COLORADO
Department of
Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

2016 Sunset Review:
Division of Insurance

October 14, 2016

COLORADO
Department of Regulatory Agencies
Executive Director's Office

October 14, 2016

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

This year, Colorado's sunset review process celebrates its 40th anniversary with the publication of the 2016 sunset reports. The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Since that time, Colorado's sunset process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. To emphasize the statewide nature and impact of this endeavor, COPRRR recently launched a series of initiatives aimed at encouraging greater public participation in the regulatory reform process, including publication of a new "Citizen's Guide to Rulemaking" (available online at www.dora.colorado.gov/opr).

Section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), directs the Department of Regulatory Agencies to:

- Conduct an analysis of the performance of each division, board or agency or each function scheduled for termination; and
- Submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination.

Accordingly, COPRRR has completed the evaluation of the Division of Insurance. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2017 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Title 10, C.R.S. The report also discusses the effectiveness of the Commissioner of Insurance and staff, in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Joe Neguse
Executive Director

COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research & Regulatory Reform

2016 Sunset Review
Division of Insurance

SUMMARY

What Is Regulated?
Insurance is essentially a contract between two parties that provides financial protection or reimbursement against losses. The insurance company pools the risk of its insured parties in order to provide affordable insurance rates, and the insured pays a premium for a policy that protects the insured from financial losses caused by damage to a person or property.

Why Is It Regulated?
Regulation of the insurance industry is necessary to protect the public from financial losses. Consumers pay significant amounts of money for insurance policies to cover losses related to homes, automobiles, businesses and to ensure they have the ability to obtain health care, long-term care and funeral services when they need them. Without the assurance that a payment would be made or services provided when needed, consumers and businesses in Colorado would be at risk of financial harm.

Who Is Regulated?
In fiscal year 14-15, there were 76,115 individual producers, 11,756 producer agencies and 1,692 insurance companies operating in Colorado.

How Is It Regulated?
Any insurance company or producer must be licensed by the Commissioner of Insurance (Commissioner) in order to operate in Colorado. The Commissioner accomplishes this through staff in the Division of Insurance (Division), who monitors the financial condition of all domestic insurance companies; conducts market conduct examinations and desk audits to ensure insurance companies are complying with state laws; monitors rates to ensure rates are not excessive, inadequate or unfairly discriminatory; and responds to consumer complaints and inquiries.

What Does It Cost?
In fiscal year 14-15, the total expenditures to administer the Division were approximately $12.9 million, and there were 84.9 full-time equivalent employees associated with the program.

What Disciplinary Activity Is There?
For the period fiscal year 10-11 to 14-15, the Commissioner denied certificates of authority to 15 insurance companies and suspended the certificates of authority of three insurance companies. In addition to these actions, the Commissioner issued 118 final agency orders against insurance companies and issued 194 fines, totaling over $4 million. The Commissioner also ordered insurance companies to pay nearly $5.8 million in restitution. The Commissioner took the following enforcement actions against individual producer licenses: 197 denials, 60 revocations, 106 suspensions, 24 surrendered and 19 placed on probation. The Commissioner also took the following enforcement actions against agency producer licenses: eight denied, nine revoked, two suspended, three surrendered and one placed on probation. Finally, the Commissioner ordered insurance producers to pay $5.3 million in fines and nearly $330,000 in restitution.

Key Recommendations

Continue the Division of Insurance for 13 years, until 2030.
Regulation of the insurance industry is necessary to protect the public from devastating financial losses. Consumers pay significant amounts of money for insurance policies to cover losses related to their homes, automobiles and businesses and to ensure they have the ability to obtain health care, long-term care and funeral services when they need them. Without the assurance that a payment would be made or services provided when needed, consumers and businesses in Colorado would be at risk of financial harm.

Authorize the Commissioner to conduct examinations of preneed sellers periodically or as often as the Commissioner deems necessary.
When a buyer pays for funeral goods and services in advance, there is no way of knowing when that contract may be needed. A preneed contract may not be used for 20 or 30 years. Because there is such a long time between the point of sale and the provision of goods and services, the trust funds may easily be misappropriated. In order to effectively regulate preneed contracts, the Commissioner must be able to conduct examinations of preneed sellers periodically or as often as deemed necessary. Providing the Commissioner with this authority would create a necessary deterrent to preneed sellers who may be tempted to defraud consumers or misappropriate funds. Periodic examinations would also help to uncover missing funds before all traces of the funds have disappeared.

Require title insurance companies and title agencies to participate in a recovery fund in case of defalcation.
In Colorado, title agencies have misappropriated several million dollars in escrow funds related to real estate transactions over the last 10 years. In order to protect all the participants in a real estate transaction who have money in escrow, all title insurance companies and title agencies holding money in escrow should be required to participate in a recovery fund in case of defalcation.

Methodology

As part of this review, Colorado Office of Policy, Research and Regulatory Reform staff interviewed Division staff, reviewed Division records, interviewed officials with state and national professional associations, interviewed stakeholders, attended advisory committee meetings, reviewed Colorado statutes and rules, and reviewed the laws of other states.

Major Contacts Made During This Review

American Insurance Association
Colorado Association of Health Plans
Colorado Association of Health Underwriters
Colorado Consumer Health Initiative
Colorado Department of Labor & Employment
Colorado Department of Law
Colorado Dept. of Public Health & Environment
Colorado Division of Insurance
Colorado Funeral Directors Association
Colorado Hospital Association
Colorado Medical Society
Colorado Office of Economic Development
Kaiser Permanente
Professional Independent Insurance Agents
Land Title Association of Colorado
National Assoc. of Mutual Insurance Companies

What is a Sunset Review?
A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:
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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria[1] and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

[1] Criteria may be found at § 24-34-104, C.R.S.

- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (8) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at: dora.colorado.gov/opr.

The functions of the Colorado Division of Insurance (Division) as enumerated in Title 10, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2017, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the administration of the Division pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed program to regulate the business of insurance conducted in Colorado should be continued and to evaluate the performance of the Commissioner of Insurance (Commissioner). During this review, the Commissioner must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff interviewed Division staff, reviewed Division records, interviewed officials with state and national professional associations, interviewed stakeholders, conducted a survey, attended advisory committee meetings, reviewed Colorado statutes and rules, and reviewed the laws of other states.

Profile of the Industry

Insurance is essentially a contract between two parties that provides financial protection or reimbursement against losses. The insurance company pools the risk of its insured parties in order to provide affordable insurance rates, and the insured pays a premium for a policy that protects the insured from financial losses caused by damage to a person or property.[2]

The insurance market may be divided into two broad categories: personal lines and commercial lines. Personal lines of insurance, such as health and homeowners insurance, help individuals and families protect themselves from financial loss, and commercial lines of insurance, such as workers' compensation and professional liability insurance, help to protect businesses against financial loss.[3]

There are several different types of personal and commercial insurance sold in the United States. The most common types are:

- **Accident and health insurance**—provides coverage for surgery, doctor's visits, medical procedures and prescription drugs.[4]

- **Life insurance**—protects against the loss of income that would result if an individual passes away.[5]

- **Property insurance**—protects an owner or renter of a structure and its contents in case of damage or theft.[6]

- **Casualty insurance**—protects an individual or business from liability resulting from injury or damage to a third party or property, and includes several different lines of insurance such as automobile, professional liability insurance and workers' compensation.[7]

Some other types of insurance products are:

- **Credit insurance**—protects a borrower for one or more lines of credit in case of death, disability and unemployment.[8]

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[2] Investopedia. *Insurance*. Retrieved September 16, 2016, from http://www.investopedia.com/terms/i/insurance.asp
[3] Investopedia. *Personal Lines Insurance*. Retrieved September 16, 2016, from http://www.investopedia.com/terms/p/personal-insurance-lines.asp and Commercial Lines Insurance. Retrieved September 16, 2016, from http://www.investopedia.com/terms/c/commercial-insurance-lines.asp
[4] Farlex Financial Dictionary. *Accident and Health Insurance*. Retrieved September 16, 2016, from http://financial-dictionary.thefreedictionary.com/Accident+and+Health+Insurance
[5] Investopedia. *Life Insurance*. Retrieved September 16, 2016, from http://www.investopedia.com/terms/l/lifeinsurance.asp
[6] Investopedia. *Property Insurance*. Retrieved September 16, 2016, from http://www.investopedia.com/terms/p/property-insurance.asp
[7] Investopedia. *Casualty Insurance*. Retrieved September 16, 2016, from http://www.investopedia.com/terms/c/casualtyinsurance.asp
[8] Investopedia. *Credit Insurance*. Retrieved September 16, 2016, from http://www.investopedia.com/terms/c/creditinsurance.asp

- **Managed care**—provides health-care coverage and benefits in a health-care setting or network of providers that are managed by the insurance company.[9]

- **Title insurance**—guarantees that the title to property is clear of liens and is properly owned by the title holder and that the owner has the right to convey or sell the property.[10]

- **Travel insurance**—covers medical expenses and trip cancellations in case of an unexpected event when traveling.[11]

- **Variable life insurance**—allows an individual to allocate a portion of the premium dollars to a separate account made up of stocks, bonds, equity funds, money market funds and bond funds.[12]

- **Variable annuity**—requires the insurance company to make regular payments, the value of which depend on the performance of investments, to the consumer beginning on a specific date, such as retirement.[13]

An insurance company may be either a:

- **Standard lines company**, also known as an admitted insurance company, which is licensed by the state to sell specific lines of insurance and is subject to state restrictions on rates and forms;[14] or

- **Surplus lines company**, also known as a non-admitted insurance company, which only sells insurance unavailable on the standard market, typically covering individuals or entities that are unusual or considered especially high risk. While surplus lines companies are not licensed by the states in which they do business, they must be approved in those states. Unlike standard lines companies, they are not required to file rates and forms with the state. However, most states require surplus lines companies to provide financial information, articles of incorporation, a list of officers and other information to determine financial solvency.[15]

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[9] MedlinePlus. *Managed Care*. Retrieved September 16, 2016, from https://www.nlm.nih.gov/medlineplus/managedcare.html
[10] Farlex Legal Dictionary. *Title Insurance*. Retrieved September 16, 2016, from http://legal-dictionary.thefreedictionary.com/Title+Insurance
[11] Investopedia. *Travel Insurance*. Retrieved September 16, 2016, from http://www.investopedia.com/terms/t/travel-insurance.asp
[12] Investopedia. *Variable Life Insurance Policy*. Retrieved September 16, 2016,from http://www.investopedia.com/terms/v/variablelifeinsurancepolicy.asp
[13] U.S. Securities and Exchange Commission. *Variable Annuities: What You Should Know*. Retrieved September 16, 2016, from http://www.sec.gov/investor/pubs/varannty.htm
[14] American Association of Managing General Agents. *AAMGA's FAQ's: Excess and Surplus Lines FAQ's*. Retrieved September 16, 2016, from http://www.aamga.org/faqs
[15] American Association of Managing General Agents. *AAMGA's FAQ's: Excess and Surplus Lines FAQ's*. Retrieved September 16, 2016, http://www.aamga.org/faqs

Other types of insurance companies include:

- **Reinsurance companies**, which sell policies to other insurance companies to protect against extensive losses;[16]

- **Captive insurance companies**, which are companies that are established by parent companies or a group of parent companies to cover their own risks;[17] and

- **Mutual insurance companies**, which are owned by the policyholders rather than shareholders.[18]

An insurance producer may be may be an agent, broker or another representative who sells insurance.[19]

The regulation of insurance companies and producers primarily rests with the individual states rather than the federal government. State regulation is primarily concerned with the following.[20]

- **Licensing insurance companies**—States require insurance companies to be licensed in the state in which they are domiciled and in all states in which they do business.

- **Licensing producers**—States require insurance agents and brokers, also called producers, to be licensed to sell insurance and comply with state laws.

- **Regulating products**—States protect consumers by ensuring that insurance policy provisions are reasonable and fair, comply with state law and do not contain major gaps in coverage that may leave consumers unprotected. How states regulate rates and forms varies, depending on state laws and the line of insurance being sold.

- **Regulating market conduct**—States employ market conduct examinations to ensure fair and reasonable insurance prices, products and trade practices.

- **Regulating financial solvency**—States employ periodic financial examinations to determine whether companies are in good financial standing and in a position to cover their policyholders' claims.

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[16] Farlex Legal Dictionary. *Reinsurance*. Retrieved September 16, 2016, from http://legal-dictionary.thefreedictionary.com/Reinsurance

[17] Farlex Legal Dictionary. *What Is Captive Insurance?* Retrieved September 16, 2016, from http://www.captive.com/resources/captive-insurance-basic-information-index/what-is-captive-insurance

[18] Investopedia. *Mutual Company*. Retrieved September 16, 2016, from http://www.investopedia.com/terms/m/mutualcompany.asp

[19] IRMI. *Producer*. Retrieved September 16, 2016, from https://www.irmi.com/online/insurance-glossary/terms/p/producer.aspx

[20] National Association of Insurance Commissioners. *State Insurance Regulation*. Retrieved September 16, 2016, from http://www.naic.org/documents/consumer_state_reg_brief.pdf

- **Serving consumers**—States field consumer questions and complaints against insurance companies and producers.

In Colorado, the Commissioner also regulates preneed funeral contracts (preneed contracts).

A preneed contract is entered into when an individual pays in advance for funeral and burial goods and services. These contracts may be financed by an insurance product or a trust fund.[21] Although not technically an insurance product, the regulation of preneed contracts financed by a trust fund does fall under the purview of this sunset review.

While the regulation of companies and producers who sell bail bond insurance are regulated by the Commissioner and will form part of this review, the regulation of cash bonding and cash bail agents is being reviewed separately in the 2016 Sunset Review: Cash Bonding and Professional Cash-Bail Agents.

National Association of Insurance Commissioners

Since many insurance companies operate nationally or in multiple states, it is especially important for states to regulate insurance with some level of uniformity and collaborative effort, and the National Association of Insurance Commissioners (NAIC) is the organization that helps states to achieve these goals.

The NAIC supports, and includes among its members, insurance regulators from all 50 states, the District of Columbia, and the five U.S. territories. The NAIC provides a forum to develop uniform standards and best practices, conduct peer review of state regulators and coordinate regulatory oversight.[22]

The NAIC also provides valuable resources to help state regulators enforce insurance statutes.

The NAIC Accreditation Program requires states to meet certain standards in the regulation of the financial solvency of insurance companies. The program allows states to rely on an accredited state in which the insurance company is domiciled to fulfill the requirement of effective regulatory oversight. This creates a more efficient system of regulation. Otherwise, insurance companies would be subject to financial oversight by multiple jurisdictions. All 50 states, the District of Columbia and Puerto Rico are currently accredited.[23]

[21] ElderLawAnswers. *Pre-Need Funeral Contracts*. Retrieved September 16, 2016, from http://www.elderlawanswers.com/pre-need-funeral-contracts-3337#
[22] National Association of Insurance Commissioners. *About the NAIC*. Retrieved September 16, 2016, from http://www.naic.org/index_about.htm
[23] National Association of Insurance Commissioners. *Accreditation*. Retrieved September 16, 2016, from http://www.naic.org/cipr_topics/topic_accreditation.htm

Every year, the NAIC requires each state insurance department to demonstrate that it meets the minimum qualifications for NAIC accreditation, and it conducts onsite audits of each state insurance department once every five years.[24]

Additionally, the NAIC provides various national databases that allow state regulators to monitor financial status and trends as well as complaints and enforcement actions against insurance companies.

Colorado participates in NAIC activities whenever possible, and it has adopted several model statutes and rules developed by the organization. However, the NAIC does not have any legal authority over Colorado or other states; the authority to regulate the insurance industry primarily rests with the states.

[24] National Association of Insurance Commissioners. *Accreditation*. Retrieved September 16, 2016, from http://www.naic.org/cipr_topics/topic_accreditation.htm

Legal Framework

History of Regulation

Colorado began regulating insurance in 1883 through the State Auditor's Office, and the Colorado Department of Insurance was formed in 1913.

Under the McCarran-Ferguson Act of 1945, the authority of the federal government to regulate insurance was delegated to the states. The McCarran-Ferguson Act provides that only federal laws that specifically relate to insurance may invalidate state insurance laws.

In the 1960's, the Colorado Department of Insurance was transferred to the Department of Regulatory Agencies and renamed the Colorado Division of Insurance (Division).

In 1999, the U.S. Congress passed the Gramm-Leach-Bliley Act, which repealed Depression-era restrictions against affiliations among banks, insurance companies and securities firms. While the Act affirmed the functional regulation of insurance by the states, it required states to achieve reciprocity or uniformity related to insurance producer licensing, or face preemption of non-resident licensing.

In 2001, Colorado adopted the National Association of Insurance Commissioners (NAIC) Producer Licensing Model Act with the intention of ensuring that Colorado remained reciprocal with other states' insurance producer requirements.

Colorado's no-fault automobile insurance law sunset in 2003, and the state reverted to a traditional tort-based law.

