complete data, including data from Connect for Health Colorado, that allowed a more accurate calculation of the impact of silver-loading on the market and on APTC.

21. With recent federal guidance indicating that there will be a change in how APTC will be calculated in 2020, and estimates that show there will be an overall reduction in APTC payments of around \$980 million, has this been considered in the Division's actuarial analysis?

The Division is working with the retained actuarial firm to adjust the analysis accordingly.

22. Is there a requirement that federal pass-through funding match the level of state funding/the state share of the reinsurance program?

The state share doesn't have to match the federal pass-through. Based on current legislation the program is funded to about \$120 Million for the first program year (2020).



May 2, 2019

Division of Insurance
Colorado Department of Regulatory Agencies
1560 Broadway, Suite 850
Denver, CO 80202

Re: Colorado Section 1332 State Innovation Waiver

Dear Colorado Division of Insurance,

The Arthritis Foundation appreciates the opportunity to submit comments on Colorado's Section 1332 State Innovation Waiver. The Arthritis Foundation is the Champion of Yes. Leading the fight for the arthritis community, the Foundation helps conquer everyday battles through life-changing information and resources, access to optimal care, advancements in science, and community connections. We work on behalf of the over 930,000 people in Colorado who live with the chronic pain of arthritis every day.

The Arthritis Foundation believes everyone should have high-quality, affordable healthcare coverage. A strong, robust marketplace is essential for people with arthritis to access the coverage that they need. The Arthritis Foundation supports Colorado's efforts to strengthen its marketplace by submitting a 1332 State Innovation Waiver to implement a reinsurance program.

Reinsurance is an important tool to help stabilize health insurance markets. Reinsurance programs help insurance companies cover the claims of very high cost enrollees, which in turn keeps premiums affordable for other individuals buying insurance on the individual market. Reinsurance programs have been used to stabilize premiums in a number of healthcare programs, such as Medicare Part D. A temporary reinsurance fund for the individual market was also established under the Affordable Care Act and reduced premiums by an estimated 10 to 14 percent in its first year.¹ A recent analysis by Avalere of the seven states that have already created their own reinsurance programs through Section 1332 waivers found that these states reduced individual market premiums by an average of 19.9 percent in their first year.²

Colorado's proposal will create a reinsurance program starting for the 2020 plan year and continuing for five years. This program is projected to reduce premiums by nearly 23 percent and increase the number of individuals obtaining health insurance through the individual market by over 6 percent. This would help patients with pre-existing conditions, including patients with arthritis, obtain affordable, comprehensive coverage.

The Arthritis Foundation believes the 1332 State Innovation Waiver will help stabilize the individual market in Colorado and protect patients and consumers. Thank you for the opportunity to provide comments.

Sincerely,

A handwritten signature in black ink that reads "Benjamin Chandhok".

Ben Chandhok
Senior Director, State Legislative Affairs
Arthritis Foundation

¹ American Academy of Actuaries, Individual and Small Group Markets Committee. *An Evaluation of the Individual Health Insurance Market and Implications of Potential Changes*. January 2017. Retrieved from https://www.actuary.org/files/publications/Acad_eval_indiv_mkt_011817.pdf.

² Avalere. *State-Run Reinsurance Programs Reduce ACA Premiums by 19.9% on Average*. March 2019. Retrieved from <https://avalere.com/press-releases/state-run-reinsurance-programs-reduce-aca-premiums-by-19-9-on-average>.



May 13, 2019

Michael Conway
Insurance Commissioner
Colorado Department of Regulatory Agencies
Division of Insurance
1560 Broadway, Suite 850
Denver, CO 80202

Re: Colorado Section 1332 State Innovation Waiver

Dear Commissioner Conway:

The Leukemia & Lymphoma Society (LLS) appreciates the opportunity to submit comments in support of Colorado's Section 1332 State Innovation Waiver.

At LLS, our mission is to cure leukemia, lymphoma, Hodgkin's disease and myeloma, and improve the quality of life of patients and their families. We exist to find cures and ensure access to treatments for blood cancer patients. We believe firmly that all patients and consumers should have access to high quality, stable coverage to ensure that they are able to receive appropriate and timely care. It is in service to this mission that we offer these comments in support of a reinsurance program in Colorado that prioritizes improved access to stable, affordable coverage for patients and consumers.

