

ARTICLE 22

COLORADO HEALTH BENEFIT EXCHANGE

Cross references: For the legislative declaration stating the purpose of and the provision directing legislative staff agencies to conduct a post-enactment review pursuant to § 2-2-1201 scheduled in 2016, see sections 1 and 2 of chapter 246, Session Laws of Colorado 2011. To obtain a copy of the review, once completed, view Colorado Legislative Council's web site.

Section

10-22-101. Short title.

10-22-102. Legislative declaration - intent.

10-22-103. Definitions.

10-22-104. Health benefit exchange - creation.

10-22-105. Exchange board of directors.

10-22-106. Powers and duties of the board.

10-22-107. Legislative health benefit exchange implementation review committee - creation - duties.

10-22-108. Moneys for implementation, operation, and sustainability of the exchange.

10-22-109. Funding for the operation of the exchange and reserves - special fees - rules.

10-22-110. Tax credit for contributions to the exchange - allocation notice - rules.

10-22-111. Tax exemption.

10-22-101. Short title.

This article is known and may be cited as the "Colorado Health Benefit Exchange Act".

Source: L. 2011: Entire article added, (SB 11-200), ch. 246, p. 1073, § 1, effective June 1.

10-22-102. Legislative declaration - intent.

The general assembly determines and declares that with the March 23, 2010, enactment of the federal "Patient Protection and Affordable Care Act", Pub.L. 111-148, and the March 30, 2010, enactment of the "Health Care and Education Reconciliation Act of 2010", Pub.L. 111-152, which allow each state to establish a health benefit exchange through state law or opt to participate in a national health benefit exchange operated by the federal department of health and human services, and although there are numerous federal lawsuits challenging the constitutionality of the federal act in multiple federal courts, the best option for the state of Colorado is to establish a health benefit exchange at the state level. The general assembly further finds that the federal act requires each state to establish a health benefit exchange to perform certain duties and to assume certain responsibilities set forth in the federal act or make sufficient progress in the creation of a health benefit exchange by January 1, 2013, or default to a federally

run national health benefit exchange. Therefore, the general assembly intends to create a health benefit exchange to fit the unique needs of Colorado, seek Colorado-specific solutions, and explore the maximum number of options available to the state of Colorado. The Colorado health benefit exchange, including an American health benefit exchange, is intended to facilitate the access to and enrollment in health plans in the individual market in this state and include a small business health options program to assist small employers in this state in facilitating the enrollment of their employees in health plans offered in the small employer market. The intent of the Colorado health benefit exchange is to increase access, affordability, and choice for individuals and small employers purchasing health insurance in Colorado.

Source: L. 2011: Entire article added, (SB 11-200), ch. 246, p. 1073, § 1, effective June 1.

10-22-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Board" means the board of directors of the exchange, appointed in accordance with section 10-22-105.

(2) "Committee" means the legislative health benefit exchange implementation review committee created in section 10-22-107.

(3) "Exchange" means the Colorado health benefit exchange created in this article.

(4) "Federal act" means the "Patient Protection and Affordable Care Act", Pub.L. 111-148, as amended by the "Health Care and Education Reconciliation Act of 2010", Pub.L. 111-152.

(5) "Group health plan" means an employee welfare benefit plan as defined in 29 U.S.C. sec. 1002 (1) of the federal "Employee Retirement Income Security Act of 1974" to the extent that the plan provides health care services, including items and services paid for as health care services, to employees or their dependents directly or through insurance reimbursement or otherwise. A "group health plan" includes a government or church plan.

(6) "Health benefit plan" has the same meaning set forth in section 10-16-102; except that the term includes a dental plan.

(7) "Insurer" means any entity that provides group health plans or individual health benefit plans subject to insurance regulation in this state, as well as any entity that directly or indirectly provides stop-loss or excess loss insurance to a self-insured group health plan including a property and casualty insurance company.

(8) "Medicaid" means federal insurance or assistance as provided by Title XIX of the federal "Social Security Act", as amended.

(9) "Medicare" means federal insurance or assistance as provided by Title XVIII of the

federal "Social Security Act", as amended.

(10) "Number of lives insured" means the number of employees and retired employees and individual policyholders or subscribers in the individual and group markets on March 1 of the previous calendar year for which a special fee is being assessed. For insurers providing stop-loss, excess loss, or reinsurance, "number of lives insured" does not include employees, retired employees, or individual policyholders or subscribers who have been counted by the primary insurer or primary reinsurer.

(11) "Secretary" means the secretary of the United States department of health and human services.

