STATE OF COLORADO

DEPARTMENT OF HEALTH CARE POLICY & FINANCING

1570 Grant Street
Denver, Colorado 80203-1818
(303) 866-2993
(303) 866-4411 FAX
(303) 866-3883 TTY

Bill Owens
Governor

Karen Reinertson
Executive Director

February 1, 2004

The Honorable Brad Young, Chairman
Joint Budget Committee
200 East 14th Avenue, Third Floor
Denver, CO 80203

Dear Representative Young:

Enclosed please find a report to the Joint Budget Committee on safety net provider payments pursuant to footnote 38 of the Long Bill, S.B. 03-258.

Questions regarding the Safety Net Financing Provider Payments Update can be addressed to Christopher Underwood, Manager, Safety Net Financing Section. His telephone number is 303-866-5177.

Sincerely,

Karen Reinertson
Executive Director

Cc: Senator Dave Owen, Vice-Chairman, Joint Budget Committee
Representative Tom Plant, Joint Budget Committee
Senator Peggy Reeves, Joint Budget Committee
Senator Ronald Teck, Joint Budget Committee
Representative John Witwer, Joint Budget Committee
Senator John Andrews, President of the Senate
Senator Mark Hillman, Senate Majority Leader
Senator Joan Fitz-Gerald, Senate Minority Leader
Representative Lola Spradley, Speaker of the House
Representative Keith King, House Majority Leader
Representative Andrew Romanoff, House Minority Leader
John Ziegler, JBC Staff Director
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COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING

OPERATIONS AND FINANCE OFFICE
SAFETY NET FINANCING SECTION

REPORT TO THE JOINT BUDGET COMMITTEE

ON

SAFETY NET FINANCING PROVIDER PAYMENTS UPDATE

FEBRUARY 1, 2004

TABLE OF CONTENTS

EXECUTIVE SUMMARY

This report is presented to the Joint Budget Committee (JBC) of the Colorado General Assembly in response to footnote 38 of Senate Bill 03-258.

The Colorado Indigent Care Program (CICP) was authorized by House Bill 83-1129, the "Reform Act for the Provision of Health Care for the Indigent." Unlike the Medicaid program, the Colorado Indigent Care Program is not an entitlement, which means the State is not legally obligated to serve all who meet the program's eligibility requirements. The program is a financing mechanism through which the State reimburses participating providers for a portion of costs incurred in treating eligible individuals. Funding for the Colorado Indigent Care Program is through two unique funding sources. These funding sources are the Disproportionate Share Hospital Allotment and the Medicare Upper Payment Limit for inpatient hospital services (Inpatient UPL), which are financed with General Fund, federal funds and certification of public expenditures.

Based on Decision Item 6 from the FY 2003-04 Budget Request submitted by the Department on November 1, 2002, a change in the reimbursement methodology for the Colorado Indigent Care Program was approved. This request combined the multiple rate setting methodologies for the program into a more simplified system that can be more readily understood by Department staff, the General Assembly and providers. In addition, five different line items were discontinued, and are now consolidated into the new Long Bill line item, Safety Net Provider Payments. Within the new line item, there are four separate calculations or payments: Low-Income payment, High-Volume payment, Bad Debt payment and the Medicaid Shortfall payment.

Given that the Safety Net Provider Payments utilize federal funds, the payment methodologies must be approved by the Centers for Medicare and Medicaid Services (CMS). On June 3, 2003, the Department submitted two State Plan Amendments to the National Institutional Reimbursement Team, a section of the Centers for Medicare and Medicaid Services, which is responsible for reviewing State Plan Amendments dealing with inpatient hospital services. On January 22, 2004, the Department received a notice that the Centers for Medicare and Medicaid Services Medicaid Director had approved the State Plan Amendments and that official written notice would soon follow.

At this time, a full comparison of the individual provider payments made under the previous payment methodologies versus the Safety Net Provider payments approved under Decision Item 6 are not available. Such a comparison would require the publication of provider rates for FY 2003-04 prior to official notification of these rates to providers. In addition, the FY 2003-04 final provider rates cannot be set until the Federal Fiscal Year 2003-04 Disproportionate Share Hospital Allotment has been formally released by the Centers for Medicare and Medicaid Services. The Department will complete a detailed analysis to illustrate the impact on individual providers for FY 2003-04 by April 15, 2004. This analysis will be submitted to the Joint Budget Committee if requested.

