

## Colorado Hospital Association - Colorado Upper Payment Limit Analysis and Recommendations

### Introduction

Upper payment limit (UPL) demonstrations for Colorado are a determinative factor in federal matching funds Colorado receives through the Colorado Healthcare Affordability and Sustainability Enterprise (CHASE). Significantly, the partnership inherent in the CHASE – and part of its constitutionally-required business purpose – is to leverage fees paid by hospitals to generate additional federal funds to offset the need for state general funding for hospital reimbursement.

While state statute requires HCPF to maximize the UPL calculation to fulfill this partnership, the UPL has been unnecessarily restricted to amounts below what is allowed under federal rules, leaving significant federal funds “on the table” that would otherwise go to support payments to hospitals, Medicaid coverage, and HCPF administrative costs, as required by state law. The current calculations fall short in two distinct ways:

1. The current calculations establish a “false ceiling” below 100% of allowable costs
2. The current calculations do not include the totality of Medicaid costs by excluding some hospitals and failing to account for Colorado Medicaid enrollees that receive care outside of Colorado

### Analysis

#### **1. The current calculations establish a “false ceiling” below 100% of allowable costs.**

The current UPL calculations are currently set at 97.2% of allowable costs for hospitals that receive supplemental payments in the CHASE model. Furthermore, in the four most recent model years where UPL was the limiting factor for the CHASE fee model, the UPL has ranged from 96.5% to 97.2%. If adjusted to 100% of allowable costs immediately, over \$100 million of federal funds could be provided to hospitals – supporting continued access to care, particularly for Medicaid and uninsured patients, and improved viability for at-risk hospitals.

We appreciate that HCPF has previously expressed concern over audit risk if the UPL is set at 100%. However, based on a review of experience from other states and federal statements, the concern is misplaced. UPL is described as a “reasonable estimate” of what Medicare would pay and is based on prospective estimates.<sup>10</sup> By definition, the UPL calculations are not intended to be retrospectively evaluated or audited since CMS has prospectively determined the estimates are reasonable. The Medicaid and CHIP Payment and Access Commission (MACPAC) has confirmed that UPL demonstrations are not audited or reconciled with other sources.<sup>11</sup> CMS comments on the practice used by many states to make additional supplemental payments - “Where Medicaid base payments are below the aggregate UPL calculation, states have the ability to make supplement payments to providers, by ownership group, up to the calculated limit.”<sup>12</sup>

#### **2. The current calculations do not include the totality of Medicaid costs by excluding some hospitals and failing to account for Colorado Medicaid enrollees that receive care outside of Colorado.**

UPL calculations refer to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles.<sup>1</sup> Currently, only hospitals receiving supplemental payments through the CHASE program are included in the UPL calculation, which excludes psychiatric hospitals. In evaluating hospital UPL limits, all hospitals providing care within Colorado should be included. Additionally, to the extent that Medicaid patients receive care outside of Colorado, the UPL should include relevant hospital payment and cost estimates for those services.

Existing Colorado law requires Medicaid to maximize both inpatient and outpatient payments to hospitals up to UPL limits as defined in CMS regulations. Colorado’s State Plan contains language

identical to CMS regulations and permits Colorado to make supplemental Medicaid inpatient and outpatient payments up to, or “not to exceed”, the UPL. Additionally, federal law allows states to adjust prior UPL filings and retrospectively apply new calculations to prior model years that fall within the CMS two-year filing deadline.

### **Recommendations**

- HCPF should immediately implement the following modifications to the hospital provider fee (HPF) model prospectively beginning with the FFY 2023-24 model, and retrospectively update federal filings for the FFY 2021-22 and 22-23 model years:
  - Set the UPL to 100% of reasonable estimates
  - Develop UPL estimates based on all hospitals in Colorado
  - Include estimates of care provided to Colorado Medicaid patients in UPL estimates using best practices from other states to establish methodology
  
- Retrospective payments resulting from retroactive corrected filings for FFY 2021-22 and 22-23 and 100% of additional federal funds received on a go-forward basis should be allocated to hospitals as supplemental payments, consistent with the CHASE statute.

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<sup>1</sup> See 42 C.F.R Section 447.282. 447.321

<sup>2</sup> “Oversight of Upper Payment Limit Supplemental Payments to Hospitals,” MACPAC, 37-38 (March 2019)