

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Emergency Regulation 22-E-20

HEALTH-CARE SHARING PLAN OR ARRANGEMENT REQUIRED REPORTING

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Section 1 Authority

This emergency regulation is being promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7) 10-1-109, 10-16-109, and 10-16-107.4(4), C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish the data reporting requirements applicable to all health care sharing plans or arrangements offering or that intend to offer plans or arrangements to facilitate payment or reimbursement of health-care costs or services for residents of this state.

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 to allow reporting parties sufficient time to implement and comply with the reporting requirements required by House Bill 22-1269 (HB22-1269), now codified at § 10-16-107.4, C.R.S. HB22-1269 was signed by the Governor on June 8, 2022; the law requires all health care sharing plans or arrangements offering or that intend to offer plans or arrangements to facilitate payment or reimbursement of health-care costs or services for residents of this state to provide the Division with the data reporting identified by the law by October 1, 2022 and by March 1 of each year thereafter. Based on the degree of stakeholder engagement the Division has delayed the October 1, 2022 deadline to December 15, 2022. The Division is concerned about providing sufficient time for reporting parties to develop and report the data required by the law. Therefore, because the Division must allow reporting parties adequate time to implement their data reporting systems, as well as meet all required deadlines, 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 health care sharing plans or arrangements offering or that markets products to facilitate payment or reimbursement of health-care costs or services for residents of this state.

Section 4 Definitions

- A. "Administrative expenses" shall mean costs incurred to operate and support the functioning of the health care sharing plan or arrangement. This includes but is not limited to bank fees, staff salaries, data processing, sales, and marketing efforts. This includes fees, commissions, and remuneration paid to contractors that acted on behalf of the HCPA to facilitate administrative expenses.
- B. "CORA" shall mean the Colorado Open Records Act (§ 24-72-201, et seq, C.R.S.)
- C. "Filing date" shall mean, for the purposes of this regulation, the day after the HCSPR filing is received at the Division.
- D. "Health care costs" or "health care expenses" shall mean any amount billed by a health care provider for health care services or related products or by a pharmacy.
- E. "Health Care provider" means any physician, dentist, optometrist, anesthesiologist, hospital, X ray, laboratory and ambulance service, or other person who is licensed or otherwise authorized in this state to furnish health-care services, as defined in § 10-16-102(56).
- F. "Health care services" means any services included in or incidental to the furnishing of medical, behavioral, mental health, or substance use disorder; dental, or optometric care; hospitalization; or nursing home care to an individual, as well as the furnishing to any person of any other services for the purpose of preventing, alleviating, curing, or healing human physical illness or injury, or behavioral, mental health, or substance use disorder. "Health-care services" includes the rendering of the services through the use of telehealth, as defined in § 10-16-123 (4)(e), C.R.S.
- G. "Health care sharing plan" or "health care sharing arrangement" or "plan" or "arrangement" or "HCSPA" shall mean any organization that offers or markets products to facilitate payment or reimbursement of health-care costs or services for one (1) or more residents of Colorado. This does not include direct primary care agreements as defined in § 6-23-101, C.R.S.; consumer payment plans offered directly between a provider and patient (or patient's responsible party); businesses used to facilitate the plan's operations such as reimbursement handling, cost containment vendors, data processing; and crowdfunded sources for the purposes of paying for and/or reimbursement of health care services.
- H. "Health Care Sharing Plan Reporting" or "HCSPR" shall mean the report required to be filed with the Commissioner pursuant to § 10-16-107.4(1), C.R.S, as interpreted by this regulation.
- I. "Health Care Sharing Plan Reporting template" or "template" shall mean the data reporting template created and distributed by the Division for the purposes of collecting data per § 10-16-107.4, C.R.S., available in Appendix A, B and C.
- J. "Insurance producer" or "producer" shall have the same meaning as found at § 10-2-103(6), C.R.S., with the exception that for the purposes of this regulation it does not include § 10-2-103(6)(b), C.R.S.
- K. "Product(s)" shall mean for the purposes of this regulation, the services covered as a package under a membership plan, tier, or level.
- L. "Program expenses" shall mean any service by the HCSPA or its contractors that, while not direct medical care, contributes to the care and overall experiences of HCSPA's participants. This includes but is not limited to coaching and wellness programs, care navigation, care coordination, medical review, quality improvement efforts, cost containment, reimbursement handling, and bill negotiations. This includes fees, commissions, and remuneration paid to contractors that acted on behalf of the HCPA to facilitate program expenses.