Source: L. 2011: Entire article added, (SB 11-200), ch. 246, p. 1074, § 1, effective June 1. **L. 2013:** (5) amended and (6) to (11) added, (HB 13-1245), ch. 258, p. 1359, § 1, effective May 23.

10-22-104. Health benefit exchange - creation.

There is hereby created a nonprofit unincorporated public entity known as the health benefit exchange. The board of directors shall govern the operation of the exchange. The board shall determine and establish the development, governance, and operation of the exchange. The exchange is an instrumentality of the state; except that the debts and liabilities of the exchange do not constitute the debts and liabilities of the state, and neither the exchange nor the board is an agency of the state. The board does not have the authority to promulgate rules pursuant to the "State Administrative Procedure Act", article 4 of title 24, C.R.S. The exchange shall not duplicate or replace the duties of the commissioner established in section 10-1-108, including rate approval, except as directed by the federal act. The exchange shall foster a competitive marketplace for insurance and shall not solicit bids or engage in the active purchasing of insurance. All carriers authorized to conduct business in this state may be eligible to participate in the exchange.

Source: L. 2011: Entire article added, (SB 11-200), ch. 246, p. 1074, § 1, effective June 1.

10-22-105. Exchange board of directors.

(1) (a) There is hereby created the board of directors of the exchange. The board consists of twelve members, of whom nine are voting members and three are nonvoting, ex officio members. On or before July 1, 2011, the governor shall appoint five voting members to the board, and the president of the senate, the minority leader of the senate, the speaker of the house of representatives, and the minority leader of the house of representatives shall each appoint one voting member to the board. The governor shall not appoint more than three members from the same political party. The board shall elect one of its members as chair of the board. Members of the board may be removed by their respective appointing authorities for cause. The person

making the original appointment or reappointment, or whoever is entitled to make the appointment on the date of a vacancy, shall fill the vacancy by appointment for the remainder of an unexpired term. Members may serve a maximum of two consecutive terms. If a member is appointed to fill a vacancy and serves for more than half of the unexpired term, the member shall be eligible for appointment to only one more consecutive term.

(b) The persons making the appointments shall coordinate appointments to ensure that there is broad representation within the skill sets specified in this paragraph (b) and shall consider the geographic, economic, ethnic, and other characteristics of the state when making the appointments. A majority of the voting members must be business representatives or individuals who are not directly affiliated with the insurance industry, and none shall be state employees. Of the members first appointed, in order to ensure staggered terms, four of the governor's appointees shall serve for a term of two years and the remaining governor's appointee and other initial appointees shall serve for a term of four years. Thereafter, the terms of the members shall be for four years. Each person appointed to the board should have demonstrated expertise in at least two, and in any case shall have demonstrated expertise in no less than one, of the following areas:

- (I) Individual health insurance coverage;
- (II) Small employer health insurance;
- (III) Health benefits administration;
- (IV) Health care finance;
- (V) Administration of a public or private health care delivery system;
- (VI) The provision of health care services;
- (VII) The purchase of health insurance coverage;
- (VIII) Health care consumer navigation or assistance;
- (IX) Health care economics or health care actuarial sciences;
- (X) Information technology; or
- (XI) Starting a small business with fifty or fewer employees.

(c) The executive director of the department of health care policy and financing, or his or her designee; the commissioner of insurance, or his or her designee; and the director of the office of economic development and international trade, or his or her designee, shall serve as nonvoting, ex officio members of the board.

(2) Each member of the board is responsible for meeting the requirements of this article and all applicable state and federal laws, rules, and regulations; serving in the public interest of the

individuals and small businesses seeking health care coverage through the exchange; and ensuring the operational well-being and fiscal solvency of the exchange.

(3) (a) Board members shall not receive compensation for performance of services for the board but may receive a per diem and reimbursement for travel and other necessary expenses while engaged in the performance of official duties of the board. Per diem and reimbursement expenses are paid through grant moneys received by the board.

(b) A member of the board shall not perform an official act that may have a direct economic benefit on a business or other undertaking in which the member has a direct or substantial financial interest.

(c) A board member or an officer or employee of the exchange is not liable for an act or omission when acting in his or her official capacity, in good faith, without intent to defraud, and in connection with the administration, management, or conduct of this article.

(4) (a) Board members are subject to articles 6, 18, and 72 of title 24, C.R.S.

(b) All moneys received by the board for the exchange are subject to audit by the legislative audit committee. The board shall report all moneys received for the exchange to the legislative audit committee.

