May 6, 2017

Ms. Lisa Larson
Assistant Director of Regulatory Affairs
Maryland Insurance Administration
200 St. Paul Place, Suite 2700
Baltimore, MD 21202

Re: Draft 31.10.44 Network Adequacy

Dear Ms. Larson,

On behalf of the 13,500 U.S. members of the American Academy of Dermatology Association ("Academy"), I am writing to support the draft rules issued by the Maryland Insurance Administration (MIA) as a first step forward in establishing network adequacy requirements in Maryland and offer the following comments:

.02 Definitions:

(12) Material Change to an access plan: We believe the draft definition of "material change" is vague. We recommend deleting the definition and substituting it for the following:

> *A change in network that could cause the coverage to fail to meet the actuarial value of a plan, due to a change in benefit design that modifies the recipient's benefits, including but not limited to, physician network or drug coverages.*

(26) Telemedicine: While telemedicine is a viable option to deliver quality care to patients in some circumstances, the Academy supports the preservation of a patient's choice to have access to in-person dermatology services. A patient's choice to have access to in-person services should not be replaced by telehealth technology nor should telemedicine be utilized to meet network adequacy standards for a health care plan.

(27) Tiered network: The Academy believes it is essential that patients with chronic, complex, or high-risk conditions should have affordable access to the treatments they require. To ensure that adequate patient access is available to all providers while retaining the carrier's ability to tier physicians, we recommend developing language that would ensure plans are not designed in a manner that could be deemed discriminatory; specifically, tiering criteria shall not be established in a manner that would disproportionately tier (out of the lowest cost tier) providers that treat or specialize in treating populations presenting a risk of higher than average claims, losses or health care service utilization, if applicable. To this end, we recommend adding the following language:

Tiering criteria shall not be established in a manner:

a) That would allow a carrier to discriminate against high-risk populations by excluding and tiering providers because they are located in geographic areas

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that contain populations or providers presenting a risk of higher than average claims, losses or health care services utilization; or

b) *That would exclude providers because they treat or specialize in treating populations presenting a risk of higher than average claims, losses or health care services utilization.*

.04 Geographic Accessibility of Providers: While we appreciate that dermatology is listed among the specialties for geographic area distance requirements, the Academy believes the draft rules could limit MIA's evaluation of provider access to the general specialty for each of the categories listed in .04 and recommends adding standards to ensure adequate access to sub-specialties. Dermatology has several sub-specialties, including Mohs Micrographic Surgery and Pediatric Dermatology, that without adequate access, patient care could be delayed or deferred, resulting in higher costs. This would also include defining "subspecialty" in Section .02 as follows:

> ***Subspecialty****: A physician whose scope of residency or fellowship training encompasses the treatments, conditions, or procedures for which subspecialization is being claimed.*

.05 Waiting Times for Appointments with Providers: The Academy supports the wait-time standards set forth under non-urgent specialty care. To strengthen this section, we request such wait-times apply to the wait-time for board-certified physicians. This would ensure carriers offer plans that enable patient access to physicians in a timely manner.

.07 Waiver Request Requirements: This section would authorize carriers to apply for a network adequacy waiver if the carrier demonstrates that physicians or other health care providers necessary for an adequate local market network are:

1. Not available to contract;
2. Not available in sufficient numbers;
3. Available, but refused on any terms or terms that are unreasonable; or
4. Unable to reach agreement with the carrier.

We are concerned that this section is too subjective and does not set forth any parameters to determine what is "unreasonable" or why the parties could not reach an agreement. Additionally, the Academy is concerned that as currently written, the MIA would create a "race to the bottom" in which a provider can accept below market rates that become "reasonable" terms and conditions that all other providers must accept; therefore, the Academy requests the following amendments to .07:

> This section would authorize carriers to apply for a network adequacy waiver if the carrier demonstrates that physicians or other health care providers necessary for an adequate local market network are:
>
> 1. Not available to contract; or
> 2. Not available in sufficient numbers;

~~3. Available, but refused on any terms or terms that are unreasonable; or~~
4. ~~Unable to reach agreement with the carrier~~.

A carrier can also apply for a network adequacy waiver if the carrier demonstrates that the carrier and provider or physician within the maximum travel distance or time standards established in sections .04 and .05 negotiated in good faith, but the parties were unable to reach an agreement. For the purposes of this regulation, a contract offered by the carrier with terms and conditions that two-thirds (67%) of willing, similarly-situated providers would accept or have accepted is considered a contract offered in good faith.

The Academy commends the Maryland Insurance Administration on its effort to ensure the citizens of Maryland have access to needed health care services in a timely fashion and urges the MIA to include the proposed amendments described above. Should you have any questions, please contact David Brewster, assistant director of practice advocacy, at 202-842-3555 or dbrewster@aad.org.

Sincerely,

Henry W. Lim, MD, FAAD
President
American Academy of Dermatology Association