February 11, 2014

Adam Hamm
President
National Association of Insurance Commissioners
444 North Capitol St., N.W.
Suite 701
Washington, D.C. 20001

Dear Mr. Hamm,

The American College of Physicians (ACP), the largest medical specialty organization and second-largest physician group in the United States, representing 137,000 internal medicine specialists (internists), related subspecialists, and medical students, writes to express our interest in working with the National Association of Insurance Commissioners (NAIC) members and insurance regulators throughout the country to achieve the Affordable Care Act's (ACA) goal of expanding access to affordable, high-quality health insurance. The ACA establishes crucial insurance reforms that for the first time protect our nation's patients from pre-existing condition coverage exemptions, undue insurance plan rescissions, and volatile premiums and cost-sharing, among other important reforms. Patients can now be assured that the coverage they purchase through a health insurance marketplace will provide essential health benefits as well as preventive services without cost sharing.

The NAIC and its state insurance regulator members play an important role in providing oversight of the health insurance industry. With major changes occurring as a result of the ACA, the mission of state insurance regulators to provide consumer education and ongoing monitoring of the new health insurance landscape is even more crucial. ACP writes to offer its assistance to insurance regulators to ensure that the implementation of the ACA's insurance regulations results in a system that is more fair, honest, and protects the rights of patients.

ACP recommends that physicians, insurers and federal and state regulators work together to promote better access to high-quality physicians by enabling patients to consult up-to-date provider directories at the time of plan selection, provide a transparent and cooperative process for provider network development, and maintain ongoing oversight and monitoring of health insurance marketplace plans to determine and rectify potential network access problems. ACP respectfully offers the following recommendations calling for greater transparency and monitoring of provider networks, benefit packages, formularies, and the appeals process to prohibit discriminatory health plan designs that cut off vulnerable patients from necessary care.

Attached is the complete letter sent to Health and Human Services Secretary Kathleen Sebelius, which suggests additional recommendations.

Recommendations

Provider Network Adequacy: ACP supports the minimum network adequacy standards established in federal regulations[i] requiring QHPs to ensure access to essential community providers, and a network sufficient in number and types of clinicians including providers that specialize in mental health and substance abuse services, to assure that all services will be accessible without unreasonable delay. We are encouraged that **CMS states in its February 4 draft letter to issuers in the federally-facilitated marketplace that it proposes to review plan lists of participating physicians and hospitals to determine whether the networks provide sufficient access without unreasonable delay, focusing on access to hospital systems, mental health, oncology, and primary care clinicians. CMS states that it intends to use its review to develop time and distance and other standards for future network review and we request that state regulators work with their federal counterparts to develop this criteria.**

We recommend that federal and state regulators strengthen existing requirements in the following ways:

- **Improve current network adequacy standards by taking into account additional criteria—including patient-to-physician ratios, use of out-of-network clinicians and hospitals, and urban, suburban, and rural area-relevant standards—as indicators of access.** These would be in addition to developing time, distance and other standards for QHP networks beginning in 2015, as proposed in CMS's February 4 letter to insurers.
- **Regulators should also encourage network adequacy standards for PPOs, including factors such as whether a hospital contracts with an in-network physician.[ii]**
- **Continuously monitor network adequacy. We are encouraged that in an April 2013 letter to insurers, CMS stated that it will be monitoring network adequacy via complaint tracking and random spot checks of QHP network data.[iii] We recommend that such compliance and complaint information be made available to the public.** We urge state and federal regulators to closely monitor network adequacy and take action to correct provider network problems.
- **CMS must work closely with state regulators to address network adequacy concerns that are most relevant to each state (and the individual health plan service areas within each state).**
- **The College also supports the enhanced requirements for the inclusion of essential community providers (ECP) such as federally qualified health centers, Ryan White HIV/AIDS providers and safety net hospitals; however, the 30% ECP threshold proposed in CMS' February 4 letter should be a minimum, and QHPs should be encouraged to incorporate additional ECPs to meet the needs of patients in the service area. CMS and state regulators should closely scrutinize QHP requests for exceptions to this rule and closely monitor plans that are granted exceptions, requiring changes as needed. Contingency plans must prioritize continuity of care with the patient's preferred health care clinician.**