Colorado's proposal will create a reinsurance program starting in the 2020 plan year, subject to funding parameters. This program is projected to reduce premiums by 22.8 percent on average, with varied levels of relief across three geographic tiers. Program administrators expect reinsurance will drive up individual market enrollment by approximately 6.6 percent in 2020, and will encourage insurers to remain in the QHP-compliant exchange market.

Cancer patients need access to meaningful health insurance coverage in order to access necessary care and treatment. LLS has adopted a set of Coverage Principles that outline our perspective on what constitutes "meaningful" health insurance coverage.¹ LLS knows that meaningful coverage for cancer patients must be both affordable and stable. Instituting a reinsurance program will help Colorado promote these standards.

¹ *Principles for Meaningful Coverage*. The Leukemia & Lymphoma Society. Retrieved from <http://www.lls.org/cancercost/Principles>.

Reinsurance programs in other states have shown promising initial results in controlling overall premium growth, and even, in some cases, resulting in premium reductions. Alaska, Oregon, and Minnesota are among the states currently operating reinsurance programs on models similar to that proposed by this waiver. These states have received significant federal pass-through funding returned as a result of reductions in premium growth and, consequently, advanced premium tax credit (APTC) payments in their states.² A March 2019 report by Avalere showed that states with reinsurance programs have achieved a nearly 20-percent reduction in individual market premiums.³

At the federal level, reinsurance programs have also been used to stabilize premiums in a number of healthcare programs, such as Medicare Part D. A temporary reinsurance fund for the individual market was also established under the ACA and reduced premiums by an estimated 10% to 14% in its first year.⁴ We find both the federal and state experiences with reinsurance to be promising.

Because LLS believes Colorado's 1332 State Innovation Waiver will help protect patients and consumers and stabilize the individual market in Colorado, we are pleased to support the establishment of a reinsurance program as proposed by this waiver.

Sincerely,



Dana Bacon
Colorado Government Affairs Director
The Leukemia & Lymphoma Society

² *State 1332 Waiver Reinsurance Proposals: Wisconsin Releases Draft 1332 Waiver Seeking \$170 Million in Pass-Through Funding*. State Health Access Data Assistance Center. March 30 2018. Retrieved from <http://www.shadac.org/news/state-1332-waiver-reinsurance-proposals-wisconsin-releases-draft-1332-waiver-seeking-170>.

³ *State-Run Reinsurance Programs Reduce ACA Premiums by 19.9% on Average*. Avalere. March 2019. Retrieved from <https://avalere.com/press-releases/state-run-reinsurance-programs-reduce-aca-premiums-by-19-9-on-average>.

⁴ *An Evaluation of the Individual Health Insurance Market and Implications of Potential Changes*. American Academy of Actuaries, Individual and Small Group Markets Committee. January 2017. Retrieved from https://www.actuary.org/files/publications/Acad_eval_indiv_mkt_011817.pdf.



Colorado Consumer Health Initiative

May 15, 2019

Commissioner Michael Conway
Colorado Division of Insurance
1560 Broadway
Denver, Colorado 80202

Re: Comments on Colorado's 1332 Draft Waiver Application

Dear Commissioner Conway:

The Colorado Consumer Health Initiative (CCHI) appreciates this opportunity to comment on Colorado's draft 1332 Waiver Application to develop a state reinsurance program. CCHI supports the concept of a reinsurance program, and supports the Division of Insurance's (DOI's) application for a 1332 waiver. We believe reinsurance will make coverage more affordable and accessible for individuals making above 400% of the federal poverty level, and consequently, allow more Coloradans to get covered. We also believe reinsurance will help stabilize the individual market, encourage existing carriers to stay in the market, and possibly incentivize new carriers to enter the market.

As you are well aware, the cost of health care for individuals in some parts of Colorado has been particularly challenging. A December 2018 – January 2019 online survey of 1,000 adult Coloradans by Altarum¹ found that 56% of respondents in the Denver area and 62% in the rest of Colorado reported a current health care affordability burden, such as delaying or foregoing care. Notably, *worry* about health care affordability exceeded 80% in both regions. Moreover, 68% of respondents were worried about not being able to afford *health insurance* in the future. Of those respondents who purchase individual coverage, 53% worried about losing their health insurance and 80% worried about not being able to afford health insurance in the future.

