COST-BENEFIT ANALYSIS

In performing a cost-benefit analysis, each rulemaking entity must provide the information requested for the cost-benefit analysis to be considered a good faith effort. The cost-benefit analysis must be submitted to the Office of Policy, Research and Regulatory Reform at least ten (10) days before the administrative hearing on the proposed rule and posted on your agency's web site. For all questions, please attach all underlying data that supports the statements or figures stated in this cost-benefit analysis.

DEPARTMENT: Regulatory Agencies (DORA) **AGENCY**: Insurance

CCR: 3 CCR 702-4 (4-2-92) **DATE:** 11/03/2022

RULE TITLE OR SUBJECT:
CONCERNING COLORADO OPTION PUBLIC HEARINGS

Per the provisions of 24-4-103(2.5)(a), Colorado Revised Statutes, the cost-benefit analysis must include the following:

1. The reason for the rule or amendment;

This regulation is being proposed to establish the procedures for noticing and conducting public hearings on proposed Colorado Option Standardized Plans that fail to meet the premium reduction or network adequacy requirements, beginning with the 2024 plan year, as required by § 10-16-1306, C.R.S.

2. The anticipated economic benefits of the rule or amendment, which shall include economic growth, the creation of new jobs, and increased economic competitiveness;

U.S. health care spending grew 9.7 percent in 2020, reaching $4.1 trillion, or $12,530 per person. As a share of the nation's Gross Domestic Product, health spending accounted for 19.7 percent,[1] nearly 50% more than any other high income country.[2] Per capita, the U.S. spends 67 percent more than the second highest spending nation (Germany). Coloradans spend $50 billion annually on health care.[3] The large size and rapid growth in health care spending in Colorado is unsustainable for families and small businesses. Research indicates that it is the price of individual services that drives health care spending in the U.S.[4] Reducing health care prices and, therefore, the health care costs, will increase take home pay and grow the economy.

This rule will economically benefit the families and small businesses of Colorado, freeing up more income to help grow the economy and create jobs. The Colorado Option law (HB21-1232) requires health insurance companies to offer health insurance plans at premiums that decrease by 5 percent per year each year for the next three years and thereafter only increase by medical inflation.

This proposed regulation is necessary to implement and comply with HB21-1232 to establish an efficient process for setting provider reimbursement rates, if necessary, to meet the premium reduction requirements set forth in HB21-1232, thereby ensuring that health insurance is affordable for small businesses and individuals. According to

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[1]https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsHistorical

[2]https://www.oecd-ilibrary.org/search?value1=health+spending&option1=quicksearch&facetOptions=51&facetNames=pub_igoId_facet&operator51=AND&option51=pub_igoId_facet&value51=%27igo%2Foecd%27&publisherId=%2Fcontent%2Figo%2Foecd&searchType=quick

[3]https://www.kff.org/other/state-indicator/health-care-expenditures-by-state-of-residence-in-millions/?activeTab=graph&currentTimeframe=0&startTimeframe=29&selectedRows=%7B%22states%22:%7B%22colorado%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D

[4]https://www.healthaffairs.org/doi/10.1377/hlthaff.2018.05144#:~:text=A%202003%20article%20titled%20%E2%80%9CIt's,mainly%20by%20health%20care%20prices.

the Colorado Health Access Survey, the rate of uninsured Coloradans was 6.6 percent in 2021, and the number one reason cited for not having health insurance was cost.[5] In fact, over 80 percent of respondents cited cost as a reason for not having health insurance. The Colorado Option will lower costs for Coloradans and increase the number of insured individuals. For individuals, insurance means better health as well as financial security. According to one analysis, private health insurance reduced poverty by 3.7 percentage points.[6] By lowering costs for Coloradans, the Colorado Option program is projected to increase the number of insured individuals by approximately 20,000 over 3 years (2022 - 2025).[7]

For small businesses, lower premiums means they spend less than they otherwise would have on health care benefits for their employees. This allows these businesses to invest in higher wages for their employees, lower prices for their customers, or growth of their business overall.

In addition to the benefits to the individual of health insurance, studies show that health insurance coverage has broader societal and economic benefits.[8] People without insurance are more likely to put off care, and more likely to rely on the emergency departments for care. Reducing the number of uninsured will benefit all Coloradans by reducing the amount of uncompensated care. Because of the financial security that health insurance provides, individuals have more disposable income to spend in the economy. Further, workers with insurance tend to be more productive.[9]

3. The anticipated costs of the rule or amendment, which shall include the direct costs to the government to administer the rule or amendment and the direct and indirect costs to business and other entities required to comply with the rule or amendment;

First, it is important to note that HB21-1232 was passed by the legislature and requires the Division of Insurance (Division) to hold hearings if health insurers fail to reduce premiums. However, it also takes a market driven approach to lower health care costs. Insurers and providers have the opportunity to negotiate rates that comply with HB21-1232. Only insurers who fail to meet the premium reduction or network adequacy requirements for their Colorado Option plans and some providers will be expected to comply with the proposed regulation. If insurers and providers negotiate rates that comply with HB21-1232, there will be no need for a public hearing and no costs to insurers, providers, or the Division.

