

Colo. FAIR Plan Gives Policyholders Options At A Cost

By **Jennifer Mandato**

Law360 (April 17, 2025, 8:54 PM EDT) -- Colorado launched the country's first new Fair Access to Insurance Requirements, or FAIR, Plan in 40 years to offer residents another tool in an increasingly challenging wildfire, hail and wind market, but experts emphasized that this limited form of coverage is not intended to address affordability concerns.



Colorado's Fair Access to Insurance Requirements, or FAIR, Plan will offer up to \$750,000 in property insurance coverage and up to \$5 million in commercial property insurance, but only for the actual cash value of the property. (AP Photo/David Zalubowski)

Despite Colorado's fairly healthy insurance market, the executive director of the state's FAIR Plan, Kelly Campbell, told Law360 that the timing of the plan's commencement provides a method of prevention without being in a time of "absolute crisis."

The plan will offer up to \$750,000 in property insurance coverage and up to \$5 million in commercial property insurance, but only for the actual cash value of the property. Despite concerns over the program's limited scope, Campbell maintained that ensuring the program remains the market of last resort will be critical to its long-term sustainability.

"The most important thing for the FAIR Plan's long-term sustainability is to keep true to its mission of being that market of last resort," she said, "And ultimately, that is the best thing for consumers so that then the FAIR Plan can act and remain as that pressure release valve for the admitted market and keep the admitted market healthy even through the rough time."

The Creation of the Plan

Carole Walker, the executive director of the insurer trade association Rocky Mountain Insurance Information Association, told Law360 that she and Campbell went down a rabbit hole of understanding FAIR Plans in other states before the legislation, which was passed in 2023 to create the plan, was even launched.

"I think for a long time, you had really good FAIR Plans out there across the country doing really good work," Walker said. "Now, because of the challenges in the property insurance market, I think FAIR Plans are under pressure."

Because of the strain hurricanes, wildfires and other perils have put onto these insurers of last resort, Walker said, that one priority held by the team working to pull the FAIR Plan together was to avoid taking "an older legacy system and then hav[ing] to replace it in a few years."

Campbell emphasized the advantage of being the first new plan in several decades offered, telling Law360 that she and her team looked at a number of states to take note of best practices and lessons learned.

"There isn't a single state that we've modeled after, but we really looked holistically at the residual market to try and make the right product for Colorado," Campbell said.

The state's FAIR Plan was built on a variety of expertise from different places, including conversations with as many stakeholders as possible, Campbell told Law360, evidenced by the plan's board of directors.

The board features members from multiple aspects of the insurance industry, including consumer and carrier representatives, trade associations and producers who work with customers every day.

Bradley Levin, a shareholder of Levin Sitcoff PC, was elected to represent the interests of consumers and spoke highly of the experience.

"When you talk about collaboration, it has been absolutely a terrific experience going through this experience," Levin told Law360. "Despite the fact that I've been mitigating insurance claims for 45 years, I've never been integrally involved with the, if you will, operations of an insurance company and the myriad of financial and regulatory aspects."

With that, the experience and knowledge other board members shared was invaluable, Levin said.

Walker sat on the board as a representative of the Rocky Mountain Insurance Information Association, or RMIIA, which oversees the interests of various insurers. She told Law360 that her experience in supporting the FAIR Plan differed from her service on other consumer boards because of the high stakes that accompany, essentially, "building an insurance company."

"From Rocky Mountain Insurance Association, in my role for 26 years, we bring that expertise of how FAIR Plans work, how companies support them and then lessons learned and best practices," Walker explained.

A Limited Scope of Coverage

While property insurance markets face challenges across the country, including in states such as Florida and California, Campbell told Law360 that Colorado still has a relatively healthy marketplace.

"For the most part, most Coloradans can access insurance," she said. "But as we are seeing that more challenging market, we know that there are some gaps."

Like other insurers of last resort, the Colorado FAIR Plan is intended to be a safety net, looking to provide property insurance coverage for homeowners and businesses when it is unavailable from traditional carriers, according to the program's website.