In 2010, the federal Wall Street Reform and Consumer Protection Act, commonly known as the Dodd-Frank Act, created the Federal Insurance Office, which gathers information on the insurance industry and reports to the U.S. Congress. The Dodd-Frank Act also reformed reinsurance and changed the basis for regulation and taxation of surplus lines companies.

Also in 2010, the U.S. Congress passed the Patient Protection and Affordable Care Act (ACA). As a result, Colorado passed House Bill 13-1266 and several other bills in an effort to bring the state regulation of health insurance products into alignment with the ACA.

In 2013, House Bill 1062 increased the authority of the Commissioner of Insurance (Commissioner) to regulate public insurance adjusters, who are are hired by policyholders to prepare claims, present claims to insurance companies and negotiate settlements on behalf of the policyholders. Public adjusters were attracted to Colorado following catastrophic wildfires and severe hailstorms. In some cases, consumers reported public adjusters were taking money without providing services.

Today, the states provide the primary regulation of the insurance industry as they have since the enactment of McCarran-Ferguson. Consequently, most insurance companies must be licensed by every state in which they do business although primary financial oversight and examination responsibilities rest with the states in which each company is domiciled.

Legal Summary

Title 10 of the Colorado Revised Statutes (C.R.S.) governs the regulation of insurance, and the Commissioner is charged with overseeing the business of insurance in Colorado. Title 10 delineates the powers and duties of the Commissioner and the Division, and it defines the requirements and responsibilities of an insurance company by line of insurance.

Many parts of Title 10 are derived, in whole or in part, from model laws developed by the NAIC.

General Provisions

Article 1 of Title 10, C.R.S., (Article 1) establishes the qualifications and duties of the Commissioner. The Commissioner is appointed and serves at the pleasure of the Governor, with approval of the Senate. The Commissioner is required to be well versed in insurance, and he or she is prohibited from having a financial interest in any insurance company.[25]

The Commissioner may hire any employees necessary to conduct the business of the Division, including deputy commissioners who are authorized to act for the Commissioner in his or her absence[26] and an experienced, skilled and competent actuary, who is responsible for conducting examinations of insurance companies.[27]

Division employees and the Commissioner are prohibited from having any financial interest in any insurance company or from taking any fee or anything of value from an insurance company, unless specifically authorized by law.[28]

The Commissioner is responsible for supervising the business of insurance to ensure it is conducted in accordance with the laws of this state and to protect the policyholders and the general public.[29]

Specifically, the Commissioner is charged with:

- Licensing insurance producers,[30]

[25] § 10-1-104(1), C.R.S.
[26] § 10-1-104(2), C.R.S.
[27] § 10-1-105, C.R.S.
[28] § 10-1-107, C.R.S.
[29] § 10-1-108(7), C.R.S.
[30] § 10-1-108(4), C.R.S.

- Issuing certificates of authority to insurance companies,[31]
- Verifying that insurance companies are solvent,[32]
- Overseeing the business of insurance in order to ensure compliance with the law and to protect policyholders and the general public,[33]
- Conducting investigations and examinations,[34] and
- Encouraging insurance companies to disseminate information to the general public in order to help consumers make informed choices.[35]

The Commissioner is also authorized to consider whether rates are excessive, inadequate or unfairly discriminatory.[36]

The Commissioner may revoke or suspend a certificate of authority for reasons specified in Article 1 including:[37]

- Insolvency or impairment;
- Failure to maintain the minimum capital or guaranty fund and an accumulated surplus;
- Failure to submit an annual report;
- Engaging in unauthorized insurance business in another state;
- Failure to comply with the provisions of its own charter or bylaws;
- Failure to submit to examination;
- Engaging in methods that render its operation hazardous, or its condition unsound, to the public or to its policyholders;
- Failure to otherwise comply with the laws of this state; and
- Engaging in practices or conditions that render its financial position unsound to the public or its policyholders.

Article 1 authorizes the Commissioner to levy fines against insurance companies, and it requires them to be consistent, reasonable and justified.[38] The Commissioner may also order an insurance company to pay restitution if the Commissioner finds the insurance company has violated Title 10 or the insurance company is financially responsible for the acts of an insurance producer.[39]

This article also requires insurance companies that underwrite malpractice insurance to report claims to the appropriate professional licensing boards.

The Commissioner has authority to adopt rules necessary to carry out his or her duties.[40]

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[31] § 10-1-108(1)(b), C.R.S.
[32] § 10-1-108(1)(a), C.R.S.
[33] § 10-1-108(7), C.R.S.
[34] § 10-1-108(5), C.R.S.
[35] § 10-1-108(10), C.R.S.
[36] § 10-1-108(13)(c), C.R.S.
[37] § 10-1-110(1), C.R.S.
[38] § 10-1-215(1), C.R.S.
[39] § 10-3-105(4), C.R.S.
[40] § 10-1-109(1), C.R.S.

Licensing Insurance Producers

Article 2 of Title 10, C.R.S., (Article 2) governs the licensing of insurance producers and bail bond agents. An insurance producer is a person, either an individual or an entity, who solicits, negotiates, effects, procures, delivers, renews, continues or binds insurance policies.[41] An insurance producer must obtain from the Division a single license with individual authorizations to sell different lines of insurance.

This article also addresses pre-licensure examination and education requirements for producers, exemptions from licensure requirements, continuing education requirements, nonresident licenses, authority of banks to sell insurance and disciplinary actions.

Specifically, the Commissioner has the authority to suspend, revoke or deny a producer license. The Commissioner may also place an insurance producer on probation, order an insurance producer to pay restitution or assess a fine.[42]

The grounds for discipline against a producer include:[43]

- Misrepresenting the terms of an insurance contract or application for insurance;
- Being convicted of a felony or misdemeanor involving moral turpitude;
- Committing any unfair trade practice or fraud;
- Using fraudulent, coercive or dishonest practices;
- Demonstrating incompetence, untrustworthiness or financial irresponsibility;
- Having a license revoked or denied in any other state, province, district or territory;
- Forging another's name to an application for insurance or to any document related to an insurance transaction;
- Cheating on an examination;
- Failing to fully meet the licensing requirements;
- Knowingly accepting insurance business from a person who is not licensed;
- Failing to comply with an administrative or court order imposing a child support obligation;
- Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax; and
- Profiting either directly or indirectly from the business of a cash-bonding agent or professional cash-bail agent unless the person profiting is registered and the profit is derived from their own business.

[41] §§ 10-2-103(3) and (6), C.R.S.
[42] § 10-2-801(1), C.R.S.
[43] § 10-2-801(1), C.R.S.

The Reinsurance Intermediary Act, located in Part 9 of Article 2, requires reinsurance intermediaries to be licensed as producers or nonresident intermediaries in order to conduct business in Colorado. A reinsurance intermediary is an individual or entity who solicits, negotiates, places or manages reinsurance. Part 9 of Article 2 outlines the duties, contract provisions, prohibited acts, examination authority and penalties and liabilities of reinsurance intermediaries. This part is substantially similar to the NAIC model act.

The Managing General Agents Act located in Part 10 of Article 2 governs the licensure of managing general agents seeking to provide services of a managing general agent for insurance companies domiciled in Colorado. A managing general agent is an individual or entity who negotiates reinsurance contracts on behalf of an insurance company or who manages all or part of the insurance business of an insurance company. Part 10 of Article 2 outlines the duties, contract provisions, prohibited acts, examination authority, penalties and liabilities of managing general agents. This part is substantially similar to the NAIC model act.

Regulation of Insurance Companies

Article 3 of Title 10, C.R.S., (Article 3) governs the formation of insurance companies, requires insurance companies to be authorized by the Commissioner in order to transact business in Colorado, and it prohibits certain high-risk investments. According to Article 3, insurance companies may be financially responsible for any unfair business practices of an insurance producer.[44]

Many of the provisions in Article 3 are derived from NAIC model laws.

Part 2 of Article 3 governs the financial affairs of insurance companies. It identifies the minimum capital or guaranty fund requirements and accumulated surplus requirements according to the lines of insurance sold, and it requires the cash or securities to be deposited with the Commissioner, or in the case of foreign or alien companies, with the authorized officer of another state.[45]

Additionally, Part 2 of Article 3 defines the application and licensing fees that the Commissioner may charge.[46] It also establishes the premium tax rate, which is applied to the gross amount of all premiums collected or contracted for during the previous calendar year in order to determine the premium tax due to the state.[47]

Parts 4 and 5 of Article 3 authorize the Commissioner to implement remedial action on a delinquent insurance company in place of revoking the certificate of authority.[48] The Commissioner has the authority to place a company deemed delinquent or insolvent on direct supervision, receivership, rehabilitation or liquidation.[49]

[44] § 10-3-131, C.R.S.
[45] §§ 10-3-201(1)(a)(V) and (2), C.R.S.
[46] §§ 10-3-207(1) and (1.5), C.R.S.
[47] § 10-3-209(1)(b)(I), C.R.S.
[48] §§ 10-3-401 and 10-3-501, C.R.S.
[49] § 10-3-401, C.R.S.

A stock insurance company is considered to be insolvent when its assets are less than its liabilities, excluding its outstanding capital stock, and it is considered to be impaired when its assets are less than its liabilities, including its outstanding capital stock, or when its surplus is less than the minimum amounts required.[50]

Article 3 also authorizes the Commissioner to regulate reinsurance, insurance holding companies and the exchange of insurance securities, including the acquisition or merger of insurance companies. It also defines unauthorized insurance practices and remedies for violations.

Part 11 of Article 3 prohibits trade practices that are deemed to be unfair, unfair methods of competition or deceptive practices or acts.[51]

Article 3 also includes:

- The Model Quality Replacement Parts Act, located in Part 13 of Article 3, which requires disclosure and identification of replacement parts in automobile repairs;[52] and
- The Model Risk Retention Act, located in Part 14 of Article 3, which authorizes the Commissioner to regulate the formation of risk retention and purchasing groups.[53]

Certified Capital Companies

The Certified Capital Company Act, located in Article 3.5 of Title 10, C.R.S., (Article 3.5) provides assistance in the formation of new business and the expansion of existing businesses by providing an incentive for insurance companies to invest in certified capital companies. A certified capital company is a business that invests in qualified businesses and is certified by the Office of Economic Development and International Trade according to the criteria established in Article 3.5. The state then grants insurance companies tax credits that may be applied to their state premium tax liability.[54]

Property and Casualty Insurance

Article 4 of Title 10, C.R.S., (Article 4) governs the regulation of property and casualty insurance, which includes automobile, homeowners, title, renters, malpractice, product liability, commercial liability, workers' compensation and other types of insurance.

According to Article 4, insurance companies must provide prior notice of cancellation for certain policies, such as medical malpractice and automobile liability insurance.[55]

[50] § 10-3-212, C.R.S.
[51] § 10-3-1101, C.R.S.
[52] § 10-3-1302, C.R.S.
[53] § 10-3-1402, C.R.S.
[54] § 10-3.5-102, C.R.S.
[55] §§ 10-4-107 and 10-4-109.7(1), C.R.S.

Although rates for most lines of insurance are file and use, meaning that they may be used after the company files the required information with the Commissioner, Colorado requires prior approval of rates for some lines of insurance including:[56]

- Workers' compensation,
- Assigned risk motor vehicle, and
- Any other line of insurance ordered by the Commissioner.

Part 4 of Article 4 establishes the criteria for review and approval of insurance rates in order to:[57]

- Promote price competition among insurance companies;
- Prevent anticompetitive behavior;
- Provide rates that are responsive to competitive market conditions;
- Improve the availability and reliability of insurance; and
- Uphold rates that are not excessive, inadequate or unfairly discriminatory.

The Colorado Insurance Guaranty Association Act, located in Part 5 of Article 4, provides a safety net for policyholders in the event an insurance company is unable to pay claims due to insolvency. All insurance companies are required to be members of the association as a condition of their authority to transact business in Colorado.[58]

Part 6 of Article 4, governs automobile insurance policies. It requires automobile insurance coverage for anyone who owns and operates a motor vehicle,[59] and it establishes the minimum liability coverage required for automobile insurance.[60] It also requires automobile policies to be written in plain language.[61]

Part 10 of Article 4 consists of the Fraudulent Claims and Arson Information Reporting Act, which defines confidentiality and disclosure requirements when fire loss is not caused by an accident. Article 4 also establishes requirements for surety bonds, portable electronics insurance and consumer goods service contracts.

[56] § 10-4-401, C.R.S.
[57] § 10-4-401, C.R.S.
[58] § 10-4-502, C.R.S.
[59] § 10-4-619, C.R.S.
[60] § 10-4-620, C.R.S.
[61] § 10-4-633.5, C.R.S.

Nonadmitted Insurance

The Nonadmitted Insurance Act, located in Article 5 of Title 10, C.R.S., governs property and casualty insurance transactions with nonadmitted, or surplus lines, insurance companies. Nonadmitted insurance companies are not directly authorized to do business in Colorado.[62] However, when insurance cannot be procured from admitted insurance companies, nonadmitted insurance companies may be utilized as long as transactions are carried out through a licensed surplus lines broker.[63]

Nonadmitted insurance companies must comply with Colorado insurance laws regarding capital, surplus and reserves. The Commissioner prepares a list of approved nonadmitted insurance companies.[64]

Captive Insurance Companies

The Colorado Captive Insurance Company Act, located in Article 6 of Title 10, C.R.S., concerns the regulation of captive insurance companies. A captive insurance company is an enterprise established by a company or group to write insurance for that specific entity, such as employee benefits coverage.[65]

Every captive insurance company is required to have its principal and home office in Colorado.[66] Captive insurance companies must maintain capital and surplus of not less than $500,000 although the Commissioner may make a written finding that additional capital and surplus is necessary.[67] Captive insurance companies are not required to participate in a guaranty pool, nor are they eligible to receive relief from a guaranty pool.[68]

Life Insurance

The regulation of life insurance is governed in Article 7 of Title 10, C.R.S. Section 10-7-102, C.R.S., establishes requirements for life insurance policies sold in Colorado, and section 10-7-103, C.R.S., establishes provisions that are prohibited from being included in life insurance policies in Colorado.

Specifically, life insurance policies must contain a provision stipulating that the policy represents the entire contract and that the policy is incontestable after it has been in force for two years. Exceptions include nonpayment of premium and engaging in activities that violate the policy, such as naval and military service during times of war.[69]

[62] § 10-5-101.2(11), C.R.S.
[63] § 10-5-103(1)(a), C.R.S.
[64] § 10-5-108(1), C.R.S.
[65] §§ 10-6-103(5) and (9), C.R.S.
[66] § 10-6-107(5), C.R.S.
[67] §§ 10-6-116(1) and (1.5), C.R.S.
[68] § 10-6-127(1), C.R.S.
[69] § 10-7-102(1)(b), C.R.S.

Credit Insurance

The Credit Insurance Act, located in Article 10 of Title 10, C.R.S., regulates the business of credit insurance. Credit insurance covers a debtor in the event of an inability to pay on a specific loan or another credit transaction.[70]

Section 10-10-108, C.R.S., establishes provisions that must be included in credit insurance policies such as:

- A description of coverage, including the amount and term and any exceptions, limitations and restrictions;
- A statement that the benefits must be paid to the creditor to reduce or eliminate unpaid debt and that if the insurance exceeds the unpaid debt, the difference must be paid to a beneficiary named by the debtor or to his or her estate.

Importantly, debtors must be provided the option of selecting an insurance company of his or her choice when credit insurance is required as a condition of indebtedness.[71] Additionally, it is prohibited for a creditor to require credit insurance for revolving credit or other charge accounts.[72]

Title Insurance

The Title Insurance Code of Colorado, located in Article 11 of Title 10, C.R.S., (Article 11) governs the regulation of title insurance. Title insurance protects owners of real property in case of defects or claims against the title to the property.[73]

In addition to other requirements, a title insurance company is required to conduct an examination of the title and make a determination of insurability prior to underwriting a policy or contract of title insurance.[74] Section 10-11-108, C.R.S., establishes practices that are prohibited for title insurance agents and companies. Notably, it prevents them from engaging in other lines of insurance.[75]

Part 2 of Article 11, creates a nine-member Title Insurance Commission, which acts in an advisory capacity to the Commissioner.[76] The Title Insurance Commission is authorized to propose rules, bulletins, position statements and changes to law regarding the regulation of title insurance. It is also authorized to consult with the Commissioner regarding complaints, final agency actions, appeals and judicial reviews.[77]

[70] § 10-10-103(2), C.R.S.
[71] § 10-10-113, C.R.S.
[72] § 10-10-118, C.R.S.
[73] § 10-11-102(10), C.R.S.
[74] § 10-11-106(1), C.R.S.
[75] § 10-11-108(1)(b), C.R.S.
[76] §§ 10-11-201(1) and (2), C.R.S.
[77] §§ 10-11-202(1) and (2), C.R.S.

