

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 22-0540.01 Richard Sweetman x4333

SENATE BILL 22-040

SENATE SPONSORSHIP

Smallwood and Winter,

HOUSE SPONSORSHIP

Will and Lontine,

Senate Committees

Finance
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING ACTUARIAL REVIEWS OF PROPOSED LEGISLATION THAT**
102 **MAY IMPOSE A NEW HEALTH BENEFIT MANDATE ON HEALTH**
103 **BENEFIT PLANS, AND, IN CONNECTION THEREWITH, MAKING AN**
104 **APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill requires the division of insurance (division) to retain a contractor on or before November 1, 2022, for the purpose of performing actuarial reviews of proposed legislation that may impose a new health

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
May 2, 2022

benefit mandate on health benefit plans. The contractor, under the direction of the division, shall conduct an actuarial review of up to 5 legislative proposals for each regular legislative session, each at the request of a member of the general assembly. Each actuarial review performed by the contractor must consider the predicted effects of the legislative proposal during the 5 years immediately following the effective date of the proposed legislation, including specifically described considerations.

In preparing a fiscal note for any legislative proposal that may impose a new health benefit mandate on health benefit plans, the legislative service agency charged with preparing the fiscal note shall either:

- Include in the fiscal note information that is produced by the contractor in review of the legislative proposal; or
- If no information is produced by the contractor in review of the legislative proposal, indicate such fact in the fiscal note.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. In Colorado Revised Statutes, add 10-16-155 as**
3 **follows:**

4 **10-16-155. Actuarial reviews of proposed health-care**
5 **legislation - division to contract with third parties - required**
6 **considerations - confidentiality - limits on expenditures - repeal.**

7 **(1) ON OR BEFORE NOVEMBER 1, 2022, THE DIVISION SHALL RETAIN BY**
8 **CONTRACT ONE OR MORE ENTITIES THAT HAVE EXPERIENCE IN ACTUARIAL**
9 **REVIEWS, HEALTH-CARE POLICY, AND HEALTH EQUITY, REFERRED TO IN**
10 **THIS SECTION AS THE "CONTRACTORS", FOR THE PURPOSE OF PERFORMING**
11 **ACTUARIAL REVIEWS OF LEGISLATIVE PROPOSALS THAT MAY IMPOSE A**
12 **NEW HEALTH BENEFIT COVERAGE MANDATE ON HEALTH BENEFIT PLANS OR**
13 **REDUCE OR ELIMINATE COVERAGE MANDATED UNDER HEALTH BENEFIT**
14 **PLANS, REFERRED TO IN THIS SECTION AS "LEGISLATIVE PROPOSALS". AT**
15 **LEAST ONE OF THE CONTRACTORS MUST BE AN ACTUARY OR AN**
16 **ACTUARIAL FIRM WITH EXPERIENCE IN ANALYZING HEALTH INSURANCE**

1 PREMIUMS. THE CONTRACTORS, UNDER THE DIRECTION OF THE DIVISION,
2 SHALL CONDUCT ACTUARIAL REVIEWS OF UP TO SIX LEGISLATIVE
3 PROPOSALS, REGARDLESS OF THE NUMBER OF LEGISLATIVE PROPOSALS
4 THAT ARE REQUESTED FOR EACH REGULAR LEGISLATIVE SESSION BY
5 MEMBERS OF THE GENERAL ASSEMBLY.

6 (2) BEFORE SEPTEMBER 1, 2022, THE DIVISION SHALL CONVENE A
7 MEETING TO OBTAIN INPUT AND RECOMMENDATIONS FROM
8 STAKEHOLDERS, INCLUDING REPRESENTATIVES OF THE HEALTH-CARE
9 INDUSTRY, CONSUMER ADVOCATES, AND OTHER INTERESTED INDIVIDUALS,
10 CONCERNING THE METHODOLOGY FOR CONDUCTING THE ANALYSIS
11 DESCRIBED IN SUBSECTION (4) OF THIS SECTION.

12 (3) (a) A MEMBER OF THE GENERAL ASSEMBLY WHO REQUESTS AN
13 ACTUARIAL REVIEW OF A LEGISLATIVE PROPOSAL SHALL SUBMIT THE
14 REQUEST TO THE DIVISION NO LATER THAN SEPTEMBER 1 OF THE YEAR
15 PRECEDING THE REGULAR LEGISLATIVE SESSION IN WHICH THE
16 LEGISLATIVE PROPOSAL WILL BE PROPOSED.

