

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Emergency Regulation 21-E-02

CONCERNING ESTABLISHING A SPECIAL ENROLLMENT PERIOD FOR ENROLLMENT IN AN INDIVIDUAL HEALTH BENEFIT PLAN

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Section 1 **Authority**

This emergency regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7)(a), (7)(b)(III), 10-1-109(1), 10-16-105(2)(b), 10-16-105.7(3)(a)(II)(G), 10-16-105.7(3)(b)(II)(F), 10-16-108.5(8), and 10-16-109, C.R.S., and the Governor's Executive Order D 2020-003 declaring the presence of COVID-19 in Colorado a disaster emergency and extensions of that declaration, most recently with Executive Order D 2021-022 on January 25, 2021.

On January 28, 2021, President Biden signed an Executive Order on Strengthening Medicaid and the Affordable Care Act. That Executive Order directs the Secretary of the U.S. Department of Health and Human Services (HHS) to consider establishing a special enrollment period (SEP) under the Patient Protection and Affordable Care Act. On January 28, 2021, HHS through the Centers for Medicare & Medicaid Services (CMS), announced a SEP for individuals and families for Marketplace coverage in response to the COVID-19 Public Health Emergency.

Section 2 **Scope and Purpose**

In light of the COVID-19 public health emergency crisis and to align with the federal SEP directed by the President's Executive Order, the purpose of this emergency regulation is to allow for a SEP in Colorado that allows enrollment in an individual health benefit plan from February 8, 2021, through May 15, 2021.

The Division of Insurance finds, pursuant to § 24-4-103(6)(a), C.R.S., that immediate adoption of this regulation is imperatively necessary for the preservation of public health, safety, or welfare because allowing individuals not currently enrolled in health benefit plans in Colorado to enroll in a health benefit plan in order to receive coverage in light of the ongoing COVID-19 public health emergency is imperative to preserve the health of the citizens of Colorado. Therefore, compliance with the requirements of § 24-4-103, C.R.S., would be contrary to the public interest.

Section 3 **Applicability**

This regulation shall apply to all carriers offering individual health benefit plans subject to the insurance laws of Colorado and the requirements of the Patient Protection and Affordable Care Act.

Section 4 Definitions

- A. “Carrier” shall have the same meaning as found at § 10-16-102(8), C.R.S.
- B. “Health benefit plan” shall have the same meaning as found at § 10-16-102(32), C.R.S.
- C. “Special enrollment period” or “SEP” shall mean, for purposes of this regulation only, a period during which an individual who meets the requirements under Section 5.B. may enroll in a health benefit plan outside the initial and annual open enrollment periods.

Section 5 Special Enrollment Period Requirements

- A. A carrier offering a health benefit plan in this state shall establish a SEP that:
 - 1. Begins on February 8, 2021 and extends through May 15, 2021; and
 - 2. Ensures a coverage effective date on the first day of the month following plan selection.
- B. Application and Verification requirements
 - 1. To access this SEP, individuals must be otherwise eligible for enrollment in the individual health benefit plan for which they are applying and must not already be enrolled in an individual, group or other health benefit plan. Only individuals not currently enrolled in a health benefit plan are eligible for the SEP established under Section 5.A.
 - 2. Individuals may apply for the SEP provided under Section 5.A. by contacting Connect for Health Colorado, a broker, an assister, or the carrier directly to determine eligibility and enrollment.
 - 3. To verify eligibility for the SEP, individuals shall attest that they are currently not enrolled in an ACA-compliant health benefit plan. Verbal attestation is sufficient for purposes of determining eligibility for this SEP. Carriers shall not require additional verification or attestation beyond the eligibility and enrollment information provided by Connect for Health Colorado. Carriers shall not require written documentation for verification of this SEP and may waive the verbal attestation requirement.
 - 4. The eligibility verification requirements of Colorado Insurance Regulation 4-2-43, 3 CCR 702-4, do not apply to this SEP.
 - 5. This SEP is for qualified individuals applying for new coverage; it does not extend to those who, absent a separate triggering event, are currently enrolled in an ACA-compliant health benefit plan and are seeking to change their current coverage or change carriers.

Section 6 Severability

If any provision of this regulation or the application of it to any person or circumstances is for any reason held to be invalid, the remainder of this regulation shall not be affected.

Section 7 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 8 Effective Date

This emergency regulation shall be effective February 5, 2021.

Section 9 History

Emergency regulation effective February 5, 2021.