DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Emergency Regulation 22-E-06

CONCERNING THE METHODOLOGY FOR CALCULATING THE HEALTHCARE COVERAGE COOPERATIVE EXEMPTION FOR THE COLORADO OPTION STANDARDIZED HEALTH BENEFIT PLANS AND PREMIUM RATE REDUCTION REQUIREMENT

Section 1 Authority

This emergency regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109(1), 10-16-109, 10-16-1304, 10-16-1305, 10-16-1306, 10-16-1312, C.R.S.

Section 2 Scope and Purpose

The purpose of this emergency regulation is to establish rules for the required premium reduction methodology to determine whether a healthcare coverage cooperative, and a carrier offering health benefit plans under agreement with the healthcare coverage cooperative, have met the requirements of § 10-16-1306(9)(a), C.R.S.

The Division of Insurance finds, pursuant to § 24-4-103(6)(a), C.R.S., that immediate adoption of this regulation is imperatively necessary to comply with state law and for the preservation of public health, safety, or welfare. By May 1, 2022, a carrier shall notify the Division of any reason it cannot offer a standardized plan at the premium rate target for 2023, pursuant to § 10-16-1306(2)(a), C.R.S. Immediate adoption of the regulation is necessary to provide carriers with the standards necessary to determine whether plans offered under agreement with a healthcare coverage cooperative qualify under § 10-16-1306(9)(a), C.R.S., to be deemed by the Commissioner as having met the standardized plan, network adequacy, and premium rate reduction requirements in §§ 10-16-1304 and § 10-16-1305, C.R.S., prior to the May 1, 2022 deadline. Therefore, immediate adoption of this rule is imperatively necessary to allow carriers to comply with state law and compliance with the requirements of § 24-4-103, C.R.S., would be contrary to the public interest.

Section 3 Applicability

This regulation applies to all healthcare coverage cooperatives and carriers offering health benefit plans under agreement with healthcare coverage cooperatives to purchasers in the individual and small group markets and is subject to the individual and group laws of Colorado and the requirements of federal law.

If Colorado's Section 1332 Innovation Waiver Request for the Colorado Option is not approved by the US Department of Health and Human Services and Department of Treasury, then these premium reductions will not go into effect.

Section 4 Definitions

A. "Actuarial value" and "AV" means, for the purposes of this regulation, the percentage of total average costs for covered benefits that a health benefit plan will cover, with calculations based on the provision of essential health benefits to a standard population.

B. "Baseline Plan" or "2021 Baseline Plan" means, for the purposes of this regulation, the health benefit plan with the carrier's lowest 21-year-old non-tobacco use premium rate, by metal level, in the applicable county from the 2021 Benefit Year, regardless of whether the health benefit plan is sold in the entire county or a partial county. The Baseline Plan shall only consider on-exchange health benefit plans for the Individual market and be determined prior to the impact of the Colorado reinsurance program. The Baseline Plan shall only consider off-exchange health benefit plans for the Small Group market.

C. "Benefit Year" means, for the purposes of this regulation, the calendar year for individual health benefit plans, or the twelve month period beginning with the health benefit plan contract date for small group health benefit plans.

D. "Calibrated Plan Adjusted Index Rate" means, for the purpose of this regulation, line 3.14 on Worksheet 2 of the URRT.

E. "Carrier" shall have the same meaning as found at § 10-16-102(8), C.R.S.

F. "Colorado Option Standardized Plan" or "Standardized Plan" or shall have the same meaning as found at § 10-16-1303(14), C.R.S.

G. "CPI-U" means, for the purposes of this regulation, the consumer price index for all urban customers, U.S. city average, and all items, as determined by the Bureau of Labor Statistics of the United States Department of Labor.

H. "Federal law" shall have the same meaning as found at § 10-16-102(29), C.R.S.

I. "Health benefit plan" shall have the same meaning as found at § 10-16-102(32), C.R.S.

J. "Healthcare coverage cooperative" shall have the same meaning as found at § 10-16-1002(2), C.R.S.

K. "Medical Inflation" shall have the same meaning as found at § 10-16-1303(10), C.R.S.

L. "Metal Level'' means, for the purposes of this regulation, the bronze, silver, and gold health benefit plans available in the individual and small group market as found at § 10-16-103.4, C.R.S.

