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Regulatory Agencies

Division of Insurance

Colorado Option Advisory Board Meeting Minutes

July 10, 2024 3:30 - 5:30 PM

Adam Fox called the meeting to order at 3:35 p.m.

Those in attendance were:

- Present (7): Adam Fox, Dr. Reginald Washington, Chris Zivalich, Jennifer Fanning, Amanda Massey, Valerie Larson, Kevin Stansbury (late)
- Absent (3): Andy Jacobs, Bianey Bermudez, Dr. Qaisar Khan

Others present from the Division of Insurance (DOI) included Sara Bencic, Tara Smith, Kyla Hoskins, and Maddie Davis. Angela Little and Colette Gaenssle attended from the Attorney General's Office.

April Meeting Minutes: The April meeting minutes were approved with a small edit: Andy Jacobs should be listed as "Absent," as he was inadvertently listed in both the "Present" and "Absent" categories.

2024 Hospital Workforce Trends Report

Sara Bencic presented updates regarding the Year 2 Hospital Workforce Trends Report.

- Nearly 2,000 (or 2% of Colorado hospital workers) respondents, including former workers, were included in the survey.
- Based on the survey and focus group findings of this report, the Colorado Option implementation has not had an impact on the Colorado hospital workforce.

Advisory Board Discussion/Items for Follow-Up:

- Chris Zivalich asked a clarifying question about the feedback requested by the DOI about the report. He asked if feedback includes things that DIRA could do differently in the next report.
 - Sara Bencic responded that if any board members have feedback on the future report that it would be best if they follow up via email.
- Chris Zivalich said he would be interested in seeing how DIRA could increase participation by different groups in the survey.
- Adam Fox said he believes there has been some underrepresentation in the non-provider workforce in the report, which is likely to be a concern for a few board members. In addition, he said he believes the focus group feedback from providers is helpful.
- Dr. Reginald Washington said he believes it is obvious from the report that the cost of delivering healthcare (at least from a labor perspective)



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continues to go up, yet the reimbursement that hospitals are going to receive will go down based on the goal of the Colorado Option. This should continue to be tracked, and he believes that these two things are opposed to each other.

- Adam Fox raised a written comment with the DOI team in advance of the meeting that from a design perspective, for individuals who have color blindness, the red and green color palette of some of the charts make them hard to read. He recommends that accessibility standards be taken into account in the final version of the report.
- Chris Zivalich said that as related to Dr. Washington's comment regarding labor costs, it is interesting to him that the report highlighted that Colorado tends to have higher wages for a lot of the positions surveyed, but that some of the feedback in the report said that people believed they were not adequately compensated, especially for extra time and how much work has to go into their role due to inadequate staffing.
 - Adam Fox mentioned that the spike in contractual labor during the pandemic seems to be an important facet of the overall cost for workforce in hospital settings. The spike seems to be decreasing, and there is an understanding of the spike and why it happened during the pandemic, but what could drive a similar spike in the future?
 - Dr. Reginald Washington said that his perspective on this is that when people left the workforce, hospitals and other facilities had to contract with contract labor companies to get workers. These entities took advantage of the situation and inflated the cost, which has "reset the bottom," so now everybody wants more money. If you are a hospital worker and know a contract worker is making more than you, you either want the same compensation or a different job. The bar has been reset, and he believes it will stay that high, even when the contract labor companies are no longer necessary. The people left behind do not want to take a pay cut just because COVID-19 is over.

Staffing Announcement

Adam Fox announced that Angela Little has accepted a new position at the Attorney General's office, so Colette Gaenssle will take Angela's role as the Advisory Board's representative from the Attorney General's office moving forward. He thanked Angela for her work.

Kevin Stansbury joined the meeting at 3:54 p.m.

Federal Network Adequacy Standards for Qualified Health Plans (QHPs)



Sabrina Corlette from the Georgetown University Center on Health Insurance Reforms provided the board with an overview of federal network adequacy standards for Qualified Health Plans (QHPs).

