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**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**  
**CONSUMER PROTECTION DIVISION**

August 16, 2022

**Via email:** [david.cooney@maryland.gov](mailto:david.cooney@maryland.gov)

David Cooney  
Assistant Commissioner, Life and Health  
The Maryland Insurance Administration  
200 St. Paul Place, Suite 2700  
Baltimore, Maryland 21202

Re: July 7, 2022 Draft Proposed Network Adequacy Regulations COMAR 31.10.44.02-.11

Dear Mr. Cooney:

The Health Education and Advocacy Unit of the Office of the Attorney General's Consumer Protection Division (HEAU) appreciates the opportunity to informally comment on the Insurance Commissioner's draft proposed amendments to Regulations .02 through .11 under COMAR 31.10.44 (Network Adequacy). The HEAU also thanks the Insurance Commissioner, you and staff for hosting the Network Adequacy Workgroup, and numerous public hearings, which are allowing consumers and other stakeholders to provide feedback on the current draft that issued July 7, 2022. We understand there will be revisions based on stakeholder feedback, and potentially further public discussion, before finalizing the draft for submission by the end of the year. We appreciate the opportunity for further consideration and discussion of the important issue of patient choice, in particular.

Maryland's network adequacy statute mandates that a carrier shall "ensure that all enrollees, including adults and children, have access to providers and covered services without unreasonable travel or delay," Md. Code Ann., Ins. § 15-112(b)(3), and further provides that the access plan "shall include a description of the carrier's process for monitoring and ensuring, on an ongoing basis, the sufficiency of the network to meet **the health care needs of enrollees.**" Md. Code Ann., Ins. § 15-112(c)(4)(ii)(punctuation omitted)(emphasis added).

In today's context of an ongoing pandemic, where in-person, telehealth and hybrid options are being chosen by enrollees to meet their health care needs, we understand the merit of allowing telehealth appointments to count towards sufficiency standards *as long as enrollee choice is preserved by meaningful protections*. We believe the basis for meaningful protection of patient choice is set forth in the July 7, 2020 draft through provisions that allow credits based on retrospective, aggregated data. However, the HEAU submits that patients need to be able to obtain the option that meets their health care needs as they experience them, notwithstanding a carrier's preferences and we respectfully suggest revisions below. Without express, meaningful protections, we are concerned that plan purchasers may be misled about their access to in-person appointments, which many enrollees require to meet their health care needs as they experience them.

#### Suggested revisions

Regulation .06B(3) in the November 4, 2020 draft predicated any applicability of a telehealth appointment to sufficiency standards on the telehealth appointment being clinically appropriate *and* elected by an enrollee. We respectfully ask for a revision restoring that language or its equivalent to clarify patient choice is required. We appreciate that the July 7, 2022 draft requires that a carrier seeking to apply the telehealth credit must demonstrate that it establishes, maintains, and adheres to written policies and procedures to assist enrollees with obtaining timely access to in-person appointments, but believe clear, affirmative language maintaining patient choice is required to ensure that patients have the ability to get timely access to an in-person rather than a telehealth appointment.

We suggest these revisions to the July 7, 2022 draft's Regulation .08(c)(3)(b) relating to telehealth credits for wait time standards:

*(b) The carrier establishes, maintains, and adheres to written policies and procedures to*

(1) ACCEPT A PATIENT'S CHOICE NOT TO ELECT UTILIZATION OF A TELEHEALTH SERVICE;

*(2) assist enrollees for whom a telehealth service is not clinically appropriate, not available, or not accessible with obtaining timely access to an in-person appointment within a reasonable travel distance with:*

*(i) A participating provider; or*

*(ii) A nonparticipating provider at no greater cost to the enrollee than if the service was obtained from a participating provider; AND*

(C) INFORM PATIENTS DENIED ACCESS TO IN-PERSON OR TELEHEALTH APPOINTMENTS OF THEIR RIGHT TO FILE A NETWORK ADEQUACY COMPLAINT WITH THE COMMISSIONER.

David Cooney, Assistant Commissioner

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On behalf of consumers, the HEAU thanks the Insurance Commissioner, you and staff for considering our comments and requests for revisions. We would be happy to answer any questions you may have.

Sincerely,

*Patricia F. O'Connor*

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Deputy Director  
Health Education and Advocacy Unit