

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Emergency Regulation 21-E-09

CONCERNING CONSUMER NOTIFICATION REQUIREMENTS FOR CARRIERS REGARDING PREMIUM TAX CREDIT ELIGIBILITY UNDER THE AMERICAN RESCUE PLAN ACT OF 2021

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Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§10-1-109, 10-16-105.7(3)(c), 10-16-108.5(8), and 10-16-109, C.R.S.

Section 2 Scope and Purpose

As a result of the passage of the American Rescue Plan Act of 2021, H.R. 1319 signed into law on March 11, 2021 (ARP), Coloradans have expanded and increased eligibility for premium tax credits (PTC) in 2021 and 2022 when they enroll in health benefit plans through the Colorado health benefit exchange. 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. On March 23, 2021, President Biden and CMS announced that the SEP for states using the Healthcare.gov platform would be extended until August 15, 2021. The Division of Insurance (Division) subsequently extended its SEP until August 15, 2021 to be consistent with the federal SEP. The purpose of this emergency regulation is to establish requirements for carriers to provide written notice to all covered persons currently enrolled in off-Exchange health benefit plans regarding their potential eligibility for PTC due to the ARP with sufficient time to allow covered persons the opportunity to enroll during Colorado's extended SEP.

The Division finds, pursuant to § 24-4-103(6)(a), C.R.S., that immediate adoption of this regulation is imperatively necessary to comply with federal law and for the preservation of public health, safety, or welfare because notifying and allowing individuals to replace their off-Exchange health benefit plan with an on-Exchange health benefit plan provides access to the increased PTC for 2021 available because of the ARP and increases individuals' access to insurance coverage and/or affordable health care and is

imperative to the financial welfare and preservation of the health of the citizens of Colorado during the ongoing COVID-19 public health emergency. Therefore, compliance with the requirements of § 24-4-103, C.R.S., would be contrary to the public interest.

Section 3 Applicability

This emergency regulation applies to all carriers currently providing coverage through individual grandfathered and non-grandfathered health benefit plans subject to the insurance laws of Colorado.

Section 4 Definitions

- A. “American Rescue Plan Act of 2021” or “ARP” means, for the purposes of this emergency regulation, the federal “H.R. 1319—117th Congress: American Rescue Plan Act of 2021”, Pub. L. 117-2.
- B. “Carrier” shall have the same meaning as found at § 10-16-102(8), C.R.S.
- C. “Covered person” shall have the same meaning as found at § 10-16-102(15), C.R.S.
- D. “Exchange” shall have the same meaning as found at § 10-16-102(26), C.R.S.
- E. “Health benefit plan” shall have the same meaning as found at § 10-16-102(32), C.R.S.

Section 5 Notice Requirements

- A. Carriers shall provide written notice to each covered person enrolled in an off-Exchange health benefit plan with that carrier, advising each covered person of potential eligibility for PTC due to the ARP.
- B. Carriers shall mail written notice or send written notice via electronic mail to each policyholder, if the Carrier has an e-mail on file for the covered person, no later than May 24, 2021.
- C. Carriers shall include the following information in the notice sent to covered persons:
 1. A statement that the covered person may submit an application through the Exchange to receive an PTC eligibility determination and to explore options for enrolling in a new health benefit plan due to changes brought about by federal legislation;
 2. A statement that in order to receive PTC a covered person must enroll in a health benefit plan through the Exchange;
 3. The contact information for both the Exchange and the carrier, including customer service telephone numbers and website addresses;
 4. In bold font, the current policy deductible amount, the total amount of deductible accumulated, and the current amount of deductible remaining as of the date of the notice;
 5. In bold font, the current policy maximum out-of-pocket amount, the total amount of out-of-pocket accumulated, and the current amount of out-of-pocket remaining as of the date of the notice;
 6. A statement in bold font indicating that if the covered person enrolls in a new health benefit plan through the Exchange with a different carrier, deductible and maximum out-of-pocket accumulations will not be transferred to the new plan;

7. A statement indicating that the covered person may contact the carrier to determine what impact switching to a new health benefit plan with the same carrier will have on the deductible and maximum out-of-pocket accumulations , including what, if any, deductible and maximum out-of-pocket accumulations can be transferred and credited to the new plan; and
8. A statement that the covered person may contact the insurance producer who assisted him or her with enrolling in an off-Exchange health benefit plan to discuss available options.

Section 6 Filing Requirements

- A. Carriers shall file a sample of the notice required by Section 5 in SERFF no later than May 18, 2021 with the all SERFF data fields completed with the following prescribed information:
 1. TOI: H21.000 and HOrg03.000 (for HMOs)
 2. Filing Type: ARP Notification
 3. Filing Mode: Review and Approve
- B. The Division must approve of the sample notice required by Section 5 in SERFF before Carriers send the notice to policyholders.

Section 7 Severability

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

Section 8 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 9 Effective Date

This emergency regulation shall be effective May 10, 2021.

Section 10 History

Emergency regulation effective May 10, 2021.