Re: Notice pursuant to Colorado Insurance Regulation 4-2-92 Section 9.A and 9.C.

UnitedHealthcare of Colorado ("UHCCO") submits this Notice of Noncompliance ("Notice") to the Colorado Division of Insurance ("DOI") consistent with and as required by Colorado Insurance Regulation 4-2-92 Sections 9.A. and 9.C. This Notice serves as an introduction providing background and details supporting UHCCO's rate position compared to UHCCO's 2026 Colorado Option premium rate reduction targets. A more detailed actuarial analysis is being submitted concurrently via SERFF as instructed in the 2026 Colorado Option Premium Rate Reduction Filing Procedures.

I. Introduction

The Colorado Standardized Health Benefit Plan Act, HB 21-1232, requires that beginning January 1, 2023, carriers that offer a small group health benefit plan in Colorado are required to offer the standardized health benefit plans ("Standard plans") in the small group market in each county where the carrier offers small group health benefit plans. In 2026, in the individual and small group markets, each carrier must offer Standard plans at a premium rate which at least 15% less than the premium rate for individual and/or small group health benefit plans offered by that carrier in the 2021 calendar year, as adjusted for medical inflation. If a carrier cannot meet the premium rate reduction requirements, the carrier must notify the commissioner of the reasons.

UHCCO offers small group health benefit plans in 40 of the 64 counties across Colorado. We estimate that UHCCO's projected Standard plan pricing in 2026 will not meet the premium rate reduction targets mandated by C.R.S. § 10-16-1305(2)(b) and calculated pursuant to Colorado Insurance Regulation 4-2-85 for small group health benefit plans in plan year 2026 in these 40 Colorado counties based on the estimated rate position across all metal levels.

UHCCO expects that UHCCO's small group health benefit plan premium rate will be higher than 2026 mandated premium rate reduction target across all 40 counties. Moreover, *even if* UHCCO was able to achieve the maximum allowable 20% discount from facility providers permitted by C.R.S. § 10-16-1306(5)(b) and/or the applicable statutory hospital-specific reimbursement floors established by the DOI in accordance with C.R.S. § 10-16-1306 and calculated pursuant to Colorado Insurance Regulation 4-2-91, from *all* providers, UHCCO's estimated 2026 small group premium rates would still not meet the 2026 premium rate reduction targets in these 40 counties.

As you know, many carriers announced their intention to fully exit the Colorado small group market beginning in 2022 and continued in the 2023 plan year. During this time, UHC has consistently served Colorado and Colorado consumers by offering one of the most affordable, actuarially sound premium rates through a variety of premier network product choices for consumers. For the past several years, UHC has made substantial efforts and deployed extraordinary resources to launch new and innovative products using unique and innovative network configurations and plan designs to deliver increased affordability and enhanced consumer access and experience to Colorado consumers. UHC's commitment to Colorado's small employers and employees and efforts to deliver increased affordability and value, enhanced consumer access and experience date back to well before HB 21-1232 was enacted.

For example, in Colorado's small group market, UHC has offered preferred, narrow, and efficient network products such as Colorado Doctors Plan ("CDP") and Select Colorado. Gaining deeper partnerships with key hospitals and health systems has been core to UHC's ability to successfully secure significant rate discounts and achieve increased affordability via lower premiums for consumers, all while improving benefits for prevention and value-based care. When these products were introduced – January 1, 2019 for CDP and July 1, 2021 for Select Colorado – they created significant premium savings for employers and employees – up to mid-20% – compared to the traditional full-network products that UHC offered prior to this time (and are still offered today as an option for Colorado's small group market). Accordingly, in the counties where CDP is offered, contracted rates between UHC and facilities are *already at, near, or below the established statutory floors* for provider reimbursement. These products helped UHC to attain significant premium advantages, up to double digits lower relative to competitors in the small group market. This helped UHC retain the majority of the membership in the small group market while bringing more affordable, consumer-centric offerings to the marketplace. In many ways these products are very similar to Standard plans including benefit designs like first dollar coverage for primary care physician visits.

