



JAMES L. MADARA, MD
EXECUTIVE VICE PRESIDENT, CEO

ama-assn.org
t (312) 464-5000

February 10, 2017

The Honorable Chris Holbert
Colorado State Senate Majority Leader
Colorado General Assembly
200 East Colfax
Denver, CO 80203

The Honorable Angela Williams
Colorado State Senator
Colorado General Assembly
200 East Colfax
Denver, CO 80203

RE: AMA Support for Senate Bill 17-088

Dear Majority Leader Holbert and Senator Williams:

On behalf of the American Medical Association (AMA) and our physician and student members, I write to state our strong support for Senate Bill (S.B.) 17-088, legislation to improve transparency in provider networks.

As you know, health plans continue to use narrow and tiered network designs to decrease their costs and patients' premiums. While the AMA in no way opposes narrow or tiered networks per se, we continue to be concerned about their impact on patients' access to quality care.

We believe that the current regulatory structure in most states does not provide adequate guidance to ensure that narrow and tiered networks are developed and administered to provide appropriate access to care for patients. Therefore, we are very pleased to have the opportunity to support S.B. 17-088, which addresses the concerns that we, along with many others, have with narrow and tiered networks in a fair and balanced way.

Transparency and consistency in provider selection standards to prevent discrimination

The AMA has long advocated for clarity in provider selection standards, and with the rise of narrow and tiered networks over the last several years, a push for transparency and consistency has become even more imperative. We regularly hear from physicians that they have been dropped from a network product or refused a contract without knowing why they were disqualified. Such deselection without clear and communicated standards creates confusion among providers and patients alike.

Moreover, ambiguity in provider selection can create the appearance, and unfortunately often the effect, of discrimination in network design. The AMA is very concerned that physicians may be targeted for deselection based on costs alone, which can translate into the removal of sub-specialists and other physicians who care for very vulnerable or medically complex populations. For example, we have seen networks that severely limit the number of HIV/AIDS providers, deterring some patients from choosing

such a network and cost-shifting out-of-network costs onto those who have purchased the product without realizing its limitations.

Thankfully, S.B. 17-088 would require health insurers to disclose the standards they use for selecting, tiering and placing providers in narrow or tiered networks. Also, your legislation would reasonably require that these standards be available to the Colorado Insurance Commissioner and a description of these standards be available to providers and consumers in plain language. While some stakeholders may express concern that these requirements will prevent the plans' ability to form narrow or tiered networks, that is simply not the case. Many states where narrow networks continue to be common have enacted greater transparency requirements with respect to selections standards and/or prohibited discriminatory network designs.¹

Additionally, the National Association of Insurance Commissioners (NAIC) also promotes the need for transparency and objectivity in provider selections standards. In its recently revised Health Benefit Plan Network Access and Adequacy Model Act (Model Act) supported by consumers and health plans alike, insurance regulators called for health insurers to make their "standards for selecting and tiering, as applicable, participating providers available for review [and approval] by the commissioner." The Model Act also requires that "a description in plain language of the standards the health carrier uses for selecting and tiering, as applicable, shall be available to the public."

Additionally, the NAIC clearly states in the Model Act that:

Selection [and tiering] criteria shall not be established in a manner:

- That would allow a health carrier to discriminate against high-risk populations by excluding [and tiering] providers because they are located in geographic areas that contain populations or providers presenting a risk of higher than average claims, losses or health care services utilization; or
- That would exclude providers because they treat or specialize in treating populations presenting a risk of higher than average claims, losses or health care services utilization...

S.B. 17-088 mirrors efforts, if not the exact language, from the nation's insurance regulators to reasonably regulate products where providers are being specifically deselected from the network or rearranged on different cost-sharing tiers. The AMA agrees with you and the NAIC that attention should be paid to these networks to protect access and prevent discrimination.

