March 2, 2015

J.P. Wieske, Chair of the NAIC Network Adequacy Model Review (B) Subgroup  
National Association of Insurance Commissioners (NAIC)  
701 Hall of States  
444 North Capitol Street, NW, Suite 701  
Washington, DC 20001

Dear Mr. Wieske:

The Association for Community Affiliated Plans (ACAP) respectfully submits comments regarding a proposed change to Section 1 of the Health Benefit Plan Network Access and Adequacy Model Act.

ACAP is an association of 59 not-for-profit and community-based Safety Net Health Plans (SNHPs) located in 24 states. Our member plans provide coverage to approximately 12 million individuals enrolled in Medicaid, the Children’s Health Insurance Program (CHIP) and Medicare Special Needs Plans for dually-eligible individuals. Nationally, ACAP plans serve roughly one-third of all Medicaid managed care enrollees. Eighteen of ACAP’s Safety Net Health Plan members have elected to offer qualified health plans (QHPs) in the Marketplaces in 2015.

We appreciate all of the work that the Network Adequacy Model Review (B) Subgroup has put into the Act thus far as well as the Subgroup’s receptivity to comments. Once complete, the Act will be helpful to both states and HHS as they begin to develop their own network adequacy requirements. ACAP along with many other organizations submitted recommended changes to the draft Act for the consideration of the Subgroup. In reviewing the comments submitted by other organizations, we found the Children’s Hospital Association’s recommended addition of a drafting note to Section 1 regarding Medicaid managed care plans particularly troubling. The suggested drafting note reads:

**Drafting Note:** In addition to applying the standards articulated in this Act to fully insured benefit plans, including qualified health plans (QHPs), states should consider adopting these standards for Medicaid managed care plans operating in the state. This standardization will assure that all networks are adequate to provide access to the covered services and will also support continuity of care for covered persons that transition back and forth between Medicaid and fully insured plans.

ACAP disagrees with including the proposed drafting note in the Model Act. Under the Medicaid controlling federal statute, regulations are issued on the federal level that set the floor that state contracts and managed care contracts must meet in terms of number of issues, including network adequacy. State Medicaid contracts with managed care organizations provide for additional requirements that take into account the needs of the population being served. Both the federal regulations and state requirements stress beneficiary protections and are written to meet the unique needs of Medicaid beneficiaries - needs that are often different than those encountered by a commercial plan. For example, federal requirements prohibit providers from balance billing Medicaid beneficiaries in all circumstances. The Act, as currently drafted, does not
provide this level of protection to beneficiaries and would be in conflict with the federal Medicaid requirements if a state were to extend the Act to include Medicaid managed care. Therefore, suggesting that the NAIC Model Act should apply to Medicaid Managed Care in order to ensure standardization does not take into account these unique needs and may result in conflicts at the state and federal level.

This drafting note would suggest that the authority to regulate Medicaid network adequacy should lie with a states’ Department of Insurance Commissioner, which is not customary in all states. Additional research needs to be completed comparing the populations served in the commercial and Medicaid markets before making the assumption that the standardization of network adequacy requirements across programs is the right approach for Medicaid members. For these reasons, ACAP urges the Subgroup to not adopt the Title 1 drafting note suggested by the Children’s Hospital Association.

**Conclusion**

ACAP thanks you for your willingness to discuss these issues with us. If you have any additional questions or comments, please do not hesitate to contact Deborah Kilstein (202-341-4101, dkilstein@communityplans.net).

Sincerely,

Margaret A. Murray
Chief Executive Officer