Mutual Insurance

The regulation of mutual insurance is governed by Article 12 of Title 10, C.R.S., (Article 12). Part 1 of Article 12 concerns mutual protective associations, a subset of mutual insurance companies. A mutual protective association may be formed by an association of 100 or more individuals.[78]

Part 4 of Article 12 applies to all mutual insurance companies, domestic and foreign, including captive insurance companies organized as a mutual insurance company.[79] A mutual insurance company is owned by the policyholders, who select the board of directors,[80] and policyholders share in the profits of the company.[81]

Mutual insurance companies can write any line of insurance.[82]

Interinsurance

The regulation of interinsurance and reciprocal exchanges is authorized in Article 13 of Title 10, C.R.S. An interinsurance or reciprocal exchange is an entity consisting of a group of subscribers, which may be individuals or businesses, who exchange insurance contracts and spread the risk associated with these contracts amongst themselves.[83]

Any representative soliciting business in Colorado for an interinsurance exchange must be licensed by the Commissioner.[84]

Each subscriber must file with the Commissioner a declaration to include:[85]

- The name and location of the office at which the interinsurance contracts will be exchanged,
- The type of insurance to be exchanged,
- A copy of the contract or agreement governing the exchange, and
- A financial statement.

The declaration must state that applications have been made to cover at least 100 separate risks totaling at least $1.5 million.[86]

[78] § 10-12-101(1), C.R.S.
[79] § 10-12-402, C.R.S.
[80] § 10-12-403, C.R.S.
[81] § 10-12-409, C.R.S.
[82] § 10-12-406, C.R.S.
[83] § 10-13-101, C.R.S.
[84] § 10-13-102, C.R.S.
[85] § 10-13-103(1), C.R.S.
[86] § 10-13-103(1)(f), C.R.S.

Fraternal Benefit Societies

Article 14 of Title 10, C.R.S., (Article 14) concerns fraternal benefit societies. A fraternal benefit society is a not-for-profit organization that offers insurance benefits to its members. It is organized into lodges, and it operates solely for the benefit of its members and their beneficiaries.[87]

A fraternal benefit society may offer benefits, depending on the certificate of authority, such as:[88]

- Death benefits;
- Endowment benefits;
- Annuity benefits;
- Temporary or permanent disability benefits;
- Hospital, medical or nursing benefits;
- Monument or tombstone benefits; and
- Other life insurance consistent with Article 14.

Preneed Funeral Contracts

Article 15 of Title 10, C.R.S., (Article 15) governs preneed funeral contracts (preneed contracts). Preneed contracts are agreements to provide merchandise or services for funeral, burial, entombment or cremation in the future at an agreed-upon price.[89] They may be provided in the form of a trust or through life insurance.[90] According to the legislative declaration, the General Assembly created this article to protect the public from unconscionable dealings in preneed funeral sales.[91]

Article 15 establishes specific requirements for preneed contracts. Importantly, it requires the preneed seller to provide a full refund if the contract is cancelled within seven days.[92] If a preneed contract is cancelled after seven days, the preneed seller may retain an amount equal to the reasonable value of administrative and sales costs incurred, not to exceed 15 percent of the total contract price.[93]

It also provides the buyer, or the person with the right of final disposition, the ability to transfer the funds or the assignment of insurance to another funeral provider.[94]

The Commissioner has several options to enforce Article 15, including:[95]

- Issuing a fine of up to $1,000 for each offense;

[87] § 10-14-102, C.R.S.
[88] § 10-14-401(1), C.R.S.
[89] § 10-15-102(13)(a), C.R.S.
[90] §§ 10-15-107(1) and 111(1), C.R.S.
[91] § 10-15-101, C.R.S.
[92] §§ 10-15-105(4)(d), (4)(e) and (9)(a), C.R.S.
[93] § 10-15-105(4)(j), CR.S.
[94] § 10-15-105(9)(a), C.R.S.
[95] § 10-15-114(1), C.R.S.

- Issuing a letter of admonition;
- Placing a preneed seller on probation; and
- Refusing, revoking or suspending a license.

The Commissioner is also authorized to:

- Issue a cease and desist order,[96]
- Seek an injunction,[97] and
- File criminal charges.[98]

Health-Care Coverage

The Colorado Health-Care Coverage Act is located in Article 16 of Title 10, C.R.S., (Article 16) much of which has been adapted to align with the ACA. Part 1 of Article 16 contains the general provisions such as:

- Minimum health-care benefits for small group and individual plans,[99]
- Required contract terms,[100]
- Mandatory coverage provisions,[101]
- Rate filing requirements,[102]
- Marketing standards,[103] and
- Prohibition against preexisting condition exclusions.[104]

This part also authorizes the Commissioner to promulgate rules establishing geographic areas for small employers and require carriers to demonstrate that rates are not excessive, inadequate or unfairly discriminatory in relation to rates in other areas.[105]

It also requires health insurance policies to be written in plain language.[106]

In addition, Part 1 of Article 16 prohibits rates for sickness, accident or health insurance that are excessive, inadequate or unfairly discriminatory, and it requires carriers to submit rates to the Commissioner at least 60 days before implementing the rates. The Commissioner may approve or disapprove the rates. If the Commissioner takes no action in 60 days, the carrier may implement the rates. However, if the Commissioner finds deficiencies in the rates after the 60-day period, the rates must be corrected on a prospective basis.[107]

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[96] § 10-15-115(1)(b), C.R.S.
[97] § 10-15-115(1)(a), C.R.S.
[98] § 10-15-118(1), C.R.S.
[99] § 10-16-103.4(1), C.R.S.
[100] § 10-16-103.5(1), C.R.S.
[101] § 10-16-104, C.R.S.
[102] § 10-16-107, C.R.S.
[103] § 10-16-108.5, C.R.S.
[104] § 10-16-118, C.R.S.
[105] § 10-16-104.9(1)(a), C.R.S.
[106] § 10-16-107.3, C.R.S.
[107] § 10-16-107(1)(a), C.R.S.

Part 1 of Article 16 also directs the Commissioner to develop a uniform application form for health benefit plans that all health insurance carriers must use when conducting business in Colorado.[108]

It also establishes a procedure for denial of benefits and internal review of benefit denials, and it provides a consumer who has been denied benefits with the option of an independent external review, of which the determination is binding on the consumer and the carrier.[109]

Part 2 of Article 16 concerns the regulation of individual sickness and accident insurance, which protects against loss of income resulting from the sickness or accidental bodily injury or death. Specifically, it addresses, among other concerns:

- Form and content,
- Required provisions,
- Language and content of optional provisions,
- Inapplicable or inconsistent provisions,
- Requirements of other jurisdictions, and
- Minimum standards.

Part 3 of Article 16 deals with nonprofit hospital, medical-surgical and health service corporations. The purpose of this part is to promote availability of care in these types of institutions on a voluntary, nonprofit prepaid basis and to conform to the federal "Tax Reform Act of 1986."[110]

This part addresses, among other concerns:

- Filing articles of incorporation,
- Establishing a board of directors or trustees,
- Taking consumer complaints, and
- Revoking or suspending a certificate of authority.

In particular, it requires a board of directors or trustees to manage the property and lawful business of a nonprofit hospital, medical-surgical or health service corporation.[111] Further, it maintains that it is the duty of the board to represent the interests of the members.[112]

Part 4 of Article 16 provides for the establishment and regulation of Health Maintenance Organizations (HMOs). An HMO must obtain a certificate of authority from the Commissioner in order to operate in Colorado.[113]

[108] § 10-16-107.5(1), C.R.S.
[109] § 10-16-113.5(12), C.R.S.
[110] §§ 10-16-301(1) and (2), C.R.S.
[111] § 10-16-305(1), C.R.S.
[112] § 10-16-305(2), C.R.S.
[113] § 10-16-401(2), C.R.S.

In order to obtain a certificate of authority, the application must be approved by the Commissioner and the Executive Director of the Colorado Department of Public Health and Environment (CDPHE).[114] When considering an HMO application, the Executive Director of CDPHE must determine whether an applicant:[115]

- Has demonstrated the ability to assure availability and accessibility of adequate personnel and facilities;
- Has arranged for an ongoing quality of care assurance program; and
- Has developed a procedure to develop, compile, evaluate and report statistics relating to the cost of its operations, the pattern of utilization of its services, the availability and accessibility of its services, and such other matters required by the Executive Director of CDPHE.

The Commissioner must examine an HMO at least once every five years to protect the interests of the people,[116] and the Executive Director of CDPHE must examine an HMO concerning the quality of health-care services at least once every three years.[117]

Each HMO must establish reasonable procedures for the resolution of written complaints from enrollees. The Commissioner must approve the HMO's complaint procedures after consultation with the Executive Director of CDPHE.[118]

HMOs are prohibited from using advertising that is deceptive.[119] Additionally, an HMO enrollee may not be cancelled on the basis of the enrollee's health.[120]

The Commissioner may suspend or revoke any certificate of authority issued to an HMO for any of the other conditions set out in section 10-16-417, C.R.S., including the inability of the HMO to provide health-care services required under its health-care plan. The Commissioner also has the authority to levy an administrative penalty in lieu of revocation or suspension in an amount not less than $100 and not more than $500. However, the Commissioner may increase the amount of the penalty by an amount equal to the damages suffered by enrollees and other members of the public.[121] Additionally, the Commissioner may issue an order to cease and desist any activity that is in violation of Part 1 or Part 4 of Article 16,[122] and the Commissioner may seek injunctive relief.[123]

Part 5 of Article 16 authorizes and regulates prepaid dental plans. In order to operate in Colorado, a prepaid dental plan is required to obtain a certificate of authority,[124] and the Commissioner may conduct periodic examinations.[125]

[114] §§ 10-16-402(2) and 10-16-102(27), C.R.S.
[115] § 10-16-402(1)(b), C.R.S.
[116] § 10-16-416(1), C.R.S.
[117] § 10-16-416(2), C.R.S.
[118] § 10-16-409(1)(a), C.R.S.
[119] § 10-16-413(1), C.R.S.
[120] § 10-16-413(3), C.R.S.
[121] § 10-16-420(1), C.R.S.
[122] § 10-16-420(3)(a), C.R.S.
[123] § 10-16-420(4), C.R.S.
[124] § 10-16- 502(1), C.R.S.
[125] § 10-16-508(1), C.R.S.

Part 6 of Article 16 requires all independent medical examinations performed by a doctor to be performed in accordance with generally accepted professional standards of practice.[126] A doctor who performs an independent medical examination is prohibited from having any financial interest in the treatment or the results of the care.[127]

The Consumer Protection Standards Act, concerning the operation of managed care plans, is located in Part 7 of Article 16. This part was enacted to incorporate consumer protections into the creation and maintenance of provider networks and to establish standards to assure the adequacy, accessibility and quality of health-care services offered under managed care plans.[128]

Specifically, it sets standards to ensure that the network is adequate to assure that all covered benefits to enrollees will be accessible without unreasonable delay.[129] It also addresses billing for services in which an enrollee may be provided services at a network facility by an out-of-network provider, and it requires treatment to be provided at no greater cost than if the treatment were provided by an in-network provider.[130]

Part 10 of Article 16 provides for the establishment of health-care cooperatives, entities that provide health coverage and health-care purchasing services, including detailed information on comparative prices, usage, outcomes, quality and member satisfaction with provider networks.[131] A health-care cooperative is required to operate for the mutual benefit of its members.[132]

Medicare Supplement Insurance

Article 18 of Title 10, C.R.S., concerns Medicare supplement insurance, which provides policyholders with coverage in excess of the benefits provided by the federal Medicare program.[133] Importantly, it prohibits Medicare supplement insurance policies from duplicating benefits already provided by Medicare.[134] It also requires the Commissioner to establish standards for policies and certificates.[135]

Additionally, all Medicare supplement policies or certificates must disclose on the first page that a policyholder or certificate holder has the right to return, for any reason, the policy or certificate within 30 days and receive a refund.[136]

[126] § 10-16-603, C.R.S.
[127] § 10-16-604, C.R.S.
[128] § 10-16-704(3)(a)(I), C.R.S.
[129] § 10-16-704(1), C.R.S.
[130] § 10-16-704(3)(b), C.R.S.
[131] § 10-16-1002(2), C.R.S.
[132] § 10-16-1004(1)(a), C.R.S.
[133] § 10-18-101(4), C.R.S.
[134] § 10-18-103(1), C.R.S.
[135] § 10-18-103(2), C.R.S.
[136] § 10-18-107, C.R.S.

Long-term Care Insurance

The Long-term Care Insurance Act is located in Article 19 of Title 10, C.R.S. Long-term care insurance is any insurance policy or rider that is offered to cover long-term care[137] for at least 12 months.[138]

Specifically, a long-term care insurance policy may not:[139]

- Be cancelled on the grounds of the age or deteriorating mental or physical condition of the insured,
- Provide coverage for skilled nursing care only, or
- Exclude coverage for reasons of senility.

A policy or certificate holder, who is not satisfied for any reason, may return the policy or certificate within 30 days of its receipt and receive a refund of the premium.

Life and Health Insurance Protection Associations

The Life and Health Insurance Protection Association Act, Article 20 of Title 10, C.R.S., was established in 1991. The Life and Health Insurance Protection Association is a state guaranty pool that was created to pay benefits and provide coverage in case an insurance company becomes insolvent.[140]

All life, health and annuity insurance companies must be members of the association as a condition of their ability to transact business in Colorado.[141] The association is funded by assessments paid for by members.[142] A board of directors, selected by the members and approved by the Commissioner,[143] determines the amount of the assessment to be paid by each member.[144]

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[137] Long-term care involves a variety of services designed to meet a person's health or personal care needs during a short or long period of time. These services help people live as independently and safely as possible when they can no longer perform everyday activities on their own. NIH Senior Health. *Long-Term Care*. Retrieved from http://nihseniorhealth.gov/longtermcare/whatislongtermcare/01.html
[138] § 10-19-103(5), C.R.S.
[139] § 10-19-107(1), C.R.S.
[140] § 10-20-102(1), C.R.S.
[141] § 10-20-106(1), C.R.S.
[142] § 10-20-109(1), C.R.S.
[143] § 10-20-107(1), C.R.S.
[144] § 10-20-109(1), C.R.S.

Program Description and Administration

The Commissioner of Insurance (Commissioner) within the Division of Insurance (Division), located in the Colorado Department of Regulatory Agencies (DORA), is vested with the authority to oversee the business of insurance in Colorado.

The Commissioner is supported by three deputy commissioners, who may act for the Commissioner in his or her absence. The deputy commissioners are responsible for fielding consumer inquiries and complaints, reviewing rates and forms, and licensing insurance producers and companies. They are also responsible for conducting financial analyses, financial examinations and market conduct examinations of insurance companies.

Table 1 illustrates the expenditures and staff dedicated to the program.

Table 1
Division Fiscal Information

Fiscal Year	Expenditures	FTE
10-11	$11,341,934	86.7
11-12	$11,387,502	86.7
12-13	$11,521,012	84.9
13-14	$11,698,731	84.9
14-15	$12,894,570	84.9

While Division expenditures increased slightly from fiscal year 10-11 to fiscal year 11-12, they increased by more than 10 percent in fiscal year 14-15. This increase was primarily due to increases in:

- Federal State Health Insurance Assistance Program funding,
- Federal Affordable Care Act (ACA) funding,
- Hiring contract employees,
- Annual salaries,
- Office of Information Technology charges, and
- Legal services charges.

However, the number of full-time equivalent employees appropriated to the Division has not increased, and in fiscal year 12-13, the appropriated full-time equivalent (FTE) employees actually decreased by 1.8 FTE. On average, the actual FTE dedicated to the Division is about 6.0 FTE below the appropriation.

The Division is managed by the Commissioner and three deputy commissioners:

- The Deputy Commissioner of Consumer and Compliance Services;
- The Deputy Commissioner of Finance; and
- The Deputy Commissioner of Policy, Consumer Education and Strategy.

The Deputy Commissioner of Consumer and Compliance Services (1.0 FTE, Rates and Financial Analyst V) is responsible for six sections:

- Consumer Services—Life and Health (10.5 FTE)
- Consumer Services—Property, Casualty and Title (7.0 FTE)
- Market Regulation (7.0 FTE)
- Producer Licensing and Enforcement (9.0 FTE)
- Rates and Forms—Life and Health (8.0 FTE)
- Rates and Forms—Property, Casualty and Title (5.0 FTE)

The Deputy Commissioner of Finance, (1.0 FTE, Rates and Financial Analyst V) is responsible for three sections:

- Actuarial Services (6.0 FTE)
- Financial Affairs and Company Services (9.0 FTE)
- Financial Examinations (9.0 FTE)

The Deputy Commissioner of Policy, Consumer Education and Strategy (1.0 FTE, Program Management III) is responsible for two sections:

- Senior Health (8.0 FTE)
- Direct Reports (4.0 FTE)

The Operations section (6.0 FTE) provides administrative support to the Commissioner and the Division.