A recent Avalere study reports that state run reinsurance programs have reduced premiums by 19.9% on average in the first year of operation. The

¹ <https://www.cohealthinitiative.org/sites/cohealthinitiative.org/files/attachments/Hub-Altarum%20Data%20Brief%20No.%2030%20-%20Colorado%20Affordability%20%28003%29.pdf>

premium reductions in the seven states with such programs ranged from 6% to 43.4%. The draft waiver application suggests we can see similar, significant reductions in premiums here in Colorado. According to the application, the reinsurance program is estimated to result in an average 22.8% reduction in 2020 premiums across the state, and some parts of the state could see premium reductions of up to 30-35%. Such premium reductions will provide much needed relief to many Coloradans, particularly those living in the highest cost areas of the state.

We do have the following comments on the draft application:

- The rulemaking hearing on the reinsurance program, including the payment parameters, is planned for September 1, 2019, yet proposed rates must be filed by June 14, 2019. Given the timeline, we encourage the DOI to engage with stakeholders on the payment parameters early on in this process.
- The enabling legislation indicates one of the program goals is to increase access to health insurance for consumers ineligible for premium tax credit subsidies while minimizing “any potential negative effects on access to affordable, high value insurance for consumers who are eligible for premium tax credit subsidies and cost sharing reductions.” We strongly support the goal of minimizing impacts on Coloradans eligible for financial assistance and would like to see this goal reflected in the waiver application.
- The waiver application is for five years, but the enabling legislation indicates the reinsurance program will operate for two years. We would be interested in understanding the DOI’s phase-out plan.

We look forward to reviewing an updated and complete application, one that reflects the current funding streams for the state share of the program and contains an economic analysis, when Health and Human Services releases it for public comment.

Sincerely,



Debra K. Judy
Policy Director



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Heart
Association.**

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May 16, 2019

Ms. Patty Salazar
Executive Director
Colorado Department of Regulatory Agencies
1560 Broadway, Suite 110
Denver, CO 80202

Mr. Michael Conway
Interim Colorado Insurance Commissioner
Division of Insurance
1560 Broadway, Suite 850
Denver, CO 80202

**RE: The American Heart Association's Written Comments on Colorado's
1332 Waiver Application**

Dear Ms. Salazar and Commissioner Conway:

On behalf of the American Heart Association and the American Stroke Association (AHA/ASA), we would like to thank you for the opportunity to provide written comments on Colorado's Section 1332 State Innovation Waiver application.

As the nation's oldest and largest voluntary organization dedicated to building healthier lives free from heart disease and stroke, our nonprofit and nonpartisan organization represents over 100 million patients with cardiovascular disease (CVD) and includes over 40 million volunteers and supporters committed to our goal of improving the cardiovascular health of all Americans. AHA has worked diligently for many years to support and advance strong public health policies in addition to providing critical tools and information to providers, patients, and families in order to prevent and treat these deadly diseases.

The AHA believes everyone should have quality and affordable healthcare coverage and a strong, robust marketplace is essential for people with CVD to access the coverage that they need. To that end, a well-designed reinsurance program can help offset the costs of enrollees with expensive health care needs. Additionally, implementing a reinsurance program could also help to alleviate other systemic problems within the state insurance exchange including smaller provider networks and low issuer participation. The AHA would like to express our support for the proposal.

As you are aware, reinsurance programs have been used to stabilize premiums in a number of healthcare programs, such as Medicare Part D. A temporary reinsurance fund for the individual market was also established under the

Affordable Care Act and reduced premiums by an estimated 10 to 14 percent in its first year. In Minnesota, a state already implementing a reinsurance program through a 1332 waiver approved last year, insurers filed proposed rates for 2019 that were between 3 and 12.4 percent below 2018 premiums. We are pleased to see that Colorado estimates that the program will reduce premiums by more than 22 percent and increase the number of people able to obtain coverage through the individual market in 2020. We encourage the state and the legislature to examine additional opportunities to extend this waiver beyond 2 years to ensure that coverage in Colorado remains within reach for consumers and people with pre-existing conditions who rely on the marketplaces to purchase their insurance.

The AHA is also pleased that the comprehensiveness and affordability of coverage offered on the individual markets will not be altered by the 1332 waiver proposal. The patient protections extended to individuals with pre-existing conditions under the Affordable Care Act (ACA) including the ten essential health benefit categories, guaranteed issue, out of pocket maximums and many other critical consumer protections are the bedrock of care for our patients. The guarantees and protections enshrined in the ACA make our healthcare system navigable for CVD patients and we commend the state for ensuring that the waiver proposal does not alter the integrity of these requirements. In addition to a strong reinsurance program, we appreciate the steps the state has taken to limit access to non-compliant plans to protect consumers and limit unnecessary premium spikes.