- M. "Third party" shall mean contractors that are associated with or assist the plan or arrangement in offering or enrolling Colorado residents as participants in the plan or arrangement.

Section 5 Rules

- A. All health care sharing plans or arrangements subject to § 10-16-107.4, C.R.S. shall:

1. Complete the required HCSPR by electronically filing a complete copy of the Division's reporting template which contains the data reporting required by § 10-16-107.4(1)(a), C.R.S. and emailing the Division any required data not captured on the template;

The required data that should be emailed to the Division includes:

- a. Copies of consumer facing and marketing materials, including a link to the organizational website used for marketing, used in Colorado to promote the plan or arrangement, including plan or arrangement and benefit descriptions, and other materials that explain the plan or arrangement;
 - b. An organizational chart of the HCSPA with a list of officers and directors;
 - c. Copies of all training materials provided to a producer and third party;
2. Complete the required HCSPR by December 15, 2022, for data from 2021 and March 1 each year thereafter with data for the prior calendar year;
 3. Provide accurate contact information for the individual responsible for completing the data reporting form.

- B. Confidentiality

1. All data filings submitted shall be considered public and shall be open to public inspection, unless the information may be considered confidential pursuant to § 24-72-204, C.R.S.
2. The entire filing cannot be held as confidential.
3. A "Confidentiality Index" shall be completed if the health care sharing plan or arrangement desires confidential treatment of any information submitted. Information identified as confidential shall be marked as such and shall be submitted separately from non-confidential material. If a CORA request is received requesting the information identified as confidential, the Division will notify the health care sharing plan or arrangement prior to sharing any information that the plan or arrangement may have identified as confidential.

- C. Where the Division finds the health care sharing plan's HCSPR to be deficient or incomplete, the Division shall notify the contact person identified in § 10-16-107.4(1)(a)(XVIII), C.R.S. The Division shall allow the health care sharing plan thirty (30) days from the date of notice to remedy the deficiency.

Section 6 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 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, subject to the requirements of due process.

Section 8 Effective Date

This emergency regulation shall become effective November 21, 2022.

Section 9 History

Emergency regulation effective November 21, 2022.

Appendix A Health Care Sharing Plan Reporting Template - Plan Specific Information

Select reporting year

TIN

Provide the name of your Organization

Contact person for your organization

Name

Email

Mailing address

Telephone number

Provide a list of:
Parent companies, subsidiaries, and other names that your organization has operated under at any time with the immediately preceding 5 calendar years

Parent Companies

Subsidiaries

Other names that your organization has operated under

Web-based materials

Provide your Organization's website

Provide any additional website(s) your organization uses to communicate marketing materials

REQUIRED INFORMATION

A. Product name
(List out all products your organization offers in Colorado)

B. Number of Colorado residents that participated in this product in reporting year (individuals)

C. Number of Colorado HDJ035-HOLDS that participated in the product in reporting year (individuals)

D. The total number of employer groups in Colorado that participated in this product

E. For each participating employer group in this product list out how many individuals participated were included

(separate answers by company)

F. Total number of participants in the product HDJ035-HOLDS

G. Number of contracts entered into with health care service providers providing services for Colorado participants for this product

H. Total amount of fees, claims, share, distributions, or other payments deducted from Colorado participants for this product

I. The percentage of fees, claims, share, contributions, or other payments from Colorado participants in the product retained by the plan or arrangement for requests/deductions (%)

J. The percentage of fees, claims, share, contributions, or other payments from Colorado participants in the product retained by the plan or arrangement for requests/deductions (%)

K. Total dollar amount of health care costs or services that were incurred by the participant and submitted by or on behalf of the participant for sharing requests/deductions (\$) (Number)

L. Total dollar amount of requests for reimbursement of Colorado participant health care costs or services that were submitted for reimbursement (\$) (Number)

M. Total dollar amount of payments made to providers for Colorado participant health care costs or services that were submitted for reimbursement (\$) (Number)

N. Total dollar amount of requests for reimbursement made to Colorado participants for health care costs or services that were submitted for reimbursement (\$) (Number)

O. Total number of requests for reimbursement that were "denied" (not shared) because they were not eligible according to the organization's guidelines but were nonetheless "shared" (not shared) (Number)

P. Total number of requests for reimbursement that were "denied" (not shared) because they were not eligible for sharing according to the organization's guidelines (Number)

Q. Total number of requests for reimbursement that were "denied" (not shared) because they were not eligible for sharing according to the organization's guidelines (Number)

R. Total number of requests for reimbursement that were "denied" (not shared) because they were not eligible for sharing according to the organization's guidelines (Number)