(5) Any information provided to a board member pursuant to this article that is exempt from disclosure under either section 24-72-204, C.R.S., or part 4 of article 6 of title 24, C.R.S., shall be and remain confidential and may be used only by the board.

Source: L. 2011: Entire article added, (SB 11-200), ch. 246, p. 1075, § 1, effective June 1.

10-22-106. Powers and duties of the board.

(1) The board is the governing body of the exchange and has all the powers and duties necessary to implement this article. The board shall:

(a) Appoint an executive director to administer the exchange, subject to approval by the committee;

(b) Create an initial operational and financial plan, subject to approval by the committee;

(c) Apply for planning and establishment grants made available to the exchange pursuant to the federal act and apply for, receive, and expend other gifts, grants, and donations. Each grant application is subject to the review and unanimous approval of the board chair and the chair and vice-chair of the committee prior to the submission of the application. If there is not unanimous approval, each grant application is subject to review and the majority approval of the committee.

(d) Create technical and advisory groups as needed to report to the board. The advisory

groups shall meet regularly throughout the year to discuss issues related to the exchange and make recommendations to the board.

(e) Provide a written report, on or before January 15 of each year, to the governor and the general assembly concerning the planning and establishment of the exchange and present the report to the senate health and human services committee and the house of representatives health and environment committee, or their successor committees;

(f) Review the internet portal operated and maintained by the secretary and the model template for an internet portal made available by the secretary for use by the state exchanges and review other appropriate internet portals. The review must include an examination as to whether the model template may be used to direct individuals and employers to health plans, to assist individuals and employers in determining whether they are eligible to participate in the exchange or eligible for a premium tax credit or cost-sharing reduction, and to present standardized information regarding health plans offered through the exchange to assist consumers in making health insurance choices.

(g) Consider the desirability of structuring the exchange as one entity that includes two underlying entities to operate in the individual and the small employer markets, respectively;

(h) Consider the appropriate size of the small employer market under the exchange, taking into consideration the definition of "small employer" pursuant to section 10-16-102;

(i) Consider the unique needs of rural Coloradans as they pertain to access, affordability, and choice in purchasing health insurance;

(j) Consider the affordability and cost in the context of quality care and increased access to purchasing health insurance; and

(k) Investigate requirements, develop options, and determine waivers, if appropriate, to ensure that the best interests of Coloradans are protected.

(2) The board may enter into information-sharing agreements with federal and state agencies and other state exchanges to carry out its responsibilities under this article so long as the agreements include adequate protections with respect to the confidentiality of the information that is shared and comply with all state and federal laws, rules, and regulations.

(3) The board may create a separate program that shares resources and infrastructure with the exchange to offer ancillary products.

(4) The board may enter into an agreement with the department of personnel to authorize administrative law judges employed by the office of administrative courts to hear and decide matters arising from eligibility and other determinations made by the exchange consistent with applicable state and federal law.

2013: (3) and (4) added, (HB 13-1245), ch. 258, p. 1360, § 2, effective May 23. **L. 2014:** (4) amended, (HB 14-1363), ch. 302, p. 1262, § 5, effective May 31.

10-22-107. Legislative health benefit exchange implementation review committee - creation - duties.

(1) For the purposes of guiding implementation of an exchange in Colorado, making recommendations to the general assembly, and ensuring that the interests of Coloradans are protected and furthered, there is hereby created the legislative health benefit exchange implementation review committee. The committee shall meet on or before August 1, 2011, and thereafter at the call of the chair at least two times during each calendar year, but no more than five times during each calendar year. The committee may use the legislative council staff to assist its members in researching any matters.

(2) (a) The president of the senate shall appoint three members to the committee. Two appointees shall be members of the senate health and human services committee, the business, labor, and technology committee, or the legislative audit committee, or their successor committees. One appointee shall be a representative of the senate at large.

(b) The speaker of the house of representatives shall appoint three members to the committee. Two appointees shall be members of the house health and environment committee, the economic and business development committee, or the legislative audit committee, or their successor committees. One appointee shall be a representative of the house of representatives at large.

(c) The minority leader of the senate shall appoint two members to the committee. One appointee shall be a member of the senate health and human services committee, the business, labor, and technology committee, or the legislative audit committee, or their successor committees. One appointee shall be a representative of the senate at large.

(d) The minority leader of the house of representatives shall appoint two members to the committee. One appointee shall be a member of the house health and environment committee, the economic and business development committee, or the legislative audit committee, or their successor committees. One appointee shall be a representative of the house of representatives at large.

