

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Proposed Amended Regulation 4-2-43

ENROLLMENT PERIODS RELATING TO INDIVIDUAL AND GROUP HEALTH BENEFIT PLANS

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Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-109, 10-16-105(2)(b), 10-16-105.7(3)(c) and 10-16-109, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish rules governing enrollment periods for individual and group health benefit plans in accordance with Article 16 of Title 10 of Colorado Revised Statutes, and the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119 (2010), and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010), together referred to as the "Affordable Care Act" (ACA).

Section 3 Applicability

This regulation shall apply to all carriers offering individual and/or group health benefit plans subject to the individual and group laws of Colorado and the requirements of the ACA. This regulation does not apply to those health benefit plans that have not yet become subject to the provisions of HB13-1266.

Section 4 Definitions

- A. "Calendar year" means, for the purpose of this regulation, a year beginning on January 1 and ending on December 31.
- B. "Carrier" shall have the same meaning as found at § 10-16-102(8), C.R.S.
- C. "Creditable coverage" shall have the same meaning as found at § 10-16-102(16), C.R.S.
- D. "Days" mean, for the purpose of this regulation, calendar days, not business days.

- E. "Designated beneficiary agreement" shall have the same meaning as found at § 15-22-103(2), C.R.S.
- F. "Exchange" shall have the same meaning as found at § 10-16-102(26), C.R.S.
- G. "Health benefit plan" shall have the same meaning as found at § 10-16-102(32), C.R.S.

Section 5 Individual Enrollment Periods

- A. Carriers offering individual health benefit plans must accept every eligible individual who applies for coverage, agrees to make the required premium payments and abide by the reasonable provisions of the plan, although carriers may choose to restrict enrollment to open or special enrollment periods.
- B. Carriers offering individual health benefit plans must display continuously and prominently on their web site:
 - 1. Notice of open enrollment dates;
 - 2. Notice of special enrollment qualifying and triggering events;
 - 3. Notice of the enrollment periods for each qualifying and triggering event; and
 - 4. Instructions on how to enroll.
- C. Open enrollment periods.
 - 1. The open enrollment period for plans effective on or after January 1, 201~~56~~⁵⁵ shall begin on November 1~~5~~⁵, 201~~45~~⁴⁵, and extend through ~~February~~^{January} 1~~5~~³¹, 201~~56~~⁵⁶. ~~Carriers must ensure that coverage purchased between the first and fifteenth day of the month during this open enrollment period shall become effective no later than the first day of the following month. Coverage purchased between the sixteenth and the last day of the month shall become effective no later than the first day of the second following month.~~
 - 2. ~~Subsequent annual open enrollment periods will begin on October 15 and extend through December 7 of each calendar year.~~
 - 3~~2~~. Carriers must ensure that coverage is effective:
 - a. ~~as of~~ January 1 for health benefit plans purchased ~~during annual open enrollment specified in C-21, of this section, on or before December 15, of the open enrollment period;~~
 - b. ~~February 1, for health benefit plans purchased between December 16 through January 16 of the open enrollment period; and~~
 - c. ~~March 1 for health benefit plans purchased between January 16, through January 31 of the open enrollment period.~~
 - 4~~3~~. The benefit year for individual health benefit plans purchased during the ~~initial and~~ annual open enrollment periods~~s~~ is a calendar year.
 - 5~~4~~. During open enrollment periods, carriers must offer guarantee-issue child-only health benefit plans to all applicants under the age of 21.

D. Special enrollment periods.

Carriers must establish special enrollment periods for individuals who experience triggering events, pursuant to § 10-16-105.7, C.R.S.

