

Date: April 27, 2018	POLICY ANALYSIS PREPARED FOR THE BOARD OF DIRECTORS	 OF NORTHERN LARIMER COUNTY
Staff: Alyson Williams		

HB18-1392: STATE INNOVATION WAIVER REINSURANCE PROGRAM

Concerning the creation of the Colorado reinsurance program to provide reinsurance payments to health insurers to aid in paying high-cost insurance claims, and, in connection therewith, authorizing the commissioner of insurance to seek approval from the federal government to waive applicable federal requirements, provide federal funds, or both to enable the state to implement the reinsurance program and making the program contingent upon waiver or funding approval, and making an appropriation.

Details

Bill Sponsors: House—*Michaelson Jenet (D)*
Senate – *Gardner (R) and Williams A (D), Jahn (U)*

Committee: House Public Health Care & Human Services

Bill History: 4/13/2018- Introduced in House- Assigned to Health, Insurance, & Environment
4/19/2018- House Committee on Health, Insurance, & Environment Refer Amended to Finance
4/23/2018- House Committee on Finance Refer Amended to Appropriations
4/27/2018- House Committee on Appropriations Refer Amended to House Committee of the Whole

Next Action:

Bill Summary

This bill authorizes the Commissioner of Insurance to apply for a State Innovation Waiver (Section 1332) from the United States Department of Health and Human Services for the waiver, funding, or both, to allow Colorado to implement and operate a reinsurance program to assist health insurers in paying high-cost insurance claims. The program cannot be established without the approval of the federal government. The reinsurance program is created within the Division of Insurance (DOI).

Issue Summary

Insurance in Colorado

Each of the 64 counties in Colorado currently has at least one carrier providing insurance. According to the 2017 Colorado Health Access Survey (CHAS), 93.5 percent are Coloradans are insured.¹ In Larimer County, 59 percent of residents reported being somewhat or very worried about health insurance becoming so expensive that they will not be able to afford it.² Only 4 percent of residents within the boundaries of the Health District of Northern Larimer County reported having no health insurance in 2016.³ Additionally, 86 percent of Health District residents reported having continual health insurance during the preceding 3 years in the same survey.³ However, cost is an issue that is at the forefront of consumer’s minds. For those that are uninsured, 78.4 percent cited that the cost of the insurance was a barrier to purchasing coverage.¹ In

¹ Colorado Health Institute (2017). *Colorado’s New Normal: Findings from the 2017 Colorado Health Access Survey*. Retrieved from https://www.coloradohealthinstitute.org/sites/default/files/file_attachments/2017%20CHAS%20DESIGN%20FINAL%20for%20Web.pdf

² Larimer Health Tracker (2016). Retrieved from www.larimerhealthtracker.org

³ 2016 Community Health Survey; note: 5 percent reported that they did not know if they had health insurance or not.

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2018, health insurance rates increased an average of 32.2 percent in the individual market in Colorado.⁴ The mountain resort region of Summit, Pitkin, Eagle, and Garfield counties in Colorado were found in 2014 to be the most expensive for insurance in the entire United States.⁵

Uncertainty at the National Level

The Trump administration has proposed two regulations that could have a destabilizing effect on the individual market. The first proposed rule was promulgated in January 2018 and would expand association health plans (AHPs).⁶ This would expand the opportunity for unlicensed entities to operate in competition with state-licensed insurers and exempt AHPs from many standards and consumer protections that would apply if the coverage was offered in the traditional state-regulated individual and small-group markets. Over time the plans may draw healthy people out of the marketplace and into AHPs, leading to adverse selection, which could have a deleterious effect on premiums for those remaining in the marketplace.⁷ The second proposed rule, issued in February 2018, changes the regulations of short-term, limited duration health insurance policies.⁸ This proposed rule would change the allowed duration of short-term insurance from 3 months to 364 days. The Urban Institute estimated that the effect of the proposed rule, in combination with the elimination of the individual mandate penalty, would reduce enrollment in ACA-compliant plans by 18.3 percent.⁹ As enrollment in short-term plans tends to skew younger and healthier, the sale of these plans can have serious implications for the health of the overall individual market risk pool. The sale of these short-term plans could lead to higher premiums in the traditional individual market, as healthier consumers exit the market to enroll in short-term coverage. Overall, both of these agencies' proposed regulations could destabilize Colorado's individual health insurance market.

