

# DEPARTMENT OF REGULATORY AGENCIES

## Division of Insurance

### 3 CCR 702-4

#### LIFE, ACCIDENT AND HEALTH

#### Emergency Regulation 22-E-03

#### CONCERNING ESTABLISHING A SPECIAL ENROLLMENT PERIOD FOR ENROLLMENT IN AN INDIVIDUAL HEALTH BENEFIT PLAN

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#### **Section 1 Authority**

This emergency regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7)(a), (7)(b)(III), 10-1-109(1), 10-16-105(2)(b), 10-16-105.7(3)(a)(II)(G), 10-16-105.7(3)(b)(II)(F), 10-16-108.5(8), and 10-16-109, C.R.S., the Governor's COVID-19 Disaster Recovery Order, most recently extended on December 28, 2021 with Executive Order D 2021 141, and the ongoing federal public health emergency declaration due to COVID-19, last renewed October 15, 2021 by the U.S. Department of Health and Human Services (HHS).

Further, this emergency regulation is promulgated pursuant to the Federal Emergency Management Agency (FEMA) disaster numbers FM-5423-CO, Colorado Marshall Fire, and DR-4634-CO, Colorado Wildfires and Straight-line Winds, President Biden's Major Disaster Declaration for Colorado issued on January 1, 2022, and Governor Polis' declared state of emergency due to the Boulder County Grass Fires.

#### **Section 2 Scope and Purpose**

In light of the fires in Boulder County on December 30, 2021 and the rapid increase in COVID-19 cases due to the Omicron variant, the purpose of this emergency regulation is to allow for a special enrollment period in Colorado that allows enrollment in an individual health benefit plan from January 16, 2022 through March 16, 2022.

COVID-19 has spread rapidly in the state due to both the Delta and Omicron variants. Data from the Colorado Department of Public Health and Environment (CDPHE) indicates that positivity rates are over 25% and reported positive new daily cases reached an all-time high in December.

On December 30, 2021, the Marshall and Middle Fork Fires ("Boulder County Fires") - the most devastating fires in Colorado history - damaged or destroyed more than 1,000 residential and commercial structures. Victims of the Boulder County Fires may have experienced and may continue to experience

health issues stemming from exposure to smoke, soot or ash. This emergency regulation is necessary to ensure individuals impacted by COVID -19 and/or the Boulder County Fires have the ability to access health insurance coverage.

The Division of Insurance finds, pursuant to § 24-4-103(6)(a), C.R.S., that immediate adoption of this regulation is imperatively necessary for the preservation of public health, safety, or welfare because allowing individuals not currently enrolled in health benefit plans in Colorado to enroll in a health benefit plan in order to receive coverage in light of the ongoing COVID-19 public health emergency and the Boulder County Fires is imperative to preserve the health of the citizens of Colorado. Therefore, compliance with the requirements of § 24-4-103, C.R.S., would be contrary to the public interest.

### **Section 3      Applicability**

This regulation shall apply to all carriers offering individual health benefit plans subject to the insurance laws of Colorado and the requirements of the Patient Protection and Affordable Care Act.

### **Section 4      Definitions**

- A.      “Carrier” shall have the same meaning as found at § 10-16-102(8), C.R.S.
- B.      “Health benefit plan” shall have the same meaning as found at § 10-16-102(32), C.R.S.
- C.      “Special enrollment period” or “SEP” shall mean, for purposes of this regulation only, a period during which an individual who meets the requirements under Section 5.B. may enroll in a health benefit plan outside the initial and annual open enrollment periods.

### **Section 5      Special Enrollment Period Requirements**

- A.      A carrier offering a health benefit plan in this state shall establish a SEP that:
  - 1.      Begins on January 16, 2022 and extends through March 16, 2022; and
  - 2.      Ensures a coverage effective date on the first day of the month following plan selection.
- B.      Application and Verification requirements
  - 1.      To access this SEP, individuals must be otherwise eligible for enrollment in the individual health benefit plan for which they are applying and must not already be enrolled in an individual, group or other health benefit plan. Only individuals not currently enrolled in a health benefit plan are eligible for the SEP established under Section 5.A.
  - 2.      Individuals may apply for the SEP provided under Section 5.A. by contacting Connect for Health Colorado, a broker, an assister, or the carrier directly to determine eligibility and enrollment.
  - 3.      To verify eligibility for the SEP, individuals shall attest that they are currently not enrolled in an individual, group or other ACA-compliant health benefit plan. Verbal attestation is sufficient for purposes of determining eligibility for this SEP. Carriers shall not require additional verification or attestation beyond the eligibility and enrollment information provided by Connect for Health Colorado. Carriers shall not require written documentation for verification of this SEP and may waive the verbal attestation requirement.
  - 4.      The eligibility verification requirements of Colorado Insurance Regulation 4-2-43, 3 CCR 702-4, do not apply to this SEP.

5. This SEP is for qualified individuals applying for new coverage; it does not extend to those who, absent a separate triggering event, are currently enrolled in an ACA-compliant health benefit plan and are seeking to change their current coverage or change carriers.

#### **Section 6 Severability**

If any provision of this regulation or the application of it to any person or circumstances is for any reason held to be invalid, the remainder of this regulation shall not be affected.

#### **Section 7 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 8 Effective Date**

This emergency regulation shall be effective January 18, 2022.

#### **Section 9 History**

Emergency regulation effective January 18, 2022.