DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Regulation 4-2-88

CONCERNING GAG CLAUSES IN INDIVIDUAL AND GROUP HEALTH BENEFIT PLANS

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109, 10-16-109, 10-16-704(18), C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to align Colorado law with the federal “No Surprises Act”, Pub. L. 116-260, as amended, pursuant to the Commissioner’s rulemaking authority, and to increase price and quality transparency by removing gag clauses on information for plan sponsors and group and individual consumers.

Section 3 Applicability

This regulation applies to carriers offering individual, small group, large group and student health benefit plans on or after January 1, 2022.

Section 4 Definitions

A. “Business associate” shall have the same meaning as found in 45 CFR § 160.103.

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. “Network” shall have the same meaning as found at § 10-16-102(45), C.R.S.

E. “Provider” shall have the same meaning as found at § 10-16-102(56), C.R.S.

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

Section 5 Prohibition on Gag Clauses on Price and Quality Information for Group Health Plans

A carrier offering group health benefit coverage may not enter into an agreement with a health care provider, network or association of providers, third-party administrator, or other service provider offering access to a network of providers that would directly or indirectly restrict a health insurance carrier offering such coverage from:

A. Providing provider-specific cost or quality of care information or data, through a consumer engagement tool or any other means, to referring providers, the plan sponsor, covered persons, or individuals eligible to become covered persons of the plan or coverage;

B. Electronically accessing de-identified claims and encounter information or data for each covered person in the plan or coverage, upon request, and including, on a per claim basis:

   1. financial information, such as the allowed amount, or any other claim-related financial obligations included in the provider contract;

   2. provider information, including name and clinical designation;

   3. service codes; or

   4. any other data element included in claim or encounter transactions.

C. Sharing information or data described in Sections 5.A or 5.B or directing that such data be shared with a business associate.

Section 6 Prohibition on Gag Clauses on Price and Quality Information for Individual Health Plans

A carrier offering individual health benefit coverage may not enter into an agreement with a health care provider, network or association of providers, or other service provider offering access to a network of providers that would directly or indirectly restrict the health insurance carrier offering such coverage from:

A. Providing provider-specific price or quality of care information, through a consumer engagement tool or any other means, to referring providers, covered persons, or individuals eligible to become covered persons of the plan or coverage; or

B. Sharing information or data described in Section 6.A, for plan design, plan administration, and plan, financial, legal, and quality improvement activities with a business associate.

Section 7 Public Disclosure and Confidentiality

A. Nothing in Sections 5.A or 6.A prevents a health care provider, network or association of providers, or other service provider from placing reasonable restrictions on the public disclosure of the information in Sections 5 or 6.

B. Nothing in this regulation shall be construed to modify or eliminate existing privacy protections and standards under Colorado or Federal law, including but not limited to, the privacy regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996, the amendments made by the Genetic Information Nondiscrimination Act of 2008, and the Americans with Disabilities Act of 1990.

Section 8 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 9 Incorporation by Reference

45 CFR § 160.103 published by the Government Printing Office shall mean 45 CFR § 160.103 as published on the effective date of this regulation and does not include later amendments to or editions of 45 CFR § 160.103. A copy of 45 CFR § 160.103 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 § 160.103 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.

"No Surprises Act", Pub. L. 116-260, shall mean Pub. L. 116-260 as published on the effective date of this regulation and does not include later amendments to or editions of Pub. L. 116-260. A copy of Pub. L. 116-260 may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of Pub. L. 116-260 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.congress.gov.

Section 10 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 11 Effective Date

This new regulation shall be effective on November 30, 2022.

Section 12 History

New regulation effective November 30, 2022.