Unfortunately, UHC's recent success in launching new, innovative, more affordable high-performing small group products, as well as having one of the most competitive rate positions in all products, now serves as a significant *disadvantage* in UHC's efforts to achieve compliance with the mandated Standard plan premium rate reduction targets for 2023-2026. The savings UHC has been able to bring to Colorado consumers *prior to* 2021 essentially rebukes UHC and its facility and health system provider partners for having proactively delivered savings to consumers.

The Legislature arbitrarily selected 2021 as the statutory "baseline" year for comparing subsequent carrier-specific lowest plan premium levels, upon which calculations to determine the maximum allowable premium targets for 2023-2026 Standard plans are based. Prior to the introduction of the Colorado's public option, UHC was able to contract with some health systems and gain reimbursement rates that are already at, near, or below the reimbursement floors established in the law. Arbitrarily establishing 2021 as the baseline year upon which mandated premium rate reductions are based *while ignoring the significant efforts* UHC and other plans strived for and succeeded in obtaining punishes plans like UHC that worked to develop – *and deliver* – market leading affordability options prior to and during 2021.

UHC continues its long-standing support of expanded access to affordable healthcare for Colorado consumers – a goal UHC shares with the DOI. However, Colorado's public option requires carriers to offer the Standard plans at artificial and actuarially unsound premium rates. Due to this, UHCCO anticipates that we will be unable to meet the premium reduction targets in the 40 counties across all metal levels.

II. Summary of reasons UHCCO failed to meet the premium rate reduction requirements for 2025 Colorado Option Plans

There are several reasons UHCCO forecasts failing to meet the premium rate reduction targets for its small group health benefit plans in 40 of Colorado's counties in 2026.

The first reason as why UHCCO does not anticipate meeting the premium rate reduction targets established by the DOI is the selection of 2021 as the baseline year against which future premium rate reductions are measured and the application of *only* the "medical inflation" as trend in the calculation of premium rate reduction targets.

Using the DOI's methodology set forth in Colorado Insurance Regulation 4-2-85, the Standard plans' premium rate reduction target for each carrier is calculated using 2021 as the baseline year starting point. The DOI then permits only the 3-year average Medical CPI as the "medical inflation" adjustor to trend the 2021 baseline plan for 5 years carrying only this permissible adjustment to the rates in 2026. These rates are then discounted by 15% to determine the mandated premium rate reduction. Based on Colorado Insurance Bulletin No. B-4.121, revised December 10, 2024, this "3 Year average of the annual percentage change of the medical care index of CPI-U" is 3.70%.

Using only the permissible trend, the adjusted allowable rate change from the 2021 baseline Standard plan is (1+3.70%) ^ 5 * (1-15%), which equates to *1.9%* permissible change over the five-year period from 2021 to 2026. However, the approved average annual renewal increases over the period 2021—2025 for non-standard plans has ranged between 5-11%. The result of these DOI-approved rate filings with proposed estimated 2026 rate action for UHCCO will create roughly a ~52% increase in rates from 2021 to 2026. Therefore, in total, the 15% mandated premium rate reduction target set by the DOI for 2026 is closer to a ~49% premium rate reduction required for the 2026 plan year.

Secondly, use of Medical CPI as the allowable "medical inflation" to determine the premium rate reduction target is neither an adequate nor appropriate proxy for the health plan pricing trend.