On behalf of the American Heart Association and American Stroke Association, thank you for reviewing our comments. We appreciate the opportunity to provide feedback on this application. If you have any questions, please contact Rebecca Dubroff, State Government Relations Director for the American Heart Association at Rebecca.Dubroff@heart.org.

Sincerely,
Rebecca Dubroff

May 15, 2019

Michael Conway
Interim Commissioner
Division of Insurance, Colorado Department of Regulatory Agencies
1560 Broadway, Suite 850
Denver, CO 80202

Re: Colorado 1332 Waiver Application

Dear Commissioner Conway:

The American Lung Association in Colorado appreciates the opportunity to submit comments on Colorado's draft 1332 Waiver Application.

The American Lung Association is the oldest voluntary public health association in the United States, currently representing the 35 million Americans living with lung diseases including asthma, lung cancer and COPD, including more than 639,000 Colorado residents. The Lung Association is the leading organization working to save lives by improving lung health and preventing lung disease through research, education and advocacy.

The American Lung Association in Colorado believes everyone should have quality and affordable healthcare coverage. A strong, robust marketplace is essential for people with lung disease to access the coverage that they need. The Lung Association supports Colorado's efforts to strengthen its marketplace by submitting this 1332 Waiver Application to implement a reinsurance program.

Reinsurance is an important tool to help stabilize health insurance markets. Reinsurance programs help insurance companies cover the claims of very high cost enrollees, which in turn keeps premiums affordable for other individuals buying insurance on the individual market. Reinsurance programs have been used to stabilize premiums in a number of healthcare programs, such as Medicare Part D. A temporary reinsurance fund for the individual market was also established under the Affordable Care Act and reduced premiums by an estimated 10 to 14 percent in its first year.ⁱ A recent analysis by Avalere of the seven states that have already created their own reinsurance programs through Section 1332 waivers found that these states reduced individual market premiums by an average of 19.9 percent in their first year.ⁱⁱ

Colorado's proposal will create a reinsurance program starting for the 2020 plan year. Based on the initial analysis commissioned by the state, this program is projected to reduce premiums by 22.8 percent and increase the number of individuals obtaining health insurance through the individual market by 6.6 percent. This would help patients with pre-existing conditions, including patients with lung disease, obtain affordable, comprehensive coverage. Additionally, Colorado's program is designed to especially help patients in rural areas of the state that have experienced higher premium increases.

The American Lung Association believes this 1332 Waiver will help stabilize the individual market in Colorado and protect patients and consumers. Thank you for the opportunity to provide comments.

Sincerely,



JoAnna Strother
Director, Advocacy
American Lung Association in Colorado

ⁱ American Academy of Actuaries, Individual and Small Group Markets Committee. *An Evaluation of the Individual Health Insurance Market and Implications of Potential Changes*. January 2017. Retrieved from https://www.actuary.org/files/publications/Acad_eval_indiv_mkt_011817.pdf.

ⁱⁱ Avalere. *State-Run Reinsurance Programs Reduce ACA Premiums by 19.9% on Average*. March 2019. Retrieved from <https://avalere.com/press-releases/state-run-reinsurance-programs-reduce-aca-premiums-by-19-9-on-average>.

May 16, 2018

Commissioner Michael Conway
Colorado Division of Insurance
1560 Broadway, Suite 850
Denver, CO 80202

Sent via email to: DORA_INS_rulesandrecords@state.co.us

Re: Draft Section 1332 Waiver Application

Dear Commissioner Conway:

Kaiser Permanente Colorado (“KPCO”) offers the following comments in response to the Draft 1332 Waiver Application. We support the Section 1332 waiver and a reinsurance program and appreciate the Division of Insurance’s (“DOI”) commitment to stabilizing the individual market. Below are our recommendations in support of the waiver application.

Colorado’s reinsurance program will significantly impact KPCO and our members. KPCO provides care and coverage to 39% of Colorado’s on-exchange individual market as of March 2019.

