January 12, 2015

Jolie H. Matthews  
Senior Health and Life Policy Counsel  
National Association of Insurance Commissioners  
444 N. Capitol Street, NW  
Suite 701  
Washington, DC  20201

Re: Comments Regarding Draft of Proposed Revisions to the NAIC Managed Care Plan Network Adequacy Model Act (#74)

Dear Ms. Matthews:

The American Association for Marriage and Family Therapy is the national association representing the professional interests of more than 60,000 licensed marriage and family therapists (LMFTs) throughout the United States. The AAMFT would like to thank the National Association of Insurance Commissioners and the NAIC’s Network Adequacy Model Review (B) Subgroup for providing us with an opportunity to comment on the Subgroup’s initial draft of proposed revisions to the Managed Care Plan Network Adequacy Model Act, dated November 12, 2014.

AAMFT believes that the initial draft is an improvement over the current Model Act. However, we believe that revisions are needed to the initial draft in order to ensure that network adequacy standards are sufficient in numbers and types of providers and that the Model Act does not conflict with federal law. AAMFT is a signatory to the letter from over 100 organizations to Commissioners Sandy Praeger and Theodore K. Nickel, dated November 16, 2014. This correspondence recommends revising the Model Act to include provisions pertaining to provider networks, an active regulatory review of provider networks and other important provisions.

In addition to the recommendations included in the November 16th correspondence from the healthcare organizations, which AAMFT strongly endorses, we believe that one other significant change will need to be included in the final draft of the Model Act. This significant change would be a requirement that health carriers must allow enrollees in a health plan to select from any licensed or certified health care provider who is providing services within the provider’s scope of practice and is willing to abide by a health plan’s terms and conditions.

Under federal law, Section 2706(a) of the Public Health Service Act, health carriers are prohibited from discriminating against any health care provider, with respect to plan participation or coverage, who is acting within the scope of that provider’s license or certification under state law. The full text of Section 2706(a) states as follows:

A group health plan and a health insurance issuer offering group or individual health insurance coverage shall not discriminate with respect to participation under the plan or coverage against any health care provider who is acting within the scope of that provider's license or certification under applicable State law. This section shall not require that a group health plan or health insurance issuer contract with any health care provider willing to abide by the terms and conditions
This important network adequacy provision applies to all health carriers regulated under state insurance laws. Section 2706(a) promotes network adequacy by ensuring that patients can choose a licensed or certified provider from among all categories of health care providers recognized by a state. By prohibiting health carriers from discriminating with respect to plan participation or coverage against a health care provider acting within the scope of that provider’s licensure or certification under state law, Section 2706(a) provides a patient with the opportunity to choose from a larger pool of providers and from a greater variety of licensed professionals. Therefore, Section 2706(a) is an important component in ensuring that patients have access to an adequate network of licensed or certified healthcare providers.

In reviewing the initial draft of the Model Law, we noticed that Section 6F(5) amends Section 6F(3) of the current Model Act by eliminating the phrase “or types of providers.” We applaud the Subgroup for eliminating the phrase “or types of providers” since the inclusion of the phrase is directly contrary to the language in Section 2706(a). We also noticed that Section F includes provisions similar to the language in the last two sentences of Section 2706(a).

By removing the language in the current Model Act that specifically allows health carriers to discriminate against providers based upon provider type, Section 6F(5) of the initial draft is an improvement over the language in the current Model Act. However, neither Section 6F(5) or any other provision of the initial draft affirmatively requires that health carriers not discriminate with respect to plan participation or coverage against any health care provider who is acting within the scope of that provider’s license or certification under state law. The revised Model Act is intended to serve as the template for commissioners and state legislators to follow in making the necessary revisions network adequacy laws in their own states. As such, the revisions to the Model Act should include all important network adequacy provisions that apply to health carriers. Since health carriers are required to comply with Section 2706(a), which is an important network adequacy provision, we believe that the Subgroup should include the language from Section 2706(a) in the revised Model Act.

AAMFT urges the Subgroup to revise Section 6F of the initial draft so that it incorporates the language from Section 2706(a). We believe that the final draft of the Model Act should require health carriers to recognize, in all of their networks and offerings, all categories of licensed health providers who are acting within the scope of their license or certification under state law. This important change would prohibit health carriers from covering a service when offered by one type of provider who is licensed or certified to provide that service while denying coverage when the same service is provided by another type of provider who is also licensed or certified to provide that same service. The addition of the language from Section 2706(a) would help ensure that patients are able to truly select from an adequate network of providers.
Thank you for providing AAMFT with an opportunity to comment. If you have any questions or need any information from AAMFT, please contact me at rsmith@aamft.org.

Sincerely,

Roger D. Smith
Senior Attorney
American Association for Marriage and Family Therapy