



INSURANCE PREMIUM TAX CREDIT FOR CONTRIBUTIONS TO THE COLORADO HEALTH BENEFIT EXCHANGE

EVALUATION SUMMARY | JULY 2022 | 2022-TE28

TAX TYPE	Insurance Premium	REVENUE IMPACT	\$5 million
YEAR ENACTED	2013	(TAX YEAR 2021)	
REPEAL/EXPIRATION DATE	None	NUMBER OF TAXPAYERS	2
		(TAX YEAR 2021)	

KEY CONCLUSION: The credit has been effective at providing a steady source of funding for the Health Benefit Exchange.

WHAT DOES THE TAX EXPENDITURE DO?

The credit allows insurance companies that choose to contribute funds to the Health Benefit Exchange (known as Connect for Health Colorado, or C4H) to claim a dollar-for-dollar credit against the insurance premium taxes they owe the State.

WHAT IS THE PURPOSE OF THE TAX EXPENDITURE?

Statute and the enacting legislation for the C4H Contributions Credit do not explicitly state a purpose; therefore, we could not definitively determine the General Assembly's original intent. Based on our review of legislative history, information from C4H, and consideration of the historical context of the credit, we considered a potential purpose: to provide a source of funding to help support C4H.

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

The General Assembly may want to consider amending statute to establish a statutory purpose and performance measures for the credit.



INSURANCE PREMIUM TAX CREDIT FOR CONTRIBUTIONS TO THE COLORADO HEALTH BENEFIT EXCHANGE

EVALUATION RESULTS

WHAT IS THE TAX EXPENDITURE?

The Insurance Premium Tax Credit for Contributions to the Colorado Health Benefit Exchange allows insurance companies that choose to contribute funds to the Health Benefit Exchange (known as Connect for Health Colorado or C4H) to claim a dollar-for-dollar credit against their future Colorado insurance premium taxes. Throughout this evaluation, we refer to the credit as the C4H Contributions Credit.

C4H is Colorado’s state-based health insurance exchange, which was created in accordance with the federal Affordable Care Act (ACA) [42 USC 18041]. Under statute, C4H is a “non-profit unincorporated public entity,” an instrumentality of the State, but not a state agency [Section 10-22-104, C.R.S.]. C4H provides a marketplace for consumers to purchase health insurance and, according to the legislative declaration, the exchange is intended to “increase access, affordability, and choice for individuals and small employers purchasing health insurance in Colorado” [Section 10-22-102, C.R.S.].

The C4H Contributions Credit was established in May 2013 through the passage of House Bill 13-1245. The aggregate amount of tax credits allowed for all insurance companies was originally capped at \$5 million per tax year [Section 10-22-110, C.R.S.]. However, Senate Bill 22-081, passed during the 2022 Legislative Session, temporarily increased the cap to \$9 million per year from September 2022 through August 2028.

INSURANCE PREMIUM TAXES

Insurers who receive the C4H Contributions Credit can use it to reduce the insurance premium taxes that they owe the State. Insurance companies that sell policies covering property or risks in Colorado are generally required to pay a 2 percent insurance premium tax to the State on the premiums they collected on those policies in the previous calendar year [Section 10-3-209(1)(b)(I)(A), C.R.S.]. The taxable amount is calculated by deducting from gross premiums certain receipts and refunds specified in statute and premiums returned to policyholders. Insurance companies pay their premium taxes in quarterly installments, unless their annual premium tax liability is \$5,000 or less, in which case the full tax payment is due March 1. Quarterly payments are due on the last day of the month following the close of each calendar quarter, except for the fourth quarter, which is due March 1.

The Division of Insurance (Division), within the Department of Regulatory Agencies, is responsible for collecting premium taxes owed to the State and for administering the C4H Contributions Credit. Along with their July 31 quarterly tax payment, insurance companies must notify the Division of their intent to contribute to C4H using a form available on the Division's website called a Notice of Intent to Contribute to Colorado Health Benefit Exchange (Notice). Companies must report the amount they intend to contribute, which is limited to the amount of their July 31 quarterly tax payment [Sections 10-22-110(3)(a)(I) and (4)(a)(I), C.R.S.]

