

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Emergency Regulation 23-E-02

CONCERNING THE METHODOLOGY FOR CALCULATING PREMIUM RATE REDUCTIONS FOR COLORADO OPTION STANDARDIZED HEALTH BENEFIT PLANS

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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), 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 for the Colorado Option standardized bronze, silver and gold health benefits plans to be offered by all carriers offering individual and small group health benefits plans issued or renewed on or after January 1, 2024.

The Division of Insurance finds, pursuant to § 24-4-103(6)(a), C.R.S., that immediate adoption of this emergency regulation is imperatively necessary to comply with state and federal law, including federal regulation, and for the preservation of public health, safety, or welfare and compliance with the requirements of § 24-4-103, C.R.S., would be contrary to the public interests. On December 12, 2022, the Department of Health and Human Services (“HHS”) released the Draft 2024 Actuarial Value Calculator Methodology, pursuant to 45 C.F.R. 156.135(g). Carriers are required to use the 2024 Actuarial Value Calculator Methodology for benefit year 2024, pursuant to 45 C.F.R.156.135(a). Carriers must also notify the Division of Insurance by March 1, 2023, whether they have achieved the premium rate reduction requirements for their 2024 standardized plans, pursuant to § 10-16-1306(2)(b), C.R.S. This emergency regulation implements the Draft 2024 Actuarial Value Calculator Methodology developed by HHS in order for carriers to develop and adjust their standardized plans to ensure compliance with state law, including the March 1, 2023, notification deadline under § 10-16-1306(2)(b), C.R.S., and federal law.

Section 3 Applicability

This emergency regulation applies to all carriers offering individual and small group health benefit plans subject to the individual and group laws of Colorado and the requirements of federal law.

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. “CSR” means, for purposes of this regulation, a cost-sharing reduction health benefit plan variation defined in 45 C.F.R. § 156.420(a).
- H. “CSR Load” means, for purposes of this regulation, the load in the silver plan premiums necessary to cover the cost of providing the CSR benefit to qualified consumers in the on-exchange silver health benefit plans.
- I. “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.
- J. “Essential health benefits” and “EHB” shall have the same meaning as found at § 10-16-102(22), C.R.S.
- K. “Exchange” shall have the same meaning as found at § 10-16-102(26), C.R.S.
- L. “Expanded bronze” means, for the purposes of this regulation, a bronze health benefit plan that provides coverage for at least one (1) major service, other than preventive services, prior to meeting the deductible, or meets the requirements to qualify as a high deductible health plan under 26 U.S.C 223(c)(2), as established at 45 CFR 156.140(c) with a bronze actuarial value of 60%.
- M. “Federal Actuarial Value Calculator” or “Federal AV Calculator” means, for the purposes of this regulation, the AV Calculator required pursuant to 45 C.F.R. 156.135(a).
- N. “Federal law” shall have the same meaning as found at § 10-16-102(29), C.R.S.

- O. "Health benefit plan" shall have the same meaning as found at § 10-16-102(32), C.R.S.
- P. "Healthcare coverage cooperative" shall have the same meaning as found at § 10-16-1002(2), C.R.S.
- Q. "Induced demand factor" means, for the purposes of this regulation, the anticipated induced demand associated with the health benefit plan's cost sharing (metal) level.
- R. "Medical Inflation" shall have the same meaning as found at § 10-16-1303(10), C.R.S.
- S. "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.
- T. "Non-EHB" means, for the purposes of this regulation, any benefit in a health benefit plan that is not an EHB as found at § 10-16-102(22), C.R.S.
- U. "Plans and Benefits Template" or "PBT" means, for the purpose of this regulation, the Plans & Benefits Template created by the Centers for Medicare & Medicaid Services
- V. "Premium" shall have the same meaning as found at § 10-16-102(51), C.R.S.
- W. "Reinsurance" shall have the same meaning as found at § 10-16-1103(12), C.R.S.
- X. "SERFF" means, for the purposes of this regulation, System for Electronic Rate and Form Filing.
- Y. "Supplemental Template" shall have the same meaning as found at Colorado Insurance Regulation 4-2-39 Section (6)(C)(3).
- Z. "Substantially Similar Plan" means, for the purposes of this regulation, the silver level health benefit plan that is substantially similar to the on-exchange CSR-loaded silver health benefit plan, but without the CSR load, for those off-exchange consumers who do not qualify for advanced premium tax credits or CSRs.
- AA. "URRT" means, for the purpose of this regulation, the Unified Rate Review Template created by the Centers for Medicare & Medicaid Services.

