



COLORADO CENTER
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Justice and Economic Security for all Coloradans

Affordable Care Act at 3: Meaningful insurance market reforms become effective January 1, 2014

ISSUE BRIEF

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George Lyford
Health Care Attorney
789 Sherman St.
Suite 300
Denver, CO 80203
www.cclponline.org
303-573-5669 ext. 310
glyford@cclponline.org

The Colorado Center on Law and Policy is a nonprofit, nonpartisan research and advocacy organization seeking justice and economic security for all Coloradans.

March 23 marked the third anniversary of President Barack Obama signing the Affordable Care Act (ACA) into law. Among the ACA's sweeping reforms are a number of requirements that will dramatically affect the commercial insurance market beginning in 2014. Several of these changes— such as requiring insurance companies to cover children with pre-existing conditions — have already become effective. However, many of the more major reform provisions become effective January 1, 2014. The intent behind many of the major insurance market reforms is to make access to insurance fair, particularly for people who have historically faced barriers accessing insurance because of pre-existing conditions. The reforms also ensure that insurance plans provide meaningful coverage by requiring a minimum floor of benefits. This issue brief examines the major ACA insurance market reforms, which will become effective in January 2014.

Coverage for consumers with pre-existing conditions

Insurance companies will no longer be allowed to deny consumers coverage due to a pre-existing condition. This means anyone who wishes to purchase an insurance policy — regardless of health status — must be enrolled by the insurance company. In addition, insurance companies will no longer be allowed to exclude coverage of particular benefits or increase rates because of a pre-existing condition. This protection began in September 2010 for children under 19 and will extend to all adults over 19 in January.

This is a significant step to ensure that all people, whether sick or healthy, have access to health coverage. More than one-third of Colorado adults ages 45 to 54 (34.2 percent) and two in five adults between 55 and 64 (43.8 percent) have pre-existing conditions that could lead to a denial of coverage.¹ These pre-existing conditions could vary from minor diagnoses to major chronic conditions, requiring significant medical attention. Because of this provision, tens of thousands of Coloradans will soon be able to access health coverage that will meet their needs.

Insurance rating reforms

The ACA prohibits health insurance companies from discriminating based on a consumer's medical condition, claims history, disability, or other health-status-related factor. This applies not only to eligibility for enrollment in the plan, but also the rates that individuals and families pay. The only rating factors that will be allowed on January 2014 are age, family unit size, geographic area and tobacco use.

- Age rating: The ACA requires age rating not exceed a 3:1 ratio for adults — meaning that insurance rates for the oldest adults shall not exceed three times that of the youngest adults. Currently, older adults often pay rates five or six times higher than young adults.ⁱⁱ The law requires a single age band for children ages 0 to 20 and one-year age bands for adults ages 21 through 64 (within the 3:1 ratio maximum), which will be determined annually at the time of plan enrollment or renewal.ⁱⁱⁱ
- Tobacco rating: The ACA allows insurance companies to charge higher rates to tobacco users, but requires that tobacco rating shall not exceed a 1.5:1 ratio for tobacco-using adults. This means that insurance rates for tobacco-using adults shall not exceed one and a half times that of non-tobacco users. Federal law defines tobacco use as use of any tobacco products (including smokeless tobacco) on average of four or more times per week within the past six months. This provision includes an important consumer protection that prohibits insurers from canceling a policy for misrepresentation of tobacco use. Consumer advocates have raised significant concerns that higher health insurance rates for tobacco users would likely make coverage much less affordable, thereby making it difficult to access necessary services, such as smoking cessation therapies.^{iv} In response to these concerns, the U.S. Department of Health and Human Services (HHS) issued regulations requiring small employer plans to offer a discount for smoking cessation wellness programs. However, this discount is not available for individual policies sold through the exchange.
- Geographic rating: Health insurers may charge higher rates from one geographic area to another. States are limited to creating geographic rating areas based on counties, zip codes or metropolitan statistical areas and the rating differences must be actuarially justified. However, states can establish different geographic rating areas with the approval of HHS. As a 2012 Robert Wood Johnson Foundation report explains, insurance rates for rural residents are typically higher than urban residents.^v However, it is not clear whether this is due to higher administrative costs required for health coverage in rural areas, higher costs of delivering care in rural areas, unhealthier rural populations or some combination of these factors.