If, however, insurers cannot meet the premium reductions, the Division is required by HB21-1232 to hold a public hearing in accordance with the proposed regulation. In passing HB21-1232, the legislature allocated approximately $1.7 million in FY 21-22 and $2 million in outyears to the Division to implement the Colorado Option. The Division anticipates that the funding as provided by the legislature, and documented in the fiscal note, will be sufficient for the Division to conduct any required public hearings.

At this time, it is unknown how many carriers will not meet the premium rate requirement and in which parts of the state. The proposed regulation has been structured to streamline the hearing process to minimize cost burdens to those participating in the hearing. For example, the proposed regulation allows for negotiation and settlement (Proposed Section 12) which would avoid the need for a hearing altogether. Proposed Section 17 gives the Commissioner the authority to consolidate proceedings; Proposed Section 19.A allows the Commissioner to set

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5 https://www.coloradohealthinstitute.org/sites/default/files/file_attachments/2021%20Colorado%20Health%20Access%20Survey%20Storybook.pdf

6 https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0331#:~:text=Private%20health%20insurance%20benefits%20reduced,poverty%20reduction%20from%20public%20benefits.

7 https://drive.google.com/file/d/1SUy-iNz3i7IIRTPTqy2OJgNYH1oyN5mX/view

8 https://www.aha.org/guidesreports/report-importance-health-coverage

9 https://www.semanticscholar.org/paper/Health-Insurance-as-a-Productive-Factor-Dizioli-Pinheiro/dc1e26c44340b081ca4ff1a412ac6ef1b87151e6?p2df

the allotted time for the public hearing; and Proposed Section 22 allows the Commissioner to issue orders to control the course of the public hearing. These provisions are all intended to streamline and create efficiency in the process while ensuring all parties have an opportunity to present their arguments related to any proposed reimbursement rate.

Further, the proposed regulation limits the impact on providers by excluding any hospital or health care provider that has less than 0.15 percent impact on a carrier's premium rate in a particular county from participation in the public hearing process.

4. Any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness; and

The proposed regulation is not anticipated to have any significant adverse economic effects. To the contrary, the proposed regulation provides a framework for insurers, providers, and consumers to all participate in the hearing in a clear, fair, and efficient manner.

As explained above, the underlying purpose of this regulation is to comply with the requirements of the legislation and to provide an opportunity, *if needed*, to set reimbursement rates fairly in a way that reduces the cost of health insurance to individuals, families, and small businesses. The resulting savings in premium rates means more disposable income and more revenues for small businesses to grow. Furthermore, the reimbursement floors are set by law and were part of extensive negotiations with the industry as part of the legislative process.

5. At least two alternatives to the proposed rule or amendment that can be identified by the submitting agency or a member of the public, including the costs and benefits of pursuing each of the alternatives identified.

One alternative to the proposed regulation would be to not adopt a regulation regarding the public hearing process and instead rely on statute. Section 10-16-1305(3)(a), C.R.S., requires the Division to hold a public hearing if the Colorado Option premium rate or network adequacy requirements are not met. However, that would leave the Division and interested parties in the position of relying only on what is in the law itself regarding the structure of such a hearing. Section 10-16-1305(3)(c), C.R.S., indicates that the Commissioner shall provide public notice and opportunity to testify to all affected parties, and that all affected parties may present evidence. If this regulation was not adopted, the parties would not have clear, consistent standards regarding expectations and timelines for participating in a public hearing. In addition, it would ignore the direction of the legislature to promulgate regulations necessary for the implementation of HB21-1232.

Another alternative to the proposed regulation is holding a public rate hearing as the Division did in 2016 and 2017. At those hearings, each carrier in the individual market was given the opportunity to explain the rationale and basis for their proposed rates and the public had an opportunity to raise questions and concerns. Those hearings were more akin to a town hall than the hearings envisioned by HB21-1232. While that type of hearing would involve less process and arguably be more efficient as a result, the Division did not believe this would comport with the intent of the legislation to allow all parties to present evidence and, moreover, would not allow for a full and fair hearing prior to the setting of any reimbursement rates for a particular provider or provider type. In contrast, the Division's proposed regulation would allow for a full and fair hearing prior to the setting of any reimbursement rates for a particular provider or provider type.