1. Following a triggering event, a carrier must provide a special enrollment period of no less than sixty (60) days.
2. When an individual is notified or becomes aware of a triggering event that will occur in the future, he or she may apply for enrollment in a new health benefit plan during the thirty (30) calendar days prior to the effective date of the triggering event, **unless otherwise noted in subparagraph 3. of this Section 5.D.,** with coverage beginning no earlier than the day the triggering event occurs to avoid a gap in coverage. The individual must be able to provide written documentation to support the effective date of the triggering event at the time of application. The effective date of this enrollment must comply with the coverage effective dates found in Section 5.D.4. of this regulation.
3. Triggering events are:
 - a. **An individual or his or her dependent involuntarily losing existing creditable coverage for any reason other than fraud, misrepresentation, or failure to pay a premium may apply for enrollment in a new health benefit plan during the sixty (60) calendar days prior to the effective date of the loss of coverage;**
 - b. **An individual or his or her dependent losing medically needy coverage as described under Section 1902(a)(10)(C) of the Social Security Act may apply, once during a calendar year, for enrollment in a new health benefit plan during the sixty (60) calendar days prior to the effective date of the loss of coverage;**
 - bc. Gaining a dependent or becoming a dependent through marriage, civil union, birth, adoption, or placement for adoption, placement in foster care, **through a child support order or other court order,** or by entering into a designated beneficiary agreement if the carrier offers coverage to designated beneficiaries;
 - ed. An individual's enrollment or non-enrollment in a health benefit plan that is unintentional, inadvertent or erroneous and is the result of an error, misrepresentation, or inaction of the carrier, producer, or the Exchange;
 - ee. Demonstrating to the Commissioner that the health benefit plan in which the individual is enrolled has substantially violated a material provision of its contract in relation to the individual;
 - ef. An Exchange enrollee **who becoming:**
 - (1) **Becomes** newly eligible or ineligible for the federal advance payment tax credit **or has a change in eligibility** for cost-sharing reductions available through the Exchange;
 - (2) **Has a dependent enrolled in the same qualified health plan who is determined newly eligible or ineligible for the federal advance payment tax credit or has a change in eligibility for cost-sharing reductions available through the Exchange, or**
 - (3) **Is enrolled in an eligible employer-sponsored plan and is determined newly eligible for the federal advance payment tax credit based in part on a finding that such individual is ineligible for coverage in an eligible**

employer-sponsored plan that provides minimum creditable coverage, including as a result of his or her employer discontinuing or changing coverage within the next sixty (60) days, provided the enrollee is able to terminate his or her existing coverage. This enrollee may apply for enrollment in a new health benefit plan during the sixty (60) calendar days prior to the effective date of the loss of coverage.

- fg. Gaining access to other creditable coverage as a result of a permanent change in residence;
- gh. A parent or legal guardian dis-enrolling a dependent, or a dependent becoming ineligible for the Children's Basic Health Plan;
- hi. An individual becoming ineligible under the Colorado Medical Assistance Act;
- ij. An individual, who was not previously a citizen, a national, or a lawfully present individual, gains such status; or
- jk. An Indian, as defined by Section 4 of the Indian Health Care Improvement Act, may enroll in a qualified health plan or change from one qualified health plan to another one time per month.

l. An individual or his or her dependent currently enrolled in an individual or group non-calendar year health benefit plan may apply for enrollment in a new health benefit plan during the sixty (60) calendar days prior to the effective date of the loss of coverage, which is the last day of the plan or policy year; or

4. Coverage effective dates.

- a. In the case of marriage, civil union, or in the case where an individual loses creditable coverage, coverage must be effective no later than the first day of the following month.
- b. In the case of birth, adoption, placement for adoption, or placement in foster care, coverage must be effective on either:

(1) The date of the event; or

(2) The first day of the month following the birth, adoption, placement for adoption, or placement in foster care, if requested by the primary individual policyholder.

c. In the case of an involuntary loss of existing creditable coverage in accordance with Section 5.D.3.a. of this regulation, coverage shall become effective either:

(1) On the first day of the month following either of these triggering events if plan selection is made on or before the day of the triggering event; or

(2) In accordance the effective dates specified at Section 5.D.4.f and g. of this regulation if a plan selection is made after the day of either of these triggering events.