Advisory Board Discussion/Items for Follow-Up:

- Kevin Stansbury said he runs a small critical access hospital about 80 miles in any direction from other providers. He said he is reasonably familiar with the requirements Sabrina discussed, but that he has also discussed with payers that the network adequacy requirements are ignored through the preauthorization process. He said that as an example, his hospital is happy to do an MRI, and they call the insurance company, but the insurance company will say that the patient is only allowed to go to a freestanding imaging center in the city. He said sometimes the hospital fights back, sometimes the patient gives up and doesn't get the care, or sometimes they drive to the city.
 - Sabrina Corlette responded that for providers, there is such a wide range of patients and they all may come with different forms of coverage that are subject to different regulatory oversight. There are no federal standards for certain plans, so there may not be federal standards that apply to them. From the carrier perspective, in addition to network design, one other way to reduce cost is through utilization management. It sounds like in the MRI example, that is the kind of thing they are engaged in. The insurance company is looking at the medical necessity of the MRI and making that determination. On one side there may be standards for network adequacy, but if you're getting care denied because of a prior authorization or medically necessary decision, the patient may be upset.
- Dr. Reginald Washington asked that if the network adequacy standard requires a certain physician or a certain type of service to be provided but it just doesn't exist in that area within the guidelines, what happens then?
 - Sabrina Corlette responded that the federal standards do not speak to that particular issue. However, there are a number of states that have their own requirements.
- Chris Zivalich asked a clarifying question about network adequacy timelines. He wanted to verify that Colorado has not had to be as stringent as the federal requirements before now.
 - Sabrina Corlette said that this is correct – up until now, the state-based marketplace states have said that it is up to them how to regulate network adequacy for marketplace plans. Starting in PY26, the federal government has created minimum standards.
- Adam Fox asked if the secret shopper surveys carriers will have to do will be released publicly or if they will be solely for CMS.



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- Sabrina Corlette said there is no indication whether these will be public, but she said she would love to see them public. However, she has not heard from CMS.
- Jen Fanning asked a question about network adequacy and surprise billing. She said that one of the things she has heard folks are experiencing in her rural community in Colorado is that people who travel to Denver and have to go to a facility not in network, if they need an emergency service and a hospital stay, particularly if they are conscious, they're not in a state to be able to move, but they are still charged out-of-network. She is hearing that a lot of people are saying that this has happened and that they are getting surprise bills.
 - Sabrina Corlette responded that the federal No Surprises Act applies to emergency services once the patient is "stabilized," and then the No Surprises Act protections do not apply. If you are getting post-stabilization services from an out-of-network provider, you can get billed for that. There are likely a number of situations where people are falling outside the cracks.
 - Sara Bencic shared a link to Colorado's out-of-network billing protections in the chat.
<https://doi.colorado.gov/insurance-products/health-insurance/health-insurance-initiatives/federal-no-surprises-act/colorado>

Colorado Network Adequacy Standards

Rates and Forms Director and Interim Chief Actuary Sydeny Sloan from the Colorado Division of Insurance provided an overview of network adequacy requirements in Colorado and the additional network adequacy requirements for Colorado Option plans.

Advisory Board Discussion/Items for Follow-Up:

- Dr. Reginald Washington said he estimates there are not many midwives in the state outside Denver and Grand Junction, which means that most plans are going to be out of compliance with the midwives requirement because they simply do not exist, and if they are, they are not forced or guaranteed to participate in the program.
 - Kyla Hoskins responded that the midwives requirement is specific for Option plans, so non-Option plans don't have to meet that requirement. The DOI is collecting network adequacy filings right now, so it's something that the Advisory Board can discuss later in the fall.
 - Dr. Washington asked a follow-up question regarding behavioral health. He believes that because it is hard to get behavioral health coverage within Denver, to say that this is a requirement the Option is fulfilling is not true. In addition, he



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believes receiving primary care within 7 days is not achievable. He said that as an Advisory Board they should know how close or far from the mark people are getting care, particularly in rural Colorado.

