

Via Regular U.S. Mail and E-Mail to networkadequacy.mia@maryland.gov

May 8, 2017

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

Dear Ms. Larson:

Thank you for the opportunity to provide comments to the Maryland Insurance Administration (MIA) regarding regulations to implement HB1318/SB 929 that will be codified at Title 31, Subtitle 10, Chapter 44 of the Maryland Code. In particular, we appreciate the opportunity to provide feedback to the MIA on the draft network adequacy regulations that were posted on the MIA's website on April 7, 2017.

1. Sub-section .02(29) – Definition of Waiting Time

The draft regulations include in the definition of waiting time the following: “the time for obtaining authorization from the carrier or the carrier’s participating providers for the appointment.” Since waiting time includes time for obtaining authorization, it is our position that such time should be measured from when a carrier receives a request for authorization. It is also our position that the regulations should reflect that “waiting time” includes the time for *obtaining an authorization* decision from the carrier regarding a service or item rather than merely the “time for obtaining authorization.” Use of the term authorization alone could suggest that a carrier will authorize coverage of a service or item. We respectfully submit that the regulations should reflect the range of possible outcomes when an insured seeks an authorization decision from a carrier.

2. Sub-section .03(A) – Filing of Access Plans

The draft regulations reflect a due date of July 1, 2018 for a carrier to submit a first access plan filing and then on July 1 annually thereafter. We respectfully request an opportunity to engage with the MIA in the development of the format and form of the access plan that carriers will be required to submit. We believe that collaboration in this regard will result in the production of an access plan format and form that can be efficiently completed and timely submitted by carriers.

3. Sub-section .04 – Geographic Accessibility of Providers

We observed that telemedicine is not specifically called out in the draft regulations except in the Definitions section. We respectfully submit that additional guidance is needed to enable carriers to reconcile the availability of telemedicine providers with the use of distance standards in sub-section .04.

4. Sub-section .04(A)(2) – Geographic Accessibility of Providers - Sufficiency Standards

The chart of specialty and geographic area distance requirements includes the categories “Other Medical Provider Not Listed” and “Other Facilities.” We respectfully submit that clarification is needed concerning the types of specialties that will fall within these catch-all categories and how compliance will be monitored and enforced by the MIA.

5. Sub-section .04(C)– Essential Community Providers

The Centers for Medicare and Medicaid Services recently lowered the standard for Essential Community Providers from 30% to 20% (*see* copy of CMS Market Stabilization Final Rule at <https://s3.amazonaws.com/public-inspection.federalregister.gov/2017-07712.pdf>). We respectfully submit that parity between the Federal and State standards promotes market efficiency and submit that a 20% (rather than a 30%) threshold for Essential Community Providers should be reflected in the regulations.

6. Sub-section .05 – Waiting times for Appointments with Providers

We fully support the goal of ensuring that members have adequate access to care. It is critical that access is measured by the availability of providers qualified to offer medically necessary care notwithstanding the possibility that an available provider may or may not be a member’s first choice. With respect to waiting times for appointments with providers, we think it is important that the regulations reflect that access and adequacy are met when a carrier has a qualified provider available to render medical care needed. We also respectfully request that the MIA consider whether and to what extent there are an adequate number of licensed providers in communities available to enable carriers to meet the timeframes in this sub-section .05.

7. Sub-section .07(C)(2) – Waiver Request Requirements

We fully support the inclusion of waiver request availability in the regulations. However, we do not think that carriers should submit a copy of the network adequacy waiver request form to any provider or physician named in the network adequacy waiver request at the same time the carrier submits the network adequacy waiver request form to the Commissioner. We think that providing copies of waiver request forms to providers will invite disputes concerning what constitutes reasonable contract terms and/or good faith contract negotiations. It is likely that the MIA would be asked to arbitrate such disputes

– a responsibility that the MIA should not assume, but that should remain solely with the parties to a potential contract. For these reasons, we respectfully request that the MIA strike sub-section .07(C)(2) from the regulations.

We again appreciate the opportunity to provide comments on the draft proposed network adequacy regulations and look forward to the MIA's consideration of our observations. Please feel free to contact me at 240-683-5374 if you have questions concerning our comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Fleig', with a large, sweeping flourish at the end.

John Fleig, Chief Operating Officer
UnitedHealthcare of the Mid-Atlantic