Additionally, the Commissioner and staff periodically meet with three advisory committees:

- **Consumer Insurance Council**—advises the Commissioner on the impact of rules and policy initiatives on consumers.
- **Producer Advisory Council**—advises the Commissioner on the impact of rules and policy initiatives on licensed producers and their clients.
- **Title Insurance Commission**—advises the Commissioner on rules, complaints and disciplinary actions concerning title insurance.

Licensing Producers

An insurance producer may be either an insurance agent or an insurance agency. The Commissioner regulates over 76,000 insurance agents and nearly 12,000 insurance agencies in Colorado.

Colorado issues a single producer license, to an insurance agent, insurance broker, an insurance agency or an insurance brokerage firm, and authorizes the lines of insurance that the producer is qualified to sell:[145]

- Accident and health
- Casualty
- Crop hail
- Life
- Limited lines credit
- Personal lines
- Property
- Title
- Surplus lines
- Variable life and annuities

Public adjusters, who are insurance adjusters hired by policyholders to work on their behalf, are also required to be licensed in order to provide services in Colorado.[146]

Pearson VUE administers producer licensing and examination functions for the Commissioner to ensure that insurance producers are qualified to participate in the insurance marketplace according to Colorado law. The staff in the Division works with Pearson Vue on a daily basis to address licensing and examination issues.

Table 2 provides the fees for individual and agency producer licenses in 2015.

Table 2
Producer Licensing Fees in 2015

Fee Type	New	Renewal
Resident (Per Line of Authority)	$57	$29
Nonresident (Per Line of Authority)	$89	$49
Surplus Lines Resident	$233	$233
Surplus Lines Nonresident	$373	$373

A surplus lines broker license costs more than other producer licenses because it is a special class of license. Unlike other types of producers, surplus lines brokers are responsible for filing the premium taxes for the insurance they sell. They are also required to conduct a due diligence search to ensure that the insurance they are selling is not otherwise available on the standard insurance market. Producers who sell standard insurance do not have this level of responsibility. Moreover, there are only about 30 licensed surplus lines brokers to cover the cost of regulation.

[145] *Pearson Vue*. Colorado Division of Insurance Licensing Candidate Handbook (July 2015), p. 2.
[146] *Pearson Vue*. Colorado Division of Insurance Licensing Candidate Handbook (July 2015), p. 2.

To qualify for a resident producer license or a public adjuster license, an applicant must be:[147]

- A resident of Colorado;
- 18 years or older; and
- Trustworthy, competent, financially responsible, and of good personal and business reputation.

Producers are also required to obtain training and pass an examination prior to licensure.[148] The examination fee is $48.

The lines of authority that are required to complete pre-licensing training and pass an examination include:[149]

- Accident and health,
- Casualty,
- Property,
- Life, and
- Personal lines.

In order to sell long-term care insurance, producers are required to complete 16 hours of education in long-term care, of which eight hours must be in a classroom setting and specific to "long-term care partnership."[150] The long-term care partnership program is a federal initiative that allows policyholders to protect their assets and still qualify for Medicaid when the long-term care policies run out.[151]

The following lines of authority are not subject to pre-licensing training, but applicants are required to pass an examination prior to licensure:[152]

- Public insurance adjuster,
- Limited lines credit,
- Title,
- Crop hail, and
- Surplus lines.

Applicants who have been licensed in another state for more than 90 days immediately prior to submitting an application are exempt from Colorado's pre-licensure education and examination requirements.[153]

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[147] *Pearson Vue*. Colorado Division of Insurance Licensing Candidate Handbook (July 2015), p. 2.
[148] *Pearson Vue*. Colorado Division of Insurance Licensing Candidate Handbook (July 2015), pp. 2, 3.
[149] *Pearson Vue*. Colorado Division of Insurance Licensing Candidate Handbook (July 2015), pp. 2, 3.
[150] *Pearson Vue*. Colorado Division of Insurance Licensing Candidate Handbook (July 2015), p. 7.
[151] ElderLawAnswers. *Long-Term Care Insurance Partnership Policies*. Retrieved on August 23, 2016, from http://www.elderlawanswers.com/long-term-care-insurance-partnership-policies-12139#
[152] *Pearson Vue*. Colorado Division of Insurance Licensing Candidate Handbook (July 2015), p. 4.
[153] *Pearson Vue*. Colorado Division of Insurance Licensing Candidate Handbook (July 2015), p. 3.

Title agency applicants must provide evidence of a minimum of $10,000 in capital.[154]

Additional pre-licensure education is required for insurance producers to be qualified as bail bond agents and long-term care agents.[155]

Examinations for producers are available at Pearson Vue testing centers in:[156]

- Bayfield,
- Colorado Springs,
- Greenwood Village,
- Grand Junction,
- Pueblo,
- What Ridge, and
- Westminster.

The fee for a producer license examination is $73, and a candidate may take up to two examinations in one session for this fee.[157]

Although Pearson Vue administers the test, Division staff works with producers to develop the test questions. All examinations are psychometrically valid.

Table 3 shows the number of producer licensing examinations given and the pass rates over a five-year period.

Table 3
Producer Licensing Examinations

Fiscal Year	Number of Examinations	Pass Rate
10-11	15,403	68%
11-12	16,163	59%
12-13	16,731	60%
13-14	17,651	59%
14-15	17,607	60%

On average, the pass rates for producer licensing examinations are 60 percent, which is somewhat low, indicating either that the examinations may be too difficult or the courses may not be adequately preparing candidates to take the examinations. According to the Division, all the examinations are psychometrically valid, and the reason for the low pass rates is that the candidates are not prepared when they take the examinations.

A candidate may retake an examination as many times as necessary to pass it.

[154] *Pearson Vue*. Colorado Division of Insurance Licensing Candidate Handbook (July 2015), p. 6.
[155] *Pearson Vue*. Colorado Division of Insurance Licensing Candidate Handbook (July 2015), p. 7.
[156] *Pearson Vue*. Colorado Division of Insurance Licensing Candidate Handbook (July 2015), back cover.
[157] *Pearson Vue*. Colorado Division of Insurance Licensing Candidate Handbook (July 2015), back cover.

Table 4 illustrates the number of producer licensing examinations given over a five-year period.

Table 4
Number of Producer Licensing Examinations by Line of Authority

Subject	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Accident and Health	4,217	4,256	4,806	4,327	4,208
Bail Bonding*	85	N/A	N/A	N/A	N/A
Casualty	2,354	2,726	2,604	3,322	3,360
Credit	146	114	143	99	183
Crop	2	6	8	11	4
Life	5,398	5,717	5,885	5,864	5,896
Personal Lines	789	630	694	726	611
Property	2,186	2,519	2,279	2,856	2,831
Public Adjuster	13	8	22	37	41
Surplus Lines	27	32	34	29	33
Title	186	155	256	380	440
Total	**15,403**	**16,163**	**16,731**	**17,651**	**17,607**

*As of fiscal year 11-12, bail bonding agents who sell bail bonds backed by a surety product are licensed as insurance producers under the casualty line of authority.

As Table 4 demonstrates, some examinations are taken by so few individuals that the pass rates may not provide very meaningful information. For example, few producers have taken the crop insurance, public adjuster and surplus lines examinations.

Table 5 illustrates the producer licensing examination pass rates by line of authority over a five-year period.

Table 5
Producer Licensing Examination Pass Rates by Line of Authority

Line of Insurance	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Accident and Health	60%	62%	60%	61%	63%
Bail Bonding*	72%	N/A	N/A	N/A	N/A
Casualty	56%	53%	53%	49%	48%
Credit	80%	76%	65%	76%	63%
Crop	100%	67%	50%	55%	50%
Life	65%	61%	63%	64%	66%
Personal Lines	51%	41%	50%	55%	60%
Property	60%	58%	62%	57%	56%
Public Adjuster	50%	100%	55%	49%	41%
Surplus Lines	100%	66%	82%	90%	67%
Title	56%	59%	63%	64%	52%
Average	**68%**	**64%**	**60%**	**62%**	**57%**

*As of fiscal year 11-12, bail bonding agents who sell bail bonds backed by surety product are licensed as insurance producers under the casualty line of authority.

While the overall average pass rate is 62 percent, when the rates are broken down by type of examination, a different picture emerges. The pass rates for the health, life and property examinations are consistent with the overall average. However, the pass rates for the casualty insurance examination are consistently low, dropping to 48 percent in fiscal year 14-15.

Once an applicant has completed the pre-licensing training and passed an examination, the applicant may fill out an online application. Pearson Vue then reviews the application to ensure that the licensing requirements are complete. If the applicant meets the licensing requirements, Pearson Vue will issue a license.[158]

When there are problems with an application, such as a criminal history, Division staff will review it in order to provide a final determination. Division staff may approve, deny or close an application.

When an application is incomplete, Pearson Vue will notify an applicant of the deficiencies. If the applicant fails to provide the requested materials within 60 days, the application will be closed.[159]

All producers must renew their licenses every two years by the last day of the month they were born. Pearson Vue will mail notification 90 days before a license expiration date. However, if a producer fails to renew a license, Colorado does not provide a grace period and the license will lapse.[160]

On average, producer licenses are issued in five days. However, an application that requires additional review may take as long as 15 days.

[158] *Pearson Vue*. Colorado Division of Insurance Licensing Candidate Handbook (July 2015), p. 6.
[159] *Pearson Vue*. Colorado Division of Insurance Licensing Candidate Handbook (July 2015), p. 6.
[160] *Pearson Vue*. Colorado Division of Insurance Licensing Candidate Handbook (July 2015), pp. 7, 8.

Table 6 provides, by line of authority, the number of actively licensed individual producers located in Colorado.

Table 6
Active Producer Licenses
Resident Individual by Line of Authority

Type	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Accident and Health	23,054	22,889	22,119	22,339	22,286
Attorney Title	126	115	102	101	88
Cash Bail	4	3	3	0	0
Professional Cash Bail	36	34	30	0	0
Surety Bail	501	471	464	0	0
Casualty	13,530	13,640	13,635	14,229	14,328
Credit	904	853	782	732	639
Crop Hail	111	106	108	116	110
HMO	1,050	980	892	806	751
Life	26,906	26,771	25,621	25,755	25,991
Non-Profit	224	210	189	178	174
Personal Lines	871	1,120	1,182	1,270	1,427
Property	13,524	13,635	13,632	13,793	13,943
Public Adjuster	31	32	34	54	59
Reinsurance Intermediary	1	1	0	0	0
Surplus Lines	242	247	236	244	255
Title	1,397	1,390	1,336	1,426	1,567
Travel Ticket	553	554	570	634	599
Variable Products	9,649	9,401	9,187	9,243	9,385
Total Number of Licenses*	**36,533**	**36,637**	**35,406**	**36,061**	**36,768**

*The columns do not add up to the total number of licenses because individual producers may be authorized to sell multiple lines of insurance.

Although the total number of individual producer licenses located in Colorado fluctuates somewhat from year to year, overall it has remained fairly stable.

Table 7 provides, by line of authority, the number of actively licensed individual producers located outside of Colorado.

Table 7
Active Insurance Producer Licenses
Non-Resident Individual by Line of Authority

Type	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Accident and Health	34,555	37,945	38,833	40,256	44,145
Attorney Title	5	4	4	4	4
Casualty	28,428	29,253	29,660	30,229	30,813
Credit	80	79	60	65	99
Crop Hail	109	132	153	162	182
HMO	41	16	12	11	9
Life	39,951	41,820	41,822	43,805	46,878
Non-Profit Hospital	1	1	1	1	1
Personal Lines	6,057	6,919	7,950	9,109	10,336
Property	28,280	29,100	29,511	30,063	30,623
Public Adjuster	155	209	205	224	171
Reinsurance Intermediary	1	1	1	1	1
Surplus Lines	1,222	1,299	1,321	1,411	1,502
Title	309	340	329	353	359
Travel Insurance	197	265	335	310	360
Variable Products	18,592	19,060	18,910	19,763	20,767
Total Number of Licenses*	**31,220**	**31,528**	**30,807**	**37,007**	**39,347**

*The columns do not add up to the total number of licenses because individual producers may be authorized to sell multiple lines of insurance.

The total number of individual producer licenses located outside of Colorado has increased fairly steadily over the five-year period.

Individual resident producers are required to complete 24 hours of continuing education every two years.

Individual producers in all lines of insurance are required to complete at least 18 hours of continuing education addressing the lines of insurance they are authorized to sell, with three additional hours of continuing education in ethics. Individual producers in property insurance must obtain at least three additional hours of continuing education in homeowner's insurance. Individual producers in casualty insurance or any other line of insurance must obtain at least three additional hours of continuing education in any approved category.

Before an individual producer license expires, Pearson Vue notifies a producer by mail whether the producer is compliant with the continuing education requirements.[161]

An agency producer license is required for an entity to sell insurance in Colorado. A sole proprietor is not required to obtain an agency license as long as he or she is doing business under a trade name on his or her individual license.[162]

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[161] *Pearson Vue*. Colorado Division of Insurance Licensing Candidate Handbook (July 2015), p. 8.
[162] *Pearson Vue*. Colorado Division of Insurance Licensing Candidate Handbook (July 2015), p. 10.

To be licensed as an agency producer, an applicant must submit an online application and fee to Pearson Vue. If the applicant meets the requirements, a license will be issued.

To qualify for an agency producer license, the applicant must submit the following:[163]

- The name of a responsible producer for the insurance agency's or business entity's compliance with insurance laws, who is an officer, partner or director of the agency and is a licensed producer agent in Colorado;
- The names of all licensed and unlicensed officers, partners and directors; and
- The name of at least one licensed individual who holds each authority that the agency is applying for and who is an agent, officer or responsible producer.

An agency producer license must be renewed every two years on or before the first day of the month that the initial license was issued.[164]

Table 8 provides, by line of authority, the number of actively licensed producer agencies located in Colorado, over a five-year period.

Table 8
Active Insurance Producer Licenses
Resident Agency by Line of Authority

Type	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Accident and Health	2,723	2,688	2,603	2,569	2,518
Attorney Title	26	0	0	0	0
Casualty	2,013	2,003	1,992	2,013	2,002
Credit	206	177	148	127	106
Crop Hail	28	29	29	29	27
HMO	183	166	147	135	126
Life	2,834	2,788	2,728	2,712	2,658
Non-Profit Hospital	45	41	38	35	33
Portable Electronics Vendor	0	0	0	0	0
Personal Lines	36	71	107	124	147
Property	2,003	1,992	1,983	1,977	1,940
Public Adjuster	0	0	2	5	13
Reinsurance Intermediary	0	0	0	0	0
Reinsurance Intermediary Manager	0	0	0	0	0
Surplus Lines	91	84	86	87	90
Title	154	162	148	145	140
Travel Insurance	393	418	429	452	395
Variable Products	641	575	485	469	442
Total Number of Licenses*	**3,892**	**3,841**	**3,758**	**3,776**	**3,696**

*The columns do not add up to the total number of licenses because an agency license may be authorized to sell multiple lines of insurance.

[163] *Pearson Vue*. Colorado Division of Insurance Licensing Candidate Handbook (July 2015), p. 10.
[164] *Pearson Vue*. Colorado Division of Insurance Licensing Candidate Handbook (July 2015), p. 10.

The total number of resident agencies in Colorado has declined over the five-year period. This decline may, in part, be related to consolidation of agencies.

Table 9 provides, by line of authority, the number actively licensed insurance agencies located outside of Colorado over a five-year period.

Table 9
Active Insurance Producer Licenses
Non-Resident Agency by Line of Authority*

Type	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Accident and Health	2,666	2,751	2,842	2,947	3,059
Casualty	4,582	3,765	4,939	5,146	5,332
Credit	12	12	13	16	17
Crop Hail	24	24	29	36	42
HMO	9	3	2	1	1
Life	2,976	3,089	3,179	3,287	3,405
Non-Profit Hospital	1	0	0	0	0
Portable Electronics Vendor	0	0	0	7	21
Personal Lines	163	226	266	341	401
Property	4,546	4,731	4,893	5,099	5,296
Public Adjuster	1	2	3	6	10
Reinsurance Intermediary	5	5	4	2	2
Reinsurance Intermediary Manager	12	12	14	15	15
Surplus Lines	454	489	525	557	588
Title	187	185	174	177	191
Travel Insurance	11	15	17	24	37
Variable Products	644	647	627	615	597
Total Number of Licenses	**6,968**	**7,261**	**7,400**	**7,712**	**8,060**

*The columns do not add up to the total number of licenses because an agency license may be authorized to sell multiple lines of insurance.

The number of non-resident agencies operating in Colorado increased gradually over the five-year period.

Licensing Insurance Companies

The Commissioner is charged with issuing certificates of authority to insurance companies operating in Colorado.

In order to obtain a certificate of authority, an insurance company must submit an online application through the National Association of Insurance Commissioners (NAIC). Division staff has two weeks to review an application in order to verify that all the required documents have been provided. Once an application is complete, staff then has 60 days to perform a substantive review of the application. If staff finds any deficiencies, it corresponds with the company.