The Division reviews the filed Notices and allocates tax credits on a first-come, first-served basis until the \$5 million cap is reached. The Division's notification to insurers of their authorized credit amounts and contributions must be made by October 31. Insurers take the credit on their quarterly premium tax payments, beginning with October 31. The credit is not refundable, but insurers are permitted to carry forward the credit until their authorized credit amount has been fully claimed.

WHO ARE THE INTENDED BENEFICIARIES OF THE TAX EXPENDITURE?

Statute does not directly state the intended beneficiaries of the C4H Contributions Credit. Based on our review of the statutory language and legislative testimony when House Bill 13-1245 was passed, we considered the primary intended beneficiary to be C4H, which receives the contributions. According to testimony on House Bill 13-1245 in both House and Senate committees, the focus of the bill was to establish multiple funding sources for C4H. Testimony centered on the need to support the exchange financially, particularly in light of federal funding ending in 2016 and a statutory prohibition on appropriating General Fund monies for the exchange [Section 10-22-108, C.R.S.].

Between Fiscal Years 2013 and 2016, C4H received federal implementation grants that totaled, in aggregate, just over \$180 million. Federal law [42 USC 18031(d)(5)] required state-based exchanges, including C4H, to be financially self-sustaining after depleting their federal grants. House Bill 13-1245, which authorized the C4H Contributions Credit, also established the following funding mechanisms for C4H:

- A special fee on insurers of \$1.80 per month on each individual insured in Colorado, which ended in December 2016;
- Redirected \$27.3 million in 2014 and 2015 that had been set aside to help provide health insurance for high-risk Coloradans through CoverColorado (described later);
- An administrative fee paid by insurers that participate in the exchange; and
- Voluntary contributions from insurance companies.

Since Fiscal Year 2017, C4H's single largest revenue source has been the administrative fee, making up roughly 70 percent of annual revenue. The administrative fee is set by C4H and is currently 3.5 percent of the premiums insurance companies charge each year for policies sold through the exchange.

Consumers who purchase insurance through C4H may also benefit from the credit if the contributions help limit the administrative fee C4H charges insurance companies that are part of the exchange. If C4H increases the fee, it is reasonable to expect that insurers would pass that increase on to customers through the premiums they pay.

The credit may also provide a financial benefit to insurance companies that contribute to C4H by reducing their federal taxable income. C4H is a qualified tax-exempt organization under section 501(c)(3) of the Internal Revenue Code, meaning contributions to C4H are considered charitable contributions. According to the Internal Revenue Code, such contributions by an insurance company may be deducted from the company's gross income to calculate federal taxable income. Federal regulations contain a provision that allows such contributions to reduce taxable income as either a business expense or as a donation. [26 C.F.R. § 1.162-15(a)(3)].

WHAT IS THE PURPOSE OF THE TAX EXPENDITURE?

Statute and the enacting legislation for the C4H Contributions Credit do not explicitly state a purpose; therefore, we could not definitively determine the General Assembly's original intent. Based on our review of legislative history, information from C4H, and consideration of the historical context of the credit, we considered a potential purpose: to provide a source of funding to help support C4H.

The credit may also have been intended to encourage insurance companies to redirect some of their expenses from taxes to contributions to C4H. Although the credit itself does not reduce a contributing insurer's overall expenses, it allows them to contribute to a nonprofit entity at no cost to themselves while potentially reducing their federal taxable income.

IS THE TAX EXPENDITURE MEETING ITS PURPOSE AND WHAT PERFORMANCE MEASURES WERE USED TO MAKE THIS DETERMINATION?

We could not definitively determine whether the C4H Contributions Credit is meeting its purpose because no purpose is provided for it in statute or enacting legislation. However, we found that it is meeting the potential purpose that we identified to conduct this evaluation: providing a source of funding to help support C4H. Each year since the credit went into effect, C4H has received \$5 million in contributions.