While the consumer price index (CPI) reflects changes paid by consumers for a market basket of services, healthcare trends are more complex and have multiple components. Utilization trend captures the change in the consumption of healthcare services, such as hospital admissions, office visits, and prescriptions due to external influences like alternative treatments, health plan medical utilization management, geographic access, new prescription drugs coming to market, changing technologies, and pandemics. The permissible trend adjustment only captures the difference in average unit cost of a predetermined, limited set of existing services, but does not capture many other changes in utilization. Over time, this will result in increasingly underpriced and actuarially unsound health plan pricing, as this will not account for all of the appropriate attributes of medical trend. Conspicuously, the Federal Department of Health and Human Services ("HHS") recognizes both cost *and* utilization trends for premium rate development; while the United States Department of Labor's Bureau of Labor Statistics ("BLS") also cautions that the "Medical CPI-U is *not* a metric for the pricing".

In fact, contrary to the mere 3.70% percent permissible "medical inflation" trend permitted by current law for Standard plans, the DOI acknowledges a more actuarially sound and justifiable trend where such trends have been factored into health plan premiums for 2021 through 2025 – which premiums were approved by the DOI. The approved average annual pricing trend during this period has been 7-12% for most carriers. This gap compounded for 5 years going from 2021 to 2026 amounts to 29.5% when using 9.2% as the average trend. UHC discerns neither actuarial nor practical rationale in support of such significant divergence for medical inflation between Standard plans and non-Standard plans in light of the cost experience actually realized in Colorado's marketplace.

Lastly, in the counties where CDP is offered, UHC achieved the contracted rates at or near the provider reimbursement floors set by C.R.S. § 10-16-1306 and calculated pursuant to Colorado Insurance Regulation 4-2-91 years before these requirements emerged. UHC has partnered with facilities and health systems across Colorado to achieve premium rate savings of up to mid-20% by developing preferred, narrow, and more efficient network products. However, the timing and methodology for pricing Standard plans penalizes the carriers that worked to offer high-performing products and the most competitive rate positions.

III. Outline of the proposed steps to come into compliance

UHCCO rates for Colorado Standard plans are developed in accordance with actuarial standards and Colorado laws using administrative expenses and profit margins consistent with non-Standard plans. The rates included in this rate filing reflect savings using our best estimates as to what provider reimbursement rates will be in 2026 from extensive discussions with providers. Additionally, although actuarially and legally justified, UHCCO will not be adding any additional administrative costs incurred or required to support its the Colorado public option products, even though we incurred significant, material additional administrative expenses driven by the substantial increase in work hours to prepare additional filings and comply with other requirements.

As has been stated publicly, and shared privately, discounts obtained from provider contracts will be materially inadequate in UHCCO's efforts to meet the DOI's premium rate reduction target rates. UHCCO performed a study to model the 2026 premium rate positions using the maximum allowable 20% discount, or the statutory floor set by the DOI from all applicable providers. Notwithstanding UHCCO's best good faith efforts, UHCCO's rates will still not meet the mandated 2026 premium rate reduction targets in 40 counties across all metal levels.

Furthermore, as UHC has shared previously, the AV methodology selected by the DOI indicates that the Standard plan deductible applies to *both* medical and Rx benefits, even though the Standard plans are *not* integrated plans. This results in the Standard plans being priced artificially and inappropriately lower than the non-Standard plans, as this method lowers the AV values which are used as induced demand factors for pricing. Yet, UHCCO is required to use these inappropriate AVs resulting in the Standard plans being artificially underpriced compared to non-Standard plans.

Finally, UHCCO is using the 2% post-tax margin/risk contingencies required by the DOI for 2023 plan year rate filings, despite the fact that many carriers, including UHC, believe that this is not an adequate risk contingency margin in the Colorado ACA market given the volatility of the marketplace. UHC worries that this will pose concerns on long-term stability of the rates to Coloradans.

In light of UHC's deep and long-standing efforts to bring affordable, innovative small group health benefit plans to Colorado consumers, the statutory and regulatory limitations imposed on Colorado option plan and pricing development, UHCCO fails to identify clear additional steps that might be taken in order to bring Standard plans that are not meeting the premium rate reduction targets into compliance while remaining actuarially sound and not offering plans which are inadequately priced in contravention of C.R.S. § 10-16-107.