A properly designed and implemented reinsurance program would help to stabilize individual market premiums. To ensure the greatest number of consumers realize the program’s benefits, the DOI should include the following specific elements in its program parameters and, as applicable, final Section 1332 waiver application:

1. A description and analysis of the varying impact of reinsurance on market participants and various geographic service areas.
2. Language describing the DOI’s intent to ensure that the federal risk adjustment program and the Colorado reinsurance program do not duplicate payments for the same high-risk membership.
3. Language describing the DOI’s intent to determine the extent of overlap between payments made under the federal risk adjustment program and the state reinsurance program.
4. Language describing the DOI’s intent to differentiate among carriers in assessing special carrier fees under the program, replicating the Affordable Care Act (“ACA”)’s differential health insurance provider (“HIP”) fee assessment.
5. Program incentives rewarding quality and cost-management, building off statutory requirements for data submission in this area.

We discuss these requests below.

The DOI Should Include a Description and Analysis of the Varying Impact of Reinsurance on Market Participants.

An equitably designed state-based reinsurance program mitigates the impact of high-risk individuals on premiums and encourages more carriers to enter the individual market in more service areas across Colorado. We note that the implementing legislation targets premium reductions of between 15-35 percent,¹ depending upon the applicable geographic region, and urge DOI to include specific modeling demonstrating satisfaction of these targets under a variety of possible payment parameters and funding approaches.

A poorly designed reinsurance program has the potential to reward carriers who are not effectively managing costs or prevent all Colorado consumers from realizing the full benefits of reinsurance in the form of lower premiums. The DOI should design its program to reward efficiency and cost-management. The first step is an account and analysis of the varying impact of reinsurance on market participants. Individual issuers may be affected differently by reinsurance. Issuers with relatively higher claims cost will receive relatively more reinsurance payments. Accordingly, the final waiver application should acknowledge that variation and break out the anticipated effect on premiums by plan and geographic service area. We also encourage DOI to evaluate potentially differential impact on HMO versus PPO products.

The DOI Should Account for Risk Adjustment in Structuring Its Reinsurance Program.

The DOI's final waiver application should clarify that the state intends to account for federal risk adjustment payment and to design a reinsurance program that pays only for uncompensated high risk, including through the actuarial analysis discussed below. This will ensure that reinsurance funds have the broadest impact for all consumers, incentivize new market entrants and encourage current participants to remain. KPCO is concerned that the reinsurance program proposed by the draft waiver application will effectively favor one health plan's membership and provide rate relief disproportionately to those consumers.

The ACA compensates carriers for high-risk members through a federal risk adjustment program that transfers money among carriers based on their enrollment of individuals with high cost diagnoses. The scale of such transfers plays a crucial role in issuer decisions to participate in the individual market. KPCO transferred \$65 million for the 2017 plan year to account for its lower than average risk membership in Colorado and anticipates paying similar amounts in 2018 and future years.

The goal of the Colorado reinsurance program should be to stabilize the entire individual market by benefitting all Colorado consumers appropriately. As written, the draft application lacks specific methodology for accounting for federal risk adjustment payments in the reinsurance program; we urge DOI to further clarify using actuarial analysis prior to regulatory development of payment parameters. Otherwise, the reinsurance funds may unfairly enrich some issuers by paying twice for the same medical condition – first from the federal risk adjustment program and a second time for claims reimbursable under the Colorado reinsurance program. As previously

¹ Colorado H.B. 19-1168 (McCluskie and Rich), §10-16-1105(2)(a).

discussed, this effect magnifies the existing distortion under risk adjustment and thereby picks competitive “winners and losers.”

We note that the Center for Medicare and Medicaid Services (“CMS”) requested the State of Maryland explain its reasoning and methodology to address such overlap in response to that State’s waiver application.² Including this analysis now may help support the prompt initial review of Colorado’s application by CMS.

The DOI Should Direct Lewis & Ellis to Quantify Risk Adjustment Overlap.

While KPCO believes the degree of overlap between risk adjustment payments and claims reimbursable through reinsurance is substantial, an actual estimate of the amount is unavailable without access to all carriers’ claims data. Lewis & Ellis, the DOI’s retained actuary for purposes of this waiver, possesses the data necessary to quantify the extent of the overlap. We urge DOI to request Lewis & Ellis to identify (1) the extent of the interaction between federal risk adjustment and state-level reinsurance and (2) available methodologies to fully correct for the overlap between programs. The analysis should compare scenarios that would more appropriately distribute reinsurance funding and avoid distorting the competitive balance in Colorado’s individual insurance market. We believe this analysis will be useful in the regulatory process for reinsurance program design.

The DOI Should Include Quality and Utilization Management Incentives.

