



## HB10-1332 MEDICAL CLEAN CLAIMS TRANSPARENCY AND UNIFORMITY ACT TASK FORCE

To: Commissioner Marguerite Salazar & Senator Irene Aguilar  
From: Marilyn Rissmiller, Barry Keene & Mark Painter  
Date: 1/31/2014  
Re: Legislation Re: Colorado Medical Clean Claims Taskforce/HB10-1332

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Thank you for the opportunity to review Division of Insurance internal analysis regarding the Colorado Medical Clean Claims Taskforce. We have had the good fortune to work with this taskforce since its inception and wanted to provide you with some comments and our considered recommendations regarding next steps.

### RESPONSE & COMMENTS

The recommendations that the Taskforce has laid out regarding governance and dispute resolution, we believe, gives Colorado a unique opportunity to lead the nation in building a successful public private partnership model in the arena of administrative simplification. In the findings that we have shared with you, we propose the creation of a Governance Body that has as part of its charge, a dispute resolution function that minimizes litigation between stakeholders and settles arguments among stakeholders without external regulation. The final path for additional appeals would become contract negotiations between the parties.<sup>1</sup> With the foundation of transparency and trust that has been laid among stakeholders, we believe that this model is not only possible, but desirable. We believe this model can also support and augment a regulatory role for DORA. This could be likened to some operational similarities of the Public Utilities or Oil & Gas Commissions. Our governance model actually engages the full band width of stakeholders with equal standing.

There are a few other key issues we would like to bring to your attention. The first relates to the scope of the taskforce: this effort applies specifically to all payer/provider relationships using CPT/HCPCS codes for billing. The second relates to the operational requirements and structure for administering the program. While we laud your efforts to better understand the operational requirements of bringing this project in-house, we believe that based both on our experience as well as that of the Centers for Medicare and Medicaid Services with the National Correct Coding Initiative, it makes ample sense to outsource the operational aspects of managing the edits over time. We believe that this allows for entities with the best personnel and technology to be contractually obligated to execute on the program with ultimate accountability resting with DORA. We also believe this will be more cost-efficient. Furthermore, given the significant additional resources required to undertake this effort in-house, we are concerned about the feasibility of obtaining legislative approval.

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<sup>1</sup> We propose a three step process:

- ❖ Staff evaluation of data within a contracted entity to determine if a protest fits protocol data sets.
- ❖ Resolution of data conflicts/requests by a Governing Body made of expert representatives from industry and providers with neutral parties.
- ❖ Remaining disputes with the edit set would be contracted out by payers or providers disagreeing with edit.

Compliance with edits sets on a daily basis would be governed by contractual relationships between provider and payer.

- ❖ Contract language would require compliance with the final data set and specific edits could be excluded by contract if both parties agree.
- ❖ There would be an arbitration clause and structure to serve for a fee if path is selected by parties.

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## RECOMMENDATIONS

We remain appreciative of your efforts to garner the support of HHS, both regionally and nationally, to support our efforts and to make this a national pilot. We believe that the work done in Colorado can and should be parlayed to a national scale. However, given the time constraints of the 2014 legislative session, we would recommend interim legislation that allows for ongoing dialogue with the federal government and our state delegation while concurrently building on the momentum of the Taskforce. We recommend that interim legislation focus on the following:

- ✓ Move the Taskforce and its work from the Department of Health Care Policy and Financing to the Department of Regulatory Agencies in a way that implicitly relieves any notion of attempting to regulate ERISA or any other federally regulated plans.
- ✓ Authorize a new Governing Board to continue to work with public review of the edit library in 2015 based on guidelines for member requirements outlined by the current Task Force recommendations.
- ✓ Authorize the contract with the current data analytics vendor beyond 2014 so that the transition into the public comment period for the final edit set can be seamless. This may also require some funding est. \$50,000.
- ✓ Postpone implementation for all plans until 2017. The enacting legislation currently requires plans to implement systems changes in 2016 (for-profit plans) and 2017 (non-profit plans). This has the benefit of giving health plans more time to implement the legislation.

We believe interim legislation would achieve the following key objectives:

- ✓ Ensure that the work of the Taskforce remains actionable and useful as groundwork for implementation. Specifically, 2015 would be a period during which the full edit set can achieve acceptance among health plans and providers through a public review process which carries the real potential for “rule promulgation authority.”
- ✓ This allows time for DORA to observe the viability of an “outside body” to achieve practical consensus and to settle disputes without a regulator’s intervention.
- ✓ Allow for DORA to have more time to continue to explore the ramifications and implications of this effort.
- ✓ Give the project time to secure commitments from HHS to become a pilot site.
- ✓ Allow for more analysis to be undertaken regarding long term funding for the effort.

We look forward to discussing this further when we meet on Monday, February 3, 2014. In the meantime, don’t hesitate to contact us.