



COLORADO

**Department of
Regulatory Agencies**

Division of Insurance

VIA EMAIL

December 18, 2023

Deputy Administrator and Director Ellen Montz
Center for Consumer Information and Insurance Oversight
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Washington, D.C.

Re: Colorado Analysis of Essential Health Benefits and Abortion Coverage

Dear Director Montz:

During the 2023 legislative session, the Colorado State legislature passed, and the Governor signed, legislation requiring coverage of abortion care in individual and small group health benefit plans. This legislation, Senate Bill (SB) 23-189, requires carriers to provide coverage for the total cost of abortion care without requiring any cost sharing from enrollees.

As directed by SB23-189, or Section 10-16-104(26), C.R.S., the Colorado Division of Insurance ("Division") has determined that SB23-189 does not require state defrayal for the reason set forth below. We request your confirmation of our determination within 60 days of the date of this letter.

Pursuant to Section 10-16-104(26)(f)(II), C.R.S., the Division is required to implement coverage for the total cost of abortion care without requiring any cost sharing from individuals enrolled in individual and small group health benefit plans under any of the following circumstances:

- A. Twelve months after the Federal Department of Health and Human Services ("HHS") "confirms" the coverage does not require state defrayal;
- B. Twelve months after HHS "otherwise informs" the Division that the coverage does not require state defrayal; or
- C. The passage of more than three hundred sixty-five days since the Division submitted this determination to HHS and HHS has failed to respond to this request.

Colorado is not required to defray SB23-189 because the coverage decreases Per Member Per Month (PMPM) Premiums



Prior to the passage of SB23-189, there were no requirements in Colorado statutes for carriers to cover abortion care, and abortion services are not included as an Essential Health Benefit (EHB).

However, Section 10-16-155, C.R.S., requires the Division to retain a contractor with experience in actuarial reviews, health-care policy, and health equity for the purpose of performing actuarial reviews of legislative proposals that may impose a new health benefit coverage mandate on health benefit plans. The actuarial review must consider “[e]stimates of any increases or decreases in premiums charged to covered persons or employers for health benefit plans offered in the individual, small group, and large group markets that would result from the legislative proposal.” C.R.S. § 10-16-155(4)(d).

Pursuant to Section 10-16-155, C.R.S., the Lewis & Ellis actuarial firm conducted an actuarial analysis to determine the premium impacts of requiring coverage of abortion services. In February 2023, the Division published the first actuarial analysis required under Section 10-16-155, C.R.S., (“Actuarial Reviews Health Insurance Mandate Legislation”). Importantly, this actuarial analysis estimated the premium impact of requiring carriers to cover certain forms of contraception and abortion services without cost-sharing to the consumer. Specifically, Lewis & Ellis’ best estimate found that requiring carriers to cover abortion services without cost-sharing would decrease Per Member Per Month (PMPM) premiums by $-\$0.03$, or -0.01% .¹ Accordingly, because the PMPM premium impact would decrease by $-\$0.03$, or 0.01% , there would be no payments required to an enrollee or a Qualified Health Plan (QHP) “on behalf of” an enrollee. See 45 C.F.R. § 155.170(b).

Therefore, Colorado is not required to defray this benefit because the actuarial analysis estimated that there would be a premium decrease as a result of the coverage. Thus, HHS may “otherwise inform” the Division that the coverage is not subject to state defrayal, pursuant to Section 10-16-104(26)(f)(II), C.R.S.

For the reason stated above, the Division believes that SB23-189 concerning abortion coverage does not require defrayal. We would appreciate your consideration and concurrence of our determination.

Sincerely,

Kate Harris
Chief Deputy Commissioner

Cc: Rebecca Bucchieri, CMS

¹ https://drive.google.com/file/d/1U3rq2tDouPUIwIPO3vJNIOXkxG9_bMpX/view

