

TO: CO Department of Labor & Employment, Division of Family & Medical Leave
FROM: Colorado Chamber of Commerce Labor & Employment Council
DATE: October 12, 2022
RE: *Comments on Draft Regulations Concerning Private Plans*

On behalf of the Colorado Chamber and its Labor & Employment Council, we are responding to the proposed regulations from the Division of Family & Medical Leave concerning private plans. The Colorado Chamber represents thousands of employers and their employees of all sizes and industries across the State that will be affected by this new Program and that may engage private plans for the purposes of providing family and medical leave benefits to employees. We would appreciate the Division's consideration of the many comments and concerns provided below regarding the draft regulations:

5.4 (3)(G) Application Requirements and Effective Date of New Private Plans

We are very concerned with the proposed rule requiring an employer that is seeking approval from the Division for offering a private plan in the form of self-insurance to its employees to submit a surety bond in advance that is equal to one-year of total premiums. Since an employer will have already paid one-year of premiums, requiring an additional surety bond is unnecessary and a costly burden on employers.

5.5 (3) & (5) Denial of Private Plan Applications:

Subsection 5 of this provision prevents private plan administrators from filing an appeal if the plan is denied by the Division of Insurance. This section should include an opportunity for a plan to file an appeal. The decision by a Division constitutes final agency action which is subject to appeal through the Administrative Procedures Act (APA).

Subsection 3 of this provision assesses another administrative fee of \$1,200 if a plan is resubmitted for approval after thirty (30) days. This is excessive and unreasonable. A plan administrator that re-submits a plan with correct information should not be penalized by the Division if they are unable to get a corrected application to the Division within 30 days. The Division may not have notified the plan provider within a reasonable period of time or the provider or employer may not have the information available within 30 days.

5.7 (1) Duration of Private Plan Approval; Renewal Requirements

This provision states that a plan would expire within two years unless authorized by the Division. This period of time is significantly short and increases costs for employers. We'd recommend extending the period of time for approval to eight (8) years. This will reduce administrative burdens on plans and employers as well as eliminate a costly administrative fee of \$1,200 every two years. The proposed rules already provide for a check and balances process by allowing employees to appeal to the Division if they choose to dispute a determination.

5.12 (F)(3) Recordkeeping and Reporting Requirements; Division Access to Records

An annual private plan administration summary is required in this provision of the proposed rules. Again, this additional administrative burden is unnecessary and costly. The proposed rules allow for employees to appeal to the Division if they choose to dispute a determination and the Division also has authority in the proposed rules to request private plan information within twenty-eight (28) days of a written request by the Division.

5.13 (1) & (2) Modification of a Private Plan

We believe the limitation of fourteen (14) days for review by the Division is insufficient and recommend extending that period to twenty-one (21) days. Additionally, the terms “minimal” and “in-depth” within subsection (2) need to be defined. We disagree with requiring another administrative fee if there is a change to a plan that has already been approved by the Division, especially if the private plan is in the form of an insurance policy and the private plan is changing to another insurance provider, which must be approved by the state. Changing insurance providers should never require an “in-depth” review, assuming that plan has already been approved once.

5.14 Voluntary Termination of an Approved Private Plan by an Employer

Requiring an employer to pay the division one year’s worth of premiums after terminating a plan is unreasonable and costly for an employer. The Division would continue to receive the employees’ portion of the premiums if the plan allowed for employee contributions. Additionally, we believe the Division should notify the employer of the renewal deadline and provide a period of time to renew prior to termination of the plan.

5.16 (3) & (4) Involuntary Termination of a Private Plan by the Division

Again, we disagree with requiring an employer to pay the division one year’s worth of premiums after terminating a plan. The Division would continue to receive the employees’ portion of the premiums if the plan allowed for employee contributions.

We also believe the Division should provide written notice to the employer and the plan and allow for a thirty (30) day cure period to allow the plan or employer to cure the alleged violation along with a final notice of termination. Additionally, in subsection (3), providing fourteen (14) days notice of Withdrawal of Private Plan Approval should be increased to thirty (30) days to allow a plan or employer to appeal the withdrawal.

5.18 (2) & (3) Appeals

We would recommend that the language in subsection (2) allows for the appeal to initially be made to the private plan administrator and in subsection (3) that the appeal be made with the Division. The Division should also allow for a judicial review to be conducted and a determination through that judicial review to be finalized prior to requiring payment of benefits.

5.19 Fines

We disagree with the proposed language requiring fines to be paid by a plan administrator unless the Court determines that payment is owed to a claimant and the plan did not pay the benefits during the time period required.

We appreciate the Division’s consideration of these comments by the Colorado Chamber’s Labor & Employment Council members. The Chamber looks forward to working with you on modifications to the draft regulations. Please contact Loren Furman at lfurman@cochamber.com or Larry Hudson at larry@groupfulcrum.com with any questions regarding these comments.