STATE OF WEST VIRGINIA
Offices *of the* Insurance Commissioner

Allan L. McVey
Insurance Commissioner

July 11, 2023

The Honorable Mac Warner
West Virginia Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305

Re: Comments Received Concerning 114 CSR 100

Dear Secretary Warner,

During the public comment period for the above-referenced legislative rule relating to network access and adequacy of health benefit plans, the Offices of the Insurance Commissioner ("OIC") of the Department of Revenue received comments from one stakeholder, The Health Plan of West Virginia, Inc. ("THP"). The comment letter received is attached. The OIC will address the two comments indicating concerns with, or suggested revisions to, certain provisions of the rule.

THP's first comment notes its appreciation of the OIC's proposed modification to add network access standards relating to wait times in subsection 3.2.1 of the rule. However, THP also suggests that the OIC align the measurement of compliance regarding the proposed wait time standards with the methodology used by the National Committee on Quality Assurance ("NCQA") for health plan network standards. THP asserts that the methodology prescribed by NCQA to measure compliance requires a "statistically valid sample" to audit and measure accessibility requirements. THP purports that the NCQA methodology allows a carrier to collect data across the entire practitioner or member population to arrive at a statistically valid sample size. The OIC's proposed revisions to the rule set forth a 90% compliance standard based upon guidance and regulations from the Centers for Medicare and Medicaid Services ("CMS"). However, the OIC's proposed rule does not mandate any carrier to utilize a specific methodology to show 90% compliance with the proposed wait time standards. Carriers may utilize any industry standard that is an appropriate and valid methodology to show compliance. The OIC does not believe it is necessary to adopt a specific methodology in the proposed rule to show compliance and, accordingly, has not proposed an amendment pursuant to the comment.

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THP's second comment concerns Appendix A of the proposed rule. More specifically, THP requests removal of "emergency medicine" as a provider specialty. THP states that emergency medicine is not a "CMS Medicare Advantage specialty code," asserting that emergency medicine physicians are not required to be credentialed by NCQA considering these providers are hospital based. THP further notes that emergency medicine providers are inherently available at acute inpatient hospitals and that measuring both emergency medicine providers and acute inpatient hospitals against the same time and distance standards is duplicative and unnecessary.

In response to THP's second comment, the OIC notes that the revisions proposed to the subject rule are designed to bring West Virginia into compliance with the CMS 2023 Notice of Benefit and Payment Parameters ("Payment Notice"). The Payment Notice allows the OIC to conduct state-level network adequacy reviews of its regulated carriers so long as the OIC applies and enforces standards that are at least as stringent as the federal network adequacy standards established under 45 CFR 156.230. Both emergency medicine and acute inpatient hospital are specifically listed in the provider types for the time and distance standards by CMS for Plan Year 2023 certification. Accordingly, the OIC believes that emergency medicine is a mandated provider specialty that the OIC must monitor to allow the OIC to conduct state-level network adequacy reviews. While the OIC appreciates that an emergency medicine standard may be duplicative of an acute inpatient hospital standard in most circumstances, the OIC notes that both are network adequacy standards established by CMS and, as noted by THP, both have the same time and distance standards in the proposed rule. Thus, the OIC does not believe that compliance with both identical standards will cause any undue hardship to carriers and has accordingly not offered any revisions to Appendix A to remove emergency medicine as a provider specialty.

The OIC thanks THP for its comments and the opportunity to consider different perspectives on these important matters. All attention to, and time spent on, this matter is greatly appreciated.

Sincerely,

Michael N Malone

Michael Malone
Associate General Counsel
West Virginia Offices of the Insurance Commissioner

Attachment

June 29, 2023

Erin K. Hunter
900 Pennsylvania Ave., 9th Floor
Charleston, WV 25302
Email: erin.k.hunter@wv.gov

Re: Comments on Proposed Amendments to the Health Benefit Plan Network Access and Adequacy Rule (W. Va. Code §§33-2-10 and 33-55-9)

Dear Erin Hunter:

Thank you for the opportunity to submit comments on the proposed amendments to the Health Benefit Plan Network Access and Adequacy Rule (W. Va. Code §§33-2-10 and 33-55-9). These comments address Section 3.2 – Appointment Wait Times and Appendix A: Provider Specialty – Emergency Medicine.

Section 3.2 – Appointment Wait Times

In the proposed rule, the WV Insurance Commission proposes that at least 90 percent of a health carrier's providers must meet specified wait times to satisfy network adequacy standards (Section 3.2.1). The Health Plan of West Virginia, Inc. (THP) appreciates the Commission's proposal to add network access standards related to wait times. We do, however, suggest aligning the measurement of compliance with these standards with the methods used by the National Committee on Quality Assurance (NCQA) for Health Plan Network Standards – NET 2: Accessibility of Services, Element A Access to Primary Care; Element B Access to Behavioral Healthcare; and Element C Access to Specialty Care.

The methodology prescribed by NCQA to measure compliance requires a "statistically valid sample" to audit and measure accessibility requirements. Specifically, "The organization may collect data across the entire practitioner or member population or from a statistically valid sample." THP suggests the Insurance Commission align how plans measure network accessibility compliance with industry standard accreditation requirements by permitting the use of statistically valid sampling methods.

Appendix A: Provider Specialty – Emergency Medicine

Emergency medicine is not a CMS Medicare Advantage specialty code that is measured for network adequacy. Further, emergency medicine physicians are not required to be credentialed per NCQA requirements as these providers are hospital-based providers. Acute inpatient hospitals are included in Appendix A using the same

standards as prescribed for emergency medicine providers. A parenthetical note indicates that acute inpatient hospitals "must have Emergency services available 24/7." That is, by way of this notation, emergency medicine providers would inherently be available to enrollees at acute inpatient hospitals. Measuring both emergency medicine providers and acute inpatient hospitals against the same time and distance standards seems duplicative and unnecessary. Given these factors, THP respectfully recommends the removal of emergency medicine as a provider specialty from Appendix A.

Respectfully,

The Health Plan of West Virginia, Inc.
1110 Main Street
Wheeling, WV 26003