Statute does not provide quantifiable performance measures for this credit. Therefore, we created and applied the following performance measures to determine the extent to which the deduction is meeting its potential purpose:

PERFORMANCE MEASURE #1: *To what extent do contributions that are subject to the tax credit help provide funding to C4H?*

RESULT: From Fiscal Years 2014 through 2021, the contributions have represented an average of about 10 percent of C4H's total revenue each year. Since federal grant funding was exhausted in 2016, the contributions have represented a slightly higher percentage of annual revenue, averaging about 11 percent for Fiscal Years 2017 through 2021. According to C4H, the contributions from insurance companies are important in helping to stabilize C4H's revenue stream. Revenue from the administrative fee, which is C4H's primary funding source, varies based on several factors, such as the number of insurers participating on the exchange and the number of policies sold. The contributions, which have remained constant at \$5 million each year, provide a counter-balance to the volatility of the fee revenue. C4H reported that the contributions have helped them to implement infrastructure requirements established by the federal government as well as to cover operational costs in "lean" years. Exhibit 1 summarizes C4H's revenue and expenses for its last 8 fiscal years since the credit was established.

**EXHIBIT 1: C4H REVENUE AND EXPENSES
BY FISCAL YEAR¹ (IN MILLIONS)**

	2014	2015	2016	2017	2018	2019	2020	2021
Revenue								
Federal Grants	\$86.2	\$45.8	\$5.3	\$0	\$0	\$0	\$0	\$0
Administrative Fee	\$2.2	\$6.9	\$14.7	\$26.2	\$32.1	\$36.1	\$33.4	\$31.0
Program & Other ²	\$16.5	\$24.5	\$20.4	\$16.3	\$6.1	\$5.6	\$7.0	\$6.7
Insurer Contributions	\$5.0	\$5.0	\$5.0	\$5.0	\$5.0	\$5.0	\$5.0	\$5.0
Total Revenue	\$109.9	\$82.2	\$45.4	\$47.5	\$43.2	\$46.7	\$45.4	\$42.7
Total Expenses	\$74.3	\$68.1	\$58.7	\$57.6	\$55.2	\$45.1	\$46.0	\$42.5
Total Revenue Less Expenses	\$35.6	\$14.1	\$(13.3)	\$(10.1)	\$(12.0)	\$1.6	\$(0.6)	\$0.2

SOURCE: Office of the State Auditor analysis of C4H financial statements.

Notes:

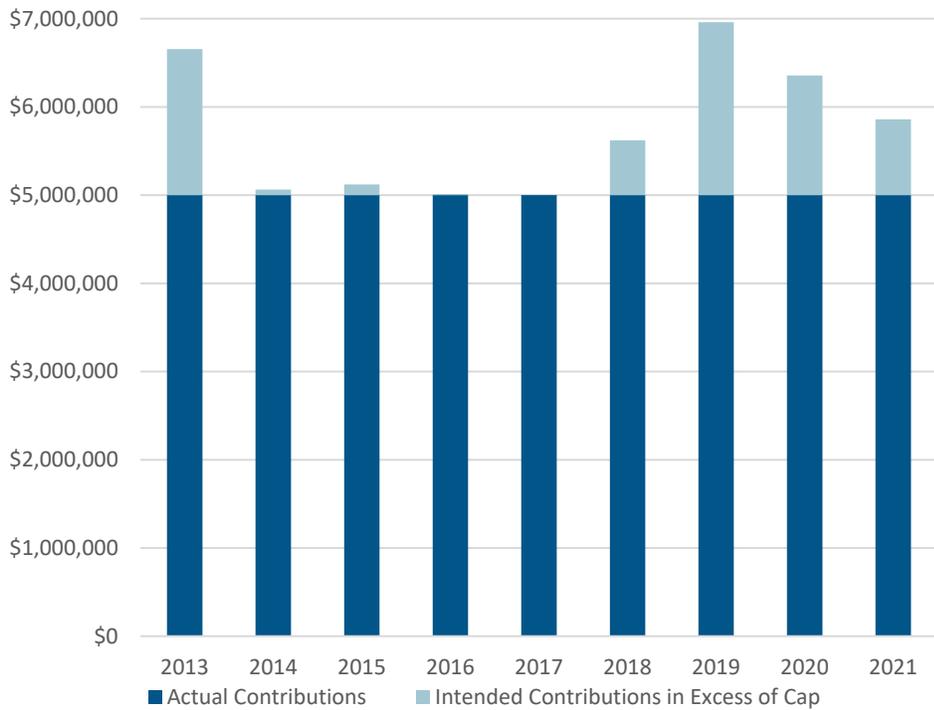
¹ C4H's fiscal year is July 1st to June 30th.