Section 1332 Waivers

Within the Affordable Care Act (ACA), section 1332 allows for states to implement elements of the ACA in alternative manners. Section 1332 waivers are limited as these novel approaches must be as successful in providing affordable, quality health coverage and must cost the federal government either the same amount or less than the standard implementation. There are four specific limitations for this waiver, known colloquially as "guardrails." The innovation must:

1. Provide coverage that is the same or more comprehensive than the original;
2. Provide coverage that is at least as affordable;
3. Provide coverage for the same amount or more people; **and**
4. Not add to the federal deficit.

These guardrails were set forth in the statutory language, but can be interpreted differently by each administration. The Centers for Medicare and Medicaid Services (CMS) has created a detailed page guiding states through the 1332 waiver process. In the final submission, the state must include a variety of critical documents. Some of these documents include: an actuarial analysis, a 10-year budget demonstrating

⁴ Colorado Health Institute (April 2018). *Insurance Prices*. Retrieved from https://www.coloradohealthinstitute.org/sites/default/files/file_attachments/2018%20Final%20Rate%20Analysis.pdf

⁵ Rau, J. (Feb. 2 2014) *The 10 Most Expensive Insurance Markets in the United States*. Kaiser Health News. Retrieved from <https://khn.org/news/most-expensive-insurance-markets-obamacare/>.

⁶ U.S. Department of Labor (Jan. 4, 2018). *US Department of Labor Announces Proposal to Expand Access to Healthcare through Small Business Health Plans*. Retrieved from <https://www.dol.gov/newsroom/releases/ebsa/ebsa20180104>

⁷ American Academy of Actuaries. (Feb. 2017). *Issue Brief: Association Health Plans*. Retrieved from <https://www.actuary.org/content/association-health-plans-0>

⁸ Centers for Medicare & Medicaid Services (Feb. 20, 2018). *Fact Sheet: Short-Term, Limited Duration Insurance Proposed Rule*. Retrieved from <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2018-Fact-sheets-items/2018-02-20.html>

⁹ Blumberg, L., Buettgens, M., Wang, R. (February 2018). *The Potential Impact of Short-Term Limited-Duration Policies on Insurance Coverage, Premiums, and Federal Spending*. Retrieved 26 March, 2018), from https://edit.urban.org/sites/default/files/publication/96781/2001727_0.pdf

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federal budget neutrality, any data or assumptions that help demonstrate satisfaction of the guardrails, and many other requirements for the innovative plan.¹⁰

Reinsurance

Reinsurance was designed as a way to cut the cost for insurance companies by paying a portion of the claims of their most expensive customers in the individual market, with the intent that the insurance companies can then lower insurance costs for their customers.¹¹ The simplest way to put it is that reinsurance is insurance for insurers. A reinsurance program and high-cost coverage can be designed in many ways. A traditional reinsurance program provides payments to insurers for high-cost claims.¹¹ In this type of program, eligibility can be based on either threshold of the total of all claims or a threshold per each individual enrollee. Another way is to design a reinsurance program that creates a segregated group for certain conditions that are known to be high-cost to the insurers, this is known as a traditional high-risk pool.¹² This type of program is typically prospective, or looks into the future to expect a certain outcome, and separates customers into a high-risk pool based on being diagnosed with one of several identified conditions and provides insurers with a set amount of reinsurance payments based on the typical costs of a patient with that condition. Finally, a hybrid/invisible pool type design can either be retrospective (i.e. look into the past) or prospective and the individuals can either be in a single or separated risk pool.

For a claims-based reinsurance program the ‘attachment point’ is the amount of a consumer’s annual claims that trigger payments from a reinsurance program. The reinsurance’s ‘coinsurance rate’ is the percentage of claims costs above the attachment point that the reinsurance program pays to the insurer. Then the ‘reinsurance cap’ is the maximum amount of annual claims that the reinsurance would make payments on to the insurer per high-cost consumer.

