January 12, 2015  VIA ELECTRONIC MAIL

Jolie H. Matthews
Senior Health and Life Policy Counsel
Executive Headquarters
National Association of Insurance Commissioners
444 North Capitol Street, N.W., Suite 700
Washington, DC 20001-1509

Dear Ms. Matthews:

The Physicians Advocacy Institute (PAI) appreciates the continued opportunity to participate in the NAIC Subgroup on Network Adequacy’s work to revise the NAIC’s Managed Care Network Accuracy Model Act. Over the last several months, the Subgroup has heard from dozens of organizations that are intensely interested in this effort. There has been considerable discussion regarding the issues that arise for patients, health care providers, payers and regulators from the increasing prevalence of “narrow” provider networks and other factors that contribute to inadequate provider networks. State regulators have struggled to address these problems and widely recognize the need for a new regulatory construct that will enable more accurate and robust oversight in this area. Similarly, the high level of stakeholder participation during this process underscores how high the expectations are within the health care community with regard to the outcome of this process.

In an April 23, 2014 letter to the Center for Consumer Information and Insurance Oversight (“CCIIO”), NAIC’s leadership urged the agency to resist adopting federal network adequacy standards and instead base federal standards for Qualified Health Plans (“QHPs”) on NAIC standards. NAIC acknowledged the need to modernize and update the existing NAIC Model Act “given the changes in the marketplace” and discussed several state regulators’ concerns about the adequacy of some networks being marketed as QHPs. The letter urged CCIIO to resist pursuing federal regulation but instead to wait for the NAIC Subgroup to “thoughtfully analyze this issue” and deliver a revised Model Act.

If the NAIC’s intent was to deliver a Model Act that, if adopted, will promote meaningful, consistent and transparent network adequacy regulation, as indicated in its letter to CCIIO, PAI respectfully submits that the current iteration of the Model Act falls short on addressing the fundamental issues involved in network adequacy regulation.

PAI appreciates the challenge in developing model legislation that will facilitate the wide range of regulatory approaches that states will take to ensure the adequacy of health carriers’ provider networks.
Several regulators on the Subgroup expressed concern about a “one size fits all” approach. However, as with any model state legislation on a topic of this complexity, the need for flexibility can be addressed by state regulators during rulemaking. Regulators will review the various policy options and tailor regulations based on specific characteristics of the state’s geography, demographics and health care marketplace.

During this second round of comments and revisions, the Subgroup will again hear from many interested organizations with input on how the Model Act should be strengthened. PAI has joined in lengthy discussions with several organizations representing provider organizations and consumers, which has been helpful in identifying areas of mutual concern. Understanding that the Subgroup will hear from various organizations on issues of common interest, PAI focuses our comments on the need for the NAIC to: (1) adopt and enforce specific and consistent network adequacy standards and (2) provide guidance about how state regulators can ensure accurate, up-to-date and consumer-friendly provider directories.

SECTION 5. NETWORK ADEQUACY

PAI urges the Subgroup to substantially revise Section 5 to address concerns of consumer/patients, health care providers and federal and state policymakers who are eagerly awaiting direction from the NAIC on this issue. Like many of the other stakeholder organizations participating in this process, PAI strongly believes that Section 5 of the Model Act should direct the state regulator to adopt quantitative network adequacy standards that health carriers must meet to market an insurance product to consumers. The language should provide specific examples of such standards for consideration during the rulemaking process. To fail to deliver on this key issue undermines the impact of the effort to revise the Model Act and will be perceived as such by key stakeholders.

The deferential approach afforded by the original Model Act and maintained in this Revision Draft allows each carrier to establish “adequacy” by “reference to any reasonable criteria” that it determines for itself. This approach to “regulation” is extraordinarily permissive and if adopted will yield little in the way of meaningful change by health insurance carriers with regard to establishing provider networks. In addition to being nearly impossible to oversee, this fails to ensure a consistent approach across carriers and even across products marketed by the same carrier. This is untenable given the concerns raised by increasingly “narrow” products and the challenge that consumer-patients face when there are network deficiencies that impair access to in-network health care services. It is difficult to see how an open-ended approach that allows insurers significant leeway in demonstrating network adequacy will satisfy patients and providers who are demanding transparency.

The Consumer Representatives have led discussions with various stakeholder organizations that have resulted in some agreement in this critical area. The PAI supports the amendments offered by the Consumer Representatives on Section 5A and B. This approach balances the need for uniform and transparent network adequacy standards with the need for state regulators to fashion network adequacy standards based on the specific characteristics of the state.

The PAI supports the amendments offered by the Texas Medical Association on Section 5C.
SECTION 8. PROVIDER DIRECTORIES

The addition of Section 8 provisions on Provider Directories, while welcome, should be strengthened to provide more detailed direction for state legislators and regulators as they seek to address pervasive inaccuracies in provider directories. Until recently, there has been little emphasis or regulatory oversight on provider directories by states. As a result, there has been a woeful lack of emphasis on the accuracy of provider directories issued by health insurers.

As the marketplace evolves and patients increasingly are faced with multiple insurance product options, it will become even more important to have accurate, up-to-date and consistently conveyed provider directory information. With regard to network adequacy, inaccurate provider directories should signal to state regulators that inaccurate provider network data is being submitted for the purpose of assessing network adequacy. The integrity of the network adequacy review process is undermined when payers submit inaccurate contracted provider information. PAI urges the Subgroup to consider two fundamental questions relating to provider directory accuracy that this version of the Model Act does not address any better than the original:

- How can regulators assess network adequacy when the information provided by a health carrier is plagued with inaccuracies?
- How can consumers choose a health plan product based on inclusion of specific physicians or other health care providers when the information upon which they base their decision is so often wrong?

PAI urges NAIC to adopt and enforce specific standards to improve provider directory accuracy and promote systems, practices and procedures within health plans that will clean up the bad data that has been allowed to persist. PAI recommends the attached language to ensure that directories not only include the appropriate information fields, but also that the information included in those fields is accurate and up-to-date.

We welcome the opportunity to discuss in greater detail the issues raised in this comment letter or any other topic of interest to physicians and patients. For any questions, please contact Kelly Kenney, PAI Executive Vice President, at k2strategiesllc@gmail.com or 312-543-7955.

Sincerely,

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cc: PAI Board of Directors
Kelly Kenney
Mary Jo Malone