Recent wildfires, including the Marshall Fire in 2021, impacted the willingness of standard insurance companies to write in various wildfire-prone areas, Levin said. Environmental concerns have been a growing problem in the state, adding to the timeliness of the program.

"Unfortunately, I think it's full of holes," Charles Brown, shareholder and plaintiffs' attorney at Daly &

Black PC, told Law360 about the extent of the program's coverage. "It offers bare bones property insurance with no coverage for water damage, no liability, loss of use or replacement cost, just actual cash value."

Campbell, however, noted that the program isn't intended to compete with the private market.

"The FAIR Plan isn't intended to mirror the admitted market; if there are risks and properties that could be covered on the admitted market, then that's where they would be," she said.

Still, understanding that residents do need coverage, Campbell told Law360 that she anticipates that particularly excess and surplus lines carriers will develop products that wrap around the plan's basic coverage to provide additional coverage for policyholders who can't find it elsewhere.

Using AI for Property-Specific Risk Assessments

In March, the state's FAIR Plan and risk modeling company ZestyAI **announced** their collaboration in order to improve insurance access for homeowners through the use of artificial intelligence-powered models for heightened climate risks.

Campbell told Law360 that through this technology, policyholders will receive evaluations of their individual property as well as the general location, with scores on a 1-10 scale for concerns such as wildfire risk.

For example, if a consumer receives an individual property score of eight for wildfire with the top three factors driving that score, it allows for a more specific conversation about mitigation efforts and ways to reduce that risk, Campbell explained.

"Perhaps by reducing their wildfire risk, we can get them to the admitted market faster so that they can get more robust coverage," she said, adding that she hopes this tool will allow property owners to better understand their risk and how to change it.

RMIIA's Walker told Law360 that meaningful mitigation efforts remain one of the insurance industry's big pushes that everyone can agree on, pointing to **HB 25-1182**, which awaits Gov. Jared Polis' signature.

"I think one thing we've really struggled with in Colorado is we've invested all this money into mitigation, but that mitigation has to be meaningful and recognized to help with insurability," Walker said. "You can't just mow the grass or cut a few trees."

Setting Guidelines and Informing the Public

Acknowledging that the FAIR Plan is intended to provide limited coverage, Walker still emphasized that the program also hopes to offer a good insurance experience.

In April, the California FAIR Plan Association was named in a **lawsuit** brought by homeowners from Pacific Palisades, Malibu, Altadena and Pasadena, in which they alleged that the state's insurer of last resort either failed to pay or delayed paying their claims for smoke-related damages.

Walker told Law360 that the board in Colorado took their role "very seriously" in mapping out guardrails for the program and that smoke damage was one of the lessons learned from the board's various fire-related experiences. Campbell was even the one to state that the program should include smoke coverage, an idea agreed upon by the board because of the members' experiences with wildfires within the state and the knowledge that smoke damage makes up a notable portion of the losses, Walker said.

The program "is limited coverage, but what should that include? What's fair to the policyholder?" Walker shared about the thought process behind the plan's making.

Levin added that one way to avoid legal claims such as those facing California's FAIR Plan is to have a vigilant claim handling process.

As a board member, Levin said that he plans to make sure that the terms and conditions of the policies are being honored and that the claims are handled in a responsible manner. If that is done, then the plan shouldn't face these kinds of problems, he said.

"That's the way to avoid any kinds of issues, is just to do right by the policyholders," Levin added.

In doing right by the policyholders, Brown told Law360 that the state must be sure to educate consumers to ensure that they understand exactly what they're purchasing.

"I'm sure there's going to be extensive outreach at various levels," he said, but "I think it's important that the state focus on exactly what the policy is and not try to laud it as a solution by itself."

Still, Brown emphasized that the FAIR Plan provides a better option for consumers who may have otherwise chosen to forgo coverage because of a lack of access to policies.

"It's just the concern is to make sure that everyone knows what the realities are for these policies," he advised.

--Editing by Nick Petruncio.