Reinsurance is being considered in state and national conversations because it provides a possible method for decreasing the risk for insurers. By doing so, this allows insurers to decrease premium costs for consumers as there is less uncertainty about how they will pay for all of their customer’s claims in a given benefit year. Additionally, it may entice reluctant insurers into markets from which they had previously withdrawn due to high claims costs.

Cover Colorado

Before the enactment of the ACA, the state had a program called Cover Colorado, which was a high-risk pool that operated from 1991 to 2013.¹¹ Each year there were approximately 13,700 individuals in the program with total claims of more than \$117 million. The program was funded through monthly premium fees (50%), assessments on state regulated plans including stop loss and reinsurance (25%), and unclaimed property funds (25%). One of the issues with this high-risk pool program was that premiums were much higher than traditional insurance. A consumer could get insurance even with a preexisting condition but only if they could afford they high costs. Due to the fact that this program was sunset in 2014, new legislation is required to create a reinsurance program and construct the waiver to apply for federal funds.

Reinsurance Analysis for Colorado

Senate Bill (S.B.) 17-300 mandated that the Division of Insurance conduct a study of the different methods of providing health coverage to high-risk individuals and reducing premiums in the individual market. The

¹⁰ Centers for Medicare & Medicaid Services (2017). *Section 1332: State Innovation Waivers*. Retrieved from https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-.html

¹¹ Colorado Health Institute (April 2018). *A Game-Changer for High Insurance Prices?: Reinsurance Presents an Option to Aid a Troubled Market*. Retrieved from <https://www.coloradohealthinstitute.org/research/game-changer-high-insurance-prices>

¹² Division of Insurance, Colorado Department of Regulatory Agencies (Oct. 2, 2017). *A Report Regarding SB17-300: Colorado High-Risk Health Coverage Study*. Retrieved from https://leg.colorado.gov/sites/default/files/images/doi_sb17-300_study_final_report.pdf

study was contracted out to a company, Milliman, who analyzed 25 different reinsurance scenarios.¹³ The following chart demonstrates the projections that the actuarial analysis found in three scenarios for a reinsurance program.⁸

State of Colorado			
2018 Illustrative Reinsurance Scenarios – Estimated Market Impact and Funding Requirements			
	<u>High</u>	<u>Medium</u>	<u>Low</u>
Reinsurance Fund Size (\$ Millions)	\$296	\$177	\$59
Individual Market Premium Rate Reduction	-21%	-12%	-4%
Federal Pass-Through Percentage with Margin	40%	40%	40%
Federal Pass Through-Funding (\$ Millions)	\$119	\$71	\$24
State-Based Revenue Requirement (\$ Millions)	\$177	\$106	\$35

The analysis found that there would be at least two beneficial impacts of Colorado implementing a reinsurance program. First, it will likely decrease prices for those in the individual market that are not receiving subsidies from the Federal government. Also, the analysis asserts that the morbidity of the individual market risk pool may ameliorate with additional enrollment from those who do not receive subsidies and may have otherwise forgone coverage.

Other States with Reinsurance Programs

Alaska was the first state to be approved to operate a reinsurance program in July 2017. The Alaska reinsurance program utilizes a prospective, hybrid condition-based model, under which 30 high-cost conditions are covered. This program is funded with 81 percent federal funds and the remaining is appropriated state funds.¹¹ Minnesota, on the other hand, had their waiver approved in September 2017 for a retrospective, hybrid claims-base model, which is funded with a combination of state and federal funds. Minnesota’s program has an attachment point of \$50,000, a coinsurance rate of 80 percent, and a reinsurance cap of \$250,000.¹¹ The state funding of this program comes from the state’s General Funds and a health access fund.¹¹ Oregon’s request for federal funding to finance the Oregon Reinsurance Program was approved in October 2017.¹⁴ This program has a coinsurance rate of 50 percent between the attachment point (yet to be determined) and a cap of approximately \$1 million.¹²