d. In the case of gaining a dependent or becoming a dependent through a court order, coverage shall become effective either:

(1) On the date the court order is effective; or

(2) In accordance the effective dates specified at Section 5.D.4.f. and g. of this regulation at the election of the primary individual policyholder.

e. The effective date of coverage for triggering events found in Section 5.D.3.d. and e. must be appropriate date based upon the circumstances of the special enrollment period.

ef. In the case of all other triggering events, where individual coverage is purchased between the first and fifteenth day of the month, coverage shall become effective no later than the first day of the following month.

eg. In the case of all other triggering events, where individual coverage is purchased between the sixteenth and last day of the month, coverage shall become effective no later than the first day of the second following month.

e. In the case of an involuntary loss of existing creditable coverage in accordance with Section 5.D.3.a. of this regulation, coverage shall become effective either:

(1) On the first day of the month following either of these triggering events if plan selection is made on or before the day of the triggering event; or

(2) In accordance the effective dates specified at Section 5.D.4.c. and d. of this regulation if a plan selection is made after the day of either of these triggering events.

f. In the case of gaining a dependent or becoming a dependent through a court order, coverage shall become effective either:

(1) On the date the court order is effective; or

(2) In accordance the effective dates specified at Section 5.D.4.c. and d. of this regulation at the election of the primary individual policyholder.

g. The effective date of coverage for triggering events found in Section 5.D.3.d. and e. must be appropriate date based upon the circumstances of the special enrollment period.

E. Notification requirements.

Carriers offering individual health benefit plans during open enrollment periods must provide the notice found in Appendix A, to their current individual policyholders no later than thirty (30) days prior to the start of each annual open enrollment period.

Section 6 Group Enrollment Periods

A. Carriers that offer small group health benefit plans must guarantee-issue small group health benefit plans throughout the year to any eligible small group that applies for a plan, agrees to make the required premium payments, and abide by the reasonable provisions of the plan, except as noted below.

B. Special enrollment periods for small employers.

1. For small employers that are unable to comply with employer contribution or group participation rules at the time of initial application, carriers may limit the availability of

coverage for a group it has declined to an enrollment period that begins on November 15 and ends on December 15 of each year.

2. Coverage must be effective consistent with the dates listed below, unless the initial premium payment is not received by the carrier's cut-off date.
 - a. Carriers cannot establish a waiting period of more than ninety (90) days.
 - b. If a fully completed application is received by the carrier between the first and the fifteenth day of the month, the first effective day of the health benefit plan will be no later than the first day of the following month.
 - c. If a fully completed application is received between the sixteenth and last day of the month, the first effective day of the health benefit plan will be no later than the first day of the second following month.

C. Special enrollment periods for employees of small and large employer group plans.

1. Carriers must establish special enrollment periods in the group health benefit plan for individuals who experience any of the following qualifying events pursuant to § 10-16-105.7(3)(b)(I), C.R.S.:
 - a. Loss of coverage due to:
 - (1) The death of a covered employee;
 - (2) The termination or reduction in the number of hours of the employee's employment;
 - (3) The covered employee becoming eligible for benefits under Title XVIII of the Federal "Social Security Act", as amended; or
 - (4) The divorce or legal separation from the covered employee's spouse or partner in a civil union.
 - b. Becoming a dependent through marriage, civil union, birth, adoption, or placement for adoption, or placement in foster care;
 - c. Becoming a dependent of a covered person by entering into a designated beneficiary agreement, or pursuant to a court or administrative order mandating that the individual be covered;
 - d. Losing other creditable coverage due to:
 - (1) Termination of employment or eligibility for coverage, regardless of eligibility for COBRA or state continuation;
 - (2) A reduction in the number of hours of employment;
 - (3) Involuntary termination of coverage; or
 - (4) Reduction or elimination of his or her employer's contributions toward the coverage.

