



December 4, 2018

Michael Conway  
Commissioner of Insurance  
Colorado Division of Insurance

Dear Commissioner Conway:

On behalf of our more than 100 hospital and health system members statewide, the Colorado Hospital Association (CHA) thanks the Division of Insurance (DOI) for the opportunity to provide comments on Proposed Amended Regulation 4-2-53, concerning Network Adequacy Standards and Reporting Requirements for ACA-Compliant Health Plans.

Network adequacy standards assure the adequacy, accessibility and quality of health care services offered by health care plans in Colorado. The proposed geographic access standard health care facility waiver process (Section 9) could have a dramatic impact on Colorado's health care market and roll back important consumer protections guaranteed under federal and state law. Specifically, CHA is concerned that the waiver process described will impede consumers' access to appropriate and timely health care services in their community and/or cause further undue financial burden on consumers who choose to receive care in their community if their local hospital is out of network. CHA is further concerned that failure to provide confidentiality protections of privileged and proprietary negotiations will run afoul of federal antitrust law.

Therefore, CHA strongly urges the DOI to make the following adjustments:

- **Ensure confidentiality of information considered proprietary or trade secrets.**

The regulation lacks significant protections for proprietary and trade secret information. Consistent with how the DOI currently treats this type of data as part of the rate filing process, information provided by carriers or providers in furtherance of applying for or contesting a waiver application must remain confidential and cannot be shared beyond the DOI and the impacted parties in order to remain compliant with federal antitrust law.

***Recommendation:*** Paragraph E should be removed, and a confidentiality standard similar to that in 10-16-107(5)(g)(III) should be adopted. The Division could also consider publishing an annual, aggregate report regarding these types of waiver applications.

- **Apply to *all* health care providers, not just hospitals.**

If the regulatory intent is to target "bad actors" in the health care system and reduce costs, then the waiver process should include all health care providers to ensure an even playing field.

***Recommendation:*** Redraft Paragraph A to be applicable to all providers of services covered by network adequacy requirements.

- **Ensure consumers are protected from unexpected medical costs and are still able to access appropriate care.**

The goal of network adequacy protections is to ensure that health plans offer adequate value to consumers by providing access to care through an in-network provider within a reasonable time and distance. As such, waivers and exemptions from these standards should be granted only in narrow situations. As drafted, the language in Paragraph B inappropriately limits network adequacy to timeliness only, effectively eviscerating the distance standard.

Further, health plans increasingly fail to provide any out-of-network benefit, leaving consumers with significant unexpected medical costs if they lack the means to leave their community for care or are otherwise compelled to seek care from an out-of-network provider. This places a significant burden on both the consumer (to pay for care) and the provider (to attempt to collect payment).

**Recommendation:** Include provisions to ensure carriers offer a reasonable out-of-network benefit to consumers impacted by these waivers; expressly require carriers to document and pass on the premium savings attested to in the waiver application (Paragraph A.3) in the plan year for which the waiver is effective; and strengthen requirements in Paragraph B to notify consumers of the fact that key community providers may not be included in their plan.

- **Further detail the process and factors the Commissioner will consider in determining whether a waiver application will be approved.**

The regulation should clearly outline the process by which the Commissioner will make a determination on the waiver application, including identifying the processes by which the application can be contested, or additional evidence submitted; outlining specific factors that will be used to assess “reasonable terms,” “monopolistic” or “anti-competitive” behavior; and the evidentiary standard that will be used.

**Recommendation:** CHA welcomes the opportunity to work with the Division, health plans and consumer advocates to develop a process with appropriate procedural safeguards.

In the absence of these changes, CHA requests that the Division postpone adoption of Section 9 of Regulation 4-2-53 and contract with an impartial third party to conduct an impact analysis that identifies all unintended consequences of the proposal. While the focus on cost is warranted, lower costs should not come at the expense of access to high-quality care.

Thank you for your consideration of our comments.

Sincerely,



Amber Burkhart  
Public Policy Manager, Colorado Hospital Association