² Includes non-federal grants; funding from the State's Unclaimed Property Trust Fund in Fiscal Year 2014; funding transferred from Cover Colorado (described later) in Fiscal Year 2015; a market assessment fee charged in Fiscal Years 2014 to 2017, interest income, and reimbursements for services provided on behalf of State agencies (HCPF and CDPHE).

PERFORMANCE MEASURE #2: *To what extent has the C4H Contributions Credit caused insurers to contribute to C4H?*

RESULT: Since Fiscal Year 2014, insurance companies have contributed the cap of \$5 million each year. The statutory cap on the credit has limited the amount of contributions insurers make, as shown in Exhibit 2. According to Notices filed with the Division each year, the amount of contributions insurers would be willing to make typically exceeds the cap, with the aggregate amount of intended contributions exceeding the \$5 million cap by between \$12,900 and \$1.96 million each year, or about \$830,000 on average. The only year when there was no difference between intended and actual contributions was 2017. When insurers would like to contribute more than the \$5 million cap, the Division allocates tax credits on a first-come, first-served basis until the \$5 million cap is reached.

EXHIBIT 2: INTENDED AND ACTUAL CONTRIBUTIONS TO C4H BY CALENDAR YEAR



SOURCE: Office of the State Auditor analysis of information provided by the Division of Insurance.

According to publicly available information from the Division, the number of insurers making contributions each year has ranged from two to seven, with only two insurers—United Healthcare Services and Aetna—applying for and making contributions since Fiscal Year 2018. Exhibit 3 shows how the total \$5 million in annual contributions breaks down among contributing insurers.

EXHIBIT 3. CONTRIBUTIONS TO CONNECT FOR HEALTH COLORADO BY INSURER, CALENDAR YEARS 2013 THROUGH 2021 (IN MILLIONS)

	2013	2014	2015	2016	2017	2018	2019	2020	2021
United Healthcare Services	\$3.5	\$3.5	\$3.5	\$3.5	\$3.7	\$4.1	\$3.4	\$3.8	\$4.9
Aetna	\$0.9	\$1.1	\$1.1	\$1.2	\$1.1	\$0.9	\$1.6	\$1.2	\$0.1
Humana	\$0.4	\$0.3	\$0.3	\$0.3	\$0.2	-	-	-	-
Humana Dental	-	<\$0.1	<\$0.1	-	<\$0.1	-	-	-	-
Anthem Blue Cross Blue Shield	\$0.2	-	-	-	-	-	-	-	-
Kanawha	-	<\$0.1	<\$0.1	-	<\$0.1	-	-	-	-
Compbenefits	-	<\$0.1	-	-	<\$0.1	-	-	-	-

SOURCE: Office of the State Auditor analysis of contribution data provided by Connect for Health.

WHAT ARE THE ECONOMIC COSTS AND BENEFITS OF THE TAX EXPENDITURE?

The C4H Contributions Credit has cost the State \$5 million annually in foregone premium taxes, which has occurred each fiscal year from 2014 through 2021. This represents about 1.5 percent of the total \$336.3 million the State collected in premium taxes in Fiscal Year 2021. The benefit of the credit is \$5 million annually in revenue to C4H, which represents roughly 10 percent of its total annual revenue. There is no net financial benefit to contributing insurers at the state level. For federal tax purposes, the contributions insurers make to C4H can reduce their federal taxable income.