(e) Members of the committee shall serve at the pleasure of the appointing authority.

(3) Members of the committee shall serve without compensation; except that each member shall receive the sums specified in section 2-2-307 (3) (a) and (3) (b), C.R.S., for attendance at meetings of the committee when the general assembly is in recess for more than three days or is not in session.

(4) During odd-numbered years, the president of the senate shall appoint the chair and the

speaker of the house of representatives shall appoint the vice-chair of the committee. During even-numbered years, the speaker of the house of representatives shall appoint the chair and the president of the senate shall appoint the vice-chair of the committee.

(5) In any year, the committee may report up to five bills or other measures to the legislative council created in section 2-3-301, C.R.S. These bills are exempt from any applicable bill limit imposed on the individual committee members sponsoring such bills if the bills have been approved by the legislative council under joint rules of the senate and house of representatives.

(6) The committee shall review grants applied for by the board to implement the exchange.

(7) The board shall send the committee an annual report that contains the financial and operational plans of the exchange. The committee shall review the financial and operational plans of the exchange.

Source: L. 2011: Entire article added, (SB 11-200), ch. 246, p. 1078, § 1, effective June 1. L. 2013: (1) and (7) amended, (HB 13-1245), ch. 258, p. 1360, § 3, effective May 23.

10-22-108. Moneys for implementation, operation, and sustainability of the exchange.

Moneys received by the board for the implementation of this article, and for building reserves for the operation and sustainability of the exchange pursuant to section 10-22-109, must be transferred directly to the exchange for the purposes of this article. The board shall deposit any moneys received in a banking institution within or outside the state. Moneys from the general fund shall not be used for the implementation of this article, except for the sums specified in section 10-22-107 (3) and for legislative staff agency services. The account of the banking institution must be insured by the federal deposit insurance corporation and compliant with the "Public Deposit Protection Act", article 10.5 of title 11, C.R.S.

Source: L. 2011: Entire article added, (SB 11-200), ch. 246, p. 1079, § 1, effective June 1. L. 2013: Entire section amended, (HB 13-1245), ch. 258, p. 1360, § 4, effective May 23.

10-22-109. Funding for the operation of the exchange and reserves - special fees - rules.

(1) On and after January 1, 2014, among other funding sources derived through the operation of the exchange, funding for the exchange may be from the following sources:

(a) Special fees assessed against insurers as provided in subsection (2) of this section;

(b) Any moneys accepted through gifts, grants, or donations received by the board for operation, reserves, and sustainability of the exchange, including contributions received pursuant to the premium tax credit allocation in section 10-22-110; and

(c) Moneys from the unclaimed property trust fund transmitted pursuant to section

38-13-116.5 (2.9), C.R.S.

(2) (a) On and after January 1, 2014, through December 31, 2016, the board shall assess special fees against insurers in an amount necessary to provide funding for the exchange. The board shall determine the amount of the special fees based on the board-approved financial plan and anticipated budgetary needs for the upcoming year to comply with this article and associated federal requirements. The special fees must not exceed one dollar and eighty cents per number of lives insured per month; except that the special fees assessed for lives insured under dental plans must not exceed eighteen cents per number of lives insured per month. The board shall use special fees assessed pursuant to this section for the operating expenses of the exchange, the reserves of the exchange, and related agreements.

(b) The board shall use any money received pursuant to section 10-8-536 (2), as enacted in House Bill 13-1115, enacted in 2013, from the reserves of CoverColorado, as created by part 5 of article 8 of this title, and any moneys received from the unclaimed property trust fund to offset the amount of the fees assessed against insurers pursuant to this subsection (2); except that the money received must not be used to offset the special fees paid by dental plans.

(c) Amounts assessed against insurers to be paid to the exchange pursuant to this subsection (2) are not considered premiums for any purpose, including the computation of gross premium tax or agents' commission.

(d) If an insurer fails to pay the special assessment fee, the commissioner may, after proper notice and hearing, suspend or revoke the insurer's certificate of authority to transact insurance business in this state.

(3) The commissioner shall promulgate rules to implement this section that include:

(a) The reasonable time periods for the billing and collection of the special fees; and

(b) The process for determining the allocation of the assessment among insurers, including the process for obtaining accurate information about the number of policies issued and lives insured by an insurer within the six months prior to the assessment.

Source: L. 2013: Entire section added, (HB 13-1245), ch. 258, p. 1361, § 5, effective May 23.

10-22-110. Tax credit for contributions to the exchange - allocation notice - rules.