Ensuring quality when quality is indicated

In addition to protecting access, S.B. 17-088 laudably addresses quality where quality is implied. The AMA knows that the narrowing and tiering of networks are largely cost containment mechanisms and most insurers agree that these mechanisms are an attempt to slow the growth of health insurance premiums. Unfortunately, these same networks are often marketed to patients as "high-value," "high-

¹ For examples, see Texas (28 TX Admin. Code § 3.3706); Maine (24-A M.R.S. § 2694-A(1)).

functioning,” or “high-performing” networks, indicating to patients that a higher level of quality and value is associated with the product and the providers selected.

Recent research by the Health Policy Institute at Georgetown University found that few, if any, health insurers across the country were incorporating quality into their network designs. Moreover, the research shows that for those health plans already purporting to measure provider quality, they are not using that data to measure and ensure overall network quality.²

The AMA would welcome efforts to incorporate quality into selection and tiering standards. Physicians are focused on not only whether their patients have access to care, but whether they have access to *quality* care. We know that a cost-only focus in narrow network design has the potential to exclude physicians and other providers caring for vulnerable populations and patients with complex medical needs. But measuring and monitoring other network dimensions, such as quality, could prevent these potential problems.

Additionally, selection of physicians for narrow networks based on cost data, with little or no consideration of the quality of care they provide, the patient mix they care for, or the innovations they embrace, runs contrary to making progress towards the “Triple Aim” of better health and better health care at lower costs. And, as a result, provider investments in new models of care may not be associated with narrow network selection.

Furthermore, while quality should play a role in any state regulatory network guidance, narrow networks are particularly ripe for stronger regulation on quality because of the limited choices provided to patients. As networks shrink, so does the ability of patients to choose their providers. In other words, where patients have choice, their selections promote competition among providers based on quality. However, when these internal network quality controls are missing because a network is too narrow, the AMA suggests that consideration of quality in network design and regulation is necessary.

Quality should be a central component of a narrow or tiered networks’ design. Transparency about the role of quality, however, is simply not debatable in our opinion. Thankfully, S.B. 17-088 would require that when quality is implied, quality is in fact realized, and patients are provided with the product advertised. We laud your efforts here.

Fair process protections

Finally, the AMA strongly supports your legislation’s protections for physicians and other providers when they are deselected or when another adverse action is taken against them by the health insurer.

As you know, in states like Colorado, physicians depend heavily on contracts with certain health insurers in order keep their businesses’ afloat. A change in a physician’s network status can significantly impact the financial stability of a practice. But even more importantly, a change in the network status of a physician can significantly disrupt ongoing patient-physician relationships and leave patients in very difficult situations.

² Cusano, D., & Connor, K. (2016, October 6). Defining “Narrow Networks” – Stakeholders’ Perspectives (Issue brief). Retrieved <https://georgetown.app.box.com/s/57dx2ei8591wmqi1bo1nzipihz8iajf2y>.

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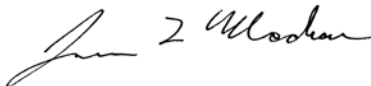
Physicians often have little recourse or processes available to them to challenge the adverse action against them. Your legislation would establish clear processes and fair protections, but it would not prevent insurers from narrowing or tiering their networks. In fact, in states like Texas and Maine, where similar processes and protections have been in place for many years, narrow networks are heavily used.³

In conclusion, the AMA strongly supports S.B. 17-088 because we believe it will bring transparency, consistency and fairness to provider network structures in Colorado. We also believe it will improve access to quality care for some of the most vulnerable Coloradoans. We look forward to working with you, the Colorado Medical Society and other stakeholders toward its enactment.

If you have any questions, please feel free to contact Emily Carroll, Senior Legislative Attorney, Advocacy Resource Center, at emily.carroll@ama-assn.org or 312-464-4967.

Thank you for the opportunity to engage on these important issues.

Sincerely,

A handwritten signature in cursive script, appearing to read "James L. Madara".

James L. Madara, MD

cc: Members of the Colorado Senate Business, Labor and Technology Committee
Colorado Medical Society

³ Polsky, D., PhD, & Weiner, J., MPH. (2015, August). State Variation in Narrow Networks on the ACA Marketplaces. Retrieved http://www.rwjf.org/content/dam/farm/reports/issue_briefs/2015/rwjf422684