INTRODUCTION

This report is presented to the Joint Budget Committee (JBC) of the Colorado General Assembly in response to footnote 38 of Senate Bill 03-258, which states:

> *Department of Health Care Policy and Financing, Indigent Care Program, Safety Net Provider Payments -- The Department is requested to submit a report by February 1, 2004, which evaluates the use of the new methodology to distribute disproportionate share and major teaching hospital payments.*

The Governor vetoed footnote 38 stating:

> *This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. I will direct the Department to comply to the extent feasible.*

I. PROGRAM OVERVIEW

The Colorado Indigent Care Program (CICP) was authorized by House Bill 83-1129, the "Reform Act for the Provision of Health Care for the Indigent." Prior to this, the State had procedures to partially reimburse providers for care furnished to the medically indigent; however, the program was not formally recognized in statute. Unlike the Medicaid program, the Colorado Indigent Care Program is not an entitlement, which means that the State is not legally obligated to serve all who meet the program's eligibility requirements.

The Colorado Indigent Care Program is a financing mechanism through which the State reimburses participating providers for a portion of costs incurred in treating eligible individuals. In turn, providers must adhere to state-established limits for amounts charged to eligible individuals. The program promotes access to health care services for low-income individuals by helping to defray provider costs of furnishing uncompensated care and by limiting the amount that low-income patients must pay.

The Colorado Indigent Care Program is not an insurance plan under State law, because it does not provide individuals with a policy that defines a list of benefits to which they are entitled. Colorado statute limits the program's expenditures to available appropriations and the individual provider's physical, financial, and staff resources. To the extent of available appropriations, the program serves persons with income and assets at or below 185% of the federal poverty level who are not eligible for Medicaid or the Children's Basic Health Plan.

Funding for the Colorado Indigent Care Program is through to two unique funding sources. These funding sources are the Disproportionate Share Hospital Allotment and the Medicare Upper Payment Limit for inpatient hospital services (Inpatient UPL), which are financed with General Funds, federal funds and certification of public expenditures. Any provider who

participates in the program is qualified to receive funding from both funding sources and uses those funds as partial compensation for providing medical care to those individuals who qualify to receive discounted services.

Payments made under either the Disproportionate Share Hospital Allotment or Inpatient UPL to publicly-owned (State or local government) providers consist entirely of federal funds. This is accomplished by the utilization of certification of public expenditures. Certification of public expenditures document the uncompensated cost by a publicly-owned entity incurred in association with providing a qualified medical service to an eligible Medicaid or indigent client, which are eligible for a federal match. Publicly-owned providers document the uncompensated cost annually, which is represented in the Long Bill as Cash Funds Exempt. For this line item, the Cash Funds Exempt figures are an accounting record to document the certification of public expenditures on Medicaid and indigent populations that have not previously been compensated at publicly-owned hospitals. Consequently, the Cash Funds Exempt figures reported for this line item do not represent an expenditure by the State.

DISPROPORTIONATE SHARE HOSPITAL ALLOTMENT

In 1987 Congress amended Title XIX (the Medicaid Program) to require states to make enhanced payments for those "safety net" hospitals which provide services to a disproportionate share of Medicaid and low-income patients. The Disproportionate Share Hospital payments were intended to offset the uncompensated costs of providing services to uninsured and underinsured patients. The payments assist in securing the hospitals' financial viability and preserving access to care for Medicaid and low-income clients, while reducing cost shifting to private payers. Since January 1991, the Colorado Medicaid Program has developed and implemented several measures, using Disproportionate Share Hospital payments, to finance Medicaid program expansions and to cover the escalating costs of ongoing Medicaid programs and costs associated with the Colorado Indigent Care Program.

