



**FACT SHEET: HEALTH REIMBURSEMENT ARRANGEMENTS (HRAs)  
AND COLORADO'S SMALL GROUP HEALTH LAWS**

**July 2009**

**Small Group Protected from "Cherry-picking"**

In 1994, the General Assembly enacted CRS 10-16-105.2, "Small employer health insurance availability program," to protect the small group market from the "cherry-picking" of healthy employees into the individual health insurance market and the "dumping" of unhealthy employees on CoverColorado, the state's high risk pool. CRS 10-16-105.2 states that small group laws apply to **any** health benefit plan that provides coverage to the employees of a small employer in Colorado if any of the following conditions are met:

1. A portion of the premium or benefits is paid by or on behalf of the small employer;
2. An eligible employee or dependent is reimbursed, whether through wage adjustments or *otherwise*, by or on behalf of the small employer for a portion of the premium;
3. The health benefit plan is treated by the employer or any of the eligible employees or dependents as part of a plan or program for the purposes of Section 162, Section 125 or Section 106 of the United States Internal Revenue Code; or
4. The health benefit plan is marketed to individual employees through an employer.

The Division of Insurance at the Department of Regulatory Agencies issued Bulletin B-4.32 in June 2009. The bulletin restates the Division's long-standing position on CRS 10-16-105.2 as it was first stated in the 1994 Summer Edition of the *Colorado Insurance Regulator*, the Division's newsletter: *If a small employer gives each employee an allotment to buy his or her own coverage, such coverage is considered small group coverage.*

**Health Reimbursement Arrangements**

Health reimbursement arrangements (HRAs) are employer funded accounts employees can use for reimbursement of qualified health expenses. HRAs are available through federal tax laws to employers of all sizes, except business groups of one, and offer certain tax advantages to employers and employees.

Some Colorado small group employers, defined as those with 50 or fewer employees, are dropping their small group insurance plan and replacing it with a HRA. The employers then use the HRA to reimburse employees for premiums on their individual policies. In Colorado, an insurance producer should not solicit an employee of a small employer for an individual health insurance policy when premiums will be reimbursed by the employer's HRA. *If an employer pays part of an employee's premium, regardless of the reimbursement mechanism utilized by the employer, the employee's policy is subject to small group laws.*

**Individual Market vs. Small Group Market**

Under Colorado law, individual coverage may be denied, or a health condition may be excluded from coverage, and the premium for the individual policy may be set, based on the applicant's past medical history or current health status. Certain services are not mandated to be included in individual health policies, most notably maternity and mental health benefits. In contrast, Colorado's small group laws contain several provisions, including guarantee issue and adjusted community rating, which prohibits premium differentials based on health status.