17 (b) FOR EACH REGULAR LEGISLATIVE SESSION:

18 (I) UP TO TWO MEMBERS OF THE MAJORITY PARTY OF THE HOUSE
19 OF REPRESENTATIVES MAY SUBMIT A REQUEST FOR AN ACTUARIAL
20 REVIEW. IF MORE THAN TWO REQUESTS ARE SUBMITTED, THE DIVISION
21 SHALL NOTIFY THE MAJORITY LEADER OF THE HOUSE OF
22 REPRESENTATIVES, WHO SHALL SELECT THE TWO PROPOSALS THAT THE
23 CONTRACTORS REVIEW.

24 (II) ONE MEMBER OF THE MINORITY PARTY OF THE HOUSE OF
25 REPRESENTATIVES MAY SUBMIT UP TO ONE REQUEST FOR AN ACTUARIAL
26 REVIEW. IF MORE THAN ONE REQUEST IS SUBMITTED, THE DIVISION SHALL
27 NOTIFY THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES, WHO

1 SHALL SELECT THE PROPOSAL THAT THE CONTRACTORS REVIEW.

2 (III) UP TO TWO MEMBERS OF THE MAJORITY PARTY OF THE
3 SENATE MAY SUBMIT A REQUEST FOR AN ACTUARIAL REVIEW. IF MORE
4 THAN TWO REQUESTS ARE SUBMITTED, THE DIVISION SHALL NOTIFY THE
5 MAJORITY LEADER OF THE SENATE, WHO SHALL SELECT THE TWO
6 PROPOSALS THAT THE CONTRACTORS REVIEW.

7 (IV) ONE MEMBER OF THE MINORITY PARTY OF THE SENATE MAY
8 SUBMIT UP TO ONE REQUEST FOR AN ACTUARIAL REVIEW. IF MORE THAN
9 ONE REQUEST IS SUBMITTED, THE DIVISION SHALL NOTIFY THE MINORITY
10 LEADER OF THE SENATE, WHO SHALL SELECT THE PROPOSAL THAT THE
11 CONTRACTORS REVIEW.

12 (c) ON OR BEFORE EACH SEPTEMBER 15, THE MAJORITY AND
13 MINORITY LEADERS OF THE HOUSE OF REPRESENTATIVES AND THE SENATE
14 SHALL NOTIFY THE DIVISION, AS MAY BE NECESSARY AS DESCRIBED IN THIS
15 SUBSECTION (3), OF THE LEGISLATIVE PROPOSALS SUBJECT TO REVIEW
16 UNDER SUBSECTION (1) OF THIS SECTION.

17 (4) AN ACTUARIAL REVIEW PERFORMED BY THE CONTRACTORS
18 PURSUANT TO THIS SECTION MUST CONSIDER THE PREDICTED EFFECTS OF
19 THE LEGISLATIVE PROPOSAL DURING THE FIVE AND TEN YEARS
20 IMMEDIATELY FOLLOWING THE EFFECTIVE DATE OF THE LEGISLATIVE
21 PROPOSAL, OR DURING ANOTHER TIME PERIOD FOLLOWING THE EFFECTIVE
22 DATE OF THE LEGISLATIVE PROPOSAL IF SUCH CONSIDERATION IS MORE
23 ACTUARIALLY FEASIBLE, INCLUDING:

24 (a) AN ESTIMATE OF THE NUMBER OF COLORADO RESIDENTS WHO
25 WILL BE DIRECTLY AFFECTED BY THE LEGISLATIVE PROPOSAL;