- Sara Bencic responded that appointment and wait time standards apply to all ACA compliant plans – not just Colorado Option plans.
- Chris Zivalich said that what has been illuminating to him is understanding the federal and Colorado-specific network adequacy requirements, as he was previously only aware of the Colorado Option-specific standards. He asked if there is a way to find publicly-available information about which carriers are compliant with Colorado standards.
 - Sydney Sloan responded that filings are made public when the DOI is done reviewing them through SERFF.
 - Adam Fox also said that if board members are interested, there is a stakeholder meeting for rate review being held by the DOI on July 25 where more information will be provided.
- Jennifer Fanning said she appreciates the clarity from today's presentations. She said she is concerned that some people are falling through the cracks despite these standards. While these are requirements, they aren't always effective. She said she has had frustrating experiences fighting with her insurance company and dealing with providers and that she just wants to give up. She said she wants to find a better way forward.
 - Sydney Sloan responded and said that she understands the challenges surrounding health insurance and that the DOI is on the same page. Although the scope of the DOI is limited, the Division is always looking to improve things.
- Chris Zivalich said that he wants to know the compliance of carriers with these standards.
 - Kyla Hoskins said that it is something we are working toward. The DOI is trying to build a data science department so that this information can be shared in a streamlined way. It's not something that we have internally built right now, but the DOI will do its best to provide more information in the fall.
 - Amanda Massey said she hopes these presentations helped everyone understand the amount of regulations that carriers have to comply with. She said that carriers want to comply and try to comply, so all of this has to be dealt with by carriers before the carriers can sell the plans.
 - Kevin Stansbury said he does not disagree with Amanda Massey's points about carriers and compliance, but his issue is that it can be



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hard to get a contract with carriers and that until the holes are filled, there are still going to be patients that are forced to go far for care.

Program Implementation Updates:

Presented by Colorado Option Director Sara Bencic.

- **Colorado Option Regulations.** Amended Regulations 4-2-81 and 4-2-85 became effective 6/15/24. The DOI will be drafting regulations for Plan Year 2026 soon.
- **Colorado Option Bulletins.** N/A
- **Rates & Plan Enrollment.** PY25 binder, rate, and network adequacy filings were submitted in June. Rates will be approved by August 23, 2024.
- **Premium Rate Reduction Hearings.** The DOI is reviewing carriers' rate filings for compliance and will implement the Commissioner's Final Agency Orders. Compliance will be announced in Fall 2024.
- **Workforce Trends Reports.** Stakeholder comments on the report will be compiled, and the year 2 report will be sent to the legislature.
- **1332 Waiver Administration.** The DOI is still waiting for CMS to determine the 2024 passthrough amount and will shortly begin preparing the 2025 passthrough submission.

Advisory Board Discussion/Items for Follow-Up:

- No discussion or follow-up items.

Comments from Kevin Stansbury on the Hospital Workforce Trends Report

Kevin Stansbury joined the meeting late, so he asked for an opportunity to be able to share his comments on the 2024 Hospital Workforce Trends Report.

- On the overall scope of the review, the statute says that the only thing required by the report is to determine if the Colorado Option has had an impact on the hospital workforce. If the Colorado Option has not had an impact, how much more examination on this topic is required?
- These workforce issues are very complex. Different hospitals have different issues.
- It is important to understand that the impact the pandemic had on the workforce is important, so there could be a difference in outcomes from the survey that are still residual from the pandemic versus outcomes from the Colorado Option.
- There should be attention paid to stress put on the hospital due to increased regulations, retirements, or different issues.



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- The workforce is a priority for all hospitals. It is driving the cost of providing care. Hospitals want to balance the cost of care and the cost of labor, but labor is important to provide care.

Public Comment

- Monica VanBurskik said that when it comes to cost and cost trends, it is split out between utilization and price, so her request is that the cost report shows those differences so that you can show what is underlying the cost driver.
- Adeline Ewing from the Colorado Hospital Association made comments on the hospital workforce report.
 - She believes analysis outside of the Colorado Option's impact on the hospital workforce – if any – is outside the scope of the report based on statute.
 - She believes there are massive methodology issues based on opinion instead of evidence.
 - The report also states that most of the directly employed workforce left hospitals during the pandemic despite included data regarding net employment showing little to no change.
 - CHA would recommend that the DOI cut out narrative conclusions in the report.
- Daniela Gosselova made a comment regarding network adequacy. She believes that the network adequacy standards are so out of whack that it has become normal that things don't work. It also feels like there is no one behind the system doing anything about it. She also believes it is too difficult to file a complaint with the Division of Insurance.

Kevin Stansbury shared that he has officially resigned from the board and said that this is likely his last meeting as he cannot give the board the full attention it deserves.

Sara Bencic said that she does not have a formal update yet, but the DOI is interviewing a few people to join the board to fill the CO Option Enrollee seat. The main update for the next board meeting will be information regarding Plan Year 2025 Colorado Option compliance.

Adam Fox adjourned the meeting at 5:25 p.m.