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Colorado Hospital Association

Oct. 4, 2022

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

Commissioner Conway:

On behalf of the Colorado Hospital Association (CHA) and our more than 100 member hospitals and health systems statewide, we are writing to provide feedback on Proposed Rule 4-2-XX Concerning Colorado Option Public Hearings. Building on previous feedback that CHA has submitted to the DOI, the below comments draw from CHA principles and recommendations to recommend changes in the proposed regulation language. However, first off, CHA would like to thank the DOI for being responsive to previous CHA feedback that is reflected in the proposed regulation. Specifically, CHA appreciates the recognition that the burden of proof should rest with the payer in establishing whether or not a hospital is responsible for a carrier's inability to meet premium rate reduction targets. Additionally, CHA appreciates the language in the proposed regulation that allows providers to submit "other data to demonstrate unique circumstances that may not be represented in the rate setting process" (Section 15.C.4.d.).

At a high level, it is a priority for CHA that the regulation both includes clear language to ensure that the evidence produced during the public hearing process is directly linked to the final rate determination for hospitals and that an opportunity is provided for hospitals to provide feedback on DOI-calculated rates prior to the final agency order. This letter outlines the following eight recommended changes from CHA for the proposed regulation, which are further expanded upon below.

1. Carriers should provide evidence that they tried to meet the required premium rate reductions prior to claiming that a hospital or provider is the cause for the carrier's failure (Section 9);
2. There should be a process for calculating the hospital share of the total health care premium, and the final rate determination should not expect hospitals to contribute more than their calculated share (Section 9);
3. Carriers should be the sole entity to identify hospitals or providers as the cause for the carrier's failure to achieve premium reduction requirements (Section 11);
4. Evidence provided pursuant to the public hearing should not conflict with antitrust laws (Section 15);
5. Additional evidence should be presented at the public hearing that helps to capture the full scope of the health care system (Section 15);

6. The burden of proof should be used in determining whether a public hearing is warranted in addition to during the public hearing (Section 17).
7. Hospitals should have the opportunity to react to DOI-calculated rates before the final rate determination (Section 20); and
8. The evidence presented during the hearing should be clearly linked to the final rate determination (Section 20).

**Section 9.C.1.a. – Carrier Notification Requirements**

It is important that adequate attention is paid to verify a carrier's claim that a hospital or provider is a cause for the carrier's failure to meet the premium reduction targets prior to a public hearing being conducted. CHA suggests adding a subsection to 9.C.1.a. to read as follows:

> *"v. Evidence that the carrier tried to meet the premium rate reduction requirements prior to claiming that a hospital or provider is a cause for the carrier's failure to meet the premium reduction targets."*

CHA appreciates the recognition that hospitals only represent a percentage of total health care premiums. While the proposed regulation requires the carrier to determine the hospital's share of the total health care premium, the proposed regulation should add additional language around the methodology for identifying the specified percentage. Additionally, the final reimbursement rate determination should be tied to the hospital-specific percentage of the total health care premium that is agreed upon by the hospital, carrier, and DOI. CHA suggests Section 9.C.1.a.ii. should be amended to read as follows:

> *"A statement outlining the analysis and conclusions to support why the hospital or provider caused the carrier to fail to meet the premium reduction requirements and the percentage amount by which the identified hospital or provider impacted the carrier's premium rates and thereby caused the carrier to meet the premium reduction targets. In determining the percentage amount by which the identified hospital or provider impacted the carrier's premium rate, carriers should conduct an analysis of carrier premiums by categories (including but not limited to administration, margin, hospital care, physician and clinical services, retail prescription drugs, laboratory services, and durable medical equipment), including reasonable assumptions on price and utilization. For any hospital or provider identified as a reason the carrier could not meet the premium target, the carrier should also calculate that hospital or provider's proportion of expenditure to the overall health care expenditure for the carrier."*

**Section 11.B. - Answer to Complaint of Failure to Meet the Premium or Network Adequacy Requirements**

CHA recommends that the DOI remove language in the proposed regulation that allows the DOI and providers, in addition to carriers, to identify hospitals or providers as a reason the carrier was unable to meet the premium reduction requirements. CHA believes it is important that carriers are the only entity that can identify a hospital or provider and recommends amending Section 11.B. to read as follows:

*"Any hospital or health-care provider identified by the carrier~~, the Division, or another provider~~ as the reason a carrier was unable to meet the premium requirements shall file an Answer within thirty (30) days from the date of service of the Complaint or Cross-Complaint, as applicable."*

**Section 15.A.2. - Discovery**

Section 15 notes that a Party may include additional documentary evidence relating to a carrier's failure to meet the premium requirements, including negotiated rates with other providers in the same county (15.A.b.) and provider rates with other carriers (15.A.e.). CHA is concerned this would violate antitrust law and recommends removing Section 15.A.2.e. and amending Section 15.A.2.b. to read as follows:

*"b. Cost and utilization data with other providers in the same county;"*

Additionally, CHA believes it is important that the DOI consider additional information such as the full scope of health care costs, trends, and assumptions; insurer initiatives and assumptions to improve on health care costs; demographics and acuity of covered populations; and specific cost and utilization trends and assumptions by category. CHA suggests adding these important factors below Section 15.A.2.e. as follows:

*f. The full scope of health care costs, trends, and assumptions;*
*g. Insurer initiatives and assumptions to improve on health care costs;*
*h. Demographics and acuity of covered populations; and*
*i. Specific cost and utilization trends and assumptions by category.*

**Section 17.A.3. – Burden of Proof**

CHA is pleased to see that the draft regulations place the burden of proof on the carrier if the carrier alleges that a particular hospital or provider is the reason a carrier failed to meet the premium rate requirements. However, CHA recommends that such burden of proof is utilized first in determining whether a public hearing is warranted in addition to during the public hearing, as currently written. CHA suggests that the language under Section 17.A. be amended to read as follows:

*"The burden of proof in determining both whether a rate hearing is warranted and in determining a reimbursement rate shall be on the Party that is the proponent of a decision."*

**Section 20 – Issuance of Final Agency Order**

Prior to issuing the final agency order, CHA believes it is important that hospitals are provided with the opportunity to react to DOI calculated rates. The public hearing process provides hospitals with an opportunity to respond to reimbursement rates proposed by the carrier but does not provide hospitals an opportunity to react to DOI calculated rates prior to the final agency order. Additionally, CHA believes it is important that the final rate determination is clearly linked to

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evidence provided during the public hearing process. Accordingly, CHA suggests amending the language under Section 20 to read as follows:

> *"The Commissioner shall issue a final agency order which shall include the Commissioner's determination of the reimbursement rate, by hospital and/or provider, that must be accepted by the identified hospital and/or provider and must be used by the carrier in its rate filings to achieve the premium reduction requirements. Following the public hearing and prior to issuing the final agency order, the Commissioner shall provide identified hospitals and/or providers with the opportunity to respond to draft reimbursement rates calculated by the DOI. The reimbursement rate shall be set in accordance with the methodology in Colorado Regulation 4-2-XX and be clearly linked to evidence presented at the public hearing."*

In general, we request consideration of these recommendations to ensure operational success for implementation of the Colorado Option, and we welcome further dialogue with the DOI on these issues.

Regards,

/S/ Adeline Ewing
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