26 (b) ESTIMATES OF CHANGES IN THE RATES OF UTILIZATION OF
27 SPECIFIC HEALTH-CARE SERVICES THAT MAY RESULT FROM THE

1 LEGISLATIVE PROPOSAL;
2 (c) ESTIMATES CONCERNING ANY CHANGES IN CONSUMER COST
3 SHARING THAT WOULD RESULT FROM THE LEGISLATIVE PROPOSAL;
4 (d) ESTIMATES OF ANY INCREASES OR DECREASES IN PREMIUMS
5 CHARGED TO COVERED PERSONS OR EMPLOYERS FOR HEALTH BENEFIT
6 PLANS OFFERED IN THE INDIVIDUAL, SMALL GROUP, AND LARGE GROUP
7 MARKETS THAT WOULD RESULT FROM THE LEGISLATIVE PROPOSAL;
8 (e) AN ESTIMATE OF THE OUT-OF-POCKET HEALTH-CARE COST
9 CHANGES ASSOCIATED WITH THE LEGISLATIVE PROPOSAL;
10 (f) AN ESTIMATE OF THE POTENTIAL LONG-TERM HEALTH-CARE
11 COST CHANGES ASSOCIATED WITH THE LEGISLATIVE PROPOSAL;
12 (g) IDENTIFICATION OF ANY POTENTIAL HEALTH BENEFITS FOR
13 INDIVIDUALS OR COMMUNITIES THAT WOULD RESULT FROM THE
14 LEGISLATIVE PROPOSAL; AND
15 (h) TO THE EXTENT PRACTICABLE, THE SOCIAL AND ECONOMIC
16 IMPACTS OF THE LEGISLATIVE PROPOSAL.
17 (5) AN ACTUARIAL REVIEW PERFORMED PURSUANT TO THIS
18 SECTION MUST:
19 (a) PRESENT THE INFORMATION DESCRIBED IN SUBSECTION (4)(d)
20 OF THIS SECTION IN TERMS OF PERCENTAGE INCREASE OR DECREASE AND
21 IN TERMS OF PER-MEMBER, PER-MONTH CHARGES;
22 (b) PRESENT THE INFORMATION DESCRIBED IN SUBSECTION (4)(e)
23 OF THIS SECTION IN TERMS OF DOLLAR AMOUNTS;
24 (c) PROVIDE, IF AVAILABLE, INFORMATION CONCERNING WHO
25 WOULD BENEFIT FROM ANY COST CHANGES AND HEALTH BENEFITS FROM
26 THE LEGISLATIVE PROPOSAL, AS IDENTIFIED IN SUBSECTIONS (4)(c), (4)(e),
27 (4)(f), (4)(g), AND (4)(h) OF THIS SECTION, AND ANY DISPROPORTIONATE

1 EFFECTS THAT THE LEGISLATIVE PROPOSAL WOULD HAVE ON
2 COLORADANS, WHICH INFORMATION, IF AVAILABLE, MUST BE
3 DISAGGREGATED, AT A MINIMUM, BY RACE, ETHNICITY, SEX, GENDER, AND
4 AGE; AND

5 (d) INCLUDE, TO THE EXTENT PRACTICABLE, A QUALITATIVE
6 ANALYSIS OF THE IMPACTS OF THE LEGISLATIVE PROPOSAL. FOR THE
7 PURPOSES OF THIS SUBSECTION (5)(d), A MEMBER OF THE GENERAL
8 ASSEMBLY WHO REQUESTS AN ACTUARIAL REVIEW OF A LEGISLATIVE
9 PROPOSAL PURSUANT TO THIS SECTION MAY DESIGNATE ONE OR MORE
10 PERSONS TO PROVIDE DATA TO THE CONTRACTORS IN ORDER TO INFORM A
11 QUALITATIVE ANALYSIS OF THE LEGISLATIVE PROPOSAL.

12 (6) IN PERFORMING ACTUARIAL REVIEWS OF LEGISLATIVE
13 PROPOSALS, THE CONTRACTORS MAY UTILIZE DATA FROM THE ALL-PAYER
14 HEALTH CLAIMS DATABASE DESCRIBED IN SECTION 25.5-1-204, DATA
15 COLLECTED FROM CARRIERS, OR DATA FROM OTHER SOURCES. CARRIERS
16 SHALL PROVIDE INFORMATION TO, AND OTHERWISE COOPERATE WITH, THE
17 CONTRACTORS AND THE DIVISION FOR THE PURPOSES OF THIS SECTION.

18 (7) THE COMMISSIONER IS NOT REQUIRED TO COMPLY WITH THE
19 STATE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF TITLE 24, FOR THE
20 PURPOSES OF HIRING CONTRACTORS BY NOVEMBER 1, 2022, AS DESCRIBED
21 IN SUBSECTION (1) OF THIS SECTION, OR FOR CONTRACTING FOR THE
22 COLLECTION OF DATA, BUT THE COMMISSIONER SHALL COMPLY WITH THE
23 STATE "PROCUREMENT CODE" WHEN HIRING CONTRACTORS OR
24 CONTRACTING FOR THE COLLECTION OF DATA AFTER NOVEMBER 1, 2022.

