



Colorado Hospitals and the Proposed Public Option: A Looming Challenge

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The Affordable Care Act (ACA) removed pre-existing condition barriers, defined a broad range of essential health benefits, and improved access to coverage and care for millions of people nationwide.

However, the ACA has thus far done little to improve health care affordability for many middle-class and other consumers struggling under the weight of high deductible health plans and a panoply of burdensome costs.

The issue of health care affordability is especially acute in rural and other communities suffering from a lack of competition in the commercial health care insurance market. High prices for coverage (including cost-sharing obligations) effectively constrict patient access to needed care in systematically negative ways, causing concomitant problems for families across the spectrum of care. Putting aside national political debates on “Medicare for All” or related topics, the affordability problem is undeniable, creating an imperative among stakeholders to act in Colorado and elsewhere.

Against this backdrop, the Colorado General Assembly recently enacted HB 19-1004, Colorado’s version of a Public Option which is codified at C.R.S. 25.5-1-129, and is one of the country’s most ambitious efforts to create a state-sanctioned insurance model intended to address the affordability conundrum.

The Colorado Department of Health Care Policy and Financing (HCPF) and Division of Insurance (DOI) were thereby directed to develop and present a report to the State Legislature regarding development of a state-specific Public Option for health care coverage in an effort to improve the affordability of health insurance.

Following discussion and building upon a national think-tank study and recommendations of a retained actuarial firm, HCPF and DOI issued a November 15, 2019 “Final Report for Colorado’s Public Option” (Report). HCPF and DOI have now posited a “public private” partnership involving licensed insurance carriers’ sale of products in the state’s ACA health insurance exchange (Connect for Colorado). If the proposed state government rate setting mechanism is implemented by further legislation, there will soon be a substantial (and likely negative) economic impact for many Colorado hospitals as well as the communities they serve, while also raising significant issues regarding government’s relationship to the current free market in health care. In overall terms, the Report paints a highly critical view of hospitals and presents an aggressive plan to reduce

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health care costs by limiting hospital payments in an apparent effort to address affordability concerns but without actual details on many key issues or an overall plan for doing so.

The Report reflects a strong presumption that hospital costs are excessive and require state intervention to promote (presumably) better insurance rates, even without tangible assurance of such results. While lacking in specificity, the Report assumes that DOI will achieve greater insurer participation (and presumed beneficial carrier competition) in communities now afflicted by effective insurer monopolization. The state agencies' Report assumes the best path to achieve more insurer competition and affordable coverage is by limiting hospital reimbursement through a "to be determined" formula, the details of which remain under development by out-of-state specialists. Although the Report assures that the hospital "reimbursement formula will be set through a diligent and careful process" (presumably subject to due process and other procedural protections provided by the Administrative Procedure Act, C.R.S. 24-4-101 et seq.), it seems likely that such rate-setting would have a negative, if unintended, impact on the availability of high quality health services in many areas as hospital balance sheets reflect revenue losses, with a corresponding negative impact on employees and even patients.

HCPF and DOI have heretofore proposed hospital rate setting "between 175 percent and 255 percent of Medicare" although the Report's supporting actuarial analysis suggests even lower hospital rates and is silent on proposed rates for other health care providers. While the factual basis for the agencies' conclusion that if hospital rates go down insurance premium costs will decrease is not well documented, the Report reflects a pre-disposition towards payer concerns pursuant to a carrier-driven business model which does not (if at all) reflect other concerns related to the health care delivery system.

In this regard, while the present proposal is now aimed at Colorado's existing individual coverage market under the ACA health care exchange, it is expressly contemplated that the rate setting framework will also be expanded to group markets and give "employers an additional model to use in their [commercial] negotiated rates" as a "new tool to decrease costs." See www.Colorado.gov/pacific/hcpf/proposed-affordable-health-coverage-option. The latter suggestion portends further sweeping changes for Colorado providers beyond hospitals (e.g., physicians, skilled nursing homes, home health agencies, etc.).

The Report does not indicate how and why payer concerns should properly predominate over provider and patient-driven considerations in this context, a topic which may warrant further public scrutiny and discussion as matters unfold.

Nonetheless, the affordability of health care remains an important concern for many persons in Colorado and elsewhere. To address such concerns effectively will likely require a broader dialogue and more inclusive approach than is reflected in the present Report with its "blame the hospitals" approach as a purported solution to the affordability problem. Many legal details will require monitoring and potential regulatory challenges abound in the effort to support Colorado's status as one of America's healthiest states.

Polsinelli will continue to update our clients and friends on this important matter as needed. Please contact any member of our Colorado health care team (listed above) if there are questions or any item you would like to discuss at this challenging time.