WHAT IMPACT WOULD ELIMINATING THE TAX EXPENDITURE HAVE ON BENEFICIARIES?

If the credit were eliminated, insurance companies would likely no longer make contributions. We were able to contact one of the insurance companies that has made contributions to C4H each year; they indicated that if the credit was eliminated, it is probable that the company would not make future contributions. The loss of the contributions would reduce C4H's revenue by \$5 million a year and could lead to net losses and/or increased fees. In Fiscal Years 2019 and

2021, C4H would have experienced net losses of \$3.4 million and \$4.8 million, respectively, if not for the contributions. According to C4H, if it no longer received contributions from insurers, it would probably have to increase the administrative fee it charges to insurance companies, and this increase would almost certainly be passed on to insurance customers.

We estimate that if C4H had not received the \$5 million in contributions each year for the last 5 years, it would have needed to increase its administrative fee from 3.5 percent of the premiums for policies sold on the exchange (the rate applied by C4H over these years) to about 4.1 percent to compensate for the lost revenue.

If insurance companies stopped contributing to C4H, they would no longer have the contribution amounts to reduce their federal taxable income, which could increase their federal tax liability.

ARE THERE SIMILAR TAX EXPENDITURES IN OTHER STATES?

We did not identify other states that offer tax incentives to insurance companies that make donations to their health exchanges. Most state-based exchanges appear to be funded almost entirely through fees assessed on participating insurers.

ARE THERE OTHER TAX EXPENDITURES OR PROGRAMS WITH A SIMILAR PURPOSE AVAILABLE IN THE STATE?

We identified no similar tax expenditures or programs offered by the State.

WHAT DATA CONSTRAINTS IMPACTED OUR ABILITY TO EVALUATE THE TAX EXPENDITURE?

We identified no data constraints related to this evaluation.

WHAT POLICY CONSIDERATIONS DID THE EVALUATION IDENTIFY?

THE GENERAL ASSEMBLY MAY WANT TO CONSIDER AMENDING STATUTE TO ESTABLISH A PURPOSE AND PERFORMANCE MEASURES FOR THE PREMIUM TAX CREDIT FOR CONTRIBUTIONS TO THE COLORADO HEALTH BENEFIT EXCHANGE. As discussed, statute and the enacting legislation for the credit do not state its purpose or provide performance measures for evaluating its effectiveness. Therefore, for the purposes of our evaluation, we considered a potential purpose for the credit: to provide a source of partial funding to help support C4H, other than an appropriation of general fund monies. We identified this purpose based on our review of the following sources:

- **LEGISLATIVE HISTORY.** The C4H Contributions Credit was passed as part of House Bill 13-1245, which laid out several funding sources for C4H. In addition to the credit, the bill established fee mechanisms and provided state funds that had been reserved for CoverColorado. CoverColorado was a nonprofit entity previously created by the General Assembly to offer health insurance to individuals with preexisting conditions who were unable to qualify for health insurance in the private market. With the enactment of the ACA and the creation of health benefit marketplaces, CoverColorado was no longer needed; it was discontinued by the General Assembly in 2013 (House Bill 13-1115). Discussion of House Bill 13-1245 in committee hearings repeatedly noted that the bill provided for a “balanced” and “multi-source” revenue stream for C4H. Further, C4H’s Fiscal Year 2015 financial statements note that the revenue provisions of House Bill 13-1245 supported C4H becoming a self-sustaining entity after the end of the federal grant period.
- **HISTORICAL CONTEXT.** The C4H Contributions Credit was preceded by a similar tax credit for contributions to CoverColorado, which operated in a very similar manner; insurers were allowed to take a credit of 100 percent of their contributions (Section 10-8-534, C.R.S., as added in HB 04-1206).

We also developed two performance measures to assess the extent to which the credit is meeting its potential purpose. However, the General Assembly may want to clarify its intent for the credit by providing a purpose statement and corresponding performance measure(s) in statute. This would eliminate potential uncertainty regarding the credit's purpose and allow our office to more definitively assess the extent to which the credit is accomplishing its intended goal(s).