Insurance companies may be classified as domestic, foreign or alien. A domestic insurance company is one that is organized under the laws of this state. A foreign insurance company is one that is organized under the laws of another state or U.S. jurisdiction, and an alien insurance company is one that is organized under the laws of another country.

The Commissioner requires domestic insurance companies to submit fingerprints for all officers of the company, and for foreign companies, it requires companies to submit biographical documentation for all the officers. Each application also undergoes a thorough actuarial review and a financial review in order to determine that the applicant has sufficient ability to maintain a minimum level of capital and surplus.

When staff determines that a company has met the requirements for a certificate of authority, it sends a letter requesting payment of fees. Companies must send the organizing documents to the Attorney General's office and to the Secretary of State. When these requirements have been met, staff issues a certificate of authority.

Insurance companies renew their certificates of authority annually when they pay premium tax.

Every insurance company must submit an annual premium tax filing to the Division and pay a two-percent tax rate on premiums. Staff audits tax filings and processes any tax credits due to insurance companies. Staff also charges insurance companies interest on any tax filings that are late.

If an insurance company is deemed to have a regional home office in Colorado, it only pays a one-percent tax rate on premiums. Companies must apply annually as an insurance company with a regional home office, and staff performs a detailed review of the company operations in order to verify eligibility. Staff also conducts on-site visits every five years to verify that the information provided in the application is true.

Most alien insurance companies are nonadmitted companies, which undergo a different approval process than standard domestic or foreign insurance companies. Nonadmitted companies are either surplus lines or reinsurance companies.

Alien surplus lines companies are eligible to do business in Colorado if they are listed on the Quarterly Listing of Alien Insurers maintained by the NAIC.

Foreign surplus lines companies must have a certificate of authority in the state in which they are domiciled and a net worth of $15 million in order to be approved to do business in Colorado. Staff reviews surplus lines filings annually to verify each company has a net worth of $15 million and the correct annual fee has been paid.

Reinsurers must annually file financial statements and trust statements. They are required to have a surplus of $20 million. Alien reinsurers must maintain a trust account equal to $20 million plus all U.S. liabilities.

In addition to authorizing insurance companies to do business in Colorado, staff reviews surplus lines broker filings, assumption reinsurance agreements, corporation organization changes and preneed seller applications and renewals. Finally, staff also handles health-care institution financial responsibility filings.

Table 10 illustrates the application activity for insurance companies over a five-year period.

Table 10
Insurance Company Applications

Type	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Received	441	362	420	608	515
Approved	412	342	401	588	510
Not Approved	31	22	21	22	11

The number of applications that the Division receives from insurance companies fluctuates from year to year. On average, the Division receives about 470 insurance company applications a year. However, it only received 362 applications in fiscal year 11-12 while it received 608 applications in fiscal year 13-14.

Table 11 demonstrates the total number of insurance companies operating in Colorado over a five-year period.

Table 11
Insurance Companies Operating in Colorado

Type	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Domestic	41	39	42	42	42
Foreign	1,401	1,411	1,420	1,429	1,438
Alien	31	34	35	44	44
Surplus Lines	139	142	150	164	168
Total	**1,612**	**1,626**	**1,647**	**1,679**	**1,692**

The total number of insurance companies operating in Colorado has increased slightly each year.

Table 12 provides, by type, the number of domestic insurance companies operating in Colorado over a five-year period.

Table 12
Domestic Insurance Companies by Type

Fiscal Year	Life and Health	HMO	Fire	Title	Casualty	Multiple Line	Total
10-11	15	11	0	3	2	10	**41**
11-12	14	10	0	3	2	10	**39**
12-13	17	10	0	3	2	10	**42**
13-14	17	10	0	3	2	10	**42**
14-15	17	10	0	3	2	10	**42**

The number of domestic life and health insurance companies operating in Colorado has increased slightly over the past five years while the number of domestic insurance companies in other lines of insurance has remained stable.

Table 13 shows, by type, the number of foreign insurance companies operating in Colorado over a five-year period.

Table 13
Foreign Insurance Companies by Type

Fiscal Year	Casualty	Fire	Life and Health	Multiple Line	Title	Total
10-11	169	4	500	709	19	**1,401**
11-12	177	4	495	717	18	**1,411**
12-13	186	4	490	725	15	**1,420**
13-14	179	5	490	740	15	**1,429**
14-15	188	5	484	746	15	**1,438**

Over the five-year period, the number of foreign casualty insurance companies operating in Colorado increased by more than 10 percent, and the number of foreign insurance companies dealing in multiple lines of insurance increased by 5 percent. However, the number of foreign life and health insurance companies has decreased somewhat, and the number of foreign title insurance companies decreased by one-fifth during this period.

Most alien insurance companies are either surplus lines companies or nonadmitted reinsurers.

In addition to authorizing insurance companies to operate in Colorado, the Commissioner also licenses preneed funeral sellers. In 2016, the Commissioner licensed a total of 92 preneed sellers, of which 70 were active and 22 were inactive. An inactive preneed seller is no longer selling preneed contracts but is still obligated to fulfill any outstanding preneed contracts.

In addition to reviewing applications and oversees regulation of all domestic, foreign and alien insurance entities and preneed contract sellers, Division staff also review applications and oversee regulation of all government and commercial self-insured pools, service contract providers, limited service licensed provider networks, purchasing groups, risk retention groups, viatical settlement providers and prepaid dental plans.

The Division is also responsible for reviewing and approving, within certain parameters, all corporate amendments and corporate transactions (i.e., mergers and acquisitions, re-domestications, reinsurance treaties, extraordinary dividends and permitted practice requests).

Actuarial Services

The Actuarial Services section of the Division provides actuarial expertise to other sections in the Division in order to ensure professional standards in the insurance industry. Its primary duties are to ensure that:

- Rates are not excessive,
- Reserves are adequate to cover all future benefit payments and expenses and to maintain solvency of the companies, and
- Actuarial memoranda submitted in rate filings and actuarial opinions align with the standards of actuarial practice and state and federal regulations.

This section conducts research and provides internal reports to the Division in order to inform staff on rating, reserving, property and casualty risks, and health-care costs. Actuarial staff also responds to consumer complaints regarding rate increases and rating practices of companies.

Rates & Forms

The Commissioner is tasked with reviewing or, depending on the line of insurance, approving insurance rates and policy forms. Staff looks at rates to ensure that they are not excessive, inadequate or unfairly discriminatory and also to ensure that companies are not engaging in deceptive or misleading practices. Policy forms are reviewed by staff to ensure that they fully disclose the terms of the insurance policy and that they are comprehensible and fair.

Insurance companies file rates and forms electronically through an NAIC database, the System for Electronic and Form Filings (SERFF). Property and casualty rates are file and use; the insurance companies may use them once they are filed. However, life and health insurance rates must be approved by the Commissioner prior to use. Staff also reviews fees for title insurance. However, most other fees assessed by insurance companies are not reviewed by staff. When there are concerns about rates, forms or fees, staff corresponds with insurance companies through SERFF.

The Commissioner also enforces standards to ensure health-care services offered under managed care plans will be accessible to covered persons without unreasonable delay.

Financial Analysis

The Division is accredited by the NAIC. The purpose of accreditation is to assure uniformity and consistency in financial regulation, so that regulators can rely on the work of their counterparts in other states and share information confidentially. To maintain accreditation, the Division must have laws and regulations that are substantially similar to NAIC models. The Division must also demonstrate that it maintains adequate and appropriately credentialed and trained staff in proportion to the number of domestic insurers. To maintain accreditation, the Division must submit an annual report to the NAIC, and the NAIC conducts on site accreditation compliance reviews at least once every five years.

Staff in the Financial Services section monitors the financial condition of domestic companies, according to NAIC guidelines, by reviewing and analyzing financial statements and other filings in order to detect, as soon as possible, errors in financial reporting, solvency concerns or negative financial trends affecting domestic insurance companies. When errors are identified, staff addresses those issues with companies and obtains corrective plans to assess the feasibility of those plans. Staff monitors compliance with corrective plans and may recommend action to the Commissioner. To assure consistency and quality of regulatory oversight, this section adheres to all NAIC accreditation standards and deadlines pertaining to financial analysis.

Table 14 shows the number of financial statements received and analyzed by the Division.

Table 14
Domestic Financial Statements

Fiscal Year	Quarterly Statements	Annual Statements
10-11	129	43
11-12	120	40
12-13	126	42
13-14	126	42
14-15	123	41

All the domestic insurance companies are required to submit quarterly and annual financial statements. The number of financial statements received and analyzed by staff depends entirely on the number of domestic insurance companies operating in Colorado.

The Commissioner requires insurance companies to maintain certain levels of capital in order to conduct business in the state. The capital requirements vary depending on the types of insurance sold and the risks that the company faces. These funds are held in a trust that the Financial Affairs section oversees. The funds must be sufficient to cover any outstanding claims, and they may be used to pay the guaranty fund in case a company becomes insolvent.

Table 15 outlines the capital requirements by type of insurance company.

Table 15
Capital Requirements

Type of Company	Requirements
Life and Health	$1.5 million or higher
Fire	$1.5 million or higher
Casualty	$1.5 million or higher
Multiple Line	$2 million or higher
Title	$750,000

The level of capital required by the Commissioner depends on the level of risk that an insurance company may be exposed to, based on the type of insurance sold.

Financial Examinations

The purpose of a financial examination is to ensure that an insurance company remains financially solvent so that it may continue to provide benefits to policyholders when claims are made. The results of a financial examination are documented in a public report that is available on the Division's website. A financial examination report assesses the financial condition of the company and may include corrective actions and recommendations for changes.

NAIC accreditation ensures that financial analyses and examinations are effective, efficient and consistent across state lines. In order to maintain NAIC accreditation, each state is responsible for the financial solvency of the companies that are domiciled in that state. Financial examinations are a critical component of NAIC accreditation.

When conducting financial examinations, staff must follow NAIC accreditation standards and uniform deadlines. When an accredited state certifies the financial solvency of a company, other states may rely on that approval. Otherwise, companies would be subject to financial examination by multiple states.

Table 16 demonstrates the financial examination activity over a five-year period.

Table 16
Financial Examinations

Fiscal Year	Financial Examinations
10-11	7
11-12	8
12-13	10
13-14	8
14-15	8

The Commissioner currently authorizes 42 domestic insurance companies in Colorado. In order to maintain NAIC accreditation, staff must perform a financial examination on each domestic insurance company at least once every five years. To meet this requirement, staff performs about eight financial examinations on domestic insurance companies every year.

In fiscal year 12-13, staff performed more financial examinations than usual. This may be attributed to the five-year examination cycle and the Division coordinating with other states to synchronize financial examinations in multiple states.

Market Conduct Examinations

The Commissioner also monitors the Colorado insurance marketplace to ensure compliance with state laws. Staff uses a variety of tools to evaluate state market conditions and identify areas of non-compliance. Staff may correspond directly with insurance companies, perform desk audits or initiate a market conduct examination.

Market conduct examinations may be conducted on any insurance company operating in Colorado, whether it is domestic, foreign or alien. A market conduct examination is an examination to evaluate the business practices and operations of an insurance company. When appropriate, Colorado participates in multi-state market conduct examinations. A market conduct examination may be a comprehensive review of the marketing, sales, underwriting, issuance and servicing of insurance products, or it may be a targeted examination looking at a specific area or issue.

Staff may also conduct market surveillance activities, which take less time than market conduct examinations and include activities such as:

- Requiring a company to perform a self-audit,
- Sending an interrogatory to companies,
- Performing a limited policy and procedure review, and
- Meeting with the insurance company to discuss corrective actions.

Table 17 demonstrates the market conduct examination activity over a five-year period.

Table 17
Market Conduct Examinations and
Market Surveillance Activities

Fiscal Year	Market Conduct Examinations*	Market Surveillance Activities
10-11	14	19
11-12	7	15
12-13	8	5
13-14	8	7
14-15	7	6
Total	**44**	**52**

*Includes targeted market conduct examinations

Typically, staff performs about eight market conduct examinations each year. In fiscal year 10-11, staff performed 14 to address certain priorities of the Commissioner. However, this was an unusual number of market conduct examinations. The decrease in surveillance activities in fiscal year 12-13 is attributed to changes in staffing levels and to the length of the assignments.

Senior Health

The Senior Health section in the Division administers two federal programs and three federal grants to assist Medicare beneficiaries in Colorado:

- State Health Insurance Assistance Program (SHIP)
- Senior Medicare Patrol (SMP)
- Medicare Improvements and Patient and Providers Act (MIPPA)

SHIP is a federal program, created in 1990, that supports a community-based, grassroots network of local SHIP offices to assist Medicare beneficiaries with questions about their health insurance. The Division contracts with 16 organizations around the state to provide these services.

SMP began in 1997 as an effort to recruit and train retired professionals to work in their communities in order to prevent health-care fraud. Volunteers in this program educate Medicare beneficiaries, especially vulnerable and hard to reach populations, on how to prevent, detect and report health-care fraud, error and abuse. The Division contracts with 15 organizations around the state to provide these services.

MIPPA was enacted in 2008 in order to provide assistance to low-income Medicare beneficiaries. The Senior Health section provides grants to agencies that help beneficiaries enroll in:

- The Medicare Low Income Subsidy (LIS), which helps to pay for prescription costs.
- The Medicare Savings Programs (MSP), which helps to pay Medicare premiums, deductibles, co-payments and co-insurance.

MIPPA grantees also educate beneficiaries about Medicare's prevention and wellness benefits.

Consumer Inquiries and Complaints

Anyone, including attorneys, consumers, health-care providers, legislators, special interest groups and company employees, may contact the Division with insurance questions or complaints. The Division has two sections that handle consumer questions and complaints, one that handles life and health insurance and another that handles property and casualty insurance.

In addition to providing guidance to consumers and others about insurance matters, the Life and Health Consumer Services and the Property and Casualty Consumer Services sections also investigate written complaints filed by consumers.

A consumer may contact the Division with a question about insurance by phone, email, letter or fax. Staff requires complaints to be provided in writing, and it accepts written complaints by email, letter or fax. Alternatively, a consumer may file a written complaint through an online form on the Division's website.

When the Consumer Services sections receive a complaint, staff takes the following steps:

1. Calls the consumer to discuss the written complaint and request additional information;
2. Reviews the written complaint and supporting documentation to determine whether the Division has jurisdiction;
3. Sends an inquiry letter to the company with a copy of the complaint;
4. Reviews the company's response and, when justified, works with the company to provide relief to the consumer;
5. Calls the consumer if 45 days has passed and the complaint has not been closed;
6. Closes the complaint when the consumer is provided relief or the complaint is found to be unwarranted;
7. Sends a letter to the consumer when the complaint is closed; and
8. Calls the consumer to discuss the outcome.

When staff receives a complaint from someone who is not the policyholder, such as a health-care provider, staff requires written permission from the policyholder before it will proceed with an investigation.

If a complaint or a series of complaints demonstrates a possible problem with a company, Consumer Services staff will work with staff in the Market Regulation section to examine the company's business practices. When a complaint involves an insurance agent, the complaint is referred to the Producer Enforcement unit. For example, an insurance agent who does not submit a premium may need to be investigated in case other premiums were not paid and for action against his or her license.

Inquiries from consumers may be recorded in one of two databases, depending on the source of the inquiry. Most inquiries are recorded in the Wanted Information for Legislators, Managers and Analysts (WILMA) database. When complaints are filed online and the Division finds it does not have jurisdiction, it records the complaint as an inquiry in a database created by Sircon.

Table 18 shows the number of inquiries and complaints filed with the Division over a five-year period.

Table 18
Consumer Inquiries and Complaints

Type	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Inquiries (WILMA)	8,191*	17,819	14,989	14,798	12,917
Inquiries (Sircon)	235	207	244	218	261
Complaints	4,257	4,229	3,323	2,854	3,402
Producer Complaints	621	481	427	822	1,344
Total	**13,304**	**22,736**	**18,983**	**18,692**	**17,924**

* WILMA data is only available for 2011.

From fiscal year 11-12 to fiscal year 14-15, the number of inquiries received by the Division decreased significantly. Similarly, compared to other years, the number of complaints was fairly high in fiscal years 10-11 and 11-12.

While Colorado experienced a number of catastrophic events in the past five years including wild fires, hail storms and floods, many of these events took place during a time when the number of complaints was decreasing. Similarly, while the ACA passed in 2010, many of its significant provisions did not take effect until January 2014, a time when the Division experienced the least complaint activity over the five years reported here.

According to Division staff, the decrease in inquiries and complaints may be attributed to the repeal of the ability for a policyholder to protest an adverse action (such as a cancellation, non-renewal or surcharge) on an automobile policy, which previously drove a high number of consumer inquiries and complaints.

Table 19 provides a breakdown of consumer complaints by type of complaint over a five-year period.

Table 19
Consumer Complaints by Type

Type	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Claim Handling	2,076	1,971	1,962	1,691	1,980
Marketing and Sales	258	198	210	162	172
Policyholder Services	544	536	486	497	734
Underwriting Protests*	1,316	1,042	265	0	0
Underwriting Complaints	582	551	766	552	631

*In 2012, the General Assembly passed House Bill 1289, which eliminated the ability for a policyholder to protest an adverse action, such as non-renewal, cancellation and surcharges, on an automobile policy.