Minimum essential benefits

The ACA requires all new health insurance plans in the individual and small group markets to offer a minimum list of Essential Health Benefits (EHB). Each state was required to select an EHB package by late 2012 and this package will apply to all health plans offered both inside and outside of the newly established health benefit exchanges. The EHB provision under the ACA means individuals and families will have the peace of mind that any insurance product they buy will provide comprehensive coverage that meets their needs

On Dec. 16, 2011, HHS issued a bulletin to states proposing an approach to establishing the EHB standard.^{vi} The HHS bulletin suggested that instead of a single, nation-wide standard for defining the EHB, states may benchmark to a "reference plan" that is based on a currently available health plan in the state, modified as needed to meet the EHB requirements found in the ACA. The bulletin specifies states will have the flexibility to choose one of the following benchmark plans as the basis for their EHBs:

- One of the three largest small group products in the state
- One of the three largest state employee health plans
- One of the three largest federal employee health plans
- The largest HMO plan in the state

The HHS bulletin indicated that once a benchmark plan is selected, the EHB package must still comply with the ACA's requirement that the EHB cover 10 categories of services. Those categories include:

- Ambulatory patient services

- Emergency services
- Hospitalization
- Laboratory services
- Maternity and newborn care
- Mental health and substance use disorder services, including behavioral health treatment
- Pediatric services, including oral and vision care
- Prescription drugs
- Preventive and wellness services and chronic disease management
- Rehabilitative and habilitative services and devices

During the summer of 2012, the Colorado Division of Insurance, the governor’s office and the Colorado Health Benefit Exchange (COHBE), engaged in a series of public stakeholder meetings to select an EHB package. In September 2012, Colorado selected its largest small-group plan, a Kaiser plan, to serve as its EHB benchmark.^{vii} This plan was selected, in part, because it ensures that the EHB package will cover all of Colorado’s state mandated insurance benefits.

ⁱ Families USA, *Help for Coloradans with Pre-Existing Conditions* (2010) available at:

<http://www.familiesusa.org/assets/pdfs/health-reform/pre-existing-conditions/colorado.pdf>

ⁱⁱ America’s Health Insurance Plans, *Age Rating* (2013), available at: <http://ahip.org/Issues/Age-Rating.aspx>

ⁱⁱⁱ US Department of Health and Human Services, *Sub-Regulatory Guidance Regarding Age Curves, Geographical Rating Areas and State Reporting* (2013), available at: <http://www.cciio.cms.gov/resources/files/market-reforms-guidance-2-25-2013.pdf>.

^{iv} Families USA, *Consumer-Friendly Standards for Qualified Health Plans in Exchanges: Examples from the States* (2013), available at: <http://familiesusa2.org/assets/pdfs/health-reform/Consumer-Friendly-Standards-in-Exchange-Plans.pdf>

^v Robert Wood Johnson Foundation, *The Rural Implications of Geographic Rating of Health Insurance Premiums* (2012), available at: http://www.rwjf.org/content/dam/farm/reports/issue_briefs/2012/rwjf73129

^{vi} See, US Department of Health and Human Services, *Essential Health Benefits Bulletin* (2011), available at: http://cciio.cms.gov/resources/files/Files2/12162011/essential_health_benefits_bulletin.pdf?utm_source=Health+Law+and+Policy+Update+09.07.12&utm_campaign=Health+Law+and+Policy+Update&utm_medium=email

^{vii} For more information regarding Colorado’s EHB selection process, please refer to the EHB page on the Colorado Division of Insurance Website, available here: <http://www.colorado.gov/cs/Satellite/DORA-HealthIns/CBON/DORA/1251626045137>