As the United States moves towards value-based payment in health care, Colorado’s reinsurance program should not move its individual market in the opposite direction. The DOI should include incentives in the reinsurance program aligned with the state’s broader policy goals related to quality, cost-effectiveness and innovation. Incentives should reward quality in care delivery through strategies like payment multipliers for high clinical quality ratings in preventive care, disease management and medication management measures.

Integrated, managed care frequently outperforms PPO models in quality and cost-effectiveness. PPOs may be more expensive because of inefficiencies, such as ineffective care management, not just higher risk profiles. Colorado’s reinsurance program should reward high-performing models and avoid compensating plans for inefficiencies.

In its final waiver application, the DOI should specify incentives for quality and cost-management. The CMS Checklist for Section 1332 State Innovation Waiver Applications requires states to address “whether the reinsurance program includes incentives for providers, enrollees, and plan issuers to continue managing health care cost and utilization for individuals eligible for the

² Maryland 1332 State Innovation Waiver to Establish a State Reinsurance Program UPDATED August 15, 2018, available at: https://www.marylandhbe.com/wp-content/uploads/2018/08/Maryland_1332_State_Innovation_Waiver_to_Establish_a_State_Reinsurance_Program_UPDATED_August_15_2018.pdf.

described reinsurance (if any).”³ A stated commitment in the application will strengthen the final application.

We recommend the state include multiplication factors in its design of reinsurance payments based on 1) third-party estimates of product and network cost-effectiveness and efficiency for each of Colorado’s individual market products; and 2) achieving the highest ratings in clinical quality as reported in the National Committee for Quality Assurance (NCQA) HEDIS health plan ratings.⁴ We believe this approach is consistent with the broader health policy goals of the DOI.

The DOI Should Clarify Its Plans for Differential Carrier Assessment.

Section 10-16-1108 of the implementing legislation authorizes DOI to fund the reinsurance program through collection of assessments against hospitals and carriers. With respect to carriers, it authorizes application of a directs DOI to assess a 2.2 percent assessment against premiums collected, “OR A SPECIAL FEE IN AN AMOUNT EQUAL TO THE AMOUNT OF THE FEE IMPOSED BY THE FEDERAL GOVERNMENT PURSUANT TO SECTION 9010 OF THE FEDERAL ACT IF THAT FEE AMOUNT IS DIFFERENT THAN THE AMOUNT SPECIFIED IN THIS SUBSECTION (1)(b)(I), FOR THE PERIOD THAT CARRIERS COLLECTED THE FEE IMPOSED PURSUANT TO SECTION 9010 OF THE FEDERAL ACT.”⁵ The legislative objective of the alternative assessment mechanism is to replicate ACA section 9010, which imposes a 50 percent reduction on collected premiums subject to assessment for eligible, tax-exempt carriers under the ACA’s HIP fee. We note that the implementing legislation authorizes collection by DOI of the assessment or special fee against carriers in years where the federal HIP fee is suspended. We urge DOI to clarify its timeline for determining when and whether a state-based HIP fee may be collected to fund program operations and separately describe its process for determining and implementing the special fee for applicable carriers.

Thank you for your time and consideration. Please do not hesitate to contact me if you have any questions or require additional information.

Sincerely,



Laura English
Vice President & Chief Financial Officer
Kaiser Foundation Health Plan, Inc.

³ See <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Checklist-for-Section-1332-State-Innovation-Waiver-Applications-5517-c.pdf>.

⁴ <http://healthinsuranceratings.ncqa.org/2018/Default.aspx>.

⁵ Colorado H.B. 19-1168 (McCluskie and Rich), §10-16-1108(b)(I).



4600 South Ulster Street | Suite 300
Denver, CO 80237

May 16, 2019

SUBMITTED ELECTRONICALLY TO: DORA_Ins_RulesandRecords@state.co.us

Michael Conway, Commissioner
Division of Insurance
Colorado Department of Regulatory Agencies
1560 Broadway, Suite 850
Denver, CO 80202

Re: Comments on draft "Colorado 1332 Waiver Application"

Dear Commissioner Conway:

The staff of Connect for Health Colorado, the state-based health insurance marketplace (SBM) for Colorado, greatly appreciates the opportunity provided by the Division of Insurance to comment on the draft Colorado 1332 Waiver Application.

Connect for Health Colorado strongly supports Colorado's Section 1332 Waiver Application to establish a reinsurance program. On behalf of the consumers we serve, Connect for Health Colorado thanks you and your staff for your hard work and dedication in establishing a reinsurance program in Colorado.