Section 5 Premium Rate Reduction Methodology for Colorado Option Standardized Health Benefit Plan

- A. Pursuant to § 10-16-1305(2)(a)-(c), C.R.S., carriers offering a Standardized Plan at the bronze, silver, and gold metal levels must offer standardized plans with a premium that is reduced by a specified percent relative to their 2021 premiums, after adjustments for national medical inflation. The Division will define the allowable adjustments for the calculation of the premium rate reduction methodology required for the Colorado Option. The required premium reductions are:
 - 1. Five percent premium reduction for the Benefit Year beginning in 2023;
 - 2. Ten percent premium reduction for the Benefit Year beginning in 2024; and
 - 3. Fifteen percent premium reduction for the Benefit Year beginning in 2025.
- B. Pursuant to § 10-16-1305(2)(d), C.R.S., for the Benefit Year beginning on or after January 1, 2026, and each year thereafter, each carrier and healthcare coverage cooperative shall limit any

annual premium rate increase to a rate that is no more than medical inflation, relative to the previous year.

C. The Division will calculate whether a carrier meets the premium reductions specified in Sections 5.A. and 5.B. using the following methodology.

1. Bronze and Expanded Bronze health benefit plans will be combined to determine the lowest cost premium rate for the Bronze Colorado Option Standardized Plan.
2. The 2021 Baseline Plan Unadjusted Premium will be calculated on a county, metal level, and market basis for each carrier. The 2021 Baseline Plan Unadjusted Premium will be calculated as follows:
 - a. For the Individual Market:
 - i. 2021 Baseline Plan Unadjusted Premium =

(minimum 2021 Calibrated Plan Adjusted Index Rate offered in the county for the metal level) x (1.0 age factor) x (2021 Geographic Rating Factor for the applicable county)
 - ii. The Minimum 2021 Calibrated Plan Adjusted Index Rate will be determined using the carrier's 2021 "No Reinsurance" URRT.
 - b. For the Small Group Market:
 - i. 2021 Baseline Plan Unadjusted Premium =

(minimum annual filing 2021 Calibrated Plan Adjusted Index Rate offered in the county for the metal level) x ((fourth quarter rate of 2021 Baseline Plan) / (first quarter rate of 2021 Baseline Plan)) x (1.0 age factor) x (2021 Geographic Rating Factor for the applicable county)
 - ii. If a carrier submitted quarterly rate filing(s) subsequent to the annual filing, the last filing submitted will be used to determine the fourth quarter rate for the Baseline plan.
3. An adjustment factor will be applied to reflect changes in the member cost sharing from the 2021 Baseline Plan to the applicable Colorado Option Standardized Plan design, underlying data changes in the 2023 federal AV calculator and in the 2024 federal AV calculator, including meaningfully different changes across the various metal levels beyond the impact of claim cost and utilization trends and trend leveraging. The Changes in Member Cost Sharing Adjustment will be calculated as follows:

$$\frac{(\text{Colorado Option Standardized Plan AV}) \times (\text{CY2023 AV Calculator Adjustment}) \times (\text{Pricing AV Adjustment}) \times (\text{CY2024 AV Calculator Adjustment})}{(\text{2021 Baseline Plan AV})}$$
 - a. Colorado Option Standardized Plan AV for the applicable metal level.
 - b. The CY2023 AV Calculator Adjustment is:

- i. 0.992 for Gold Metal Level Plans
 - ii. 0.971 for Silver Metal Level Plans
 - iii. 1.002 for Bronze Metal Level Plans
 - c. The Pricing AV Adjustment will be consistent across carriers and determined using information provided to the Division in a data call.
 - d. The CY2024 AV Calculator Adjustment is:
 - i. 1.017 for Gold Metal Level Plans
 - ii. 1.019 for Silver Metal Level Plans
 - iii. 1.020 for Bronze Metal Level Plans
 - e. The 2021 Baseline Plan AV will be determined by the value entered in the carrier's PBT for the 2021 Baseline Plan.
- 4. An adjustment factor will be applied to reflect changes in the loading applied to Individual market Silver health benefit plans for CSR payments. The CSR load will be calculated for both the Colorado Option Standardized Plan and the 2021 Baseline Plan using the ratio of the on-Exchange silver health benefit plan and the off-Exchange Substantially Similar Plan. The CSR Load Adjustment will be calculated as follows:

(Colorado Option Standardized Plan CSR Load) ÷

(2021 Baseline Plan CSR Load)