Most of the complaints concern claims handling. Underwriting practices are another common source of complaint. The complaint numbers in this table do not match the numbers reported in other tables because some of the complaints in Table 19 are counted in more than one category.

Table 20 demonstrates the consumer complaint resolution activity from fiscal year 10-11 to fiscal year 14-15.

Table 20
Consumer Complaint Resolution

Complaints	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Number of Complaints Received	4,257	4,229	3,323	2,854	3,402
Confirmed Complaints	1,140	1,300	1,302	1,206	1,384
Non-Confirmed Complaints	3,530	2,845	2,186	1,559	1,913
Number of Complaints Closed	4,670	4,145	3,488	2,765	3,292
Average Days to Resolution	82	56	56	54	49

When staff confirms that there is justification for a complaint and that it is within the jurisdiction of the Division, staff attempts to make the consumer whole. When staff finds a complaint is not within its jurisdiction or it lacks justification, it closes the complaint.

The Division's goal is to close 85 percent of all complaints within 90 days. Division staff nearly always exceeds this goal.

In fiscal year 14-15, it took, on average, 49 days for the Division to resolve a complaint, a five-day improvement over the previous year. The decrease in the average time to close a complaint may be attributed to the Consumer Services section changing its complaint handling process after undergoing a Lean[165] process improvement evaluation.

[165] Lean is a program that seeks to maximize customer value and minimize waste.

Table 21 illustrates the number of consumer complaints filed with the Division by line of insurance.

Table 21
Consumer Complaints By Line of Insurance

Type	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Automobile	*2,371	*2,102	*1,652	1,059	1,278
Bail, Preneed, Travel, other**	61	60	54	51	33
Fire and Property	77	86	80	94	76
Health	1,008	886	685	675	1,093
Homeowners	754	725	753	661	601
Liability	79	56	51	49	48
Life Insurance and Annuity	278	191	175	158	141
Title	40	39	38	18	24
Total	**4,668**	**4,145**	**3,488**	**2,765**	**3,294**

*Includes protests, which were statutorily eliminated in 2012.

Automobile insurance is, by far, the line of insurance that consumers complain about the most. Health insurance and homeowners insurance also drive high numbers of complaints.

Producer Disciplinary Actions

The Commissioner protects consumers by investigating allegations of misconduct involving licensed insurance producers and unlicensed persons and entities who are unlawfully conducting the business of insurance in Colorado. The Commissioner has the authority to place a producer on probation, suspend, revoke or refuse to renew an insurance producer license.

Table 22 illustrates the disciplinary actions taken against individual producers over a five-year period.

Table 22
Disciplinary Actions Against Individual Producers

Type	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Denial	70	28	32	33	34
Revocation	22	16	9	6	7
Surrendered License	0	7	4	8	5
Suspension	17	18	24	23	24
Probation/Limited License	4	3	3	6	3
Withdrawal In Lieu of Denial	27	15	12	27	13
Stipulation/Final Agency Orders	53	49	52	30	33
License Supervision	1	0	0	0	0
License Conditional	1	0	0	0	0
Summary Suspensions	2	0	0	20	5
Cease & Desist	3	1	5	4	3
Other	14	7	12	39	17
Total	**214**	**144**	**153**	**196**	**144**

Over the five-year period, the Commissioner denied 197 and revoked 60 individual producer licenses. Twenty-four individual producers surrendered their licenses, and the Commissioner suspended 106 licenses and placed 19 licensees on probation. Also, 94 applicants withdrew their applications in lieu of denial.

"Other" refers to additional enforcement actions, such as, requirements for compliance plans, reports or audits, that do not fit in the other categories.

Table 23 illustrates the disciplinary actions taken against agency producers over a five-year period.

Table 23
Disciplinary Actions Against Agency Producers

Type	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Denial	4	0	1	0	3
Revocation	3	2	0	3	1
Surrendered	0	1	1	0	1
Suspension	0	0	0	2	0
Probation/Limited License	0	0	1	0	0
Withdrawal In Lieu of Denial	2	0	1	5	4
Stipulation/Final Agency Orders	9	5	9	9	9
License Supervision	0	0	0	0	0
License Conditional	0	0	0	0	0
Summary Suspensions	1	0	0	1	0
Cease & Desist	6	2	3	1	0
Other	2	0	0	3	8
Total	**27**	**10**	**16**	**24**	**26**

Over the five-year period, the Commissioner denied eight and revoked nine agency licenses. Three agencies surrendered their licenses, and the Commissioner suspended two agencies and placed one on probation. Also, 12 applicants withdrew their applications in lieu of denial.

"Other", in this table, also refers to additional enforcement actions the Commissioner may have taken that do not fit in the other reported categories, such as, requirements for compliance plans, reports or audits.

Table 24 details the number and amount of fines against producers over a five-year period.

Table 24
Fines Against Producers

	Individuals		Agencies	
Fiscal Year	Fines	Amount	Fines	Amount
10-11	35	$409,986	9	$194,600
11-12	31	$1,468,069	6	$13,800
12-13	35	$389,778	8	$122,650
13-14	26	$339,960	7	$37,466
14-15	30	$1,032,000	8	$1,312,050

The number of fines assessed against producers is fairly consistent from year to year. On average, the Division assessed about 31 fines per year against individual producers and approximately eight fines per year against agency producers. Over the five-year period, the Commissioner assessed a total of 157 fines against individuals, totaling over $3.6 million, and it assessed a total of 38 fines against agencies, totaling nearly $1.7 million.

The total amount of fines assessed against individual producers was much higher in fiscal year 11-12 than in other years because of one producer, who was fined $1.25 million for committing unfair trade practices and fraud. This fine is likely the largest fine ever imposed on an individual producer. The producer was found to have committed 416 violations of Colorado insurance laws.

Table 25 details the restitution against producers over a five-year period.

Table 25
Restitution Against Producers

Fiscal Year	Orders	Amount
10-11	3	$72,242
11-12	1	$7,371
12-13	4	$103,725
13-14	0	$121,364
14-15	1	$24,843

The restitution orders vary from year to year, depending number of producers who violated the law and the amount of restitution necessary to make consumers whole.

Insurance Company Disciplinary Actions

The Commissioner has the authority to deny an insurance company's application for a certificate of authority. The Commissioner may also revoke or suspend an insurance company's certificate of authority, and he or she may place an insurance company under supervision, in receivership or order an insurance company to change their operations or business practices in order to comply with Colorado law.

Table 26 illustrates the number of disciplinary actions taken against insurance companies over a five-year period.

Table 26
Disciplinary Actions Against Insurance Companies

Type	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Denial	2	6	1	6	0
Revocation	0	0	0	0	0
Suspension	0	0	1	0	2
Supervision	0	0	0	0	0
Receivership	0	0	0	0	0
Final Agency Orders	51	17	18	16	16
Total	**53**	**23**	**20**	**22**	**18**

The Commissioner denied 15 applications over the five-year period. However, the Commissioner did not revoke any certificates of authority. In fiscal year 14-15, the Commissioner suspended the certificates of authority of two foreign insurers who found to be in hazardous financial condition.

In addition to these actions, the Commissioner issued 118 final agency orders against insurance companies. Final agency orders are often the result of a market conduct examination when the Division has uncovered areas in which an insurance company is not compliant with Colorado law.

The Commissioner may also issue fines when the Division conducts a market conduct examination and uncovers areas in which an insurance company is not compliant with Colorado law.

Table 27 details the number and amount of fines assessed against insurance companies over a five-year period.

Table 27
Fines Against Insurance Companies

Fiscal Year	Number of Fines	Amount of Fines
10-11	43	$2,072,814
11-12	18	$577,180
12-13	64	$605,990
13-14	42	$344,140
14-15	27	$483,900

The number of fines varies considerably from year to year. The Commissioner issued a total of 194 fines against insurance companies, totaling over $4 million over the five-year period. The total amount of fines was higher in fiscal year 10-11 because the Division issued a very large fine to one insurance company, whose license was ultimately suspended.

The Commissioner may also order insurance companies to pay restitution when they have violated the law in order to make consumers whole.

Table 28 details the number and the amount of restitution ordered by the Commissioner over a five-year period.

Table 28
Restitution Against Insurance Companies

Fiscal Year	Orders	Amount
10-11	10	$1,277,041
11-12	5	$2,411,516
12-13	5	$676,601
13-14	8	$1,084,650
14-15	7	$343,215

Typically, the Commissioner orders restitution when the Division uncovers misconduct through market conduct examinations.

Collateral Consequences – Criminal Convictions

Section 24-34-104(6)(b)(IX), Colorado Revised Statutes, requires the Colorado Office of Policy, Research and Regulatory Reform to determine whether the agency under review, through its licensing processes, imposes any disqualifications on applicants or registrants based on past criminal history, and if so, whether the disqualifications serve public safety, commercial or consumer protection interests.

In section 10-2-801, C.R.S., the Commissioner has the authority to deny, revoke or suspend a producer license when the licensee is convicted of a crime involving moral turpitude. During the five fiscal years reported here, the Commissioner denied 77 licenses and revoked 27 licenses based on past criminal history. The Commissioner did not suspend any producer licenses based on criminal history over the five-year period.

The Commissioner denies or revokes a license when a criminal conviction calls into question the ability of the individual to act as an insurance producer.

Table 29 shows the number of licenses that the Division denied or revoked based on past criminal history and the basis for the disqualification.

Table 29
License Denial or Revocation with Criminal Convictions

Criminal Conviction	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Abuse of Corpse	0	0	1	0	0
Arson	0	0	0	1	0
Assault/Harassment/Menacing	8	1	3	3	0
Child Abuse	1	0	0	4	0
Computer Crime	1	0	1	0	0
Controlled Substances	6	1	4	3	1
Criminal Mischief	0	1	0	0	0
Disorderly Conduct	1	0	0	0	0
Fraud/Forgery/Impersonation	5	3	6	3	4
Kidnapping/False Imprisonment	1	1	0	0	0
Loitering with Intent	0	0	0	1	0
Obstructing Police with Threats/Violence	1	0	0	0	0
Reckless Driving, Habitual Offender	1	1	0	0	0
Sexual Assault/Voyeurism	1	0	2	1	2
Solicitation of a Prostitute	1	0	0	1	0
Theft/Burglary/Robbery	13	12	8	7	7
Trespassing	2	0	1	2	0
Witness Tampering	1	0	0	0	0
Total	**43**	**20**	**26**	**26**	**14**

The most common reasons that the Commissioner disqualified producer licenses based on criminal history were for convictions related to burglary, theft or robbery. The Commissioner also denied several licenses based on criminal convictions related to fraud, forgery or impersonation.

Unfortunately, Table 28 provides an incomplete picture of the disqualifications based on criminal history. For instance, the Commissioner would not necessarily deny a license to someone solely because of a history of assault or possession of a controlled substance. In these cases, there were typically several factors that lead to the denial or revocation, one of which included criminal activity. Some of these individuals had patterns of criminal activity over a number of years and in multiple states. Others lied about their criminal histories on their license applications. The Commissioner uncovered at least one scheme in which someone applied for a license so that a spouse could continue to operate as an insurance producer after his license had been revoked. Both the applicant and the spouse had criminal histories.

Analysis and Recommendations

Recommendation 1 – Continue the functions of the Division of Insurance for 13 years, until 2030, and continue the regulation of preneed funeral contracts for five years, until 2022.

The laws that govern the business of insurance are located in Title 10, Colorado Revised Statutes (C.R.S.). The Commissioner of Insurance (Commissioner) in the Division of Insurance (Division), located in the Colorado Department of Regulatory Agencies, oversees the regulation of insurance in Colorado. The Commissioner is supported by three deputy commissioners and a Chief Actuary.

Insurance is essentially a contract between two parties that provides financial protection or reimbursement against losses. The insurance company pools the risk of its insured parties in order to provide affordable insurance rates, and the insured pays a premium for a policy that protects the insured from financial losses caused by damage to a person or property.[166]

Sunset reviews are guided by statutory criteria found in section 24-34-104, C.R.S., and the first criterion questions whether regulation is necessary to protect the health, safety and welfare of the public.

Regulation of the insurance industry is necessary to protect the public from devastating financial losses. Consumers spend significant amounts of money on insurance policies to cover losses related to their homes, automobiles and businesses and to ensure they have the ability to obtain health care, long-term care and funeral services when they need them. Without the assurance that a payment would be made or services provided when needed, consumers and businesses in Colorado would be at risk of financial ruin.

The sunset criteria in section 24-34-104, C.R.S., question whether the agency operates in the public interest.

The Commissioner protects the public by issuing certificates of authority to insurance companies operating in Colorado. The Commissioner conducts fingerprint-based criminal history record checks of all the officers of domestic insurance companies. Additionally, each domestic insurance company that applies for a certificate of authority undergoes an actuarial and financial review to ensure that they meet statutory and regulatory requirements and they have the ability to fulfill policyholder claims.

In fiscal year 14-15, the Commissioner issued certificates of authority to 1,692 domestic, foreign and alien insurance companies.

[166] Investopedia. *Insurance*. Retrieved on September 16, 2016, from http://www.investopedia.com/terms/i/insurance.asp

The Commissioner protects the public by monitoring the financial condition of domestic insurance companies. This is accomplished by the Financial Affairs section which reviews and analyzes financial statements and other filings in order to detect, as soon as possible, errors in financial reporting, solvency concerns or negative financial trends affecting domestic insurance companies. When errors are identified, staff addresses those issues with companies and obtains corrective plans to assess the feasibility of those plans. Staff then monitors compliance with corrective plans.

The Commissioner also protects the public through the use of financial analysis and examination. The purpose of financial analysis and examination is to safeguard the financial solvency of an insurance company so that it may continue to provide benefits to policyholders when claims are made.

The Division conducts a quarterly financial analysis of each domestic insurance company and a financial examination at least once every five years. The objective is to verify that financial solvency is not a concern, so that consumers have an assurance that payments or benefits will be provided when they file claims. Insurance products can be long term, 30 or more years is not uncommon; therefore, assuring financial solvency is of the utmost importance for policyholders.

The Commissioner protects the public by ensuring that insurance company reserves are adequate to cover all future benefit payments and expenses. The Commissioner accomplishes this with the assistance of the Chief Actuary and the actuarial staff in the Division, who review annual statements of actuarial opinion and verify actuarial assumptions in support of financial examinations.

The actuaries also work with staff in the Rates and Forms sections to ensure that rates are not excessive, inadequate or unfairly discriminatory and to ensure that companies are not engaging in deceptive or misleading practices. Policy forms are reviewed by staff to ensure that they fully disclose the terms of insurance policies and that they are comprehensible and fair.

Additionally, the Commissioner protects the public by monitoring the Colorado insurance marketplace to ensure compliance with state laws. This is accomplished through a variety of tools to evaluate state market conditions and identify areas of non-compliance. Staff may correspond directly with insurance companies, perform desk audits or initiate market conduct examinations.

A market conduct examination is an examination to evaluate the business practices and operations of an insurance company. It may be a comprehensive review of the marketing, sales, underwriting, issuance and servicing of insurance products, or it may target a specific area or issue.

The Commissioner also protects the public by responding to consumer complaints and inquiries through the Consumer Services sections.

When staff in either the Life and Health Consumer Services section or the Property and Casualty Consumer Services section confirms that there is justification for a complaint, staff attempts to make the consumer whole. Complaints may be referred to the Market Regulation section to examine a company's business practices or to the Producer Enforcement unit to investigate a complaint against an insurance agent or agency. For example, an insurance agent who does not submit a premium may need to be investigated in case other premiums were not paid and to determine whether an enforcement action against his or her license is appropriate.

The Commissioner has the authority to deny, suspend or revoke the certificate of authority of an insurance company. Over a five-year period, the Commissioner denied 15 insurance company applications and suspended three certificates of authority. In addition to these actions, the Commissioner issued 118 final agency orders against insurance companies. The Commissioner also issued a total of 194 fines, totaling over $4 million.

The Commissioner protects the public by licensing insurance producers, which are insurance agencies or insurance agents, to ensure they are trustworthy, competent, financially responsible, and of good personal and business reputation. This is accomplished through licensing and enforcement actions.

Producers must obtain training and pass an examination in order to obtain a license to sell insurance in Colorado.

In fiscal year 14-15, the Commissioner licensed 76,115 individual producers and 11,756 producer agencies.

Division staff investigates allegations of misconduct involving licensed insurance producers and unlicensed persons and entities who are unlawfully selling insurance in Colorado. The Division has the authority to place a producer on probation, suspend, revoke or refuse to renew a producer license.

Over a five-year period, the Commissioner took the following enforcement actions against individual producer licenses: 197 denied, 60 revoked, 106 suspended, 24 surrendered licenses, and 19 placed on probation. The Commissioner also took the following enforcement actions against agency producer licenses: eight denied, nine revoked, two suspended, three surrendered and one placed on probation.

