

CANCER LEADERSHIP COUNCIL

A PATIENT-CENTERED FORUM OF NATIONAL ADVOCACY ORGANIZATIONS
ADDRESSING PUBLIC POLICY ISSUES IN CANCER

January 12, 2015

National Association of Insurance Commissioners
Regulatory Framework (B) Task Force
Hall of the States Building, Suite 701
444 North Capitol Street, NW
Washington, DC 20001
ATTN: Jolie Matthews, NAIC Senior Health and Life Policy Counsel

Re: Health Benefit Plan Network Access and Adequacy Model Act

Filed by email at jmatthews@naic.org

Dear Ms. Matthews:

The undersigned organizations represent cancer patients, health care professionals, and clinical researchers. We appreciate the opportunity to comment on the work of the National Association of Insurance Commissioners (NAIC) Regulatory Framework (B) Task Force to update the managed care network adequacy act. We commend the Task Force for provisions of the Health Benefit Plan Network Access and Adequacy Model Act that would offer patients some protections in obtaining out-of-network care. The out-of-network access provisions of the model act are of great importance to cancer patients, who often need timely specialty care that is not available in network. We recommend some modifications to the draft that would improve patients' ability to obtain necessary care accompanied by appropriate financial protections.

Process for Obtaining Care Out-of-Network (Section 5(C))

As currently drafted, the model act would require a health carrier to have a "process to assure that a covered person obtains a covered benefit at in-network level of benefits from a non-participating provider" if the covered person is diagnosed with a condition or disease that requires specialized health care services or medical services and the health carrier does not have a network provider of the required specialty with the professional training and expertise to

treat or provide health care services for the condition or disease or cannot provide access to an appropriate in-network provider without unreasonable delay.

We propose that additional language be added to the model act to define the process that the insured individual must follow and the information that the individual must provide to obtain out-of-network care. The model act states that out-of-network care might be necessary if the carrier does not have a network provider of the required specialty with the professional training and expertise to provide health care services for the condition or disease.

We recommend that the model act be amended and that accompanying regulatory language be developed to ensure that patients receive care provided according to clinical practice guidelines or current best practice, and that such care be available out-of-network if there is no provider who can supply care that meets current best practice. For example, care by an in-network oncologist may not be adequate if that provider has little or no experience in treating the rare cancer of a patient. This problem is a serious concern for children with cancer, where engagement of pediatric specialists and pediatric sub-specialists is critical to be sure that children receive quality treatment and survivorship care. In addition, a general surgeon may be part of a carrier's network, but that surgeon might not have the necessary expertise or familiarity with current practice standards to operate on a patient with advanced ovarian cancer. In these examples, the providers might be considered to have professional training to care for these patients, but their experience might not in fact be adequate to ensure quality care for patients with these rare or complex conditions.

We recommend that the language of Section 5(c)(2)(b)(I) be amended to read, "Does not have a network provider of the required specialty with the professional training and expertise or knowledge of relevant treatment guidelines or standards of care to treat or provide health care services for the condition or disease." Regulatory language implementing and explaining the model act should provide details about out-of-network providers who might be available to patients with rare, complex, or difficult-to-treat cancers. We urge that states adopting and implementing the model act consider identifying providers at cancer centers, including but not limited to National Cancer Institute-designated cancer centers, as out-of-network providers whose services would be available to patients in the complex clinical situations described above.

We also recommend a more specific definition of the process for obtaining out-of-network care. The model act should be revised to set concrete standards for this process, so that a covered person with an urgent or acute medical condition could be assured access to an out-of-network provider within 24 hours. The access plan filed by the carrier should provide specific information about the exceptions process for obtaining out-of-network care.

We also recommend that a determination that a covered person should be provided access to care out-of-network should be applicable for the full course of treatment or remainder of the plan year, whichever ends first. Cancer patients should not be required to undergo the exceptions process on multiple occasions during the course of treatment.

Requirements for Health Carriers and Participating Providers (Section 6)

We are pleased that the model act includes a provision to discourage discriminatory benefit design. The model act states that the criteria that carriers must use to select participating providers would not permit carriers to exclude providers “because they treat or specialize in treating populations presenting a risk of higher than average claims, losses, or health care services utilization.” The inclusion of this protection against discriminatory benefit design is important as a protection for cancer patients who may be above average health care utilizers during their treatment. Medical groups that treat large numbers of cancer patients and especially those who treat complex and rare cancers are readily identified, and their exclusion would constitute a discriminatory benefit design that would at the very least limit the plan choices of cancer patients.