Congress granted states a great deal of flexibility in the design and implementation of these Disproportionate Share Hospital plans. However, as states exercised this flexibility to finance the state share of Medicaid, the federal government became alarmed at the corresponding impact on the federal budget. The federal Balanced Budget Act of 1997 (BBA97) established declining limits on the amount of federal funds available to states for Disproportionate Share Hospital payments. These limits were established as allotments (or caps) for each state starting in Federal Fiscal Year 1997-98 based on their previous levels of payments. Under the Balanced Budget Act of 1997, the allotment for Colorado in Federal Fiscal Year 2000-01 was to be $74 million. However, federal legislation was enacted in December 2000 that provided temporary relief from the Balanced Budget Act of 1997 allotments by maintaining the Federal Fiscal Year 1999-00 allotment of $79 million for Federal Fiscal Years 2000-01 and 2001-02, plus increases tied to the Consumer Price Index for all Urban Consumers (CPI-U) for those years.

For Federal Fiscal Year 2002-03, the Disproportionate Share Hospital Allotment reverted to the Balanced Budget Act of 1997 allotment of $74 million plus an inflationary increase for Colorado. Using an inflationary increase (based on the CPI-U) of 1.5%, the Federal Fiscal Year

2002-03 allotment for Colorado was $75,110,000. Due to the $8,780,890 decrease in the Disproportionate Share Hospital Allotment, Disproportionate Share Hospital provider payments in FY 2002-03 were substantially lower than the previous state fiscal year.

The anticipated Disproportionate Share Hospital Allotment for Colorado in Federal Fiscal Year 2003-04 is $87,127,600, based on provisions in the recently passed Medicare Prescription Drug, Improvement and Modernization Act of 2003. In addition, this act specifies that the Colorado Disproportionate Share Hospital Allotment will remain at $87,127,600 through Federal Fiscal Year 2004-05. It is possible that additional federal legislation could be implemented to change the Federal Fiscal Year 2003-04 or 2004-05 allotments.

Disproportionate Share Hospital Allotment

Federal Fiscal Year	Disproportionate Share Hospital Federal Payment Maximum
1997-98	$93,000,000
1998-99	$85,000,000
1999-00	$79,000,000
2000-01	$81,765,000
2001-02	$83,890,890
2002-03	$75,110,000
2003-04*	$87,127,600
2004-05*	$87,127,600

* Anticipated allotments based on passage of the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

MEDICARE UPPER PAYMENT LIMIT

The Medicare Upper Payment Limit is the maximum amount Medicaid can reimburse a provider and still receive the federal match rate (federal financial participation). The Medicare Upper Payment Limit is relevant to three distinct provider payments: Inpatient Hospital, Outpatient Hospital and Nursing Home payments. The three unique Medicare Upper Payment Limits are calculated by the Department, such that each must be a reasonable estimate of the amount Medicare would reimburse providers for providing Medicaid services.

Medicaid fee-for-service and managed care rates reimburse providers below all three Medicare Upper Payment Limits. This provides an opportunity for the Department to gain a federal match on the difference between the Medicaid fee-for-service and managed care reimbursement and the Medicare Upper Payment Limits. State owned and government owned providers use certification of public expenditures (State or local expenditures), which generate a federal match without a General Fund expenditure.

Colorado Indigent Care Program payments to publicly owned-providers are partially funded using certification of public expenditures under the Medicare Upper Payment Limit for inpatient

hospital services (Inpatient UPL). For FY 01-02 and FY 02-03, a total of $2,645,000 in federal funds had been generated for these Colorado Indigent Care Program payments, which eliminated the need for General Fund to support these payments.

Beginning in FY 1989-90, Colorado Indigent Care Program payments to Denver Health and University Hospital have been partially funded under the Inpatient UPL through a payment commonly known as the "Major Teaching Payment." However, starting in FY 1999-00, utilization of certification of public expenditures for inpatient hospital services eliminated the General Fund portion of the payment. Over the three fiscal years from FY 2000-01 to FY 2002-03, $64,667,000 in federal funds had been generated for these provider payments. In addition to these federal funds, another $26,766,000 in federal funds had been generated through the payments that were contributed back to the State General Fund by Denver Health and University Hospital.

