Public Option Resource Guide for Hospital Answer to Carrier Complaint

CHA has developed a resource guide to assist hospitals in responding to carrier and DOI "complaints" regarding hospital rates for the Colorado Option plans. The document below includes guidance on how to approach the process, suggested talking points, and questions to discuss with your financial team to prepare a response. Hospitals will have 30 days to respond to a complaint. CHA strongly recommends consulting with hospital counsel throughout this process.

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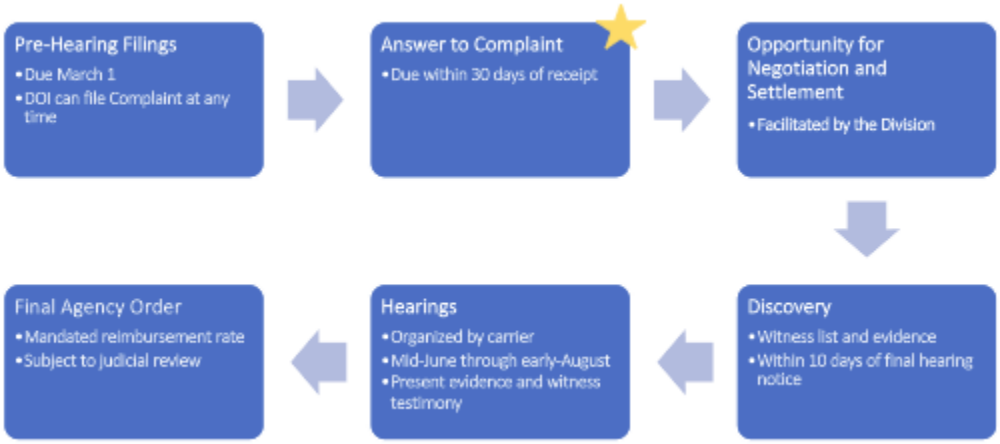
Background

On March 1, carriers are required to inform DOI whether or not they will be able to meet premium rate reduction (PRR) requirements for the 2025 plan year. If a carrier does not anticipate meeting the PRR requirements, they have the option to name a hospital and/or provider as the reason for higher premiums (known as the "Complaint"). The DOI says it has the ability to file a Complaint on behalf of a carrier at any point in the spring. This Complaint will be accompanied by supporting data, which must be submitted to the DOI and sent via formal legal notice methods to any hospital named in a Complaint. Following receipt of a Complaint, a hospital will have **30 days** to submit an "Answer to Complaint" back to the carrier and to the DOI. As a part of the Complaint, hospitals will receive all materials submitted by the carriers (found here in DOI templates).

Figure: Colorado Option Hearing Process



It is also important to note that this is not the only opportunity to provide evidence related to the Complaint, and hospitals will have the chance to provide evidence leading up to and during the formal hearing process. Additional details on the hearing process can be found here and in regulation 4-2-92 concerning Colorado Option Public Hearings. The steps outlined in the complaint response have been previously identified.

This year, the DOI has run into unforeseeable delays in finalizing the Statewide Median Reimbursement Rate (which determines one of the applicable rate floors for hospitals) and is therefore allowing carriers and hospitals to submit a joint attestation between March 1 and March 22, 2024. This could delay Complaint filings.

Step-by-Step Guide **March 1 occurs, and you get a notification from a carrier that your facility has been implicated in a complaint... What do I do next?**	
Step 1: Prepare Internally to Respond to the Allegation	
Guidance:	• **Data:** Assemble data on your current financial condition and rate interactions with carrier. • **Staffing:** Ensure you have assigned responsibilities for which staff members will process the complaint, engage in arbitration (if hospital chooses to pursue arbitration), and attend formal rate hearings. • **Identifying the Complaint:** Ensure your administrative staff are prepared to identify the formal complaint letter from the DOI and notify executive teams immediately. • **Notify CHA:** Email CHA at *financial.policy@cha.com* that you have received a formal complaint. • **Document Negotiations:** Document instances where the carrier failed to negotiate in good faith and how your facility worked to negotiate in good faith. • **Identify Expertise:** Identify inside or outside expertise. CHA would be happy to serve as a referral source for outside expertise hospitals require. *Anticipated key competencies:* experience assessing hospital's own data with background in carrier data, communication to draft the response, legal to review the response. • **Review Carrier Data:** Review data templates provided by the carrier related to your hospital in the complaint. Evaluate information and document inconsistencies or inaccuracies. • **Rate Check:** Compare your rate with the rate floor scenarios included in the legislation. ***CHA resource here.***

