January 9, 2015

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Executive Headquarters
National Association of Insurance Commissioners (NAIC)
701 Hall of the States Building
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Washington, DC 20001-1509

Ms. Matthews,

The American Optometric Association (AOA) represents 33,000 doctors of optometry and optometry students. Optometrists serve patients in nearly 6,500 communities across the country, and in 3,500 of those communities optometrists are the only eye doctors available. Network adequacy is a great concern of AOA members throughout the country. The AOA supports the work of the Network Adequacy Model Review Subgroup and agrees that more needs to be done to assure that all Americans have a reasonable level of unencumbered access to quality health care providers. The AOA appreciates the opportunity to have input on the work of the NAIC’s Network Adequacy Model Review Subgroup and to provide comments on the initial draft of proposed revisions to the Managed Care Plan Network Adequacy Model Act (#74).

The AOA has identified specific concerns we have with the current revised language of the model act that we believe warrant attention as the Network Adequacy Model Review Subgroup moves forward with their important work.

The AOA has concerns with Sections 5.C.(1) and 5.C.(2) as written. These sections would require health carriers to allow beneficiaries to obtain services from out-of-network providers under certain circumstances. We agree with this provision from the perspective of protecting the consumer (beneficiaries), but we are concerned that this provision can also be a disincentive for health carriers to assure that their provider networks are indeed sufficient in numbers and types of providers to assure that all services to covered persons will be accessible without unreasonable delay.

If a health carrier cannot assure total network sufficiency, the health carrier should so note any deficiency when the health carrier submits its access plan to the insurance commissioner for approval. When a deficiency is so noted, Sections 5.C.(1) and 5.C.(2) of the model act should apply for the benefit of beneficiaries, but the health carrier should still be held accountable for assuring that its provider network is sufficient. As such, the health carrier’s provider network should not be adjudged as sufficient.
From the perspective of the out-of-network (non-contracted) provider providing care to a health carrier’s beneficiary, there should be no expectation or requirement that the provider will not balance bill the beneficiary so that the payment from the health carrier and the payment from the beneficiary equates to the provider’s charge for services provided.

The model act as revised indicates that health carriers are required to submit to the commissioner an access plan that includes various pieces of information that demonstrate the carrier’s efforts to ensure network sufficiency. Section 5.E.(2)(a) of the act indicates that carriers may request that the commissioner deem sections of the access plan proprietary. The AOA believes it would be appropriate to clarify that the portions of the access plan that delineate: 1) “The health carrier’s process for monitoring and assuring on an ongoing basis the sufficiency of the network to meet the health care needs of populations that enroll in managed care plans”; and 2) “The health carrier’s process for making available in consumer-friendly language the criteria it has used to build its provider network, which must be made available through the health carrier’s on-line and in-print provider directories” cannot be deemed proprietary and confidential. While determinations of propriety will be left to individual commissioners, we believe it is important that health carriers develop network sufficiency monitoring processes that are valid and appropriate and can withstand public scrutiny without the option of keeping this information proprietary.

As indicated in our earlier comment letter date July 1, 2014, the AOA is foremost concerned with the possibility that the Managed Care Plan Network Adequacy Model Act (#74) may conflict with the Affordable Care Act’s provider non-discrimination provision (Section 2706(a) of the Public Health Service Act as created by Section 1201 of the ACA):

“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 for participation established by the plan or issuer. Nothing in this section shall be construed as preventing a group health plan, a health insurance issuer, or the Secretary from establishing varying reimbursement rates based on quality or performance measures.”

Section 6.F.(5) states that health carriers are not required to “employ” specific providers that may meet their selection criteria or to contract or retain more providers than necessary to maintain a sufficient provider network.

Instead of the term “employ,” we suggest “contract with” be used consistently in this section.

The AOA is concerned that Section 6.F.(5) as written could still allow for some discrimination based on licensure. Health carriers will likely establish their own parameters for determining the
“necessary” number of a given provider type needed to ensure network sufficiency. For some specialties having overlapping service coverage capability with another specialty, an insurer may be tempted to say that a sufficient number of one of the specialty types would mean that the other specialty type offering the overlapping service coverage would not have to be included in the provider network at a “sufficient” number. An exclusion of an entire specialty type, particularly in contrast to the inclusion of another specialty type that provides some overlapping services, is discrimination based on licensure. An established level of sufficiency should apply to all specialties providing covered services that are within the scope of their license or certification under applicable state law.

Thank you for the opportunity to provide comments on the revisions for the model act. If you have any questions or would like additional information, please contact AOA’s Third Party Center Director, Lendy Pridgen, MBA, MHA at: LPridgen@AOA.ORG.

Sincerely,

[Signature]

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President
American Optometric Association