April 4, 2022

Commissioner Michael Conway
Colorado Division of Insurance
Consumer Services, Life and Health Section
1560 Broadway, Suite 850
Denver, Colorado 80202

Commissioner Conway:

On behalf of Colorado Hospital Association (CHA) and its 100-plus member hospitals and health systems statewide; the Colorado Association of Health plans (CAHP), the state association of health insurance providers whose members offer coverage to more than 2.5 million Coloradans; and the Colorado Medical Society (CMS), the largest physician-based organization in Colorado; we write to express significant concern with the regulatory process and timeline concerning implementation of HB 21-1232, legislation to establish the Colorado Option.

<u>Delayed Regulatory Process Threatens 2023 Rollout</u>

Despite best attempts by staff at the Division of Insurance, at present, significant regulatory components for implementation of HB 21-1232 – including parameters for the standardized plan and premium reduction target methodologies – are running four months or more behind anticipated completion dates. required by statute. This, in turn, **threatens the ability of insurers and providers to effectively execute** their own obligations under the law in a timely manner to achieve a Jan. 1, 2023 rollout of the Colorado Option.

Standardized Plan Parameters: The originally proposed timeline required carriers to file standardized plans with the Division of Insurance (DOI) by Apr. 1, 2022; however, the Department of Health and Human Services has not finalized its 2023 Notice of Benefit and Payment Parameters, and DOI has not been in a position to finalize the implementing regulations for the premium reduction methodology, network adequacy requirements, and rules for the Colorado Option standardized bronze, silver, and gold health benefit plans. Additionally, a permanent rule specifying parameters of the standardized plan is not in place, pending potential changes to the actuarial values for each metal tier included in the federal Notice of Benefit and Payment Parameters for 2023 and Mental Health Parity and Addiction Equity Act outstanding mandates. **There is no anticipated timeline to resolve these issues.**

Due to factors that were not contemplated during development of the statute, emergency regulations for the premium reduction target were not adopted until Feb. 28, 2022 – almost two months after the original Jan. 1, 2022 goal. DOI did not hold a permanent rule-making hearing on these regulations until Thursday, March 31. Additionally, the emergency rule for the Colorado Option standardized bronze, silver, and gold health benefit plans was not adopted until March 31. **Carriers still have not received the actual target reductions by county and metal level**, which were supposed to be provided by March 30. As a result, carriers will now have less than one month to renegotiate contracts with providers before informing the DOI in May whether or not they will be able to meet the five percent target reduction required by statute. Additionally, there is still an open comment period related to the pricing actuarial value adjustment for the premium rate reduction requirements, and it is unclear when this regulation will be finalized.

The delay of these regulatory guidelines has made it incredibly difficult for carriers to understand the five percent reduction targets and develop plans to achieve those targets for the 2023 plan with such limited timeframes. Subsequently, it will be almost impossible for carriers, providers, and facilities to effectively comply in this limited time frame. Additionally, the Division has not yet addressed significant, outstanding actuarial concerns detailed in the enclosed attachment.

Best,

Katherine Mulready

Chief Strategy Officer, Colorado Hospital Association

Amanda Massey

Executive Director, Colorado Association of Health Plans

Bryan Campbell

Chief Executive Officer, Colorado Medical Society

<u>Additional Information on Actuarial Flaws:</u>

CHA, CAHP, and CMS have serious concerns that the state's actuarial analysis seriously disregards adjustments required by statute and existing mandates. These are concerns that need to be addressed for program feasibility and sustainability. Specifically, the current methodology does not accurately account for:

1. An actuarially sound pricing trend
2. Differences in Essential Health Benefit requirements from 2021 to 2023
3. Additional state-mandated benefits

To achieve the premium reduction targets without destabilizing the health care industry, HB 21-1232 required the commissioner to account for "*any actuarial differences between the standardized plan and the health benefit plans [carriers] offered in the 2021 calendar year*." The law further requires that the standardized benefit plan be "*actuarially sound and allow a carrier to continue to meet the financial requirements of [state law]*." In order for the Colorado Option plans to be actuarially sound, they must include an actuarially sound pricing trend. An actuarially sound pricing trend must project future spending by including expected changes in utilization, deductible leveraging, changes in enrollment mix, etc. Conversely, the premium reduction target methodology requires a historical average of Medical CPI-U in lieu of an actuarially sound pricing trend. The Medical CPI-U metric is not appropriate since it represents a fixed basket of goods and is a retrospective measure.

Colorado received approval from the federal government in 2021 to update its Essential Health Benefits (EHB) package beginning in 2023. This will materially change the level of benefits offered in 2023 relative to the 2021 EHB package. Added benefits include acupuncture, gender affirming care, mental health wellness exams, and changes to drug coverage. **The premium reduction methodology does not accurately account for the impacts of the updated EHB.** The Division's actuaries estimated the total cost of these benefit changes at 0.16 percent of premium, which is based in part on Wakely's utilization assumptions over 20 to 40 years and on data from Wakely from 2017.[1] Other independent actuaries' analysis of the same benefits yielded remarkably different results – equating to potentially a nine-fold difference in impact to premiums, as outlined below. These changes will have a direct impact on what consumers must bear in out-of-pocket premium expense with additional downstream impacts on providers responsible for collecting cost sharing from patients when services are received.

Additionally, the DOI has not yet accounted for all other mandates passed in addition to the 2023 EHB package. Essential to the framework of HB 21-1232 is the concept that independent adjustments to the underlying value of the standardized benefit plan – such as new benefit mandates – would not undercut the potential for carriers and providers to successfully achieve the premium reduction targets specified in the legislation. Additionally, recent legislation (HB 20-1158) requires coverage of additional infertility and reproductive services. This was not included in the state's recent EHB package but will be required to be built into premiums in plan year 2023. While there is no estimate at this time, it is important for the DOI to review what qualifies as a mandate and include those estimates in the methodology.

Based on the statutory requirement for appropriate comparative adjustment described above, it is deeply concerning that outside analysis regarding EHB and state mandates, even using rigid actuarial industry standards, have yielded impact differences that could be as little as 0.88 percent and as great as 2.45 percent. These mathematical differences must be accounted for in any actuarial estimate of the savings anticipated by this waiver.

EHB/Mandate Additions	DOI Estimate	Outside Estimate
Acupuncture, gender affirming care, mental health wellness exams, and changes to drug coverage	0.16% of premium	0.28% to 1.45% of premium
Prevention Of Substance Use Disorders (HB21-1276)	Not addressed	
Pharmacy Benefit Manager And Insurer Requirements (HB21-1297)	Not addressed	
Eliminate Donor Costs For Living Organ Donations (HB21 – 1140)	Not addressed	

[1] Wakely CO EHB Actuarial Report 2021050

Additional infertility and reproductive services	Not addressed	0.6% to 1.0% of premium (just a note that this does not include egg preservation services)
Total	**0.16% of premium**	**0.88% to 2.45% of premium**