	• **Safeguard Confidential Information:** Documents can be shared publicly by the DOI unless the party submitting the document asserts that the document is confidential. Hospitals should review information that will be submitted with your legal counsel to determine whether confidentiality should be asserted. A detailed explanation of confidential information procedures can be found in Section 14 of regulation. ***Overview of steps for asserting confidentiality:*** 1. Verify that the hospital has a reasonable and good faith belief that the subject or information is confidential under state and federal law. 2. Any party submitting documents must file a notice of confidentiality specifying each document, the nature of the document on which confidential information is found, and the basis for the claim of confidentiality. 3. Each page of each document containing the confidential information must be clearly marked as "CONFIDENTIAL." 4. The Commissioner will then make a determination if the information is confidential.
Step 2: Identify whether the Carrier could have hit the target. ***While it is impossible to know why or if the carrier could have hit the target from the hospital's perspective, CHA has prepared some narrative elements to explain why it would be difficult in this market to hit statutory 15% premium rate reduction mandate.***	
Proposed Narrative	**The Colorado Option includes a retrospective inflation factor that does not account for current financial trends**. The CO Option medical inflation trend for 2025 is only 3.56% (DOI calculation here). According to the Bureau of Labor Statistics, the Consumer Price Index for Medical Care measures inflation was at 8% as of December 2023, with medical care services (which includes hospital care) at 6.5%. Within Colorado, hospitals have seen total expenses increase 31% since pre-pandemic, which is about 8% per year, according to Q3 2023 financial and operational data report from CHA. **The standard plan includes a robust set of benefits, and the richness of them is not consistent with premium reductions.** After the Affordable Care Act was passed mandating a more robust set of benefits for plans offered on the individual market, the national average monthly premium and Colorado average monthly premium increased by 129% and 147%, respectively, from 2013 to 2019. Requiring a more robust set of benefits to be covered is generally associated with increasing health insurance premiums and thus not

	compatible with the premium rate reduction requirements encapsulated in the Colorado Option. While hospitals support additional coverage for benefits, hospitals remain concerned that the DOI actuarial estimates do not accurately estimate the total cost of the additional Essential Health Benefits included in the Colorado Option standardized plan. **The carriers did not have timely information from the DOI to be able to effectively negotiate with facilities and providers.** Preliminary rates are usually submitted to the Division in June, and the March 1 filing deadline includes a significant amount of pricing uncertainty. Carriers did not receive the emergency regulation governing the 2025 standardized benefit plan payment parameters until Feb. 15 (only 10 business days prior to the March 1 deadline) as it did not include the Department of Health and Human Services Draft 2025 Actuarial Value Calculator Methodology that carriers are required to utilize in their plan adjustments. **The carriers did not have reliable data from the most recent plan year to accurately forecast 2025 premium trends to enable a robust and thorough negotiation.** It takes time for carriers to compile the necessary data to predict 2025 premium trends. At this point in the year, carriers are working with incomplete claims runout data, do not have risk adjustments results from the Division (typically released in May), and must use less up-to-date trend modeling assumptions. Without mature claims data, carriers will be making conservative assumptions that may not accurately reflect the complete dataset from the previous year. Additionally, in terms of trend modeling assumptions, carriers have to use a prior trend model at this point in the year while current standard practice is to use more up-to-date trend modeling.
Step 3: Identify reasons why the carrier's suggested rate is insufficient. **For this step, CHA recommends crafting a compelling narrative about your hospital's financial situation. Below is information and suggested questions on how to approach these discussions.**	
Narrative Suggestions	• **Evaluate the enrollment data (see below) and include in your formal response:** ○ Analyzing 2023 and 2024 enrollment data to project the financial impact of proposed carrier rates on your organization. DOI 2023 and 2024 enrollment data by county: DOI provided enrollment data by county that hospitals can use to project the financial impact of the proposed premium.

<table>
<tr><td></td><td>
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<tr><td>2023 Enrollment Data Points: In 2023, 18.5% of exchange consumers enrolled in CO Option plans.
<u>DOI Data</u>
Individual: 39,729
Small Group: 142</td><td>2024 Enrollment Data Points: In 2024, 34% of exchange consumers enrolled in CO Option plans.
<u>DOI Data</u>
Individual: 93,140
Small Group: 478
More details available here.</td></tr>
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Some questions to evaluate with your finance team:

How much would the carrier’s proposed rate impact your hospital or the region’s financial situation?
Would the proposed rate be detrimental to operations or maintaining certain service lines?
Are there other factors not adequately considered in the Medicare reference rate floor?

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<tr><td colspan="2">Step 4: Identify other factors the carrier should have included.

This information is being requested of the DOI. However, as the insurance market regulator, the DOI is the appropriate entity to evaluate carrier trends – not hospitals.</td></tr>
<tr><td>Narrative Suggestions</td><td>CHA recommends hospitals suggest the DOI is a better-equipped entity to evaluate carrier trends and factors carriers should have considered for their rate filing.