Effective July 1, 2002 the Children's Hospital became eligible to receive a Major Teaching Hospital Payment. An agreement was reached with the Children's Hospital and the Department, such that the hospital would administer the payments to Outstate clinics and in return, the Department would use a portion of the General Fund available under the Outstate clinic payment as Children's Hospital Major Teaching Hospital payment. The payment under the Medicare Upper Payment Limit for inpatient hospital services for FY 2002-03 was $6,119,760. Since the Children's Hospital is a privately owned facility, the certification of public expenditures for uncompensated Medicaid costs at the facility is not allowed as in the Major Teaching Hospital payment to Denver Health and University Hospital. Instead, General Fund is required as the State's share of the payment to receive the federal funds match.

SAFETY NET PROVIDER PAYMENTS

Based on Decision Item 6 from the FY 2003-04 Budget Request submitted by the Department on November 1, 2002, a change in the methodology for the Colorado Indigent Care Program was approved. This request combines the methodologies for rate setting for the Major Teaching Hospital payment, Out-state Indigent Care Program payments, Component 1A Disproportionate Share Hospital payments, Pre-Component 1 Disproportionate Share Hospital payments and Bad Debt payments. In addition, under this new methodology, Denver Indigent Care Program, University Hospital Indigent Care Program, Out-state Indigent Care Program, Disproportionate Share Payments to Hospitals and Pre-Component 1 Disproportionate Share Payments to Hospitals line items were all discontinued, and are now consolidated into the new Long Bill line item, Safety-Net Provider Payments. The primary goal in combining the methodologies was to create a more simplified system that can be more readily understood by Department staff, the General Assembly and providers.

Within the new line item, there would be four separate calculations or payments: Low-Income payment, High-Volume payment, Bad Debt payment and the Medicaid Shortfall payment. The Low-Income payment and the High-Volume payment utilize the same formula to distribute different pools of funds. The Low-Income payment is used to distribute available funds under the Disproportionate Share Hospital Allotment, while the High-Volume payment is used to distribute funds under the Inpatient UPL. The Bad Debt payment is used as a balancing mechanism to maximize the federal funds available under the Disproportionate Share Hospital

Allotment after the Low-Income payment has been distributed. If the Low-Income payment utilizes the entire Disproportionate Share Hospital Allotment, the Bad Debt payment will be zero.

The Medicaid Shortfall payment is a simplified payment to providers who qualify for a Disproportionate Share Hospital payment under the federal guidelines, but do not participate in the Colorado Indigent Care Program. Only three providers are expected to receive this payment in FY 2003-04.

The detailed mathematics associated with these calculations were provided within Decision Item 6 from the FY 2003-04 Budget Request submitted by the Department on November 1, 2002.

II. RECENT HISTORY

Given that the Safety Net Provider Payments utilized federal funds, the payment methodologies must be approved by the Centers for Medicare and Medicaid Services (CMS) prior to the distribution of funds. Since July 1, 2003, the Department had been paying interim payments to providers using the previous payment methodologies until the Centers for Medicare and Medicaid Services approves the Safety Net Provider Payments methodology. On June 3, 2003, the Department submitted two State Plan Amendments to the National Institutional Reimbursement Team (NIRT), a section of the Centers for Medicare and Medicaid Services, which is responsible for reviewing State Plan Amendments dealing with inpatient hospital services.

Under the direction of the National Institutional Reimbursement Team, the Department has made considerable effort to revise the two State Plan Amendments necessary for the finalization of the Safety Net Provider Payments. The National Institutional Reimbursement Team submitted questions on the two State Plan Amendments to the Department on August 29, 2003. In an attempt to accelerate approval, the Department submitted responses to these questions in draft form on September 19, 2003. After considerable discussion and compromise with the National Institutional Reimbursement Team, the Department submitted a final response to address the Centers for Medicare and Medicaid Services questions on November 12, 2003. The Department requested that Centers for Medicare and Medicaid Services approve the two State Plan Amendments by December 15, 2003. However, the Centers for Medicare and Medicaid Services had up to 90 days from the date the final responses were submitted to approve these two State Plan Amendments.

On January 16, 2004, the Department was notified that the National Institutional Reimbursement Team would recommend the two State Plan Amendments for approval to the Centers for Medicare and Medicaid Services Medicaid Director. On January 22, 2004, the Department received a notice that the Centers for Medicare and Medicaid Services Medicaid Director had approved the State Plan Amendments and that official written notice would follow shortly.

