

HB20-1008: HEALTH CARE COST-SHARING CONSUMER PROTECTIONS

Concerning protections for consumers who participate in health care cost-sharing arrangements.

Details

Bill Sponsors:	House – <i>Lontine (D)</i> Senate – <i>Fields (D)</i>
Committee:	House Health & Insurance
Bill History:	1/8/2020- Introduced 2/4/2020- House Health & Insurance Committee Lay Over Unamended
Next Action:	Action in House Health & Insurance Committee
Fiscal Note:	<u>1/31/2020</u>

Bill Summary

The bill requires operators of health care cost-sharing arrangements (CSAs) to report specified information to the Commissioner of Insurance, within the Department of Regulatory Agencies (DORA), provide disclosures to consumers, and respond to requests for payment within specified time periods.

Issue Summary

Insurance Coverage in Colorado

Coloradans can get health insurance coverage through a variety of different means, depending on eligibility. There are public programs, such as Medicare, Medicaid, and Child Health Plan Plus (CHP+), or private insurance through an employer, through the marketplace run by Connect for Health Colorado, or insurance that is offered off the marketplace. This figure from the Colorado Health Institute (CHI) demonstrates the proportion of residents in the different types of insurance coverage offered in Colorado.¹



According to the 2019 Colorado Health Access Survey (CHAS) from CHI, 93.5 percent of Coloradans are insured.¹ For those who reported being uninsured in the 2019 CHAS, 89.6 percent cited that the cost of the insurance was a barrier to purchasing coverage, which is much greater than the 78.4 percent that had the same response in 2017.¹ Each of the 64 counties in Colorado has at least one carrier providing insurance on the marketplace. For the 2020 plan year, 22 of Colorado's 64 counties had only one carrier offering plans, an increase from 14 counties for the 2019 plan year.²

Approximately 4 percent of Larimer County adults ages 18-64 reported being uninsured in 2016.³ During the same year, 59 percent of Larimer County adults reported being somewhat or very worried about health

¹ Colorado Health Institute (Jan. 2020). *Progress in Peril: 2019 Colorado Health Access Survey Storybook*. Retrieved from https://www.coloradohealthinstitute.org/sites/default/files/file_attachments/CHAS%20Storybook%202019%20for%20Web.pdf

² Norris, L. (Jan. 16, 2019). *Colorado health insurance marketplace: history and news of the state's exchange*. Retrieved from <https://www.healthinsurance.org/colorado-state-health-insurance-exchange/>

³ Health District of Northern Larimer County (June 21, 2017). *Significant Changes in Health Coverage and Expenses in Larimer County*. Retrieved from <https://www.healthdistrict.org/sites/default/files/2016-community-health-survey-summary.pdf>

insurance becoming so expensive that they will not be able to afford it. Additionally, 86 percent of Health District residents reported having continual health insurance during the preceding 3 years in the 2016 Health District survey.

Health Care Cost-Sharing Arrangements (CSAs)

Typically, health care cost-sharing arrangements (CSAs) have members that share a religious or ethical belief system.⁴ Members contribute to the CSA, usually monthly, in order to cover the qualifying medical costs of other members. Since these CSAs do not meet the definition of health insurance under federal law and the Affordable Care Act (ACA), they can exclude coverage for pre-existing conditions, may have lifetime limits on coverage, cap payments, or not guarantee payment.⁵ Since most CSAs are faith-based, they may not cover treatments or conditions that do not align with those religious beliefs. Further, the ACA does not dictate if or how states should regulate CSAs.⁵ It is not easy to track the number of CSA enrollees; however, according to the Alliance of Health Care Sharing Ministries, Colorado is one of the top ten states for participation.⁵ There are an estimated 21,000 households and 53,000 people participating.⁶

This Legislation

Definitions

The bill defines a “health care cost-sharing arrangement” as a health care sharing ministry, as defined by federal law⁶, or a medical cost-sharing community or other arrangement or entity through which the members contribute money on a regular basis, at levels determined by the community/arrangement, that may be used to share, cover, or otherwise defray the medical costs of members. A “producer” is a person who solicits, negotiates, effects, procures, delivers, renews, continues, or binds enrollment in a health plan.⁷

Reporting Requirements

By March 1, 2021, and by each March 1 after, a person that offers, operates, manages, or administers a CSA must file with the Commissioner of Insurance the following information and documentation:

- Annual audited financial statements for the previous calendar year
- Detailed list of any commissions or fees paid to third parties for marketing, promotion, or enrollment of members into a CSA
- Detailed list of any commissions or fees paid to third parties for operating, managing, or administering a CSA
- List and description of membership benefits, limitations, and exclusions applicable to the CSA
- List of providers that CSA has a provider agreement, contract or other arrangement with
- Total number of members and households in the CSA in the previous calendar year
- If applicable, total number of employer groups and employees in each group in the CSA during the previous calendar year
- Number of applications or other requests to participate in the CSA that were submitted, accepted, and denied in the previous calendar year
- Total number in the previous calendar year of:
 - Bills/medical expenses paid with money from the CSA for its members, including total amount of the expenses paid
 - Bills/medical expenses that the CSA denied in whole or part, including total amount of the expenses denied
 - Retroactive membership denials