25 (8) A REQUEST FOR AN ACTUARIAL REVIEW PURSUANT TO THIS
26 SECTION AND THE FINAL REPORT RESULTING FROM SUCH A REQUEST SHALL
27 BE TREATED AS CONFIDENTIAL EXCEPT BY THE MEMBER OF THE GENERAL

1 ASSEMBLY WHO MADE THE REQUEST UNTIL THE LEGISLATIVE PROPOSAL
2 THAT IS THE SUBJECT OF THE ACTUARIAL REVIEW IS INTRODUCED IN THE
3 REGULAR LEGISLATIVE SESSION FOLLOWING THE SUBMISSION OF THE
4 REQUEST FOR THE ACTUARIAL REVIEW OR, IF NO SUCH LEGISLATIVE
5 PROPOSAL IS INTRODUCED, UNTIL AFTER THE END OF THE LEGISLATIVE
6 SESSION FOLLOWING THE SUBMISSION OF THE REQUEST.

7 (9) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION TO
8 THE CONTRARY, THE DIVISION SHALL NOT ENGAGE ANY CONTRACTOR TO
9 PERFORM AN ACTUARIAL REVIEW AS DESCRIBED IN THIS SECTION UNLESS
10 THE DIVISION DETERMINES THAT THERE ARE ADEQUATE RESOURCES
11 AVAILABLE WITHIN EXISTING APPROPRIATIONS TO COMPENSATE THE
12 CONTRACTOR FOR THE ACTUARIAL REVIEW.

13 (10) THE DIVISION MAY SEEK, ACCEPT, AND EXPEND GIFTS,
14 GRANTS, AND DONATIONS FOR THE PURPOSES OF THIS SECTION.

15 (11) THIS SECTION IS REPEALED, EFFECTIVE NOVEMBER 1, 2027.

16 **SECTION 2.** In Colorado Revised Statutes, 2-2-322, **add (5)** as
17 follows:

18 **2-2-322. Fiscal notes - repeal.** (5) (a) IN PREPARING A FISCAL
19 NOTE FOR ANY LEGISLATIVE PROPOSAL THAT MAY IMPOSE A NEW HEALTH
20 BENEFIT COVERAGE MANDATE ON HEALTH BENEFIT PLANS OR MANDATE A
21 REDUCTION OR ELIMINATION OF COVERAGE UNDER A HEALTH BENEFIT
22 PLAN AND FOR WHICH A REPORT HAS BEEN PREPARED BY A CONTRACTOR
23 PURSUANT TO SECTION 10-16-155, THE LEGISLATIVE SERVICE AGENCY
24 CHARGED WITH PREPARING THE FISCAL NOTE SHALL INCLUDE A
25 STATEMENT THAT A REPORT HAS BEEN PREPARED BY THE CONTRACTORS
26 FOR THE LEGISLATIVE PROPOSAL PURSUANT TO SECTION 10-16-155 AND
27 SUBMITTED TO THE DIRECTOR OF RESEARCH OF THE LEGISLATIVE COUNCIL

1 BY THE DIVISION, INCLUDING AN INDICATION OF HOW THE CONTRACTORS'
2 FINAL REPORT MAY BE OBTAINED IN ITS ENTIRETY.

3 (b) THIS SUBSECTION (5) IS REPEALED, EFFECTIVE NOVEMBER 1,
4 2027.

5 **SECTION 3. Appropriation.** (1) For the 2022-23 state fiscal
6 year, \$100,000 is appropriated to the department of regulatory agencies
7 for use by the division of insurance. This appropriation is from the
8 division of insurance cash fund created in section 10-1-103 (3), C.R.S. To
9 implement this act, the division may use this appropriation as follows:

10 (a) \$50,000 for personal services, which amount is based on an
11 assumption that the division will require an additional 0.3 FTE; and

12 (b) \$50,000 for operating expenses.

13 **SECTION 4. Act subject to petition - effective date.** This act
14 takes effect at 12:01 a.m. on the day following the expiration of the
15 ninety-day period after final adjournment of the general assembly; except
16 that, if a referendum petition is filed pursuant to section 1 (3) of article V
17 of the state constitution against this act or an item, section, or part of this
18 act within such period, then the act, item, section, or part will not take
19 effect unless approved by the people at the general election to be held in
20 November 2022 and, in such case, will take effect on the date of the
21 official declaration of the vote thereon by the governor.