

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Emergency Regulation 21-E-12

CONCERNING THE ESTABLISHMENT OF A SPECIAL ENROLLMENT PERIOD DUE TO THE CESSATION OF EMPLOYER CONTRIBUTIONS OR GOVERNMENT SUBSIDIES FOR CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT (COBRA) HEALTH INSURANCE COVERAGE

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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.

In a final rule effective July 6, 2021, the Department of Health and Human Services (HHS) established a special enrollment period (SEP) for a qualified individual or his or her dependent who is enrolled in COBRA continuation coverage or a similar state program for which an employer is paying all or part of the premiums, or for which a government entity is providing subsidies, if the employer completely ceases its contributions to the qualified individual's or dependent's COBRA or state continuation coverage or government subsidies completely cease. 45 CFR § 155.420(d)(15).

Section 2 Scope and Purpose

In light of the continued need for access to health insurance coverage in the wake of the COVID-19 public health emergency crisis, and to align with the federal SEP established by HHS, the purpose of this emergency regulation is to allow for a SEP in Colorado for a qualified individual, or his or her dependent, enrolled in COBRA continuation coverage or Colorado state continuation coverage, pursuant to § 10-16-108, C.R.S., for which an employer is paying all or part of the premiums, or for which a government entity is providing subsidies, if the employer completely ceases its contributions to the qualified individual's or dependent's COBRA continuation coverage or government subsidies completely cease.

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 who cease to receive employer contributions or government subsidies for COBRA

coverage in Colorado to enroll in a health benefit plan in order to receive continued coverage in the wake of the 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 on and off-Exchange 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. “Exchange” shall have the same meaning as found at § 10-16-102(26), C.R.S.
- C. “Health benefit plan” shall have the same meaning as found at § 10-16-102(32), C.R.S.
- D. “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.A. 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 allows a qualified individual or enrollee, and his or her dependent, to enroll in a health benefit plan if the qualified individual or his or her dependent is enrolled in COBRA continuation coverage or Colorado state continuation coverage for which an employer is paying all or part of the premiums, or for which a government entity is providing subsidies, and the employer contributions or government subsidies completely cease.
- B. The triggering event is the last day of the period for which COBRA or state continuation coverage is paid for or subsidized, in whole or in part, by an employer or government entity.
- C. The effective date of coverage in the qualified health plan (QHP) must be on the first day of the month following plan selection.

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 Incorporated Materials

45 CFR § 155.420(d)(15) shall mean 45 CFR § 155.420(d)(15) as published by the Government Printing Office on the effective date of this regulation and does not include later amendments to or editions of 45 CFR § 155.420(d)(15). A copy of 45 CFR § 155.420(d)(15) may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of 45 CFR § 155.420(d)(15) may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at www.ecfr.gov.

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 September 21, 2021.

Section 10 History

Emergency regulation effective September 21, 2021.