(1) (a) For the tax year 2013 and each tax year thereafter, a credit against the tax imposed by sections 10-3-209 and 10-6-128 is allowed to any insurance company that becomes a qualified taxpayer by making a contribution to the exchange pursuant to this section.

(b) A qualified taxpayer claiming a credit against premium tax liability under this section is not required to pay any additional retaliatory tax as a result of claiming the credit.

(2) The commissioner may promulgate rules necessary for the administration of the tax credit allowed by subsection (1) of this section in accordance with article 4 of title 24, C.R.S.

(3) (a) Subject to paragraph (c) of subsection (4) of this section, an insurance company shall become a qualified taxpayer if all of the following conditions are met:

(I) The insurance company declares with its quarterly tax payment due on or about July 31 in the manner prescribed by the commissioner its intent to contribute to the exchange on or before October 31 an amount of money equal to the premium taxes paid by the company pursuant to the July 31 tax payment or a lesser amount as specified by the commissioner if required pursuant to paragraph (b) of subsection (4) of this section;

(II) The total amount of the tax credits granted by the commissioner does not exceed five million dollars; and

(III) The insurance company receives an allocation notice from the commissioner and the insurance company makes the contribution to the exchange as specified in the allocation notice on or before October 31.

(b) Subject to paragraph (c) of subsection (4) of this section, an insurance company that becomes a qualified taxpayer may claim the tax credit on one or more subsequent quarterly or annual tax payments beginning on or about October 31.

(c) The board shall promptly notify the commissioner when it receives a contribution pursuant to this section of the amount and date of the contribution and the name of the contributor.

(4) (a) Subject to paragraph (c) of this subsection (4), by September 30 of each year, the commissioner shall:

(I) Send an allocation notice to each insurance company whose declaration of intent to contribute to the exchange has been accepted pursuant to this subsection (4). The allocation notice shall specify the amount of tax credits allocated to the insurance company and the amount of cash the insurance company must contribute to the exchange by October 31, which amounts shall be identical and not exceed the amount of premium taxes paid by the insurance company in its quarterly tax payment due on or about July 31.

(II) Post on the division's web site whether the full amount of tax credits authorized to be allocated each year has been allocated.

(b) Subject to paragraph (c) of this subsection (4), the commissioner shall allocate no more than a total of five million dollars of premium tax credits per year. The commissioner shall allocate to an insurance company that has declared its intent to contribute to the exchange pursuant to this section tax credits in an amount equal to the amount of premium taxes paid by the insurance company in its quarterly tax payment due on or about July 31 in the order in which

the division receives such quarterly tax payments until the full amount of credits available pursuant to this section has been allocated; except that, if such amount of taxes or the sum of all the taxes filed by all the insurance companies on any one day would exceed, singly or in the aggregate, the annual maximum aggregate amount of tax credits available under this section, the commissioner shall reduce the allocation to the insurance company whose contribution first exceeds the annual maximum aggregate to the amount needed to satisfy the annual maximum aggregate. If the commissioner is unable to determine the order of receipt of tax payments on that day, the commissioner shall allocate the tax credits to the company or among the companies on a pro rata basis based on the ratio such company's quarterly tax payment bears to the total amount of all such companies' quarterly tax payments until the full amount of credits available pursuant to this section has been allocated.

(c) (I) The commissioner shall allow insurance companies to declare their intent to contribute to the exchange pursuant to this section on the insurance companies' quarterly tax payments due on or about October 31 and shall send such companies allocation notices by February 1 if:

(A) The full amount of tax credits available in any one year have not been fully allocated by the commissioner pursuant to statements of intent filed with insurance companies' quarterly tax payments due on or about July 31; or

(B) The total amount of tax credits has been claimed, but one or more insurance companies failed to timely make a contribution to the exchange.

(II) An insurance company that declares its intent to contribute to the exchange pursuant to this paragraph (c) shall make the contribution to the exchange as specified in the allocation notice on or before March 1 and may claim the tax credit on one or more subsequent quarterly or annual tax payments due on or about March 1.

(5) The board shall use moneys contributed to the exchange pursuant to this section and interest derived from the deposit and investment of the moneys to operate and sustain the exchange and to build reserves.

Source: L. 2013: Entire section added, (HB 13-1245), ch. 258, p. 1362, § 5, effective May 23.

10-22-111. Tax exemption.

The exchange is exempt from any tax levied by this state or any of its political subdivisions.

Source: L. 2013: Entire section added, (HB 13-1245), ch. 258, p. 1364, § 5, effective May 23.