As authorized in section 24-34-104, C.R.S., the General Assembly may continue this program for any period between 1 and 15 years.

During the sunset review, few issues were identified concerning the regulation of insurance. However, this report proposes several changes to law concerning preneed funeral contracts (preneed contracts). In order to monitor these changes, Article 15, which governs preneed contracts, should only be continued for five years.

The General Assembly should continue the Division for 13 years, until 2030. However, it should only continue the regulation of preneed contracts for five years, until 2022.

Recommendation 2 – Repeal the duties related to reviewing health maintenance organization certificates of authority and conducting periodic reviews of health maintenance organizations that are assigned to the Executive Director of the Colorado Department of Public Health and Environment and reassign them to the Commissioner, and repeal any provisions that are otherwise duplicative.

When a health maintenance organization (HMO) applies to the Commissioner for a certificate of authority, the Executive Director of the Colorado Department of Public Health and Environment (CDPHE) has the following powers and duties.

- Section 10-16-402, C.R.S., requires CDPHE to review the application to determine whether sufficient personnel and facilities are available and accessible, and whether the HMO has arrangements for an ongoing quality assurance program.
- Section 10-16-409, C.R.S., concerns a complaint system that must be approved by the Commissioner after consultation with CDPHE and allows either the Commissioner or CDPHE to examine the complaint system.
- Section 10-16-416, C.R.S., requires CDPHE to examine the HMO at least once every three years.
- Section 10-16-417, C.R.S., authorizes the Commissioner to suspend or revoke the certificate of authority if CDPHE certifies that the HMO is not fulfilling health-care service obligations.
- Section 10-16-419, C.R.S., requires CDPHE to attend a hearing and participate if there are concerns regarding the quality of health-care services.
- Section 10-16-420, C.R.S., authorizes CDPHE to meet with the HMO prior to levying a penalty or suspending a certificate of authority.
- Section 10-16-424, C.R.S., authorizes CDPHE to contract for services in order to meet obligations for initial and ongoing reviews as well as suspension and revocation requirements.

Sunset criteria located in section 24-34-104, C.R.S., question whether existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest.

This additional layer of regulation appears to be unnecessary, and according to CDPHE, it does not have any funds to perform these duties.

In most states, the business of regulating HMO's falls under the authority of the insurance regulator. Rather than splitting these duties among two different state agencies, they should be entrusted to the Division. In order to fulfill these additional responsibilities, however, the Division must have the ability to charge additional fees in order to cover the cost of the initial and ongoing reviews.

Repealing the additional layer of regulation will create a more efficient and effective regulatory process.

Therefore, in Part 4 of Article 16 of Title 10, C.R.S., the General Assembly should repeal the duties related to reviewing HMO certificates of authority and conducting periodic reviews of health maintenance organizations that are assigned to CDPHE and reassign them to the Commissioner, and it should repeal any provisions that are otherwise duplicative.

Recommendation 3 – Sunset the Certified Capital Company Act, effective July 1, 2025.

The Certified Capital Company Act, located in section 10-3.5-101, C.R.S. *et seq.*, created a venture capital program. Under this program, insurance companies were able to invest a total of $100 million in certified capital companies. In exchange for this investment, the state allowed the insurance companies to claim tax credits for qualified investments in certified capital companies (CAPCO's).

Initially there were six certified capital companies. According to the Office of Economic Development and International Trade (OEDIT), which administers the program, the certified capital companies have made the required amount of investment. The OEDIT decertified two of the companies, and it is currently reviewing the other four. The OEDIT expects the last company to be decertified in 2017. The program is winding down, and there is no plan to continue it.

In 2003, a state audit found that the Certified Capital Company Act was a drain on the General Fund and recommended abolishing it. In 2004, Senate Bill 04-106, created another venture capital program, the Venture Capital Authority, which stimulates the Colorado economy while ensuring that the return of capital continues to benefit the state. Therefore, the Certified Capital Company Act is effectively obsolete.

However, since insurance companies have the ability to carry forward premium tax credits, the program cannot be sunset at this time. According to a report by the State Auditor's Office, it is possible that some insurance companies could claim tax credits through 2024.[167]

Although the repeal of this section of law is delayed, scheduling it for repeal will ensure that it is not overlooked.

Therefore, the General Assembly should schedule the Certified Capital Company Act to sunset on July 1, 2025, with no provision for a sunset review.

[167] *Report of the State Auditor: A Review of Colorado's Certified Capital Company Program,* Colorado State Auditor (October 2003) p. 20. Retrieved from http://www.leg.state.co.us/OSA/coauditor1.nsf/All/33197AAE09E548FA87256E1C005B0FD0/$FILE/1585%20CAPCO%20Review%20FY04.pdf

Recommendation 4 – Repeal the provision that exempts policies with more than four automobiles from Part 6 of Article 4 of Title 10, C.R.S.

Section 10-4-608(1)(b), C.R.S., states policies covering more than four automobiles are exempt from Part 6 of Article 4.

An automobile under this part is defined as:

> A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers nor rented to others pursuant to the terms of a motor vehicle rental agreement, or any other four-wheel motor vehicle with a load capacity of 1,500 pounds or less that is not used in the occupation, profession, or business of the insured.

Part 6 of Article 4 governs personal automobile insurance, and it protects consumers by:

- Requiring automobile policies to be written in plain language,[168]
- Establishing the basis for cancellation,[169]
- Requiring 30-day advance notice in case of cancellation or 10-day advance notice in case of cancellation for nonpayment of premium,[170]
- Requiring 30-day advance notice in case of nonrenewal,[171] and
- Requiring timely payment of claims.[172]

Part 6 of Article 4 has numerous other consumer protections in addition to these. Under this exemption, consumers with more than four vehicles on one policy could be denied the same protections as other consumers.

No reasonable justification for this provision could be identified during the course of this sunset review.

This law is likely outdated. It was created at a time when it was unusual for families to have more than two vehicles. Vehicle ownership has changed dramatically since that time. In 1960, approximately 2.5 percent of U.S. households had three or more vehicles. In 2010, 19.5 percent did.[173]

When this law was created, there may have been concerns about people using their vehicles for commercial purposes. However, another part of law governs insurance for commercial vehicles. If automobiles are being used for commercial purposes, then the owners must obtain commercial coverage. If automobiles are only being used for personal purposes, a consumer cannot obtain commercial coverage.

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[168] § 10-4-633.5, C.R.S.
[169] § 10-4-602, C.R.S.
[170] § 10-4-603, C.R.S.
[171] § 10-4-604, C.R.S.
[172] § 10-4-642, C.R.S.
[173] U.S. Department of Transportation. *Figure 2-8 Household Vehicle Ownership:1960-2010*. Retrieved on September 19, 2016, from http://www.rita.dot.gov/bts/publications/passenger_travel_2015/chapter2/fig2_8

Some stakeholders surmised that owners may be loaning their vehicles to people outside of their family, and the insurance companies would have no way of knowing who was driving the vehicles. This would be true regardless of the number of vehicles owned per household, and it is not a valid reason to deny consumers protection under Part 6 of Article 4.

While the percentage of the population who owns more than four vehicles for personal use may be fairly small, it is not reasonable to apply different levels of protection to families based on an arbitrary number of vehicles. Eliminating this exemption will improve the ability of the Division to protect the public.

Therefore, the General Assembly should repeal section 10-4-608(1)(b), C.R.S.

Recommendation 5 – Require title insurance companies and title agencies to participate in a recovery fund to benefit consumers in case of real estate defalcation.

Title insurance guarantees that the title to a property is clear of liens and is properly owned by the title holder and that the owner has the right to convey or sell the property. If the title agency performs its due diligence, there is little risk related to title insurance. Typically, the lender and the buyer are the beneficiaries on a title insurance policy.

A title agency acts as an insurance agency for an insurance company. A title agency reviews the title of a property to ensure that there are no problems, issues title insurance policies, facilitates real estate closings, and files and records paperwork related to real estate transactions.

In Colorado, title agencies are regulated as insurance producers.

One problem that occurs with title agencies has to do with real estate defalcation. This occurs when a title agency misappropriates funds that are placed in an escrow account for a real estate transaction. Unfortunately, when the funds are misappropriated, not all parties involved in the real estate transaction may be made whole. Additionally, title insurance companies are going out of business or refusing to do business in Colorado because of real estate defalcation.

During a real estate transaction, all the money from the sale is placed into an escrow fund until everything is finalized and the funds are disbursed. Typically, the escrow funds are held by a title agency.

When escrow funds are misappropriated by a title agency, the insurance company will usually cover any misappropriated funds connected to a title insurance policy. However, the seller and the real estate brokers, whether the buyer’s broker or the seller’s broker, are not typically beneficiaries on a title insurance policy, so the insurance company is not obligated to make these individuals whole.

For example, consider a situation in which a property sells for $400,000 and the individual that sold the property has paid $100,000 of the principal on the original loan. In a typical transaction, the seller's lender will receive $300,000 and the proceeds of $100,000 would be transferred to the seller. In the event of a defalcation in which the entire $400,000 is misappropriated, the title insurance company would make the seller's lender whole by paying the $300,000 in order to insure that the buyer's lender maintains first lien position on the property. However, title insurance companies take the position that they do not have an obligation to make the seller whole by paying the seller proceeds of $100,000.

How much money is lost and who loses money depends on when the funds are misappropriated. For instance, a real estate broker could lose any commission earned from the sale if the title agency misappropriates the funds before the real estate broker receives his or her commission.

In 2014, an owner of a title agency stole approximately $2.5 million in escrow funds. Although the insurance company covered the losses for the parties who were beneficiaries to the title insurance policies, approximately $340,000 was not covered by the insurance company. This included seller proceeds and earnest money for six individuals.

Few sellers in a real estate transaction would anticipate that they would not have the ability to recover escrow funds that were stolen because, unlike the buyer and the lender, they are not beneficiaries on a title insurance policy. These situations can be devastating for the consumers involved.

Several other states require title agents or agencies to maintain a surety bond in order to cover these types of losses.

There are two benefits to requiring a surety bond.

First, a surety company must underwrite the bond to determine the premium. In order to do this, the surety company conducts a background check on an applicant. When a surety company uncovers an individual or entity that has mishandled money in the past, depending on the level of severity, it may either reject the bond application or increase the premium.

Second, if a title company misappropriates any funds held in escrow, then the surety bond may help to make these persons whole. However, while a surety bond would provide some relief for consumers who lose money due to a real estate defalcation, a surety bond to cover all the losses on a dollar for dollar basis would likely be too expensive for many title agencies to bear, especially small agencies in rural areas. So, either the surety bond would be set too low to cover the potential losses, or some title agencies may not be able to afford to pay for the surety bonds and would lose their businesses.

Moreover, real estate defalcation does have the potential to put a title insurance company out of business. According to the Division, title agencies have misappropriated $9.4 million dollars in escrow funds related to real estate transactions in Colorado over the last 10 years.

Because of these losses, at least one title insurance company has ceased doing business in Colorado and another has gone out of business altogether.

Another possible solution would be to create either a guaranty fund or a recovery fund to cover any losses related to a real estate defalcation.

With a guaranty fund, when a real estate defalcation occurred, the Commissioner would then require insurance companies or title agencies, or both, to cover any losses. However, it would take some time for these funds to be made available to consumers, and, depending upon the amount misappropriated, the assessments could be costly and difficult for businesses to absorb.

If a recovery fund were created, the Commissioner could collect a nominal fee on each title policy. Once the amount in the recovery fund reaches a certain level, the Commissioner could reduce the amount being collected or place a moratorium on the collection of fees. When real estate defalcation occurs, funds would be immediately available to cover any losses and make consumers whole. Then the Division could attempt to collect the money directly from the individuals involved in the real estate defalcation in order to restore the recovery fund.

A recovery fund would likely be the least burdensome solution for title agencies and provide consumers with the best level of protection.

Creating a recovery fund would help to protect consumers who would otherwise not be made whole when funds are misappropriated in a real estate transaction, and it would also spread any potential losses across more parties so that a single insurance company does not suffer excessive losses.

Therefore, the General Assembly should require title insurance companies and title agencies to participate in a recovery fund to benefit consumers in case of real estate defalcation, and direct the Commissioner to promulgate rules to determine the fees and to administer the collection and disbursement of funds. The recovery fund should be deposited into the title insurance recovery fund, which may only be used for restitution payments in case of real estate defalcation and the funds may not be used for any other purpose or transferred to the General Fund.

Recommendation 6 – Repeal the prohibition against the Commissioner delegating approval of continuing education courses to the continuing education administrator.

Section 10-2-301(6), C.R.S., requires the Commissioner to administer the continuing education of insurance producers, including the approval of continuing education courses. While this section authorizes the Commissioner to contract with an outside service provider to act as the continuing education administrator, it prohibits the Commissioner from delegating course approval responsibilities to the continuing education administrator.

Sunset criteria ask whether an analysis of the agency operations indicates that the agency performs its statutory duties efficiently and effectively.

Approving continuing education courses is an essential function of administering a continuing education program, and it would be more efficient and effective to authorize the Commissioner to delegate this authority.

Currently, Pearson VUE administers the producer licensing and examination functions for the Division, including the pre-licensing and continuing education functions, in order to ensure that insurance producers are qualified to participate in the insurance marketplace. Pearson Vue also administers continuing education programs for other states, so they have staff with expertise in this area. Providing the Commissioner with statutory authority to delegate this function would streamline this process and eliminate an unnecessary level of regulation.

Therefore, the General Assembly should repeal the prohibition against the Commissioner delegating approval of continuing education courses to the continuing education administrator.

Recommendation 7 – Repeal preneed funeral contract licensing fees from statute and authorize the Division to set fees administratively based on the cost of regulating the industry.

A preneed funeral contract (preneed contract), according to Article 15 of Title 10, C.R.S. (Article 15), is an agreement in which a consumer pays for funeral services and merchandise in advance. Funeral services may consist of transporting the remains, embalming, cosmetology, cremation and other services. Funeral merchandise may consist of urns, caskets, flowers and other goods. The purpose of preneed contracts is to alleviate family members of the burden of purchasing costly funeral arrangements at the last minute when they are vulnerable and grieving.

According to the legislative declaration, the General Assembly created Article 15 to protect the public from unconscionable dealings in preneed funeral sales.[174]

[174] § 10-15-101, C.R.S.

A preneed contract may be financed by an insurance policy, or it may be financed by a trust fund.

In Colorado, there is no limit on how long a preneed contract may be in effect. The preneed contract binds the preneed seller, or the heirs, assigns or duly authorized representatives of the preneed seller, to provide the services or merchandise agreed to in the preneed contract at the time of death of the beneficiary. Colorado law mandates that all preneed contracts are refundable.

A preneed seller, according to Article 15, may be someone connected to a funeral establishment or a crematorium, an insurance agent or an individual broker. If the preneed seller retains a contract in the form of funds and not life insurance benefits, then 75 percent of the funds must be placed into trust. The trustee may not pay out any excess gains from the trust fund until the value of the trust exceeds the total of all the funds paid by the preneed buyer. At that time, any excess gains from the trust fund may be distributed according to the terms of the contract between the preneed seller and the preneed buyer.

For example, if a preneed buyer pays $10,000 connected to a preneed contract, then the preneed seller may keep $2,500 and the remaining $7,500 must be placed into a trust account. When the interest and earnings from the trust increases so that the total balance in the trust reaches $10,000, the preneed seller may also collect any interest and earnings from the trust. This is in addition to the profit earned from the goods and services paid for through the contract.

Article 15 requires the preneed seller to provide a full refund if the contract is cancelled within seven days.[175] If a preneed contract is cancelled after seven days, the preneed seller may retain an amount equal to the reasonable value of administrative and sales costs incurred, not to exceed 15 percent of the total contract price.[176]

It also provides the preneed buyer, or the person with the right of final disposition, with the ability to transfer the funds to another funeral provider.[177]

The Division performs the following duties in order to regulate preneed sellers:

- Processes applications and annual renewals;
- Conducts fingerprint background checks with the Colorado Bureau of Investigation and the Federal Bureau of Investigation on owners, officers and directors of preneed funeral sellers;
- Issues licenses;
- Reviews plan of operations;
- Reviews trust agreements;

[175] § 10-15-105(4)(d), C.R.S.
[176] § 10-15-105(4)(j), CR.S.
[177] § 10-15-105(9)(a), C.R.S.

- Reviews the annual reports on contracts sold, trust statements and who purchased contracts;
- Ensures that annual reports match what was sold and that preneed sellers trust at least 75 percent of the amount paid for a preneed contract;
- Ensures preneed sellers have a surety bond or a net worth of $10,000;
- Examines trust accounts if a complaint is filed; and
- Investigates complaints against preneed sellers.

The Commissioner has several options to enforce Article 15, including:[178]

- Issuing a fine of up to $1,000 for each offense;
- Issuing a letter of admonition;
- Placing a preneed seller on probation; and
- Denying, revoking or suspending a license.

