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CLIENT ALERT

National Association of Insurance Commissioners Updates Model Network Adequacy Law to Address Narrow Networks and Surprise Bills

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On November 22, 2015, the National Association of Insurance Commissioners ("NAIC") approved an updated version of its Managed Care Plan Network Adequacy Model Act, now known as the Health Benefit Plan Network Access and Adequacy Model Act ("Network Adequacy Model Act"). The NAIC regularly creates model laws to serve as templates to assist federal and state lawmakers and regulators in drafting insurance laws and regulations. The Network Adequacy Model Act was introduced in 1996 and has changed little since.

Controversy over the growing use of narrow provider networks by issuers on the Affordable Care Act's insurance exchanges ("Exchanges"), along with concern over enrollees' receipt of unexpected charges from out-of-network practitioners when receiving treatment at in-network facilities (often referred to as "surprise bills"), compelled the NAIC to update the Network Adequacy Model Act. State legislatures are expected to look to the revised Network Adequacy Model Act as they introduce new network adequacy bills in the 2016 legislative session. In addition, the Centers for Medicare & Medicaid Services has said that it will look to the Network Adequacy Model Act for guidance in developing network adequacy standards for products offered on the Exchanges.

Due to the NAIC's substantial influence on state and federal lawmakers and insurance regulators, health insurers, health plans, providers, and other stakeholders should be aware of the following changes to the Network Adequacy Model Act.

Definitions

The Network Adequacy Model Act no longer references the term "managed care plan," having replaced this with the broader-based term "network plan." The NAIC notes that the "network plan" definition is intentionally broad to encompass health benefit plans using a variety of requirements or incentives, including preferred provider organizations, health maintenance organizations, accountable care organizations, and other delivery system models. In addition, the NAIC has added definitions for "telemedicine" and "tiered network" to the Network Adequacy Model Act.

Network Adequacy and Continuity of Care

The NAIC made extensive changes to the network adequacy section of the Network Adequacy Model Act, focusing primarily on the requirements for network sufficiency. The Network Adequacy Model Act looks to state insurance commissioners to determine the adequacy of an insurer's network, using criteria such as geographic population dispersion and new health care delivery options like telemedicine. Insurers are now required to have a process in place to ensure that covered persons can access covered benefits at the in-network level (including for cost sharing) from a non-participating provider. Such process is necessary when the insurer has a sufficient network but not the specific type of provider needed to provide the covered benefit, or when the insurer does not have a sufficient number of the specific type of participating provider available to provide the covered benefit without unreasonable delay or travel.

The Network Adequacy Model Act also requires insurers to submit access plans to their state insurance commissioner, with states having the option to either require prior approval of the access plan or allow the insurers to file and use the access plan without prior approval. The information to be included in the access plan has also been revised, now requiring inclusion of the criteria that the insurer will use to select and/or tier providers within a network.

Several revisions were made to improve continuity-of-care protections for covered persons in the event that a provider leaves or is removed from a provider network. These revisions include a requirement for insurers to develop reasonable procedures to transition covered persons undergoing an active course of treatment to a participating provider.

Surprise Bills

Surprise bills arise when enrollees receive emergency or non-emergency services from an in-network facility, though some services are provided by non-participating but facility-based providers, such as pathologists, radiologists, or anesthesiologists. The enrollee may then receive unexpected bills from these non-participating providers, asking for out-of-network cost-sharing levels and, where allowed by the state in question, possible balance bills for the difference between the provider's charges and the insurer's allowed amounts for the services.

The NAIC added a new section to the Network Adequacy Model Act to address the issue of surprise bills. Insurers would now be required to establish a program for the payment of facility-based out-of-network provider bills in instances where the billed charge and the plan's allowable amount is more than $500. The insurer can choose to either pay the submitted facility-based out-of-network provider bill or pay in accordance with benchmarks set by the state. The benchmark payment is presumed to be reasonable if it is based on the higher of the insurer's contracted rate or a set percentage of the Medicare rate for the same or similar service in the same geographic area. For providers that object to these payment rates, insurers are required to establish a provider mediation process.

The NAIC also adopted several notice requirements with which insurers and in-network facilities must comply. Insurers must provide a covered person with a written notice at the time of pre-certification that some services might be provided by out-of-network providers

even though the facility at which the covered person is receiving the covered benefit is in-network. In-network facilities also must provide a covered person, within 10 days of a non-emergency appointment, or at the time of admission, with written notice confirming that the facility is a participating provider but that certain professionals providing services may be out-of-network. In the case of emergency services, bills from facility-based out-of-network providers must include a notice stating that the covered person is only responsible for the in-network cost-sharing amount.

Provider Directories

The Network Adequacy Model Act also added provisions addressing provider directory requirements, outlining the information that must be included in both online and print versions of the directories. Insurers are required to post online a current and accurate provider directory that is updated at least monthly, and a print copy of the directory must be available upon request. In addition, both online and print directories must accommodate individuals with disabilities and include a link or information concerning assistance for those with limited English language proficiency.

Conclusion

The NAIC's issuance of its revised Network Adequacy Model Act is just the first piece in states' ongoing efforts to address network adequacy concerns. At the next legislative session in each state, legislators will be confronting the access concerns widely discussed with the implementation of the Exchange marketplaces. These legislatures will likely introduce new network adequacy bills modeled on the NAIC and its recommendations. Therefore, stakeholders should closely monitor their state legislatures to ensure that they are aware of legislative initiatives and have the opportunity to engage in the policy discussion surrounding any related changes.

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This Client Alert was authored by **Helaine I. Fingold** *and* **M. Brian Hall, IV.** *For additional information about the issues discussed in this Client Alert, please contact one of the authors or the Epstein Becker Green attorney who regularly handles your legal matters.*

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