

August 10, 2022

*Sent via email networkadequacy.mia@maryland.gov*

Kathleen Birrane  
Commissioner  
Maryland Insurance Administration  
200 St. Paul Place, Suite 2700  
Baltimore, MD 21202

*Re: COMAR Proposed Draft 31.10.44: Network Adequacy*

Dear Commissioner Birrane:

On behalf of the undersigned organizations, we want to thank you for the opportunity to comment once again on the draft revisions to the network adequacy regulations. Overall, we believe that the changes proposed are positive and will have a meaningful impact on both consumers and providers in ensuring robust networks. This letter focuses on ensuring network adequacy for providers employed or contracted to work in in-network hospitals.

Maryland's long history with its own assignment of benefits law has effectively protected patients from balance billing and has reduced the number of out-of-network providers. As such, it is important that Maryland's network adequacy requirements complement this law. The December 2020 network adequacy regulatory draft included provisions that would have required carriers to describe network access by percentages for on-call physicians, hospital-based physicians, anesthesiologists, and radiologists and would have required a report of whether any hospital-based non-physician providers, including laboratories or radiological facilities, were out-of-network. Concerns were raised regarding the ability of carriers to have the necessary data to comply with this requirement. Therefore, this current draft removes this provision but includes several data points that carriers must include in the annual access plan concerning out-of-network claims received by carriers, including the percentage of claims that are for emergency services, on-call physicians, or hospital-based physicians.

We support the inclusion of this data point and believe that it will provide needed information. However, it is important to emphasize that it is just that – a data point. It is also an “after the fact” data point that does not ensure that carriers are sufficiently contracting with providers working in in-network hospitals. As articulated below, we urge the Administration to specifically reference emergency services, on-call physicians, and hospital-based physicians in the sufficiency requirements.

To that point, we recognize that .03A of the draft states that “[a] carrier shall develop and maintain a network of providers in sufficient numbers, geographic locations and practicing specialties to ensure enrollees have access to participating providers for the full scope of benefits and services covered under the carrier's health benefit plan,” However, given the fact that these providers are not covered specifically in the distance standards list, it can be argued that network adequacy would be based on adequacy to the facility and not the specific providers under contract with the facility.

Therefore, we urge the following change:

***.03 Network Adequacy Standards.***

***A. Sufficiency Standards.***

*(1) A carrier shall develop and maintain a network in sufficient numbers, geographic locations, and practicing specialties, INCLUDING TIMELY ON-SITE ACCESS TO EMERGENCY SERVICES, ON-CALL PHYSICIANS AND HOSPITAL-BASED PHYSICIANS, to ensure enrollees have access to participating providers for the full scope of benefits and services covered under the carrier's health benefit plan.*

In making the above change, we also recommend that the definition of “hospital-based physician” be amended as follows – “*hospital-based physicians*” has the meaning stated in *Insurance Article, § 14-201, Annotated Code of Maryland AND INCLUDES THOSE SPECIALITIES LISTED IN COMAR 31.10.34.03.*”<sup>1</sup> This change will bring consistency between the regulations on provider panels and network adequacy. We would then recommend that the Administration move .03A. (2)<sup>2</sup> to .03B given that the provision relates to monitoring of the standards.

Lastly in referencing hospital-based physicians, it is important that we acknowledge that some of these providers are not only “hospital-based” but practice across multiple settings and should be accounted for under network adequacy sufficiency standards. The Administration must ensure that carriers are evaluating and reporting sufficiency for those specialties that work not just in hospitals but across other settings and that they are being accounted for in the standards.

We would be remiss if we also did not point out that the ability to have adequate networks is also tied to the need to have adequate reimbursement paid to providers by carriers. Unfortunately, Maryland continues to fall short in this area compared to other states. According to the Health Care Institute,<sup>3</sup> commercial carriers in Maryland pay on average 104% of Medicare whereas the average payment in the country is around 140%.<sup>4</sup> The only two states that pay less than Maryland are Delaware at 103% and Alabama at 98%. Maryland cannot ensure robust networks if it fails to ensure an adequate supply of physicians and providers who can afford to

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<sup>1</sup> In COMAR 31.10.34.03, “hospital-based physician” references an anesthesiologist, pathologist, radiologist, neonatologist, hospitalist, intensivist, or emergency medicine physician.

<sup>2</sup> .03A. (2) A carrier shall establish written policies and procedures to implement a process for addressing network deficiencies that result in an enrollee lacking access to any providers with the professional training and expertise necessary to deliver a covered service without unreasonable travel or delay.

<sup>3</sup> Health Care Institute, “*Comparing Commercial and Medicare Professional Services Prices,*” 2020.

<sup>4</sup> Even within Maryland, reimbursement rates fluctuate with reimbursement at 94% of Medicare in Salisbury, Maryland.

work in Maryland and participate in-network. We strongly encourage the Administration and the State to closely examine this growing concern.

Again, we thank you for the opportunity to comment on these regulations and commend the Administration in its efforts to ensure adequate networks for Maryland consumers as the maintenance of adequate provider networks is critical to the implementation of an effective and equitable health care system. As always, we are more than willing to have additional discussions on the points raised in this letter. If you have any questions, please contact Danna Kauffman at [dkauffman@smwpa.com](mailto:dkauffman@smwpa.com) (on behalf of MedChi).

Sincerely

The Maryland State Medical Society (MedChi)  
College of American Pathologists  
Maryland Society of Pathologists  
Maryland Chapter of American College of Emergency Physicians  
American College of Emergency Physicians  
Maryland Society of Anesthesiologists  
American College of Radiology  
Maryland Radiological Society  
US Acute Care Solutions  
US Anesthesia Partners