



MEMORANDUM

To: CEOs
CHA Member Hospitals and Health Systems

Re: Potential Contract Terms to Promote Compliance with the Colorado Option

Background

As further detailed in CHA's [executive brief](#) on this issue, the law established through House Bill 21-1232 created the Standardized Health Benefit Plan Colorado Option (i.e., Colorado Option), which requires private health insurance carriers to offer a standardized health plan in the individual and small group markets beginning in 2023.

The Division of Insurance's (DOI's) rate-setting authority will not apply until the 2024 plan year. In each of the first three years (2023-25), carriers must achieve premium reductions based on 2021 plan premiums (5 percent in 2023, 10 percent in 2024, and 15 percent in 2025). Beginning in 2024, the DOI will have the authority to hold a rate review public hearing if a carrier is failing to meet reduction targets, which could result in mandated reimbursement rates set by the DOI that hospitals and providers will be required to accept.

By March 1, 2023, carriers must submit a report to the DOI detailing whether they anticipate being able to meet the required premium rate reduction. The information being requested by DOI as part of that reporting deadline has a high likelihood of containing hospital-specific information that is proprietary and confidential.

Please note that the suggestions and language included herein are intended to present possible solutions to problems raised by the Colorado Option and may not be appropriate for any particular hospital. Please consult independent legal and business counsel.

Considerations

To ensure adequate legal protection of hospital confidential information and to otherwise promote compliance with the Colorado Option, hospitals could consider employing the terms below in their negotiations with carriers.

1. Confidentiality Terms in the Hospital's Participation Agreement with the Carrier

Hospitals may wish to consider including a confidentiality agreement in its carrier contracts that provides appropriate notice to the hospital should confidential information need to be disclosed and the potential for injunctive relief.

Sample language:

If a Party believes it must disclose the Confidential Information pursuant to the requirements of applicable law, the disclosing Party will give prompt prior notice to the other Party of such disclosure, along with a copy of all materials the disclosing Party intends to disclose. If reasonably practicable, sufficient prior notice shall be given to permit the Party to seek temporary, preliminary and/or injunctive relief in a court of law.

Each Party expressly agrees that a breach or threatened breach of any confidentiality obligations by the other Party, including its respective affiliates or employees, is highly likely to cause significant, irreparable harm. A Party so aggrieved shall be entitled, in that case, to temporary, preliminary and/or injunctive relief, or any other equitable remedy deemed appropriate by the reviewing court, to protect its interests in its Confidential Information. Each Party agrees to immediately notify the other, should it learn of a breach or threatened breach of the other's Confidential Information, by providing information regarding the nature of the breach or threatened breach and the Confidential Information that has been disclosed. Each Party further agrees to take all necessary steps to immediately cure or prevent such breach and to ensure no further release of any Confidential Information.

2. Form Letter to Carriers Designating Previously Disclosed Information as Confidential for Purposes of the Colorado Option

Hospitals may wish to consider sending a letter to carriers with whom they have contracts designating previously disclosed information as confidential.

Sample language:

To Whom It May Concern,

As you know, the Colorado Division of Insurance continues to clarify its expectations for data submission from payers relating to Colorado Option plans you offer. Please be advised that it is _____'s position that all information regarding our charges, negotiated rates, receivables, offers during any negotiations, and any other information disclosed to you that would be protected from disclosure under the Colorado Open Records Act is confidential, proprietary, and/or a trade secret. As such, the information is not subject to public disclosure under the Colorado Open Records Act and shall be treated as Confidential Information under 3 CCR 702 Reg. 4-2-92.

If you believe such information must be disclosed to the Colorado Division of Insurance for purposes of Colorado Option rate review or for any other reason, you are to mark each page of such information as "Confidential Information" prior to submission to the Colorado Division of Insurance. If there is any question about whether certain information must be marked as Confidential Information prior to submission to the Colorado Division of Insurance, please contact _____.

Kind Regards,

3. Short Agreement to Coordinate on Colorado Option Rate Hearing Responses

Hospitals may wish to enter an agreement with carrier partners to coordinate their responses to the Division of Insurance for purposes of a Colorado Option rate setting hearing.

Sample language:

Dear _____:

This Letter of Agreement (this "LOA") is effective as of _____, 2023 (the "Effective Date") by and between _____ ("Hospital") and _____ ("Company").

Hospital and Company agree to work together in good faith to achieve the purposes of the Colorado Option and to avoid undue scrutiny from the Colorado Division of Insurance. Each party will designate one or more individuals with decision-making authority to immediately meet to discuss the ways in which the parties can coordinate. Without binding either party, this coordination might take the form of coordination on information about Hospital to be disclosed to the Colorado Division of Insurance to ensure accuracy, renegotiation of rates or reimbursement methodologies, or other improvements to the relationship between the parties that might be impacted by the Colorado Option.

All activities engaged in by the parties pursuant to this LOA shall be deemed strictly confidential. Neither party will, without the prior written consent of the other party, disclose or use any confidential information of the other party, except in furtherance of this LOA.

Upon completion of the Parties' negotiations related to coordination on the Colorado Option, the parties intend to enter into mutually-acceptable definitive agreements containing commercially reasonable, standard and customary provisions to memorialize any binding coordination.

Hospital

Company

By: _____

By: _____

Name: _____

Name: _____