M. "Premium" shall have the same meaning as found at § 10-16-102(51), C.R.S.

N. "Reinsurance" shall have the same meaning as found at § 10-16-1103(12), C.R.S.

O. "SERFF" means, for the purposes of this regulation, System for Electronic Rate and Form Filing.

P. "URRT" means, for the purpose of this regulation, the Unified Rate Review Template created by the Centers for Medicare & Medicaid Services

Section 5 Healthcare Coverage Cooperatives Exemption

A. Pursuant to § 10-16-1306(9)(a), C.R.S., a healthcare coverage cooperative, and a carrier offering health benefit plans under agreement with the healthcare coverage cooperative, will be deemed by the Commissioner as having met the requirements of §§10-16-1304 and 10-16-1305, C.R.S., if they have:

1. Relative to premiums offered by health benefit plans that were in existence prior to the entrance of the healthcare coverage cooperative into the market, offered premium rates at least 15% lower prior to June 16, 2021, after adjusting for medical inflation and other actuarially justifiable factors as detailed in this Section, for all benefit years.

2. Maintained at least a 15% premium rate reduction since June 16, 2021, after accounting for medical inflation and adjustments as detailed in this Section.

B. If a carrier offers health benefit plans under agreement with a healthcare coverage cooperative that meets the requirements of Section 6.A., and the carrier offers health benefit plans outside of a healthcare coverage cooperative, the carrier's health benefit plans offered outside of the healthcare coverage cooperative will not be deemed pursuant to § 10-16-1306(9)(a), C.R.S. as having met the requirements of §10-16-1304 and §10-16-1305, C.R.S.

C. The Division will calculate whether a healthcare coverage cooperative meets the requirements of Section 5.A.1 using the following methodology.

1. The healthcare coverage cooperative will be evaluated separately by county, metal level, and market basis for each healthcare coverage cooperative.

2. The Healthcare Coverage Cooperative Comparison Plan premium rate for a 21-year-old non-tobacco user will be the lowest cost plan premium, without reinsurance, if applicable, offered by the healthcare coverage cooperative in the first year the healthcare coverage cooperative operates in the applicable county. The Healthcare Coverage Cooperative Comparison Plan will be determined separately for each metal level, county, and market. The Healthcare Coverage Cooperative Comparison Plan Premium will be calculated as follows:

a. Healthcare Coverage Cooperative Comparison Plan Premium =

(minimum Calibrated Plan Adjusted Index Rate offered by the healthcare coverage cooperative in the county for the metal level) x (1.0 age factor) x (Geographic Rating Factor for the applicable county)

b. The Minimum Calibrated Plan Adjusted Index Rate will be determined using the URRT from the first year the healthcare coverage cooperative operates in the applicable county. The "No Reinsurance" URRT will be used, if applicable.

3. The Healthcare Coverage Cooperative Baseline Plan Unadjusted Premium will be equal to the lowest cost plan premium, without reinsurance, if applicable, by county and metal level in the year prior to the introduction of the healthcare coverage cooperative plan. The Baseline Plan Unadjusted Premium will be calculated as follows:

a. Healthcare Coverage Cooperative Baseline Plan Unadjusted Premium =

(minimum Calibrated Plan Adjusted Index Rate offered in the county for the metal level) x (1.0 age factor) x (Geographic Rating Factor for the applicable county)

b. The Minimum Calibrated Plan Adjusted Index Rate will be determined using all carriers' plans in the year prior to the introduction of the healthcare coverage cooperative. All carriers' URRTs from the year prior to the introduction of the healthcare coverage cooperative will be used to determine the Minimum Calibrated Plan Adjusted Index Rate.

i. The "No Reinsurance" URRT will be used, if applicable.

ii. The Geographic Rating Factor will be the Geographic Rating Factor from the carrier that has the lowest cost plan premium.

4. An adjustment factor will be applied to reflect changes in member cost sharing from the Baseline Plan to the applicable healthcare coverage cooperative plan. The Changes in Member Cost Sharing Adjustment will be calculated as follows:

(Healthcare Coverage Cooperative Plan AV) ÷ (Baseline Plan AV)

5. The Medical Inflation Trend will be calculated as follows:

(1 + "10 Year Average CPI-U for Medical Services, Annualized") ^ (Months of Trend/12)

a. The "10 Year Average CPI-U for Medical Services, Annualized" will be based on medical inflation.

b. Months of Trend will be calculated as the difference between the midpoint of the Healthcare Coverage Cooperative Comparison Plan Benefit Year and the midpoint of the effective period of the Baseline Plan.