The requirements in the model act related to notification of covered individuals regarding the termination of a network provider and the continuation of care after termination are inadequate to meet the needs of covered individuals with cancer. We recommend that Section 6(L)(1)(b) be revised to require notification of termination of “all covered persons who are patients seen in the last 5 years by the provider whose contract is terminating.” Cancer patients may require significant follow-up monitoring and care after completion of active treatment, and the patient’s cancer care provider is often the provider who coordinates that care. Those patients might not meet the definition of seeing the terminated provider “on a regular basis” as required by the model act language, but notice of termination of provider is important for those patients so that they may make arrangements for management of their follow-up care.

The provision related to continuation of care in the case of termination of a provider is also inadequate to meet the acute health care needs of cancer patients. The model act provides for “affected covered persons with acute or chronic medical conditions in active treatment to continue such treatment until it is completed or for up to ninety (90) days, whichever is less.” This provision would force a disruption of care for some cancer patients, whose course of treatment at the time of provider termination would exceed 90 days. We recommend that this provision be amended to read, “Whenever a provider’s contract is terminated without cause, the health carrier shall allow affected covered persons with acute or chronic medical conditions in active treatment to continue such treatment until it is completed or for up to ninety (90) days, whichever is greater.”

Provider Directories (Section 8)

The standards of the model act related to online posting of the carrier's provider directories will be useful in informing the consumer regarding network providers. We support the standards of the model act that require online posting of the carrier's provider directories with search functions that will provide covered individuals information about hospital affiliation, medical group affiliations, board certifications, and certain other data. However, we also recommend that the provider directory information include data about the affiliation of the provider with cancer centers, including but not limited to National Cancer Institute-designated cancer centers. The monthly updating standard also helps to ensure that covered individuals have reasonably up-to-date information.

We also recommend that the posted online information include data about the carrier's exceptions process and how that process is administered. We propose that the online posting requirements, which should be included in the access plan filed by the carriers, include information about the average length of the exceptions process, the percentage of exceptions that are granted, and the reasons that exceptions are denied.

We also propose that carriers be required to monitor consumer complaints about access to out-of-network care and offer reports regarding these complaints by online posting.

Disclosure and Notice Requirements (Section 7)

Covered individuals in many plans have suffered significant financial responsibility associated with care provided by out-of-network providers when patients receive care in in-network hospitals. Individuals have suffered this burden despite making every effort to obtain care from in-network providers. The model act is not adequate in addressing this serious consumer exposure.

The model act includes provisions requiring disclosure and notification to covered individuals that they might receive care from an out-of-network provider while receiving care in an in-network hospital. These provisions of the model act should be modified to require that out-of-network care that is provided to a covered individual in an in-network facility is reimbursed as if it were in-network care.

The model act as currently written does not permit the patient to make an informed decision about his or her care, including efforts to obtain protection from financial exposure associated with out-of-network care. Advance notice that an individual might receive out-of-network care at an in-network hospital is not sufficient. These patients might be in no position to decline the out-of-network

care and are unlikely to be able to request and receive in-network care as a substitute for the out-of-network care that is provided in the in-network hospital.

The model act should instead be revised to protect a covered person from balance billing for services rendered in an in-network facility by an out-of-network health care professional, unless the covered person authorizes in writing and in advance of receipt of services that he/she has chosen to be treated by an out-of-network health care professional and is aware of the additional costs applicable as a result of selecting an out-of-network provider.

Application of Network Adequacy Protections

Network adequacy protections should apply to all health plan designs that are within the jurisdiction of a state's insurance commission.

We appreciate the opportunity to comment on the network adequacy model act.

Sincerely,

Cancer Leadership Council

CancerCare
Cancer Support Community
The Children's Cause for Cancer Advocacy
Fight Colorectal Cancer
Kidney Cancer Association
The Leukemia & Lymphoma Society
LIVESTRONG Foundation
Lymphoma Research Foundation
Multiple Myeloma Research Foundation
National Coalition for Cancer Survivorship
National Patient Advocate Foundation
Ovarian Cancer National Alliance
Pancreatic Cancer Action Network
Prevent Cancer Foundation
Us TOO International Prostate Cancer Education and Support Network