We are supportive of solutions aligned with our mission of increasing access, affordability, and choice for individuals and small employers purchasing health insurance in Colorado. We believe in substantive choice, and in providing consumers access to the best available health coverage options for themselves and their families. The program, if approved, would further our mission and help stabilize the individual market by reducing premiums for consumers in the individual market.

We are acutely aware of the impact high premiums have had in rural areas of the state and for those households that are not eligible for subsidies. The premium savings as a result of the reinsurance program will help Coloradans in the individual market to afford health insurance coverage and may allow some individuals to enroll who previously could not afford coverage.

A reinsurance program may also encourage issuers to continue offering plans through the Marketplace, possibly expand into areas of the state that currently have fewer companies offering individual plans, or even attract new issuers to the state. Maintaining or increasing competition throughout the state will also help to keep premiums down for consumers.

We look forward to a quick review and approval of Colorado's waiver application by the U.S. Department of Health and Human Services and the U.S. Department of the Treasury (collectively, the Departments). As you are aware, the deadlines related to the Open Enrollment Period (OEP) for plan year 2020 are fast approaching. A speedy review and approval of the waiver application is necessary to allow time for us to load plan rates, allow issuer review and conduct our own quality assurance, and process renewals prior to OEP. If we can be of any assistance in helping to expedite the 1332 application process or the Departments' review and approval of the 1332 Waiver Application, please let us know.

Again, we appreciate your leadership and the opportunity to comment. We look forward to working with your office to effectively and efficiently approve and certify qualified health plans for the upcoming plan year.

Sincerely,

Connect for Health Colorado Staff

May 14, 2019

Commissioner Michael Conway
Colorado Division of Insurance
1560 Broadway
Denver, CO 80202

Re: Written Comments on Reinsurance

Dear Commissioner Conway:

Thank you for the opportunity to comment on Colorado's Section 1332 Waiver Application Request, posted April 16, 2019. We support the establishment of a reinsurance program as a mechanism that can improve coverage rates and bring Colorado closer to universal coverage, reduce financial hardship for individuals, and further stabilize the individual market, and believe these goals can be achieved while protecting the sizeable population that now benefits from financial assistance through the state exchange, Connect for Health Colorado.

We understand that the comment period must be "sufficient to ensure a meaningful level of public input." 31 CFR 33.112(a)(1) and 45 CFR 155.1312(a)(1). While the posted document and the legislative process for HB19-1168 likely meet that standard, there are challenges to commenting on a document that lacks supporting data. With that caveat, we provide the following comments, many of which are oriented toward information we feel is important to a thorough evaluation of the reinsurance program.

In Section I, it would be helpful to provide additional information, including information on the revised funding mechanism for the reinsurance fund, and, for reference, the projected increase in premium costs from 2019 to 2020 in the absence of a reinsurance program.

In Section II, we will be seeking more information regarding the projected 6.6% increase in individual market enrollment, including assumptions made and whether the Division considered the impact of federal changes to regulations that affect exchanges and ACA plans, as well as those that affect non-citizens; on-exchange-only silver-loading to make up for the loss of CSR payments; and the level of state-wide funding for assisters. Considering that the greatest premium impacts would be seen in less populous parts of the state, we are curious about regional impacts and would request that projected increases in enrollment be broken down by region.

An additional concern is new federal guidance regarding processes when a state would like to end a waiver early. With enabling legislation limiting the reinsurance program to two years, Colorado could be required to comply with timelines imposed on states that wish to phase out a reinsurance program.¹² We would be interested in hearing more about the Division's approach, should the program need to end before five years.

We recommend that the stakeholder process and reports to the legislature include any actions the Division will take to assess and minimize the impact of the reinsurance program on individuals who are eligible for financial assistance, a consideration required by enabling legislation.

Thank you again for the opportunity to comment. We look forward to participating in the stakeholder process and reviewing the complete waiver application.

Very truly yours,



Bethany Pray
Health Program Director

¹ "CMS Releases New Info on State Reinsurance Funding," Health Affairs Blog, March 4, 2019. DOI: 10.1377/hblog20190304.112399.

² "Section 1332 State Relief and Empowerment Waiver Pass-through Funding – Frequently Asked Questions (FAQ)." Department of Health and Human Services, February 28, 2019. Available at: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Section1332-Pass-through-Funding-FAQ.pdf>

May 16, 2019

RE: 1332 Waiver Application

Dear Commissioner Conway:

The Colorado State Association of Health Underwriters (CSAHU) is supportive of the reinsurance proposal and the 1332 Waiver. We do have some questions and comments regarding the application from our membership we would like to pass along for comment.