Provider Network Transparency and Network Development Principles: ACP supports efforts to consider value in the development of health plan networks, as long as the process is balanced, transparent, fair, and provides real choice. The process through which networks are developed and the factors considered by insurers should be made public; state and federal regulators should require further safeguards to ensure access and continuity of care:

- **Mandate that QHPs provide physicians and their patients advance notice of network changes and the opportunity to appeal.**
    - **Physicians should be provided with detailed reasons as to why their contract was terminated.**
    - **They should be able to comment on and challenge alterations as necessary.**
    - **All network selection and deselection decisions should be on record.**
    - **Health plans or networks should provide public notice within their geographic service areas when physician applications for participation are being accepted.**
- **Ensure that physicians have the option of applying to any health care plan or network in which they desire to participate and to have their application judged based on objective criteria that are available to both applicants and enrollees.**
- **Require transparency in the criteria used by QHPs to determine who will be allowed into networks. Performance measures and methodologies used for network selection and tiering should conform to the following standards:**
    - **Measures should be meaningful to consumers and reflect the importance of patient-centered care.**
    - **Physicians and physician organizations should have input to these programs and the methods used to stratify performance. They should also have access to the information collected and should be given notice before individual information is released.**
    - **Measures and methodology should be transparent, valid, accessible, and understandable by consumers, physicians, and other clinicians.**
    - **Measures should be based on national standards, primarily standards endorsed by the National Quality Forum (NQF). Standards from other groups and organizations may be used, but they should be replaced by NQF standards once available.**
- **QHPs should consider multiple criteria related to professional competency, quality of care, and the appropriate utilization of resources. In general, no single criterion – including cost - should provide the sole basis for selecting or excluding a physician from a plan's network.**
- **In keeping with nondiscrimination guidelines, QHPs should be prohibited from excluding health care clinicians because their practices contain substantial numbers of patients with expensive medical conditions.**

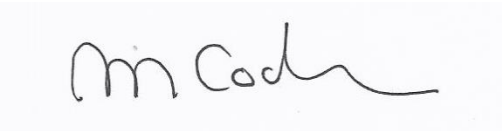
Improving the appeals process: With reports surfacing that many qualified health plans are offering tight provider networks, tiered networks, stringent prescription drug formularies and other cost-cutting schemes, it is important that regulators work to ensure that consumers are able to access a fair and responsive appeals process. State regulators should monitor and enforce ACA and state laws that

facilitate access to an appeals process for claims denials, formularies, and others. In the event that a plan's network is deemed inadequate, health plans must **create an appeals process to authorize in-network cost-sharing if a medically necessary service is not available within the network but is available from an out-of-network physician willing to accept terms of the service. This exception is permitted for preventive services[iv], but it should be expanded to include other essential health benefits.**

Further, state and federal regulators and other stakeholders must closely monitor formularies and other benefit design features to ensure that coverage does not exclude patients with complex chronic conditions undergoing therapy, including patients with cancer, transplants, mental health treatment, HIV/AIDS, and hepatitis C. Such limited formularies would violate the spirit of the ACA's nondiscrimination provisions which prohibit discrimination based on factors including health status, disability, age, race, gender, and sexual orientation. The College supports CMS' increased attention to tracking formularies and urges state regulators to work with their federal counterparts to monitor whether formularies and benefit packages violate the intent of the law.

ACP appreciates the role of state insurance regulators to monitor and enforce the broad and complex reforms established by the ACA. Physicians offer their support towards the mission of NAIC to help ensure that patients have access to their preferred physician and are enrolled in health insurance coverage that is fair, comprehensive, and affordable.

Sincerely,



Molly Cooke, MD FACP
President
American College of Physicians

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[i] 45 CFR 156.230

[ii] McCarty S and Farris M. ACA Implications for State Network Adequacy Standards. Robert Wood Johnson Foundation. August 2013. Accessed at http://www.rwjf.org/en/research-publications/find-rwjf-research/2013/08/aca-implications-for-state-network-adequacy-standards.html

[iii] Center for Consumer Information and Insurance Oversight, Centers for Medicare and Medicaid Services. Affordable Exchanges Guidance: Letter Issuers on Federally-facilitated and State Partnership Exchanges.

[iv] U.S. Department of Labor. FAQs about Affordable Care Act Implementation Part XII. February 20, 2013. Accessed at http://www.dol.gov/ebsa/faqs/faq-aca12.html