S. Percentage of total number of requests denied compared to the total number of requests for reimbursement submitted

T. Percentage of total number of requests denied compared to the total number of requests for reimbursement submitted

U. Total amount of Colorado participants health care costs and services submitted in 2021 that qualify for reimbursement pursuant to the plan's management's criteria but that were not paid out or reimbursed by HDJ035-HOLDS, including any amounts that the participants bearing the health-care costs or services must pay before receiving reimbursement under the plan or arrangement (S)

V. Estimated number of participants in Colorado in 2023

W. Estimated number of participants in Colorado in 2023

X. Estimated number of participants in Colorado in 2023

Y. Estimated number of participants in Colorado in 2023

Z. The total number of participants that are associated with or are providing services in Colorado in the product (number of individuals)

AA. Of the number of Colorado participants in the product how many were denied through a provider (number of individuals)

Additional context you'd like to provide the Division about this product or any of the data submitted on this fact?

If any Colorado data were provided on a pro rata basis please note that here and enter data elements (e.g. B, G-I, W) are based off of national numbers

Appendix B Health Care Sharing Plan Reporting Template - Aggregate Information

Organizational Information											
Organizational Name											

REQUIRED INFORMATION - THIRD PARTIES			REQUIRED INFORMATION - Producers		REQUIRED INFORMATION - Organizational		REQUIRED INFORMATION	ADDITIONAL INFORMATION
Provide a list of third parties, excluding producers, that are associated with or assist the organization in offering or enrolling participants in Colorado in the plan or arrangement. (Add more rows to this table as needed)					Colorado Counties		National Information	Please describe any appeals processes that your organization's uses when a participant contests a reimbursement, requested share, or payment denial
Name of third party - provide the "doing business as" name of each applicable third-party (list out separately)	Total commission, fees, or remuneration paid in the previous calendar year for: marketing, promoting, or enrolling participants in a plan or arrangement to Colorado participants	Total commission, fees, or remuneration paid in the previous calendar year for: operating, managing, or administering a plan or arrangement offered by the organization	Total number of producers that are associated with or assist in offering or enrolling participants in Colorado (Aggregate value)	Total commission, fees, or remuneration paid in the previous calendar year to producers for: marketing, promoting, or enrolling Colorado participants in a plan or arrangement (Aggregate value)	List out the Colorado counties where a plan/arrangement was offered in 2021	List out the Colorado counties where a plan/arrangement is intended to be offered in 2023	List out the other states (i.e., states other than Colorado) in which your organization offered a plan or arrangement was in 2021 One row per state	
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								

Additional context you'd like to provide the Division about the data provided on this tab?											

Appendix C Health Care Sharing Plan Reporting Template - Attestation

Timeline to respond to incomplete submissions

If the Organization subject to the requirements of § 10-16-107.4, C.R.S. fails to submit the information or certification required by § 10-16-107.4, C.R.S., the submission is incomplete. The Commissioner of Insurance shall make a determination of completeness no later than forty-five (45) days after the filing date of the submission. If the commissioner has not informed the Organization of any deficiencies in the submission within forty-five (45) days after receiving the submission, the submission is considered complete.

If the Commissioner determines that a person fails to comply with the requirements of § 10-16-107.4, C.R.S., the Commissioner shall: (a) notify the Organization that the submission is incomplete and enumerate in the notification each deficiency found in the person's submission; and (b) allow the Organization thirty (30) days after notice of the incomplete submission to remedy the deficiency found in the submission. If the Organization does not remedy the deficiency within the thirty-day period, the Commissioner may levy a fine not to exceed five thousand dollars (\$5,000) per day. If the Organization does not remedy the deficiency or deficiencies within thirty (30) days after the initial fine is levied, the Commissioner may issue a cease-and-desist order in accordance with section § 10-3-904.5, C.R.S.

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By clicking here you attest that you read the above statement and are aware of the timeline to respond to the Commissioner and the Division if this submission is deemed incomplete

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By clicking here you attest that all data required to be submitted, per § 10-16-107.4, C.R.S., have been submitted. Including emailing of: (1) supplemental, training, and marketing materials; (2) organizational chart of the HCSA with a list of officers and directors; (3) copies of any training materials provided to a producer; (4) training materials provided to a third party to the Division.

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By clicking here you, an officer of the Organization, attest that the information provided in this reporting template, to the best of your good-faith knowledge and belief, is accurate and satisfies the requirements of House Bill 22-1269

Insert digital signature

Date

Print name and role within organization

Email address