This Legislation

This bill imparts all powers necessary to implement the Colorado Reinsurance Program to the Commissioner of Insurance and is specifically given authorization to:

- Enter into contracts to carry out the reinsurance program
- Take legal action to avoid payment of improper claims
- Establish procedures for the operation of the program
- Establish procedures for carriers to submit claims to the program
- Establish and adjust the payment parameters for each benefit year
- Assess special fees against insurers for the operation of the program

¹³ Milliman, Inc. (Nov. 22, 2017). *Actuarial Report to the Colorado High-Risk Health Care Coverage Task Force, Final Report*.

¹⁴ Kaiser Family Foundation. (April 19, 2018). *Tracking Section 1332 State Innovation Waivers*. Retrieved from <https://www.kff.org/health-reform/fact-sheet/tracking-section-1332-state-innovation-waivers/>

- Apply for a state innovation waiver, federal funds, or both for the program
- Apply for and expend gifts, grants, donations, and any federal funds that become available
- Adopt rules that are necessary to implement, administer, and enforce the program

The reinsurance program is created within the Division of Insurance (DOI). The implementation and operation of the program is contingent upon approval of the state innovation waiver or federal funding. The program is to constitute an enterprise for the purposes of the Taxpayers Bill of Rights (TABOR).¹⁵ The Commissioner will collect or access data from an eligible carrier¹⁶ to determine reinsurance payments. On a quarterly basis during an applicable benefit year, eligible carriers shall report claims costs that exceed the attachment point and each insurer that is subject to the special fees shall report on its collected assessments. The Commissioner is to notify eligible carriers of reinsurance payments to be made for the benefit year no later than June 30 of the year following the benefit year. Then, by August 15 of the year after the benefit year, the Commissioner will disburse the reinsurance payments to eligible carriers.

In order to calculate eligibility and reinsurance payments for the 2019 benefit year, the commissioner shall set the attachment point, coinsurance rate, and reinsurance cap at points to meet specified goals. This amount is to achieve a reduction in claims costs between 30-35 percent in geographic rating regions 5 (Grand Junction) and 9 (West). Further, these points are to result in a reduction in claims costs between 20-25 percent in geographic rating regions 4 (Fort Collins), 6 (Greeley), 7 (Pueblo), and 8 (East). Finally, for the other geographic rating regions in state (1 [Boulder], 2 [Colorado Springs], and 3 [Denver]) these amounts are to achieve a reduction in claims costs between 15-20 percent.

For the 2020 benefit year, and each year thereafter, the Commissioner shall conduct a stakeholder process then establish and publish the payment parameters for the benefit year by the March 15 of the year immediately preceding the benefit year in question. When setting the rates for 2020 and after, the following factors for each rating region shall be considered: carrier participation and competition in the individual market, enrollment and morbidity in the individual market, participation and competition by providers, and rates in the individual market. If there is ever inadequate funds in the program to meet the payment parameters, then the Commissioner shall establish new payment parameters within the available funds. Additionally, if these circumstances occur, the Commissioner is to allow carriers to revise applicable rate filings for the next benefit year.

An eligible carrier must make requests for reinsurance payments in accordance with requirements that are set by the Commissioner. By April 30 following the benefit year for which reinsurance payments are requested, carriers must provide the Commissioner with access to the data, under applicable Federal laws.¹⁷ Eligible carriers shall keep enough documents and records that can substantiate their requests for reinsurance payments for at least 6 years. The documents and records shall be available upon request of the Commissioner for verification, investigation, audit, or other review of reinsurance payments. The Commissioner will calculate reinsurance payments based off of an eligible carrier's incurred claims costs for a covered person's benefits in the benefit year. The Commissioner is to ensure that reinsurance payments to eligible carriers do not exceed the total amount paid by the carrier for any eligible claim.¹⁸ The carrier is

¹⁵ Section 20 of Article X of the Colorado State Constitution

¹⁶ A carrier that offers individual health benefit plans that are compliant with the ACA and incurs claims costs for a covered person's covered benefits in the applicable benefit year.