If premiums are reduced by 22.8% the individual premiums would be lower than small group rates and individuals would be incented to move from the small group market to the individual market. With this we would anticipate the individual market would grow under the reinsurance program.

Would lowering the individual rates 22% encourage small groups to drop group coverage and allow their employees to go individual opening up the employer to set up ICHRA-type arrangements?

Would this encourage carriers to offer individual plans that are not HMO only plans?

Would this encourage other individual carriers to engage/sell in these outlying areas?

How likely are we to get 1332 waiver from this administration?

How are the carriers reacting to this waiver?

Is there any consideration to have a similar reinsurance pool for the small group market?

The funding mechanism has changed significantly. When will the waiver Draft be updated with the new funding?

The tobacco tax did not pass. How will this be funded in 2021 with the absence of that revenue stream?

Is this still a five year program or just a two year program?

What are the projected administration costs?

Who will administer?

Are there an estimated number of reductions of federal spending in each of the years of the program?

What if we miss the mark on the forecasted numbers?

How close have other states come on their forecasted numbers?

How many jobs will be created in the DOI and what are the projected costs?

How will the DOI police the hospitals to ensure the fees will not be passed on to consumers?

Please let us know if you have any questions.

Thanks,

Tim Hebert

CSAHU Legislative Chair

970-484-1250

Attachment 7

Division of Insurance Tribal Consultation May 6, 2019

Division staff and Commissioner Conway delivered a presentation on the draft Section 1332 waiver application that had been released for public comment, as well as the reinsurance program as contained in the most recent version of HB 19-1168. No opposition was expressed to the proposed reinsurance program or the draft Section 1332 waiver by tribal representatives who attended this consultation. Questions were asked and answered on the state of the individual market, reinsurance programs in general, and how a reinsurance program would be implemented in Colorado. The questions asked during the tribal consultation, and comments expressed by attendees are summarized below.

Attendees:

Lorelyn Hall – General Council, Southern Ute Indian Tribe

Cheryl Frost – Southern Ute Tribal Council Vice-Chair

Carole Veloso – Director, Southern Ute Tribal Health Department

Peter Ortego – Ute Mountain Ute Tribe – Director of Tribal Legal Department

Questions and comments raised on Section 1332 waiver application and reinsurance program

1. What sort of impact will the program have on tribal members, and what sort of potential savings might they experience?

There will be no impact on tribal members from the reinsurance program unless they purchase private insurance. If they purchase private insurance they will see a reduction in premiums. As the majority of tribal members are in an area that has experienced large rate increases, they would see some of the greatest premium reductions if they have private insurance.

2. How would the program interact with Indian Health Services, or the Southern Ute “benefit plan”, as it is not considered “health insurance”?

The program will not have an impact on tribal interactions with Indian Health Services or the Southern Ute benefit plan, as it applies only to individual health benefit plans.

3. What does a consumer pay on the reinsurance program side?

Consumers pay their normal copayments and coinsurance rates contained in their specific health benefit plan, and do not pay anything for the reinsurance program. The reinsurance program is funded by the federal pass-through and state funding sources, and the payments are made from the program to the insurance carrier directly, without needing to involve the consumer.

4. How do you make sure insurance companies don't pocket the savings?

Insurance companies must actuarially justify the rates they file with the Division for the plans they offer. If they are not able to be actuarially justified, the plans are not approved for sale. The Division's rate review process and the level of scrutiny these plans undergo will ensure that premium reductions are passed-on to consumers appropriately.

5. Will the reinsurance program impact any other market other than the individual market?

No, the reinsurance program is being established to reduce premiums in the individual market.

6. What happens if the Affordable Care Act is struck-down by the courts and goes away?

This program would end if the Affordable Care Act is repealed.

7. How many people are in the individual market in our state?

There are approximately 220,000 individuals participating in the individual market in Colorado.

8. How many people got coverage due to the Medicaid expansion?

Approximately 600,000 more Coloradans have insurance since the Affordable Care Act was passed, with a majority of that increase due to the expansion of Medicaid.

9. Have states received the estimated pass-through funding they calculated in their applications?

The Division has no reason to believe that it will receive less pass-through funding than what has been calculated for the Section 1332 waiver application.

10. Who approves the waiver?

The Centers for Medicare and Medicare Services (CMS).