 - a. The Colorado Option Standardized Plan CSR Load will be calculated using the Calibrated Plan Adjusted Index Rate for the on-exchange Colorado Option Standardized Silver Plan divided by the Calibrated Plan Adjusted Index Rate of the substantially similar off-exchange Colorado Option Standardized Silver Plan.
 - b. The 2021 Baseline Plan CSR Load will be calculated using the Calibrated Plan Adjusted Index Rate for the 2021 Baseline Plan divided by the Calibrated Plan Adjusted Index Rate of the substantially similar off-exchange plan of the 2021 Baseline Plan.
- 5. An adjustment factor will be applied to reflect changes in the induced demand factor applied in 2021 and the applicable Colorado Option Standardized Plan design. The Induced Demand Factor Adjustment will be calculated as follows:

(Colorado Option Standardized Plan Induced Demand Factor) ÷

(2021 Baseline Plan Induced Demand Factor)

 - a. The Colorado Option Standardized Plan Induced Demand Factor will be determined by the following formula:

Colorado Option Standardized Plan Induced Demand Factor =

$$1.24 - (AV) + (AV)^2$$

- b. The 2021 Baseline Plan Induced Demand Factor will be determined by the value supplied to the Division in a data call regarding 2021 plans. The 2021 Baseline Plan Induced Demand Factors are normalized based on the projected membership carriers assumed for the 2021 Benefit Year. To ensure the induced demand adjustment is consistent, a normalization factor will be developed and applied to the Induced Demand Factor using the formula in (a). This normalization factor will be developed separately for each carrier and ensure that the shift from carrier-specific induced demand factor to the federal induced demand formula is revenue-neutral across each carrier's 2021 rate filing.
6. The Adjustment for EHB Changes of 1.0016 will be applied to reflect the changes in the EHB-benchmark plan, which will be in effect starting with the 2023 Benefit Year. This adjustment will be based on the cost impact of the benefit changes in the actuarial analysis submitted to CMS for approval of these changes.
7. If the Baseline Plan has non-EHBs not reflected in the Colorado Option Standardized Plan, an adjustment will be made based on the EHB Percent of Total Premium in the Plan & Benefits Template for 2021. Additionally, if the 2021 Baseline Plan did not include any non-EHB benefits but the carrier chooses to offer allowable non-EHB benefits in the Colorado Option Standardized Plan, an adjustment would also be made based on the EHB Percent of Total Premium in the Plan & Benefits Template for the Benefit Year. The Adjustment for non-EHB Changes will be calculated as follows:

$$\frac{(\text{"EHB Percent of Total Premium" for 2021 Baseline Plan})}{(\text{"EHB Percent of Total Premium" for the Colorado Option Standardized Plan})}$$
 - a. The "EHB Percent of Total Premium" for the Colorado Option Standardized Plan will be determined by the value entered in the carrier's PBT for the Colorado Option Standardized Plan.
 - b. The "EHB Percent of Total Premium" for the Baseline Plan will be determined by the value entered in the carrier's 2021 PBT.
8. The Medical Inflation Trend will be calculated as follows:

$$(1 + \text{"10 Year Average CPI-U for Medical Services, Annualized"})^{(\text{Months of Trend}/12)}$$
 - 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 Colorado Option Standardized Plan Benefit Year and the midpoint of the effective period of the 2021 Baseline Plan.
9. The Required Rate Reduction Factor will be calculated as follows:

$$(1 - \text{Benefit Year Required Rate Reduction Percentage})$$

The Benefit Year Required Rate Reduction will equal 5% for Benefit Year 2023, 10% for Benefit Year 2024 and 15% for Benefit Years 2025 and all subsequent Benefit Years.