¹⁷ Federal Risk Adjustment Program; 42 U.S.C. Sec. 18063

¹⁸ The total amount paid by the eligible carrier means the amount paid by the carrier based on the allowed amount minus any deductible, coinsurance, or copayment.

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allowed to request reconsideration of the Commissioner's decision of payments within 30 days of the original decision.

For each benefit year, the Commissioner is to maintain accounting regarding the money appropriated for reinsurance payments, operational/administrative costs, requests for reinsurance payments from carriers, reinsurance payments made to carriers, and administrative/operational expenses incurred for the program. By November 1 of the year following the benefit year or 60 days after the final disbursement of reinsurance payments for that benefit year (whichever is later), the Commissioner will summarize the program's operations for that benefit year in a public report. The bill specifies that the reinsurance program is subject to audit by the state auditor.

The Reinsurance Program Cash Fund is created in the treasury that consists of any federal funding, special fees, and gifts, grants, or donations. All money that is deposited or paid into the program cash fund (including interest or income earned through investment) is continuously available and appropriated to the DOI to be expended for the program's reinsurance payments of the operating and administrative expenses of the program.

For the 2019 benefit year, special fees are to be assessed against insurers to provide funding for the program. The fees are based on the amount necessary to reduce the claims costs by the amounts previously outlined. However, the fees cannot exceed 2 percent of the premiums collected by an insurer that provides group or individual health benefit plans that are subject to state regulation (excludes Medicaid and the Children's Health Insurance Plan) and the fees cannot be greater than 8 percent of the premiums collected by entities that directly or indirectly provide stop-loss or excess loss insurance to a self-insured group health plan. For the 2020 benefit year and every year thereafter, the special fees must not exceed these thresholds and are to be based on the claims submitted, the administrative/operating costs of the reinsurance program in the immediate preceding benefit year, and the expected annual growth of the program. Rules are to be promulgated to implement the special fees including the time periods for billing and collection of the fees, procedures for the approval, deferral or abatement of the fees, and the assessment amount of the fees. If an insurer fails to pay a special fee in the established time period, the Commissioner may use all available powers to enforce payment.

The Commissioner is to apply to the U.S. Department of Health and Human Services for a waiver, federal funds, or both to implement and operate the reinsurance program for plan years starting on or after January 1, 2019. Any application must state that the operation of the program is contingent on approval of the request. The waiver application should ensure that it is done in accordance with Section 1332 of the ACA and include a request for a pass-through of federal funding. The Commissioner is to notify the Joint Budget Committee, Senate Committee on Health and Human Services, House Committee on Health, Insurance, and Environment, and House Committee on Public Health Care and Human Services regarding any federal actions on the waiver application. All of the provisions in this bill are repealed if the waiver is denied.

For the 2018-2019 fiscal year, \$15,000 is appropriated to the Department of Regulatory Agencies for use by the DOI.

How This Legislation May Look

Figure 1 from the Colorado Health Institute illustrates how the bill envisions the state’s reinsurance program to be funded.⁹ Table 2 demonstrates the projected special fees on the three types of insurers subjected to such fees in the legislation.⁹ For those consumers of the individual market they will expectedly either see their premiums decrease or stay the same. Consumers in the group market may see their premiums rise between \$18 and \$96 per year.

