AMA
AMERICAN MEDICAL ASSOCIATION

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Mr. Adam Plain
Insurance Regulation Liaison
Nevada Division of Insurance
1818 E. College Parkway, Suite 103
Carson City, NV 89706

Re: AMA comments on LCB File No. R049-14

Dear Mr. Plain:

On behalf of the American Medical Association (AMA) and our physician and medical student members, I write to state our support for efforts by the Nevada Division of Insurance (Division) to revise its network adequacy regulation. We very much appreciate the continued opportunity to comment on the proposed regulations.

First and foremost, we support many of the recent changes made to the August 12th draft rule that appear in the September 25th version. We see the most recent draft regulation as a step in the right direction. In particular, a movement away from the specific ratios and provider lists included in the last drafts is a marked improvement. Other important revisions include greater emphasis on quantitative standards for measuring adequacy, an increase in the required percentage of contracted essential community providers from 20 percent to 30 percent, and improvements to the provider directory requirements.

At the same time, we also see additional areas where the regulation can further the Division's intent to provide clarity, transparency, and meaningful access to care for Nevada's patients.

Quantitative measures

We strongly support the inclusion of quantitative, objective standards for measuring network adequacy. While we support the Division's movement toward quantitative measurement in Section 3, we recommend a stronger commitment in the regulations to the incorporation of multiple quantitative and objective measures when determining network adequacy. Such standards could include:

- Maximum travel time and distance standards to access a full time equivalent primary care physician, specialty physician, and other health care provider.
- Maximum allowable wait times for a primary care physician, specialty physician, and other health care provider.
- Minimum number of full-time equivalent physicians and other healthcare clinicians needed in a network to meet the needs of patients with limited English proficiency, diverse cultural and ethnic backgrounds, and with physical and mental disabilities.

- Maximum time and distance standards to access full time equivalent technological and ancillary services, including imaging and laboratory services.
- Maximum time and distance standards to access general hospital services with emergency care.

We also suggest that the Division consider other factors that contribute to patient access to quality care such as:

- Assessment of provider capacity, including the availability of providers to accept new patients;
- The variation in hours of operation for network providers;
- The quality measures used to evaluate providers for network inclusion; and
- The ability of physicians to admit patients to in-network hospitals.

Contract negotiations

Under Section 8.2(b), we are concerned that as amended, the draft regulation establishes unenforceable standards, and does not consider whether insurers are entering into fair contract negotiations with physicians. We urge the Division to consider developing specific criteria as to how it would measure or evaluate "good faith" negotiations between physicians and insurers.

Insurer attestation and network plan

Under Section 2.2, the proposed regulation states that "each year a carrier shall submit, in conjunction with the rate and form filing, a declaration that the network plan meets the requirements of subsection 1 of this section." Later in Section 3.5, the proposed regulation specifies that carriers must submit "sufficient data" to the Commissioner to "establish that the proposed network plan has the capacity to adequately serve the anticipated number of enrollees in the network plan." We recommend that further revisions identify more objective criteria to be submitted to the Division for these purposes, and that such information and data will be made available to the public.

Consumer protections against an inadequate network

The AMA supports strong consumer protections for patients who cannot access needed care from in-network providers, i.e. when a network is inadequate. Under Section 12.5, we encourage the Division to move forward with such strong protections and establish a fair and quick process by which consumers can access needed care.

The AMA advocates that all networks should meet or exceed Nevada's network adequacy requirements and provide patients access to needed care. However, when a patient cannot find needed care with an in-network provider, the patient should be held harmless for all additional costs associated with accessing out-of-network care. To be clear, insurers should not be able to pay non-contracted providers discounted, in-network rates to remedy inadequate networks. Such an allowance will not protect consumers, is contrary to fair contracting principles, and will have the unintended consequence of incenting insurers to develop inadequate networks. Instead, insurers should be held accountable for an inadequate network and cover the costs of out-of-network care, leaving patients with only the cost-sharing responsibilities that would have applied if the network was adequate.

Provider appeals

Given the environmental shift toward very narrow or tiered networks, the AMA hears from physicians who have been removed from (or denied entrance into) networks and are unable to continue seeing patients with whom they have long-standing relationships. Often these network terminations or denials come with little available recourse for physicians or their patients. These network disruptions impact patient-physician relationships essential to patient care.

Therefore, we strongly urge the Division to adopt language that provides physicians with a fair and timely process to appeal network decisions. We also recommend public disclosure of all provider selections standards.

Next steps

The AMA believes that the Department is in a unique position to work with the Nevada health care community, including the Nevada State Medical Association (NSMA), to help ensure that patients have access to truly adequate provider networks. The AMA supports the comments of the NSMA and others. We very much appreciate the opportunity to participate in this process.

If you have any questions or want more information, please contact Emily Carroll, JD, Senior Legislative Attorney, Advocacy Resource Center, at emily.carroll@ama-assn.org or 312-464-4967. Thank you for your consideration.

Sincerely,

James L. Madara, MD

cc: Nevada State Medical Association