DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Regulation 4-2-89

COMPENSATION DISCLOSURES FOR HEALTH INSURANCE CARRIERS

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109, 10-16-109, and 10-16-133(6)(b), C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to align disclosure requirements related to insurance producer compensation for health insurance carriers offering individual health benefit plans or short-term limited duration health insurance policies under the federal “No Surprises Act”, Pub. L. 116-260, as amended, with Colorado law.

Section 3 Applicability

The requirements of this regulation apply to all health insurance carriers offering individual health insurance coverage or short-term limited duration insurance coverage in the state of Colorado.

Section 4 Definitions

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

B. “Commission schedule” means an itemized list or table that provides the commission levels that are paid by a carrier to an insurance producer for the sale, placement, or renewal of individual health insurance coverage or short-term limited-duration insurance.

C. “Direct compensation” means monetary amounts, including sale and base commissions, paid by a carrier that are attributable directly to the policy, certificate, or contract of insurance and that are paid to an insurance producer for the enrollment, selection, sale, placement, or renewal of individual health insurance coverage or short-term limited-duration insurance.

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

E. “Indirect compensation” means payments by a carrier attributable indirectly to a policy, certificate or contract of insurance to insurance producers, and other persons for items other than sales and base commission. Examples of indirect compensation include service fees, consulting fees, finders’ fees, profitability and persistency bonuses, awards, prizes, volume-based incentives, and non-monetary forms of compensation.

F. “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 public adjusters as defined at § 10-2-103(6)(b), C.R.S.

G. “Policyholder” means, for the purposes of this regulation, the person who is choosing the coverage and agreeing to be financially responsible for premiums and other payments due under the insurance contract, and does not include all plan enrollees.

H. “Sale” means, for the purposes of this regulation, the exchange of a contract of insurance for money or its equivalent.

I. “Short-term limited duration health insurance” shall have the same meaning as found at § 10-16-102(60), C.R.S.

Section 5 Carriers Disclosing Compensation

A. All health insurance carriers must make the following disclosures to policyholders purchasing individual health benefit plans or short-term limited duration health insurance policies:

1. Disclose any direct or indirect compensation provided by the carrier to an insurance producer or other person enrolling individuals in coverage for services provided by the insurance producer associated with plan selection and enrollment.

2. Disclosures shall be:

    a. For new, initial enrollments, made prior to the individual finalizing plan selection and included on any documentation confirming the initial enrollment, including enrollment documentation required by applicable state or federal law or an initial enrollment package;

    b. For renewals of enrollment, included on any documents confirming enrollment and any renewal notice of coverage required by applicable state or federal law; and

    c. In the absence of any documentation required by applicable state or federal law to confirm initial enrollment or the requirement for a notice of renewal of coverage, provided with the invoice for the first premium payment for the initial coverage term and for each renewal period.

3. The disclosure is required to include the commission schedule used to determine the compensation owed to a producer as part of the appointment contract between the producer and the carrier offering individual health insurance coverage or short-term limited duration insurance, as well as the structure for compensation not captured on the commission schedule.

4. All disclosures must be made available in all of the 15 most common languages in the state and ensure accessibility for individuals with disabilities and limited English proficiency consistent with 45 C.F.R. § 155.205(c), including provision of appropriate auxiliary aids and services at no cost to the individual.

B. Delegation

Carriers may satisfy their obligations under this regulation by requiring insurance producers to make the insurance producer compensation disclosures outlined in this regulation on the carriers' behalf.

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 Incorporated Materials

45 C.F.R. § 155.205(c) shall mean 45 C.F.R. § 155.205(c) as published on the effective date of this regulation and does not include later amendments to or editions of 45 C.F.R. § 155.205(c). A copy of 45 C.F.R. § 155.205(c) may be examined during regular business house at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of 45 C.F.R. § 155.205(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

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

Section 10 History

New regulation effective November 30, 2022.