FIGURE 1. How a Reinsurance Program Works

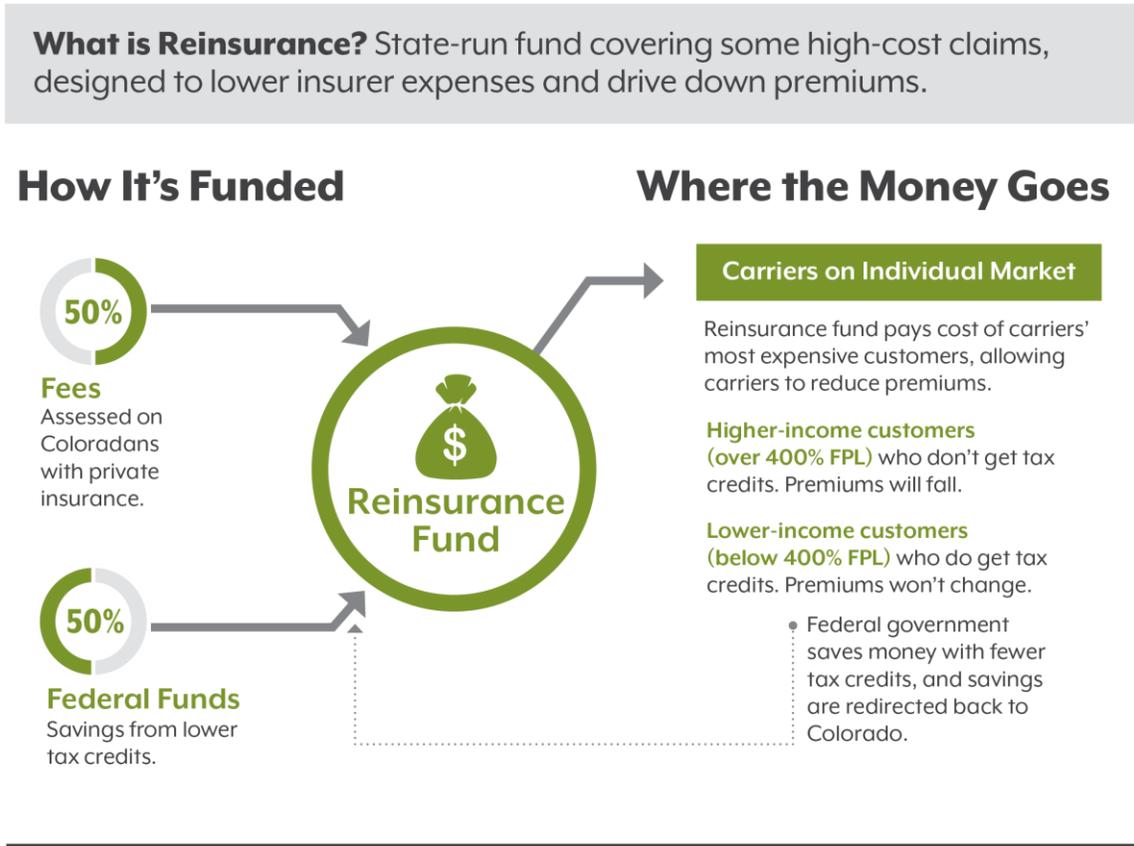


TABLE 2. Projected Fees to Run a Reinsurance Program

Health Insurance Plans Subject to Fee	Number of People Subject to the Fee	Fee per person per year		
		Small Reinsurance Fund (5% Claims Impact)	Moderate Reinsurance Fund (15% Claims Impact)	Large Reinsurance Fund (25% Claims Impact)
Fully insured group plans, Individual plans, Stop-loss plans*	2.0 million	\$18	\$54	\$96

* HB 1392 proposes a large reinsurance fund with fees on these three types of plans.

Reasons to Support

The program could provide substantial relief to the 124,000 people who buy coverage on the individual market but do not receive the federal Advance Premium Tax Credits. The approximately two million covered people who would pay new fees would get the indirect benefit of a healthier insurance market. A healthier market could ultimately have a positive effect on the amount of their premiums. As the individual market becomes so destabilized prices for all tend to go up, and if it fails then prices will skyrocket for everyone in the state.

If prices in the individual market decrease, it could spur some of the uninsured to gain coverage. Most of those that are foregoing insurance are reporting that they are doing so due to cost. It is likely that the removal of the individual mandate from the federal government coupled with increasing costs for health insurance in the individual market will increase the amount of Coloradans that are uninsured. Addressing the cost of premiums in the individual market could keep these people in the market, which could avert uncompensated care costs associated with increased uninsurance rates.