Draft narrative: As the Division is the regulatory entity responsible for oversight of carriers’ plan filings, it is critical for the Division to evaluate all trends to ensure they accurately account for sound actuarial analysis and the realities of higher costs in many of the health care inputs. Specifically, we request that the Division ensure that the carrier’s trends on utilization management, drug pricing, equipment inflation, and labor costs accurately align with their historical trends and the current costs reflected in the market.
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	Carriers and the DOI must ensure that the following trends are accurately accounted for in their actuarial analysis for the following trends. Below are narrative suggestions based on state and national data. CHA would also recommend working with your financial team to identify information specific to your hospital. **State Trends:** Expense trends for Colorado hospitals continue to rise at near double-digit rates and higher than other states. Total expenses in 2023 are 31% higher than pre-pandemic levels, nearly 8% per year, driven by increases in staffing, medical supplies, pharmaceutical costs, and growing administrative costs to support regulatory requirements. • Labor expenses (salaries and benefits) have increased 31.9% between 2019 and 2023. • Supply expenses (medical supplies, pharmaceutical costs, etc.) have increased by 35.6% between 2019 and 2023. • Total operating expenses have increased by 31.1% between 2019 and 2023. **National Trends:** • **Utilization management trend** ○ Patient acuity has increased, as measured by how long patients need to stay in the hospital. The increase in acuity is a result of the complexity of COVID-19 care, as well as treatment for patients who may have put off care during the pandemic. The average length of a patient stay increased 9.9% by the end of 2021 compared to pre-pandemic levels in 2019 (AHA Report). ○ An aging population uses more health care. Between 2000 and 2020, the U.S. population aged 65 and up increased 60%; from 2020 to 2040, it is expected to increase another 44% (AHA Report). • **Drug prices** ○ Drug expenses increased dramatically by 36.9% on a per patient basis compared to pre-pandemic levels. As a share of non-labor expenses, drug expenses grew from approximately 8.2% in January 2019 to 10.6% in January 2022 (AHA Fact Sheet). • **Equipment inflation:** ○ Medical supply expenses grew up 20.6% through the end of 2021 compared to pre-pandemic levels (AHA Fact Sheet).

	• **Labor costs:** ○ Labor costs account for approximately 50% of a hospital's total expenses and any fluctuations have a significant impact on hospital operating margins. Since the beginning of the pandemic, labor costs have increased by more than 33% (Kaufman Hall Report).
Step 5: Did you try arbitration? ***Note:*** there are two in-between steps that could occur prior to the June/July hearings once a hospital has been identified as the reason for not meeting a PRR target. ***1. Optional negotiated settlement*** if either the carrier or the Division claims that the PRR requirements are not met for a Standardized Plan, the Commissioner shall provide an opportunity for the carrier, the hospital, and the Division to enter into a negotiated settlement prior to June/July. ***2. Optional nonbinding arbitration*** will occur from March 1 through rate hearings in June. If a hospital is called to a rate hearing in June/July, the Commissioner will ask if the parties pursued nonbinding arbitration.	
Potential In-Between Step	• **Negotiated Settlement:** Parties to the hearing have the option to undertake settlement negotiations prior to the hearings in June/July. The Division staff would be fire-walled from the Commissioner as a part of this process. If the carrier and identified hospital refuse the opportunity to negotiate, the Commissioner shall issue a Final Notice of Hearings to the Parties and post the notice on the Division's website. The Division will provide this opportunity. • **Arbitration:** Arbitration is an option for hospitals prior to the rate-hearings. This is a voluntary negotiation. If you believe you need a stronger hand during the rate-setting hearings in June and July, arbitration is an alternative and in-between step before public rate-hearings. Neither the Commissioner nor Division staff will be involved in nonbinding arbitration if you choose to pursue it. • **Template Language you may wish to consider if negotiations are not fruitful to send a notice to the carrier that you are pursuing arbitration:** *"Per Colorado Revised Statutes 10.16.1306 and Section 12 of 3 CCR 702-4 Regulation 4-2-92, [Insert Hospital Name] is reaching out to initiate non-binding arbitration regarding provider reimbursement rates for services provided to enrollees of Colorado Option Standardized Plans offered by [Insert Carrier Name]."*

Additional Resources

- CHA's Colorado Option Regulatory Page
- CHA's Executive Brief on Rate-Setting
- DOI's Colorado Option Public Hearings Page
- The DOI Templates carriers will submit March 1
- The proposed hearing schedule for June/ July will be found here.
- DOI Slides on The Process and information on how to access the zoom recording:

  https://us02web.zoom.us/rec/share/3oGA_coQ5-7IABUwf35rQuygQ-Tb4slapUn73RkrONkAw01N8l5E6vuUJuJ3srvW.ZYF-gFFAh55cMBjT?startTime=1675454237000 (Passcode: mJ5#0GgP)

Summary of 2023 Complaints

In 2023, there was one Complaint filed by a carrier and four Complaints filed by the Division of Insurance implicating nineteen hospitals. All the public hearings were vacated when carriers and hospitals agreed to reimbursement rates without DOI intervention. CHA submitted a comment letter in May 2023 noting concerns with the DOI-initiated complaints that identified hospitals as a source of a carrier's premium rate reduction failure.