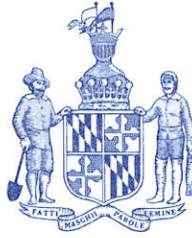


BRIAN E. FROSH
Attorney General

ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General



WILLIAM D. GRUHN
Chief
Consumer Protection Division

Writer's Direct Dial No.

410-576-6515

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

May 8, 2017

Nancy Grodin
Deputy Insurance Commissioner
Maryland Insurance Administration

Re: Draft Network Adequacy Regulations

Dear Ms. Grodin,

On behalf of consumers, the Health Education and Advocacy Unit of the Office of the Attorney General (HEAU) thanks you and the Commissioner's staff for the substantial time and effort all of you have spent drafting proposed regulations to carry out the intent of the network adequacy legislation enacted in the 2016 session. The legislation was modeled on the NAIC's Health Benefit Plan Network Access and Adequacy Model Act ("the Model Act"). As the NAIC has stated, "Network adequacy refers to a health plan's ability to deliver the benefits promised by providing reasonable access to a sufficient number of in-network primary care and specialty physicians, as well as all health care services included under the terms of the contract."¹ The lack of quantitative standards has made it difficult for some consumers to access in-network care and to hold carriers accountable for the lack of access, even when HEAU has attempted to assist these consumers. As a result, they have borne the costs of out-of-network care, which can be significant and, for some consumers, devastating. Thus the legislature intended to provide consumers quantitative protections against network inadequacy because the "reasonable access" standard proved ineffective.

HEAU believes the quantitative metrics included in the draft regulations – appointment wait times and distance standards – offer much improved protections for consumers. HEAU is

¹ http://www.naic.org/cipr_topics/topic_network_adequacy.htm



Nancy Grodin
Deputy Insurance Commissioner
May 8, 2017

concerned, however, that the quantitative protections may be subverted by subsection .07, Waiver Request Requirements.

As drafted, subsection .07 is at odds with the remedial statutory scheme enacted to impose quantitative standards on carriers. In contravention of this goal, subsection .07 would allow a carrier to obtain a waiver of one or more of the new network adequacy requirements, for up to one year. HEAU is concerned that, as drafted, subsection .07 could be inappropriately interpreted to allow repeated waivers of one or more quantitative standards. The waivers proposed in subsection.07 are conceptually inconsistent with quantitative network adequacy standards meant to give carriers specific metrics for fulfilling the promises they make to consumers and threaten to nullify legislative intent. HEAU urges the Commissioner to instead employ corrective action orders to address the rare but foreseeable inadequacies that may occur due to conditions not under the control of carriers. In finalizing these regulations, HEAU further urges the Commissioner to reject the notion that carriers may avoid network adequacy requirements on grounds other than providers being physically unavailable to contract within a distance standard, or being physically unavailable in sufficient numbers to contract within a distance standard.

Corrective action orders are established elements in network adequacy regulatory schemes. For instance, current regulations authorize the Commissioner to “order a carrier to take reasonably appropriate corrective action” for a regulatory violation, COMAR 31.10.34.06, and the NAIC’s Model Act authorizes use of a corrective action plan to ensure compliance with the Act, in Section 13, Enforcement.² In the newly amended statute, the legislature expressly included the enforcement tool, stating that the “Commissioner may order corrective action if, after review, the access plan is determined not to meet the requirements of this subsection.” Insurance Article, § 15-112(c)(2)(iii). This provision relates to the access plan as originally filed and/or materially changed, both subject to the Commissioner’s review. Insurance Article, § 15-112(c)(2)(i) and (ii)(2).

HEAU requests that subsection .03, Filing of Access Plan, be amended to add the language contained in Insurance Article, § 15-112(c)(2)(iii), in a way that tracks the statute and makes it clear the corrective action order is to follow the Commissioner’s review of a plan as originally filed and/or materially changed.³ Out-of-network care costs incurred by enrollees until the corrective action is taken by the carrier should be the financial responsibility of the carrier, if costs exceed what the enrollee would have paid for in-network care. HEAU proposes this

² <http://www.naic.org/store/free/MDL-74.pdf>

³ HEAU defers to the Commissioner’s staff on the drafting, because draft subsection .03 is structured differently than the statute.

Nancy Grodin
Deputy Insurance Commissioner
May 8, 2017

language, modeled on current COMAR 31.10.34.06.B (2), but updated to reflect 2016 legislative intent: “A CARRIER SHALL REIMBURSE, TO AN ENROLLEE WHO RECEIVED SERVICES DURING THE TIME THE CARRIER FAILED TO MEET THE QUANTITATIVE STANDARDS FROM A PROVIDER THAT WAS NOT IN THE CARRIER’S NETWORK, THE OUT-OF-POCKET COSTS OF SUCH SERVICES EXCEPT FOR ANY DEDUCTIBLE, COPAYMENT, OR COINSURANCE AMOUNT THE ENROLLEE WOULD HAVE PAID TO AN IN-NETWORK PROVIDER FOR THE SERVICES.”

HEAU further requests an amendment requiring a carrier to publish the corrective action order in the manner necessary to inform consumers of the inadequacy and the carrier’s reimbursement obligation; this should extend to all marketing materials, also.⁴

Consumers have appeal and grievance rights arising out of coverage decisions and adverse decisions. When an appeal or grievance relates to alleged network inadequacy, consumers should have access to the information identified in subpart .08, Confidential Information in Access Plans, which includes information about the methodology used to annually assess the carrier’s performance and to measure timely access to health care services, as well as factors used by the carrier to build its provider network. Accordingly, HEAU proposes this amendment to subsection .08: “B. AN ENROLLEE IS ENTITLED TO ACCESS THE INFORMATION IN SUBPART A FOR THE PURPOSE OF PURSUING APPEAL AND GRIEVANCE RIGHTS UNDER THE INSURANCE ARTICLE.”

HEAU believes there should be a cap on the amount of time a carrier may take to file an updated access plan following a material change, and asks that subsection .03.B (2) be amended to read as follows: “Include in the notice required under § B (1) of this regulation a reasonable timeframe, NOT TO EXCEED 30 DAYS FROM FILING THE NOTICE, within which the carrier will file with the Commissioner an update to the existing access plan for review by the Commissioner.” This cap is reasonable because the carrier has 15 days to file the notice, *after* the material change occurs.

Finally, HEAU believes consumers would be well-served by the express inclusion of the following hospital-based providers in subsection .04, Geographic Accessibility of Providers: anesthesiology, emergency medicine, interhospital transportation services, neonatal-perinatal medicine and pathology. These providers have historically been underrepresented in networks, to the detriment of consumers in PPO plans, though some improvement in recent years has been

⁴ HEAU defers to Commissioner’s staff on the drafting.

Nancy Grodin
Deputy Insurance Commissioner
May 8, 2017

documented.⁵ The new network adequacy regulations present a welcome opportunity to protect consumers from the possibility of lower participation rates in the future among these providers of essential hospital services.

Thank you for your consideration of HEAU's comments and requests.

Sincerely,



Patricia F. O'Connor
Assistant Attorney General
Deputy Director
Health Education and Advocacy Unit

⁵ http://mhcc.maryland.gov/mhcc/pages/plr/plr/documents/LGSPT_AOB_rpt_20150115.pdf