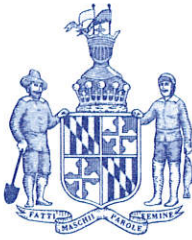


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STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

August 21, 2017

Via email: networkadequacy.mia@maryland.gov

Lisa Larson
Regulations Manager
Maryland Insurance Administration
200 St. Paul Place, Suite 2700
Baltimore, MD 21202

Re: Proposed Network Adequacy Regulations

Dear Ms. Larson,

The Health Education and Advocacy Unit of the Office of the Attorney General's Consumer Protection Division appreciates the opportunity to comment on the Proposed Network Adequacy Regulations issued by the Commissioner, which reflect changes made to the Draft regulations after informal stakeholder comments. HEAU generally incorporates its May 2, 2017 comment letter on the Draft regulations herein, and re-emphasizes the following points:

1. Consumer harm is likely to result from the proposed waiver of network adequacy requirements (31.10.44.07).

There should be no waiver of any network adequacy requirements because waivers are likely to undercut the intended remedial effect of the 2016 legislation. The current regulatory scheme holds carriers to a "reasonable access" standard without defining what that means in quantitative terms. The lack of quantitative standards made it difficult for some consumers to access in-network care and to hold carriers accountable for the lack of access, even when HEAU attempted to assist these consumers. Affected consumers have had to forego necessary care or bear 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. Not applying quantitative standards across the board, without exception, risks leaving the "reasonable access" standard and all of its deficiencies effectively in place, contrary to legislative intent.

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During the debate about the 2016 legislation, HEAU advocated for the simple proposition that a consumer should get the benefit of his bargain with a carrier: quantitatively reasonable access to a sufficient number of in-network primary care and specialty providers, as well as all health care services included under the terms of the contract. Consumers believe every contract is backed up by adequate networks because they are told that is what the law requires. But the waiver provision, as drafted, would allow carriers to have secret permission to not meet the quantitative standards, and to not, in fact, provide consumers what they thought they were buying. On behalf of consumers, HEAU urges elimination of Proposed 31.10.44.07.

2. The 2016 legislation expressly included corrective action orders, not waivers.

In finalizing these regulations, HEAU 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. Instead of waivers, HEAU urges the Commissioner to employ corrective action orders to address the rare but foreseeable inadequacies that may occur due to conditions not under the control of carriers.

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.¹ The enforcement tool was expressly included by the legislature when the network adequacy statute was updated: 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 31.10.44.03, Filing of Access Plan, be amended to track the statute by adding subpart (1) containing language derived from the statute: “The Commissioner may order corrective action if, after review of a newly filed or materially changed access plan, the access plan is determined not to meet the requirements of Insurance Article, §§ 15-112(b) and (c).”

3. Consumers should not bear the costs of inadequate networks.

Carriers are in the business of insurance and should bear the costs of the rare but foreseeable inadequacies that may occur. Out-of-network care costs incurred by consumers should be the

¹ <http://www.naic.org/store/free/MDL-74.pdf>

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financial responsibility of the carrier, if costs exceed what the enrollee would have paid for in-network care. HEAU proposes this language, modeled on current COMAR 31.10.34.06.B (2), but updated to reflect 2016 legislative intent: "An enrollee who receives services from an out-of-network provider because the carrier failed to meet quantitative standards is entitled to reimbursement by the carrier for the out-of-pocket expenses except for any deductible, copayment or coinsurance amount the enrollee would have paid an in-network provider for the services."

HEAU further requests an amendment requiring a carrier to inform consumers of the inadequacy and the carrier's reimbursement obligation; this should extend to all marketing materials, also.

4. Consumers are entitled to more transparency.

HEAU urges the Commissioner to reject the proposed provisions in 31.10.44.08B-D, which were added after stakeholders commented on the Draft regulations and creates a process that would enable carriers to keep virtually all information related to network adequacy secret from the public. The trend is to increase public access to government records, not decrease it, which is a sufficient basis for rejecting the provisions. But the provisions are unnecessary given the breadth of 31.10.44.08A which mandates confidentiality for the methodology used to annually assess the carrier's performance in meeting quantitative standards and annually measure timely access to health care services, as well as the factors used by the carrier to build its network.

HEAU submits 31.10.44.08 is overly broad and could interfere with consumers' appeals and grievances rights. When an appeal or grievance relates to alleged network inadequacy, consumers should have access to the information identified in 31.10.44.08A. Accordingly, HEAU proposes this language be added to the Proposed regulation: "An enrollee is entitled to access the information in subpart A for the purpose of pursuing appeals and grievance rights under the Insurance Article."

5. Concerns about definitions, travel distance standards and appointment waiting time standards.

The Proposed regulations changed important provisions in the Draft regulations, particularly the definitions and quantitative standards derived from Medicare Advantage plans. The historical experience of the plans provided consumers a level of confidence in the Draft regulations' standards. We do not know whether the Proposed regulations are based on historical experience or not. Proposed 31.10.44.02(19), (21) and (24) define rural area, suburban area and urban area by referring to the Maryland Department of Planning but do not incorporate references to a state map that would show consumers how their relevant areas are actually defined. HEAU submits that a clearer definition is required for consumer understanding and protection.

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HEAU asks that the following providers be reinstated from the Draft regulations to the charts contained in Proposed 31.10.44.04: cardiothoracic surgery, cardiac surgery program, cardiac catheterization services, mammography, physical therapy, occupational therapy, and speech therapy.

HEAU also believes consumers would be well-served by the express inclusion of the following specifically enumerated hospital-based providers in Proposed 31.10.44.04: 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 documented.² These 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.

HEAU also asks for reinstatement of an urgent care wait time of no longer than 48 hours.

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

² http://mhcc.maryland.gov/mhcc/pages/plr/plr/documents/LGSPT_AOB_rpt_20150115.pdf