In addition to the approval of the two State Plan Amendments, the Department had asked the National Institutional Reimbursement Team to review a revised calculation for the Inpatient UPL. The revised Inpatient UPL calculations are based on Medicare payment per discharge instead of the Medicare hospital base rates utilized in the current calculation. The revised Inpatient UPL calculation is significantly higher than the current calculation. Current and future calculations of the Inpatient UPL, starting in FY 2002-03, would be impacted by this revision. The Department expects to receive endorsement of the Inpatient UPL calculation in February 2004.

Because of these adjustments to the Inpatient UPL calculation for FY 2002-03 and FY 2003-04, the Department will examine releasing additional Major Teaching payments for FY 2002-03 and a UPL Payment for FY 2003-04. Thus, the Department will consider submitting a FY 2004-05 Supplemental Request so funds can be appropriated by the General Assembly. At that time, the Department will examine the FY 2004-05 High-Volume payment and submit any necessary adjustments due to the revised Inpatient UPL calculation.

At this time, a full comparison of the individual provider payments made under the previous payment methodologies versus the Safety Net Provider payments approved under Decision Item 6 are not available for several reasons. Since the Safety Net Provider payments have not been officially approved in writing by the Centers for Medicare and Medicaid Services, providers have not been formally notified of their FY 2003-04 rates. In addition, the anticipated Disproportionate Share Hospital Allotment for Colorado in Federal Fiscal Year 2003-04 of $87,127,600, based on provisions in the recently passed Medicare Prescription Drug, Improvement and Modernization Act of 2003, is not official until formally published in the Federal Register by the Centers for Medicare and Medicaid Services. Until the figure is published, we will not know the actual number; we are presently working with estimates computed by the Department based on the published policy of a 16% increase. The anticipated change to the Federal Fiscal Year 2003-04 Disproportionate Share Hospital Allotment will alter the FY 2003-04 provider rates. The Department anticipates the Federal Fiscal Year 2003-04 Disproportionate Share Hospital Allotment to be published in February 2004. The Department will complete a detailed analysis to illustrate the impact on individual providers for FY 2003-04 due to the approved change in reimbursement methodology by April 15, 2004.

SUMMARY

Funding for the Colorado Indigent Care Program is through to two unique funding sources. These funding sources are the Disproportionate Share Hospital Allotment and the Medicare Upper Payment Limit for inpatient hospital services (Inpatient UPL), which are financed with General Funds, federal funds and certification of public expenditures. The anticipated Disproportionate Share Hospital Allotment for Colorado in Federal Fiscal Year 2003-04 is $87,127,600, based on provisions in the recently passed Medicare Prescription Drug, Improvement and Modernization Act of 2003. This act specifies that the Colorado Disproportionate Share Hospital Allotment will remain at $87,127,600 through Federal Fiscal Year 2004-05. In addition, FY 2004-05 High-Volume payment will utilize an Inpatient UPL calculation for FY 2004-05, which is under review by the National Institutional Reimbursement Team.

Given that the Safety Net Provider Payments utilize federal funds, the payment methodologies must be approved by the Centers for Medicare and Medicaid Services (CMS). On June 3, 2003, the Department submitted two State Plan Amendments to the National Institutional Reimbursement Team, a section of the Centers for Medicare and Medicaid Services, which is responsible for reviewing State Plan Amendments dealing with inpatient hospital services. On January 22, 2004, the Department received a notice that the Centers for Medicare and Medicaid Services Medicaid Director had approved the State Plan Amendments and that official written notice would follow shortly.

At this time, a full comparison of the individual provider payments made under the previous payment methodologies versus the Safety Net Provider payments approved under Decision Item 6 are not available. Such a comparison would require the publication of provider rates for FY 2003-04 prior to official notification of these rates to providers. In addition, the FY 2003-04 final provider rates cannot be set until the Federal Fiscal Year 2003-04 Disproportionate Share Hospital Allotment has been formally released by the Centers for Medicare and Medicaid Services. The Department will complete a detailed analysis to illustrate the impact on individual providers for FY 2003-04 due to the approved change in reimbursement methodology by April 15, 2004. This analysis will be submitted to the Joint Budget Committee if requested.