- f. Losing coverage under the “Colorado Medical Assistance Act” and then requesting coverage under an employer’s group health benefit plan within sixty (60) days of the loss of coverage;
 - g. An employee or dependent becoming eligible for premium assistance under the “Colorado Medical Assistance Act” or the Children’s Basic Health Plan; or
 - h. A parent or legal guardian dis-enrolling a dependent, or a dependent becoming ineligible for the Children’s Basic Health Plan, and the parent or legal guardian requests enrollment of the dependent in a health benefit plan within sixty (60) days of the disenrollment or determination of ineligibility.
2. Individuals in the group market shall have a thirty (30) day special enrollment period that begins on the date the qualifying event occurs, except as provided in Section 6.C.1.f. and g. of this regulation, which provide a sixty (60) day special enrollment period.
 3. When an individual in the group market is notified or becomes aware of a qualifying event that will occur in the future, he or she may apply for coverage during the thirty (30) calendar days prior to the effective date of the qualifying event, with coverage beginning no earlier than the day the qualifying event occurs to avoid a gap in coverage. The individual must be able to provide written documentation to support the effective date of the qualifying event at the time of enrollment. The effective date of this enrollment must comply with the coverage effective dates found in Section 6.C.4. of this regulation.
 4. Coverage effective dates.
 - a. In the case of birth, adoption, placement for adoption, or placement in foster care, coverage must be effective on the date of the event.
 - b. In the case of marriage, civil union, or other qualifying events, coverage must be effective no later than the first day of the following month after the date the Exchange or the carrier receives a completed enrollment form.

Section 7 Incorporation by Reference

The “Indian Health Care Improvement Act” (25 U.S.C. § 1601 et seq. (2010)), published by the Indian Health Service shall mean “Indian Health Care Improvement Act” as published on the effective date of this regulation and does not include later amendments to or editions of the “Indian Health Care Improvement Act.” A copy of the “Indian Health Care Improvement Act” may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202 or by visiting the Indian Health Service website at http://www.ihs.gov/ihcia/documents/home/USCode_Title25_Chapter%2018.pdf. A certified copy of the “Indian Health Care Improvement Act” may be requested from the Colorado Division of Insurance for a fee.

“Section 1902(a)(10)(C) of the Social Security Act”, published by the Social Security Administration shall mean “Section 1902(a)(10)(C) of the Social Security Act” as published on the effective date of this regulation and does not include later amendments to or editions of “Section 1902(a)(10)(C) of the Social Security Act.” A copy of “Section 1902(a)(10)(C) of the Social Security Act” may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado 80202 or by visiting the Social Security Administration website at http://www.ssa.gov/OP_Home/ssact/title19/1902.htm. A certified copy of “Section 1902(a)(10)(C) of the Social Security Act” may be requested from the Colorado Division of Insurance for a fee.

Section 8 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 9 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 10 Effective Date

This regulation shall become effective on ~~August 15~~ November 1, 20145.

Section 11 History

Emergency regulation 13-E-13 effective October, 31, 2013.

Regulation effective February 1, 2014.

Amended regulation effective August 15, 2014.

Amended regulation effective November 1, 2015.

APPENDIX A

Annual Open Enrollment Period Notice for Individual Health Benefit Plans

"We would like to let you know that your annual open enrollment period starts this year on [Open Enrollment Start Date]. Your open enrollment period will last until [Open Enrollment End Date]. During the open enrollment period you will be able to purchase new health insurance for the coming year.

You have two choices:

- You can continue with your current plan, where you will not need to take any action; or
- You can enroll in a new plan during the open enrollment period.

If you decide to choose a new plan:

- You can choose your new plan from us, or any other carrier offering plans; or
- You may purchase a new plan through Connect for Health Colorado, where you may qualify for federal financial assistance (www.connectforhealthco.com).

Make sure you follow the termination notice requirements in your current plan so that you will be able to avoid a gap in coverage by ending your old plan and beginning your new plan on the appropriate dates.

You can contact us or your insurance advisor for assistance and additional information. [Insert carrier contact information]"