

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Emergency Regulation E-11-03

MANDATORY OPEN ENROLLMENT PERIODS FOR CARRIERS ISSUING CHILD-ONLY 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, 10-16-104.4, and 10-16-108.5, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to facilitate the implementation of SB11-128 entitled "Concerning Requiring a Carrier That Participates in the Individual Health Insurance Market in Colorado to Issue Child-Only Plans on a Guaranteed Issues Basis, and Making an Appropriation in Connection Therewith." This regulation also facilitates the implementation of certain provisions of 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). It replaces Colorado Insurance Regulation 4-2-33 in its entirety.

The Division hereby finds that the immediate adoption of this emergency regulation is imperatively necessary to comply with a state or federal law, or federal regulation, or for the preservation of public health, safety, or welfare. The Division further finds compliance with the notice and hearing requirements of § 24-4-103, C.R.S., with the exception of those set forth for temporary or emergency rules, would be contrary to the public interest. The Division hereby provides the following reasons for this emergency regulation:

- A. Colorado Insurance Regulation 4-2-33 provides for semi-annual open enrollment periods for child-only plans in the months of January and July.
- B. SB11-128 was signed into law by the Governor on April 29, 2011. SB11-128 provides that "The first open enrollment period shall begin on the first of the month closest to ninety days after the effective date" of the legislation which is August 1, 2011;
- C. The provision of SB11-128 pursuant to which the remaining open enrollment period for child-only plans in 2011 is to begin is August 1, 2011 and supersedes the provision of Colorado Insurance Regulation 4-2-33 setting the open enrollment period as July 2011.

- D. To avoid confusion by carriers and consumers, and to facilitate compliance with state and federal law, it is necessary and imperative that the remaining semi-annual child-only open enrollment period be changed from July 2011 to August 2011, and other changes be made in the regulation to comport with the requirements of SB11-128.

Section 3 Applicability

This regulation applies to carriers that issue child-only plans on or after May 3, 2011.

Section 4 Definitions

- A. "Carrier" shall have the same meaning as defined in § 10-16-102(8), C.R.S.
- B. "Child-only plan" shall mean an individual health benefit plan that is issued on or after April 29, 2011 that provides coverage to an individual under the age of nineteen years of age. A "child-only plan" does not include coverage provided to a dependent under an individual or group health benefit plan.
- C. "Qualifying Event" shall include birth, adoption, marriage, dissolution of marriage, loss of employer-sponsored insurance, loss of eligibility under the Colorado Medical Assistance Act in Parts 4, 5, and 6 of Title 25.5 of the Colorado Revised Statutes, loss of eligibility under the Children's Basic Health Plan in Article 8 of Title 25.5 of the Colorado Revised Statutes, entry of a valid court or administrative order mandating the child be covered, or involuntary loss of other existing coverage for any reason other than fraud, misrepresentation or failure to pay premium.

Section 5 Rules

- A. Enrollment Only Allowed During Certain Periods
1. Carriers issuing child-only plans on or after April 29, 2011 shall accept an application for child-only plan coverage only during the open enrollment periods set forth in subsection B. below unless the application is received within thirty (30) days after a Qualifying Event.
 2. Enrollment outside the open enrollment periods shall be prohibited, except upon the occurrence of a Qualifying Event. The submission of an application for coverage must occur within thirty (30) days after the occurrence of such Qualifying Event.
- B. Twice Yearly Open Enrollment Periods for New Applicants
1. There shall be an open enrollment during the month of August, 2011. For each year thereafter, beginning January 1, 2012, carriers offering child-only plans shall hold an open enrollment period each January and July, for the duration of the entire month. During these open enrollment periods, all children under the age of nineteen shall be offered coverage on a guaranteed issue basis, without any limitations or riders based on health status. Carriers shall use such rates as are filed and approved in accordance with § 10-16-107(1.5), C.R.S. The open enrollment period shall be followed by a thirty (30) day waiting period for the child-only plan to take effect.
 2. Notice of the open enrollment opportunity, open enrollment dates for new applicants, as well as the opportunity to enroll due to a Qualifying Event, and instructions on how to enroll a child in a child-only plan, must be displayed continuously and prominently on the carrier's web site throughout the year. Each carrier shall also provide a link to public programs administered by the Department of Health Care Policy and Financing.
 3. Nothing contained in this regulation shall alter an applicant's ability to obtain a child-only plan, outside the open enrollment period, upon the occurrence of a Qualifying Event.

- C. As a condition of issuing coverage in the individual health market, a carrier shall have an approved child-only plan available to be issued pursuant to § 10-16-104.4 and this regulation.
- D. A carrier may cancel coverage for a dependent in the individual market if the parent subscriber cancels his or her individual coverage. The carrier shall allow the dependent to apply for a child-only plan during the next open enrollment period with no surcharge.
- E. A carrier may deny coverage to an applicant for enrollment in a child-only plan if other creditable coverage as defined in § 10-16-102(13.7), C.R.S., is available. For purposes of this subsection E., creditable coverage does not include eligibility for a high-risk pool insurance plan, including but not limited to CoverColorado and Getting US Covered, but creditable coverage does include current enrollment in a high-risk pool insurance plan.
- F. A carrier may impose a surcharge for up to twelve (12) months on an individual who enrolls in a child-only plan if the individual was previously enrolled in a child-only plan, subsequently dropped the coverage, and the lapse in coverage is greater than sixty-three (63) days. The surcharge may be up to an additional fifty percent (50%) of the amount that would be charged for the same child demonstrating continuous coverage.
- G. Annual Report

At the time a carrier submits the information required in § 10-16-111(4)(a), C.R.S., it shall submit a report, in a manner specified by the Commissioner, providing the following information:

1. The number of applicants for a child-only plan in each of the open enrollment periods for the previous calendar year;
2. The number of individuals enrolled in a child-only plan as of January 1 and December 31 for the previous calendar year; and
3. The number of applicants denied enrollment in a child-only plan and the specific reasons for the denials for the previous calendar year.

Section 6 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 and shall remain in full force and effect.

Section 7 Enforcement

Noncompliance with this regulation may result, after proper notice and hearing, 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 fines, refund of excess premiums plus interest, restitution, issuance of cease and desist orders, and/or suspensions or revocation of license or certificate of authority. Among others, the penalties provided for in § 10-3-1108, C.R.S. may be applied.

Section 8 Effective Date

This regulation shall become effective on May 3, 2011.

Section 9 History

Emergency Regulation E-11-01 effective September 23, 2010.
Regulation 4-2-33 effective January 1, 2011.
Emergency Regulation E-11-03 effective May 3, 2011.