10. The Colorado Option Standardized Plan premium rate for a 21-year-old non-tobacco user, calculated on a county, metal level, and market basis for each carrier must be less than or equal to the Maximum Colorado Option Standardized Premium. The Maximum Colorado Option Standardized Plan Premium will be calculated as follows:
- a. For Colorado Option Standardized Gold and Bronze Plans in the Individual and Small Group markets, and Colorado Option Standardized Silver Plans in the Small Group Market:
 - i. Maximum Colorado Option Standardized Plan Premium =
$$(2021 \text{ Baseline Plan Unadjusted Premium}) \times (\text{Changes in Member Cost Sharing Adjustment}) \times (\text{Induced Demand Factor Adjustment}) \times (\text{Adjustment for EHB Changes}) \times (\text{Adjustment for non-EHB Changes}) \times (\text{Medical Inflation Trend}) \times (\text{Required Rate Reduction Factor})$$
 - ii. The Maximum Colorado Option Standardized Plan Premium for the Small Group Market is the maximum allowable premium for all plans commencing during the applicable benefit year, irrespective of whether the rates are based on an annual or quarterly rate filing.
 - b. For On-Exchange Colorado Option Standardized Silver Plans in the Individual Market:
 - i. Maximum Colorado Option Standardized Plan Premium =
$$(2021 \text{ Baseline Plan Unadjusted Premium}) \times (\text{Changes in Member Cost Sharing Adjustment}) \times (\text{CSR Load Adjustment}) \times (\text{Induced Demand Factor Adjustment}) \times (\text{Adjustment for EHB Changes}) \times (\text{Adjustment for non-EHB Changes}) \times (\text{Medical Inflation Trend}) \times (\text{Required Rate Reduction Factor})$$
 - ii. A separate calculation will not be required for the Off-Exchange Colorado Option Standardized Silver Plan.
 - c. If a carrier is offering the Standardized Plan in a county where the carrier did not sell plans in 2021, the Maximum Colorado Option Standardized Plan Premium will be the weighted average, using enrollment as of April 1, 2021, of the Maximum Colorado Option Standardized Plan Premiums, across all carriers, that offered plans in the applicable county in 2021, regardless of whether plans are sold in the entire county or a partial part of the county. If a county did not have enrollment in any plans in the applicable metal level as of April 1, 2021, the Maximum Colorado Option Standardized Plan Premium will be the average of all plans in the applicable county in 2021, regardless of whether plans are sold in the entire county or a partial part of the county.
- D. Carrier-filed Colorado Option Standardized Plan premiums submitted as part of rate filings pursuant to § 10-16-1306(1), C.R.S., must be at or below the rates set forth in Section 5.C.10. in order to be compliant with the required premium rate reductions pursuant to § 10-16-1305(2), C.R.S.

Section 6 Filing Requirements

- A. Carriers shall notify the commissioner whether the carrier's Colorado Option Standardized Plan will comply with the required premium rate reductions set forth in § 10-16-1305(2), C.R.S., and calculated pursuant to Section 5.
 - 1. For premium rates applicable in 2023, the carrier shall notify the commissioner. If a carrier's Colorado Option Standardized Plan fails to comply with the required premium rate reductions set forth in § 10-16-1305(2), C.R.S., and calculated pursuant to this Section 5, the carrier shall notify the commissioner of the reasons why the carrier is unable to meet the requirements in compliance with § 10-16-1306(2), C.R.S.
 - 2. For premium rates applicable in 2024 or any subsequent year, the carrier shall notify the commissioner by March 1 of the preceding year.
- B. Format of Filings
 - 1. Carriers shall submit the notification of whether Colorado Option Standardized Plans will meet the required premium rate reductions through the "Colorado Option Standardized Plan Premium Rate Reduction" template supplied by the Division.
 - 2. Carriers shall submit the "Colorado Option Standardized Plan Premium Rate Reduction" template in SERFF through an "Colorado Option Rate Reduction Notice" filing. This filing shall be submitted separately from any rate, form, annual certification, binder or network adequacy filing.
 - 3. For the Individual market, Carriers shall use January 1 of the Benefit Year for which the filing applies for the "Effective Date" in SERFF.
 - 4. For the small group market, Carriers shall use January 1 of the Benefit Year for the annual filing period as the "Effective Date" in SERFF. For other periods, the carrier shall use April 1, July 1, or October 1 of the Benefit Year for which the filing applies for the "Effective Date" in SERFF.
 - 5. Carriers shall use "Informational" for the "Requested Filing Mode" in SERFF.
 - 6. Carriers shall complete the SERFF Form Schedule tab to specify the forms to which this filing applies.
 - 7. Carriers shall provide a filing description, including the Benefit Year the filing will support.

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 Incorporation by Reference

45 C.F.R. § 156.420(a) published by the Government Printing Office shall mean 45 C.F.R. § 156.420(a) as published on the effective date of this regulation and does not include later amendments to or editions of 45 C.F.R. § 156.420(a). A copy of 45 C.F.R. § 156.420(a) 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 C.F.R. § 156.420(a) 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.

45 CFR 156.140(c) published by the Government Printing Office shall mean 45 CFR 156.140(c) as published on the effective date of this regulation and does not include later amendments to or editions of 45 CFR 156.140(c). A copy of 45 CFR 156.140(c) 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 156.140(c) 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.

45 CFR 156.135 published by the Government Printing Office shall mean 45 CFR 156.135 as published on the effective date of this regulation and does not include later amendments to or editions of 45 CFR 156.135. A copy of 45 CFR 156.135 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 156.135 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 9 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 10 Effective Date

This emergency regulation shall be effective February 15, 2023.

Section 11 History

This emergency regulation effective February 15, 2023.