⁴ Volk, J., Curran, E., & Giovannelli J. (Aug. 8, 2018). *Health Care Sharing Ministries: What Are the Risks to Consumers and Insurance Markets?* Commonwealth Fund. Retrieved <https://www.commonwealthfund.org/publications/fund-reports/2018/aug/health-care-sharing-ministries>

⁵ Ingold, J. (Sept. 30, 2019). *As Coloradans struggle to pay for health coverage, cheaper alternatives come with their own perils.* Colorado Sun. Retrieved from <https://coloradosun.com/2019/09/30/colorado-health-insurance-sharing-ministries/>

⁶ 26 U.S.C. SEC. 5000A (d)(2)(B)

⁷ Full definition at C.R.S. 10-2-103 (6)

- Appeals of grievances submitted to the CSA and the number of appeals approved in whole or part and the dollar amount
- Any other information required by the Commissioner that is related to the offering, provision, administration, or operations of CSAs in the previous calendar year

Disclosure Requirements

On and after January 1, 2021, a person (including a producer) that offers, operates, manages, or administers a CSA is to prominently display on its website and marketing materials the following information:

- Participation or membership in a health care CSA does not guarantee payment of bills or medical expenses
- A member of a health care CSA remains personally responsible for payment of all bills or medical expenses
- A member of a health care CSA may be subject to certain preexisting condition exclusions or other limitations
- Any other information required by the Commissioner through rulemaking

This information must also be included in a written disclosure provided to a prospective or renewing member/group that must be signed.

Limitation on Enrollment Period

Neither a CSA nor a producer can enroll or accept, an individual or group in a CSA during the annual open enrollment⁸ for health benefit plans purchased through Connect for Health Colorado (the state-based marketplace).

Notice of Decision on Bills

A CSA that receives a bill or request for payment from a health provider that provided care to a member is to provide a response to that bill/request for payment within a specified number of days (to be determined by rule) after the date of service. If the CSA fails to pay the expenses in full or respond in that specified period, it constitutes a denial. If the CSA only pays a portion, it constitutes a denial of the remaining unpaid amount.

Rulemaking

The Commissioner is to adopt rules to implement the disclosure and reporting requirements as well as the required time frame for responding to bills/requests for payment. Additionally, the Commissioner may establish a schedule for the assessment of penalties based on the frequency and severity of noncompliance.

Civil Penalties

The Commissioner can assess a penalty against a CSA for failing to:

- File the required report
- Post/provide the required disclosures
- Comply with the prohibition on selling/enrolling a CSA during open enrollment
- Pay or respond to a bill or request for payment within the specified timeframe

The penalty can be up to \$500 for an initial violation and up to \$5,000 for any subsequent failure to comply. If a producer fails to comply with the required disclosures or the prohibition on selling/enrolling during open enrollment period, the Commissioner can assess a civil penalty.

Cease-and-Desist of Prohibited Acts

A person is prohibited from issuing, circulating, or causing the issuance or circulation, any statement or publication that misrepresents the health care CSA's benefits, advantages, conditions, or terms. If this prohibition is violated the Commissioner can issue a cease-and-desist order.

⁸ Set at November 1 through January 15 every year.

Reasons to Support

The disclosure requirements will aid consumers in knowing that they are not purchasing insurance. Currently, many believe that they are purchasing traditional insurance but later learn that CSAs do not offer the same guarantees. While these arrangements may work for some people, consumers should be aware of what they are buying, including that they are responsible for any medical expenses if their claims are denied and that they could be denied for any reason.

Supporters

- AARP
- Center for Health Progress
- Colorado Center on Law & Policy
- Colorado Children's Campaign
- Colorado Community Health Network
- Colorado Consumer Health Initiative
- Colorado Cross-Disability Coalition
- Colorado Hospital Association
- Colorado Obstetrical and Gynecological Society
- Connect for Health Colorado
- Healthier Colorado
- League of Women Voters of Colorado
- National Multiple Sclerosis Society

Reasons to Oppose

An outcome of this bill could restrict the number of CSAs in Colorado, which could impact those individuals who have enrolled in CSAs because they feel like traditional individual insurance is too expensive. Some may assert that CSAs provide some financial protection for families who want to share their health care expenses with other families with the ultimate goal of keeping everyone's out-of-pocket costs low. These mandates could increase the administrative costs of the CSA, thus increasing the costs for its members. The prohibition on selling/enrolling individuals during the marketplace open enrollment period could leave some individuals without any type of coverage for a period of time and susceptible to incurring large medical debts.

Opponents

- Christian Home Educators of Colorado

Other Considerations

The disclosure requirements do not explicitly state that the CSA's must include a statement regarding the fact that it does not meet the definition of health insurance under federal law and is not required to provide the same consumer protections as insurance. However, something addressing this fact could be included during the DOI's rulemaking on the issue.

Additionally some may feel that the fines imposed in the bill are low considering the financial implications for consumers can be great.

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. This analysis is accurate to staff knowledge as of date printed. For more information about this analysis or the Health District, please contact Alyson Williams, Policy Coordinator, at (970) 224-5209, or e-mail at awilliams@healthdistrict.org.