6. The required rate reduction will be 15.0% for all benefit years. Healthcare coverage cooperatives at or above the 15.0% rate reduction for a particular market, metal level, and county will be considered to have met the requirements of Section 5.A.1. Healthcare coverage cooperatives with a rate reduction less than 15.0% would not meet the requirements of Section 5.A.1. The Required Rate Reduction Factor will be calculated as follows:

(1 – 15.0%) = 0.85

7. To meet the requirements of Section 5.A.1, the Healthcare Coverage Cooperative Comparison Plan Premium must be less than or equal to the Healthcare Coverage Cooperative Baseline Plan Adjusted Premium, calculated as follows:

Healthcare Coverage Cooperative Baseline Plan Adjusted Premium =

(Healthcare Coverage Cooperative Baseline Plan Unadjusted Premium) x (Changes in Member Cost Sharing Adjustment) x (Medical Inflation Trend) x (Required Rate Reduction Factor)

D. If the healthcare cooperative meets the initial healthcare cooperative exemption outlined in Section 5.C, the healthcare cooperative must also maintain a 15% rate reduction in subsequent years after the initial year that the healthcare cooperative offered plans in a particular county. The Division will calculate whether a healthcare coverage cooperative is maintaining a 15% rate

reduction, and therefore, meets the requirements of Section 5.A.2. using the following methodology:

1. The Healthcare Cooperative Comparison Plan and the Healthcare Cooperative Comparison Plan Premium will be the same as described in Section 5.C.2.

2. The Healthcare Cooperative Reduction Maintenance Test Plan premium will be the premium rate for a 21-year-old non-tobacco user will be the lowest cost plan premium, without reinsurance, if applicable, offered by the healthcare coverage cooperative in the year prior to the applicable plan year for which the healthcare coverage cooperative is being evaluated in the applicable county. The Healthcare Coverage Cooperative Reduction Maintenance Test Plan will be determined separately for each metal level, county, and market. The Healthcare Coverage Cooperative Comparison Plan Premium will be calculated as follows:

   a. Healthcare Coverage Cooperative Reduction Maintenance Test Plan Premium =

      (minimum Calibrated Plan Adjusted Index Rate offered by the healthcare coverage cooperative in the county for the metal level) x (1.0 age factor) x (Geographic Rating Factor for the applicable county)

   b. The Minimum Calibrated Plan Adjusted Index Rate will be determined using the URRT from the year prior to the applicable plan year in the applicable county. The "No Reinsurance" URRT will be used, if applicable.

3. The Medical Inflation Trend will be calculated as follows:

   (1 + "10 Year Average CPI-U for Medical Services, Annualized") ^ (Months of Trend/12)

   a. The "10 Year Average CPI-U for Medical Services, Annualized" will be based on medical inflation. This will be calculated based on the latest CPI-U published 30 days prior to the publication of a bulletin by April 1, 2022 for the 2023 Benefit Year, and January 1 of each year thereafter.

   b. Months of Trend will be calculated as the difference between the midpoint of the Healthcare Cooperative Comparison Plan Benefit Year and the midpoint of the effective period of the Healthcare Coverage Cooperative Reduction Maintenance Test Plan.

4. To meet the 15% rate reduction maintenance test, and therefore the healthcare cooperative continues to meet the requirements of Section 5.A.2, the Healthcare Coverage Reduction Maintenance Test Plan premium must be less than or equal to the Healthcare Coverage Cooperative Comparison Plan Adjusted Premium, calculated as follows:

   Healthcare Coverage Cooperative Comparison Plan Adjusted Premium =

   (Healthcare Coverage Cooperative Comparison Plan Premium) x (Medical Inflation Trend)

E. Plans that do not meet the requirements in Section 5.C will be required to offer the Colorado Option Standardized Health Benefit plans starting in 2023, in compliance with Colorado Insurance Regulation 4-2-81, and with the premium rate reduction methodology described in Colorado Insurance Regulation 22-E-05.

F. Plans that do not meet the maintenance requirements in Section 5.D will be required to offer the Colorado Option Standardized Health Benefit plans for the benefit year in which they failed to meet the maintenance requirements, in compliance with Colorado Insurance Regulation 4-2-81, and with the premium rate reduction methodology described in Colorado Insurance Regulation 22-E-05.

Section 6 Filing Requirements

A. To file as a healthcare coverage cooperative meeting the requirements in Section 5, a healthcare coverage cooperative must notify the Division via email and attach the "Healthcare Coverage Cooperative Exemption" template, supplied by the Division.

1. For the initial exemption applicable in 2023, the carrier shall file by April 1, 2022.

2. For any subsequent year, the carrier shall file for the exemption by February 1.

3. If a healthcare coverage cooperative fails to meet the requirements of Section 5, the carrier must comply with the filing requirements in Colorado Insurance Regulation 22-E-05, Section 6.

Section 7 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 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 February 28, 2022.

Section 10 History

Emergency regulation effective February 28, 2022.