Introducing a reinsurance program would help with the stabilization of the individual market, which most in the state assert is at a crisis point. State stabilization is particularly important since it is uncertain what policies regarding health care will be made at the federal level. Although reinsurance does not solve the problem of affordability, it provides a better anticipated outcome than the status quo. Decreased premiums on the individual market would allow more individuals and families that do not qualify for subsidies to be able to afford health insurance while being able to pay for food and utilities, repay student loans, and/or contribute to retirement plans.

Reinsurance could also help keep carriers in the market as the program removes some of the financial risk from the entities. Keeping these carriers in the market improves competition in the market. Improved competition results in increased choice for consumers.

Supporters

- Colorado Center on Law and Policy
- Colorado Children's Campaign
- Connect for Health Colorado
- Division of Insurance
- Friday Health Plans
- Garfield County Commissioners
- Grand County Commissioners
- Healthier Colorado
- National Association of Insurance and Financial Advisors
- Summit County Chamber of Commerce
- Summit County Commissioners

Reasons to Oppose

Reinsurance does not solve the problem of affordability in health care. A recent study has demonstrated that Colorado spends drastically more (17 percent more than the average for comparable populations) than many other states.¹⁹ Some are concerned about the funding mechanism for the reinsurance program, since placing fees on other types of plans might penalize those who do not get their coverage through the individual market and employers who provide employer-sponsored insurance, if their costs do not ultimately go down. Other states have appropriated funds from their budget to create and administer such a program, some think this a more appropriate funding mechanism for such a program. Additionally, some believe that how the program is currently modeled will exacerbate costs for the rest of the health insurance market.

¹⁹ Network for Regional Healthcare Improvement. (2018). *Healthcare Affordability: Untangling Cost Drivers*. Retrieved from http://www.nrhi.org/uploads/benchmark_report_final_web.pdf

Opponents

- Colorado Competitive Council
- Colorado State Chamber of Commerce
- Kaiser Permanente HMO
- National Federation of Independent Business

Other Considerations

It is uncertain how much the cost of premiums will rise in 2019 without reinsurance due to the repeal of the individual mandate and other actions at the federal level. Therefore, the price reductions due to a reinsurance program could go unnoticed by the consumer. The reinsurance program could prevent a larger premium increase than what would occur at the status quo, but if consumers are expecting premiums to decrease in plan year 2019 they may be disappointed.

The Milliman actuarial study only examined the impacts of a reinsurance program for one year, 2019. Therefore, the longer-term impacts are largely unknown. Furthermore, the analysis is based on many assumptions, including how much carriers are able to decrease their premiums and how much money the Federal government will contribute to the program under a waiver.

Reinsurance must weigh the benefits for approximately 124,000 Coloradans against the costs for the 2 million Coloradans paying fees. The following chart from the report by the Colorado Health Institute demonstrates the pros and cons for different groups affected by a reinsurance program.⁹

Who Gets What from Reinsurance

Middle-class Individual Market Customers:

This group would benefit the most. The ACA offers no financial help for people who earn more than four times the federal poverty level, so they suffered the most under the recent dramatic price increases. They would see the most relief from a reinsurance program.

Subsidized individual market customers:

This group would see little change. The ACA offers subsidies to cushion the effects of price hikes. A reinsurance program would use some of those subsidies to lower premium prices, so the result probably would be a wash for this group.

Other health insurance enrollees: Customers of small- and large-group health insurance plans and individual market plans could face fees of \$11 to \$185 a year, according to an estimate.

Insurance companies: Carriers that sell plans on the individual market would likely come out ahead with more predictable markets. But they may also be assessed fees to help finance the reinsurance program.

About this Analysis

This analysis was prepared by Health District of Northern Larimer County staff to assist the Health District Board of Directors in determining whether to take an official stand on various health-related issues. The Health District is a special district of the northern two-thirds of Larimer County, Colorado, supported by local property tax dollars and governed by a publicly elected five-member board. The Health District provides medical, mental health, dental, preventive and health planning services to the communities it serves. For more information about this summary or the Health District, please contact Alyson Williams, Policy Coordinator, at (970) 224-5209, or e-mail at awilliams@healthdistrict.org.