The Commissioner is also authorized to:

- Issue a cease and desist order,[179]
- Seek an injunction,[180] and
- File criminal charges.[181]

Section 24-34-104, C.R.S., questions whether any changes to statute are necessary to improve agency operations to enhance the public interest.

The Division receives approximately $65,000 per year in licensing fees to regulate preneed funeral sellers. In 2016, there were 71 active preneed sellers and 21 inactive preneed sellers. An inactive preneed funeral seller is no longer selling preneed contracts but is still obligated to file an annual report and fulfill any outstanding preneed contracts.

As of December 31, 2015, the total amount of outstanding preneed contracts was $372 million, with approximately 40 percent held by preneed sellers outside of Colorado.

The licensing fee for the initial application is $500.

Table 30 shows the renewal fees, which are based on the total amount of the outstanding preneed contracts at the end of the calendar year.

[178] § 10-15-114(1), C.R.S.
[179] § 10-15-115(1)(b), C.R.S.
[180] § 10-15-115(1)(a), C.R.S.
[181] § 10-15-118(1), C.R.S.

Table 30
Preneed Renewal Fees

Outstanding Contracts	Renewal Fee
$100,000 or less	$100
$100,000 to $500,000	$200
$500,000 to $1,000,000	$500
$1,000,000 to $5,000,000	$1,000
$5,000,000 to $10,000,000	$1,500
Over $10,000,000	$2,000

These fees are set in statute. The Commissioner may reduce the amount of the fees if there is a surplus of uncommitted reserves in the fund. However, the Commissioner does not have any authority to increase fees to cover the cost of regulation when the funds are insufficient.

In a regulatory program, the licensing fees should pay for the cost of regulation. In this program, they do not.

The potential for fraud and misappropriation in preneed funeral sales is high. In 2014, the median cost of a funeral was over $7,000. People typically plan for their funeral near the end of their life, so many preneed buyers are older and at risk of financial exploitation. Some preneed sellers have millions of dollars in preneed contracts.

Consumers pay for their funeral in advance so that they will have peace of mind for themselves and their loved ones. The death of a family member is often a difficult time, so when family members discover the money set aside to pay for the funeral has been lost, mismanaged or stolen, it can be devastating.

Over the last 10 years, the Commissioner has investigated nine cases of preneed trust funds that were misappropriated and has ordered restitution of over $2 million related to these cases. Investigating and litigating these cases is time consuming and costly. Licensure should cover the cost to investigate and litigate these cases in addition to managing the other duties with which the Commissioner is tasked. It does not.

Regulation of preneed sellers is necessary to protect preneed buyers from unscrupulous or irresponsible preneed sellers, and an effective regulatory program is beneficial for the industry as well as consumers. When preneed sellers mismanage preneed trust funds, they diminish the reputation of the funeral industry. For this reason, all preneed sellers have an interest in ensuring that the licensing fees are adequate to support an effective regulatory program.

Therefore, the General Assembly should repeal preneed licensing fees from statute and authorize the Division to set fees administratively based on the cost of regulating the industry and the outstanding preneed contract obligations of the sellers.

Recommendation 8 – Authorize the Commissioner to conduct examinations of preneed sellers periodically or as often as the Commissioner deems necessary.

At this time, the Commissioner is only authorized to conduct an examination of a preneed seller when a complaint is filed. Examinations of preneed sellers are necessary to ensure that these companies are trusting preneed funds as required by law. Unfortunately, by the time a complaint is filed, it is often too late.

In Colorado, hundreds of consumers have paid for funeral arrangements in advance, only to find out later that the funds have gone missing. It is unlikely that many of these consumers will ever recover the missing funds.

When a buyer pays for funeral goods and services in advance, there is no way of knowing when that contract may be needed, and a preneed contract may not be used for 20 or 30 years. Because there is such a long time between the time of sale and the provision of goods and services, the trust funds may easily be misappropriated.

Over the last 10 years, the Division has uncovered several cases in which preneed sellers have failed to trust over $2 million in funds related to preneed funeral sales. It is likely that the Division will continue to uncover additional cases of consumers who have been harmed by preneed sellers who misappropriate funds and fail to provide funeral services.

Consumers prepay for their funerals in order to provide themselves and their loved ones with peace of mind. While Colorado licenses preneed sellers, it does not effectively regulate them, which provides consumers with a false sense of security. A regulatory program that is ineffective is also harmful to the businesses that are handling consumer funds responsibly and providing goods and services as promised.

Regulation of preneed funeral sales varies from state to state. However, most states authorize the regulator to audit or examine the preneed seller either periodically or as necessary. The ability to conduct examinations is, in fact, a hallmark of the regulation of the preneed industry.

The primary reason to conduct examinations of preneed sellers is to ensure the trusts are sufficiently funded to pay for any outstanding preneed funeral sales.

Missouri changed its laws in 2009 for this very reason. Previously, it only authorized the regulator to examine a preneed seller upon receipt of a complaint. However, in Missouri, lawmakers determined that by the time a complaint was filed, it was too late—the funds had disappeared.

In order to effectively regulate preneed contracts, the Commissioner must be able to conduct examinations of preneed sellers periodically or as often as deemed necessary. Providing the Commissioner with this authority would create a necessary deterrent to preneed sellers who may be tempted to defraud consumers or misappropriate funds.

Conducting periodic examinations would also help to uncover missing funds before all traces of the funds have disappeared.

Therefore, the General Assembly should authorize the Commissioner to conduct examinations periodically or as often the Commissioner deems necessary.

Recommendation 9 – Require the Commissioner to conduct examinations of preneed sellers with Division staff if the company is located in Colorado.

The Commissioner has the authority to examine preneed sellers only when a complaint is filed. Recommendation 8 proposes authorizing the Commissioner to conduct examinations of preneed sellers periodically or as often as the Commissioner deems necessary, rather than based on a complaint. Providing the Commissioner with this authority would create an important deterrent to preneed sellers who may be tempted to misappropriate funds.

While many states require the preneed seller to bear the cost of an examination and do not require the use of the regulator's staff, such a practice may be overly burdensome to some of the smaller funeral homes in Colorado.

If the licensing fees are removed from statute, the Division would have the ability to set the licensing fees to cover the cost of regulation, which could include the cost to use staff in order to conduct some examinations of local preneed sellers. In this way, the cost of examinations would be spread among all the licensees rather than a few that may be examined in any one year.

Therefore, the Division should be required by statute to use its staff to examine preneed sellers that are located in Colorado, and authorize the Commissioner to promulgate rules for the examination of preneed sellers who are located in other states.

Recommendation 10 – Repeal the surety bond requirement for preneed sellers and instead create a preneed recovery fund.

A consumer who purchases a preneed contract may not be able to recover funds in case the funds are mishandled, lost or stolen, or the preneed seller is unlicensed. In this case a recovery fund would help to mitigate the loss for a consumer.

Colorado has experienced several cases in which preneed funds are misappropriated, lost or stolen. Preneed sellers may be using money to pay for the operations of their business, or they may be operating a Ponzi scheme, in which they count on the fact that several of the buyers may never claim the contract. In one recent case, a preneed seller was unlicensed. In another case, a licensed preneed seller stole hundreds of thousands of dollars from consumers; the money was never put into trust and some of it was lost in an offshore account. Although the consumers have been awarded restitution, these individuals are now in prison and consumers may never recover the money they are owed.

Creating a more effective regulatory program in which regulators have the ability to examine preneed sellers will help to mitigate the problem of these trust funds being depleted. However, it is likely there will continue to be some losses, especially since other trust funds may have been lost, mismanaged or raided but have yet to be uncovered.

In the cases in which consumers have a preneed contract, it would be reasonable to provide some mechanism for relief in case a provider defaults on its obligations.

Currently, the law requires preneed sellers to either have a surety bond in the amount of $10,000 or a net worth of $10,000. Both of these are inadequate for different reasons. First, a company may have a net worth of $10,000 one day, and nothing the next. Second, the median cost of a funeral was over $7,000 in 2014. Whether in the bank or in a surety bond, one large funeral could deplete the preneed sellers' funds completely.

Raising the surety bond amount would not necessarily help consumers in case trust funds are misappropriated. In one recent case, the Division found a funeral home that had been bought and sold several times. By the time, a complaint was received by the Division the funds for contracts going back to the 1970's had been lost. At this time, it is unknown how many preneed funeral trust accounts have been lost. However, over $2 million in preneed funds have been misappropriated over the last 10 years.

Requiring preneed sellers to obtain surety bonds that would cover an amount to make these consumers whole would likely be too expensive for some preneed sellers to support.

Instead, it would be better to create a recovery fund that would provide consumers with some protection in case the trust funds are depleted. Preneed sellers should be required to pay a nominal fee based on each preneed contract sold, which should be used to create a fund for preneed buyers. Preneed sellers or the trustees who have mishandled the trust funds should be required to pay back any money paid out from the fund.

In this way, consumers would be provided immediate relief in case the funds they paid in advance for their own funeral or the funeral of a loved one are lost or stolen.

Therefore, the General Assembly should repeal the surety bond requirement and instead create a preneed recovery fund, and it should authorize the Commissioner to promulgate rules to administer the fund and determine a reasonable fee to support it. The recovery fund should be deposited into the preneed recovery fund, which may only be used for restitution payments for preneed funeral sales, and the funds may not be used for any other purpose or transferred to the General Fund.

Recommendation 11 – Require any interest and other earnings from a preneed trust account to remain with the principal.

In Colorado, if the preneed funeral seller retains a contract in the form of funds and not life insurance benefits, then 75 percent of the funds must be placed into trust. The trustee may not pay out any excess gains from the trust fund until the value of the trust exceeds the total of all the funds paid by the preneed buyer. At that time, any excess gains from the trust fund may be distributed according to the terms of the contract between the preneed seller and the preneed buyer.

For example, if a preneed buyer pays $10,000 connected to a preneed contract, then the funeral home may keep $2,500 and the remaining $7,500 must be placed into a trust account. When the interest and earnings from the trust increases so that the total balance in the trust reaches $10,000, depending upon the preneed contract, the preneed seller may also collect any interest and earnings from the trust. This is in addition to the profit earned from the goods and services paid for through the contract.

The main purpose of regulating preneed contracts is to ensure that the funds will be available when they are needed. The cost of goods and services will increase over time. These funds may not be required for 20 or 30 years, so the funds will need to increase as well.

On average, the cost of a funeral increases about 2.7 to 3.0 percent per year. However, in years of high inflation, such as the 1980's, the cost of a funeral increases at a much higher rate. To illustrate, between 2004 and 2014, the median cost of a funeral increased 28.6 percent. Between 2000 and 2009, the median cost of a funeral increased 26.6 percent, but between 1980 and 1990, it increased as much as 87 percent.[182]

In order to ensure the funds are available when needed, the interest and the earnings should remain with the principal amount.

Article 15 also provides the buyer, or the person with the right of final disposition, the ability to transfer the funds to another funeral provider.[183] However, if the trust fund does not have sufficient funds to pay for the goods and services that were purchased by the preneed buyer, the right of final disposition is undermined.

Thirty-nine states prohibit the preneed seller from withdrawing interest and other earnings from the trust fund prior to fulfilling the contract. Of the states that allow withdrawals, three of them allow only 10 percent of the interest earned to be withdrawn, and one state allows only earnings above 125 percent of the trust liability to be withdrawn.

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[182] National Funeral Directors Association. *NFDA Releases Results of 2015 Member General Price List Survey*. Retrieved on August 23, 2016, from http://www.nfda.org/news/media-center/nfda-news-releases/id/840/nfda-releases-results-of-2015-member-general-price-list-survey

[183] § 10-15-105, C.R.S.

The purpose of preneed contracts is to alleviate family members of the burden of purchasing costly funeral arrangements at the last minute when they are vulnerable and grieving. These funds should remain intact until they are needed. Otherwise, any outstanding and future preneed contracts are at risk.

It is even more important in Colorado, which only requires 75 percent of the funds to be placed in a trust account. In 44 other states preneed sellers are required to deposit 90 to 100 percent of preneed funds into a trust. In Colorado, by the time the preneed trust has reached 100 percent of the preneed contract price, the costs of goods and services have most likely already increased beyond the preneed contract price. Not only that, but preneed trust funds will likely experience losses in some years.

The responsible approach would be to leave the interest and earnings in the account with the principal.

The preneed seller is already earning a profit from the preneed sale in a couple of ways. The preneed seller may garner up to 25 percent of the original price of the contract without providing any funeral goods or services. Additionally, the preneed seller will earn the profit from the sale when the goods and services are provided if the trust fund is left intact. It is unclear why the earnings of the trust should also be available to the preneed seller prior to the provision of goods and services.

Therefore, the General Assembly should require all interest or other earnings to remain with the principal in a trust account until a death certificate is provided, the funds are returned to the buyer at the buyer's request or the account balance transferred to the Unclaimed Property Trust Fund, pursuant to Recommendation 12 of this sunset report.

Recommendation 12 – Require preneed sellers to transfer trust funds to the Unclaimed Property Trust Fund in case the funds are never used for the contracted funeral goods and services.

A preneed contract, according Article 15, is an agreement in which a consumer pays for funeral services and merchandise in advance. By the time the beneficiary requires the goods and services, several life events may have occurred in which the contract or the memory of the contract may be lost. The question is: what happens to the funds that were trusted for these accounts?

Colorado law does not have any provisions in place in case a preneed contract is never fulfilled and no one requests a refund.

One problem related to this issue is that the preneed seller does not necessarily know all the preneed buyers and their life circumstances. In a rural community, it is possible that the preneed seller may know every client with a preneed contract. In suburban and urban communities, however, this is unlikely.

It is common for insurance companies to check policyholder names against the Social Security death database in order to cease payments to annuity holders who have passed away or to pay out life insurance benefits. Preneed sellers may also be able to conduct a similar search.

It would also be possible to determine a reasonable amount of time that the preneed contract may never be fulfilled and to require the funds to be transferred to either the heirs or, if the beneficiary or a legal representative cannot be located, the state's Unclaimed Property Trust Fund. This could be based on either the age of the contract or the age of the beneficiary.

It is unknown what percentage of preneed contracts are purchased and never fulfilled. However, it is likely to occur.

These funds were allocated for the provision of funeral goods and services. It is unlikely that the buyer intended for this money simply to be provided to rest in a trust account indefinitely. If the goods and services are not provided, the reasonable step would be to return the funds to the beneficiary's estate.

All states require preneed contracts that are not backed by an insurance product to be backed by trust funds. The purpose of the trust fund is to provide a guarantee that the funds will be available when it is time to fulfill the contract. However, if the goods and services are not provided, it is reasonable for these funds to be returned to the beneficiary's estate.

If after a reasonable search, a licensed preneed seller is unable to locate the beneficiary of the funeral trust account, the preneed seller should be required to notify the trustee, and the trustee should then transfer the account to the Unclaimed Property office of the Colorado State Treasurer. Any funds that are deposited with the Colorado State Treasurer belong to the owner or heir of the account, and there is no time limit for filing a claim.

Therefore, the General Assembly should require a preneed seller to conduct a reasonable search to determine if a beneficiary has died without using preneed funds and, if so, the funds should be returned to the beneficiary's estate. If a legal representative for the beneficiary's estate cannot be located, the preneed seller should be required to transfer the trust fund to the Unclaimed Property Trust Fund. The Commissioner should be authorized to promulgate rules to determine the steps necessary to ensure a reasonable search is conducted and the trust fund is properly disbursed by the trustee.

Recommendation 13 – Make technical changes to the Act.

Title 10, C.R.S., has been in place for decades. As with any law, it contains instances of obsolete, duplicative and confusing language. The Act should be revised to reflect current terminology and administrative practices. These changes are technical in nature, so they will have no substantive impact on the Division or any of its programs.

The General Assembly should make the following technical changes:

- **Section 10-4-631, C.R.S.** Strike this section that refers to a flat rate schedule as there are no requirements to submit this after July 1, 2003.
- **Section 10-16-102(20), C.R.S.** Clarify that the term enrollee may also mean individuals with non-HMO or prepaid plans, as in section 10-16-106.7(2)(c), C.R.S.
- **Section 10-16-102(46), C.R.S.** Revise the definition of participating provider to include providers in other states that are part of the carrier's managed care network since consumers may use contracted providers in other states when Colorado insurance protections are applicable.
- **Section 10-16-105.6(3), C.R.S.** Strike this section as the 35 percent surcharge is a violation of federal law.
- **Section 10-16-704(1.5)(a)(II), C.R.S.** Revise to read "part 4 of *article 5* of title 25.5., C.R.S." since the reference to "article 4" is incorrect.
- **Section 10-19-113.6(1)(a), C.R.S.** Strike this section since this training course was a one-time training requirement to be completed by January 1, 2009, and it is no longer relevant today.
- **Section 12-58.5-105(1)(k), C.R.S.** Clarify that all bail agents licensed by the Division of Insurance are exempt from the private investigator licensing statute.