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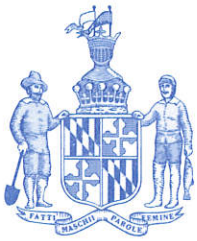

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OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

Writer's Direct Dial No.
410-576-6515

February 2, 2017

Nancy Grodin
Deputy Insurance Commissioner
Maryland Insurance Administration

Re: Network Adequacy Regulations

Dear Ms. Grodin,

As the unit in the Consumer Protection Division that assists consumers enrolled in private insurance with complaints about inadequate networks and related issues, the Office of the Attorney General's Health Education and Advocacy Unit (HEAU) thanks you and your staff for holding comprehensive public hearings about network adequacy standards for the forthcoming regulations. 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. HEAU supported HB 1318 during the 2016 legislative session because its strengthened network adequacy scheme promises to protect consumers from such costs and other harms.

The amended network adequacy statute requires carriers to file network access plans once a year with the Commissioner who must evaluate the network's sufficiency according to quantitative, and if appropriate, nonquantitative criteria in the new regulations, § 15-112(d). The new regulations are, among other things, to ensure availability of health care providers to meet the health care needs of enrollees, § 15-112(b)(1)(i), and that all enrollees have access to providers and covered services without unreasonable travel or delay, § 15-112(b)(3)(i).

Some testimony has suggested that quantitative standards will not establish network adequacy, but HEAU trusts the Commissioner will reject the suggestion because HB 1318 requires plans to meet quantitative standards so they must be formulated and adopted. HEAU supports the quantitative standards proposed by Consumer Health First, the University of Maryland Carey School of Law Drug Policy Clinic and the Mental Health Association of Maryland because, based

on testimony and information in the public hearing record about quantitative standards used in other states and federal regulations, they are specific and attainable.

HEAU's past advocacy for consumers revealed how easily carriers may shift costs of care to consumers when network adequacy is not evaluated according to quantitative standards. HEAU hopes the new standards – if specific and strong enough - will improve access for consumers. If the new standards do not, they will provide a better basis for consumers and their advocates when they seek to enforce contract rights to in-network care or to out-of-network care without out-of-network costs.

The amended statute also provides that the Commissioner shall, if appropriate, adopt nonquantitative criteria to evaluate network sufficiency, § 15-112(d). HEAU respectfully submits that there must be maximum transparency and accountability for the amended statute to protect consumer interests, and asks that the following concerns be addressed in the new regulations.

Network participation barriers

During the public hearings, there was conflicting testimony about the reasons why some providers choose not to participate in networks with carriers. By means of other authority, or through nonquantitative regulations, HEAU asks that the Commissioner ascertain the facts relating to network participation by providers, particularly behavioral health providers. It seems reasonable to require carriers to document their outreach and recruitment efforts, and for the MIA to take whatever action may be appropriate, within its regulatory authority, to reduce or eliminate barriers to participation.

HEAU also asks that the Commissioner consider monitoring data about provider denials and terminations for possible violations of §§ 15-112(h)(2)-(4) and (k) which prohibit denying applications from or terminating contracts with providers who have filed internal and external appeals and grievances on behalf of patients. Provider advocacy for patients is vitally important to HEAU's advocacy in appeals and grievances. The express provisions of the amended statute offer protections against denials and terminations, but HEAU questions how the protections can be effectively enforced, absent monitoring of data. This could be achieved through a new regulation or existing authority.

Payment rates are cited by both sides in this conflict: carriers say providers' rates are too high, providers say carriers' payments are too low. Carriers often counter with promises of bonuses payable through internal managed care programs. The effect may be that providers who continue to advocate for consumers in the traditional manner may end up making less than providers who do not, further muting the provider advocacy that is so important to consumers. Whether this leads to termination is unclear, but HEAU is concerned about financial incentives that violate the spirit and/or the letter of the amended statute, and asks that the Commissioner consider monitoring the related data from carriers.

Possible cost-shifting under temporary inadequacy

HEAU asks that the regulations close any gap in network access that may result from the circumstances described in § 15-112(c)(ii) and (iii) and ensure that costs arising out of temporary inadequacy are not shifted to consumers.

Limiting confidentiality of access plans

Parts of the access plan filed with the Commissioner may be considered confidential by a carrier pursuant to § 15-112(c)(3)(ii). HEAU asks that the regulations strictly limit the standard for confidentiality. This would preserve the National Association of Insurance Commissioners' (NAIC) intent for access plans to be considered public information, subject to protections in a state's open records law. See Drafting Note to Section 5.E (2) of Model Act-74.

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

Sincerely,

Patricia F. O'Connor

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