JUSTICE IN AGING
FIGHTING SENIOR POVERTY THROUGH LAW

February 28, 2017

Department of Health Care Services
Submitted via email: dhcsmcqmdnau@dhcs.ca.gov
Re: Medicaid Managed Care Final Rule – Network Adequacy Policy Proposal

Greetings,

Thank you for the opportunity to comment on the Department's Network Adequacy Policy Proposal put forth to comply with the federal Medicaid Managed Care Final Rule.

As a preliminary matter, in addition to implementing these network adequacy standards through health plan contracts, All Plan Letters, and County Information Notices, DHCS must establish these standards through regulation in compliance with the California Administration Procedures Act. We also adopt the Health Consumer Alliance's recommendation that DHCS review and update the entirety of the network adequacy standards currently set forth over three chapters of the California Code of Regulations.

MLTSS Network Adequacy Standards

The Medicaid Managed Care Regulations were finalized in April 2016. The new regulations represent the first revision since 2002 and were updated to address the significant increase in both the number of Medicaid beneficiaries enrolled in managed care and the expansion of benefits covered through managed care, most notably long-term services and supports (LTSS). A robust LTSS network is necessary to fulfill the state's commitment to deliver services in the least restrictive setting and comply with the *Olmstead* decision of the U.S. Supreme Court.

Plans are responsible for three primary managed long-term services and supports (MLTSS) benefits: Community Based Adult Services (CBAS), the Multi-Purpose Senior Services Program (MSSP), (in Coordinated Care Initiative counties only); and skilled nursing facility (SNF) care (in CCI and COHS counties). Currently, the network of managed LTSS is inadequate. CBAS, which is a managed care benefit in all 58 counties, is not available to all enrollees. There are 32 counties that have no CBAS center, eight counties that have only one center, and 13 counties that have fewer than five centers. Similarly, the waiting period for MSSP in managed care counties ranges from 30 days to a year (the average is 192 days). The consequence to an inadequate MLTSS network is an increased risk for hospitalization and institutionalization. Accordingly, it is imperative to develop MLTSS network adequacy standards that can meet the LTSS need in California. We have outlined specific recommendations below.

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Standards are required for both providers that the enrollee travels to and for providers that travel to the enrollee.

The proposal states that network adequacy standards are only required for MLTSS that require the beneficiary to travel to the provider. This is not accurate. Network adequacy standard requirements for MLTSS are outlined in §438.68(b)(2) and necessitate 1. time and distance standards for LTSS provider types in which an enrollee must travel to the provider to receive services; and 2. network adequacy standards *other* than time and distance standards for LTSS provider types that travel to the enrollee to deliver services.

The Final Rule provides states with guidance on how to develop MLTSS network adequacy standards. First, states must consider the same nine elements as those required for addressing network adequacy for other provider types including:

> Anticipated Medi-Cal enrollment; expected utilization of services; characteristics of the health care needs of the populations required; numbers and types of providers required to furnish services; number of providers accepting new patients; geographic location of providers and enrollees; considering distance, travel time, and means of transportation; ability of providers to communicate with limited English proficient enrollees in their preferred language; ability of providers to ensure physical access, reasonable accommodations, culturally competent communications; and availability of triage lines, telemedicine, e-visits.[1]

Second, in developing MLTSS standards, the Final Rule requires California to include elements that would support an enrollee's choice of provider; strategies that would ensure the health and welfare of the enrollee and support community integration of the enrollee; and other considerations that are in the best interest of the enrollees that need LTSS.[2]

> ***Recommendation***
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> California's Network Adequacy Policy must include MLTSS network adequacy standards for both providers that enrollees travel to and providers that travel to enrollees. Standards will have to take into consideration both time and distance and factors that are unique to LTSS. For example, the LTSS provider network will need to be tailored to address a beneficiary's medical need and age. A CBAS center that serves mostly younger adults with developmental disabilities is not an appropriate center for an older patient with dementia. Likewise, a CBAS center that is located in a community that serves the Korean community and a center that serves the Russian community, for instance, are both necessary to meet the needs of enrollees even if the centers are just blocks away from each other.
>
> MLTSS network standards have not been previously developed and there is no standard model. Based on the complexity of developing such standards, we strongly recommend that DHCS convene a workgroup specifically tasked with developing MLTSS network adequacy standards that comply with the rule's requirements and incorporate the elements outlined therein.

[1] §438.68 (c)(2)(i)
[2] §438.68 (c)(2)(ii-iv)

MSSP

The proposal indicates that network adequacy standards do not need to be developed for the Multi-Purpose Senior Services Program (MSSP) both because MSSP providers travel to beneficiaries and MSSP is a waiver program. Neither reason exempts California's obligation to develop standards for MSSP. First, as noted above, DHCS must develop network adequacy standards other than time and distance for providers that travel to enrollees. Second, the managed care rule makes clear that the definition of LTSS[3] includes Home and Community Bases Services (HCBS) delivered through waivers, including a 1915(c) waiver under which MSSP is authorized.

Recommendation

The Network Adequacy Policy must include standards for MSSP. We again strongly recommend that DHCS convene a workgroup specifically tasked with developing MLTSS network adequacy standards that comply with the rule's requirements and incorporate the elements outlined therein.

CBAS

The proposal does not provide for network standards for CBAS on the basis that a minimum capacity standard is set forth in the 1115 waiver. The Final Rule, however, does not carve out an exception to developing network adequacy standards just because some form of a standard is currently in place. Furthermore, the current 1115 baseline does not address network adequacy. Most notably, the baseline does not take into consideration growth in enrollment or utilization. Nor does the baseline include other elements required by the Federal Rule including the geographic location of network providers and enrollees, the ability of network providers to communicate with limited English proficient enrollees, or the ability of network providers to ensure physical access and culturally competent communications. As noted previously, the fact that 32 counties have no CBAS centers at all demonstrates that the network is not adequate to meet the need of managed care enrollees.

Recommendation

The Network Adequacy Policy must include standards for CBAS. Again, we recommend that DHCS convene a workgroup tasked with developing MLTSS network adequacy standards.

Skilled Nursing Facility/Intermediate Care Facilities

The Final Rule states that time and distance standards do not need to be developed for nursing facilities or Intermediate Care Facilities (ICF) because enrollees reside in these institutions. Yet, the Final Rule makes clear that MLTSS networks should support the health, welfare, and community integration of the enrollee. Accordingly, institutional providers should be available in the community in which the enrollee resided prior to institutionalization. This ensures the health and welfare of enrollees by maintaining access to family and friends and promotes community integration by providing access to community supports.

[3] **Defining Long-Term Services and Supports**: "Examples of what we would consider community based LTSS include Home- and Community-Based Services (HCBS) delivered through a section 1915(c) waiver, section 1915(i), or section 1915(k) state plan amendments, as well as personal care services otherwise authorized under the state plan." https://www.federalregister.gov/d/2016-09581/p-2036

Recommendation

The Network Adequacy Policy must include at a minimum time and distance standards for skilled nursing facilities and ICFs. Again, we recommend that DHCS convene a workgroup tasked with developing MLTSS network adequacy standards.

Assisted Living Centers/Residential Care Facilities

The assisted living waiver in the Coordinated Care Initiative counties is administered through managed care. Yet, this provider type is not addressed in the Network Adequacy Policy.

Recommendation

The Network Adequacy Policy must include network adequacy standards for assisted living facilities and residential care facilities in the counties that administer the waiver through managed care. Again, we recommend that DHCS convene a workgroup tasked with developing MLTSS network adequacy standards.

Accessibility – physical, cultural, language

The current Network Adequacy Policy Proposal does not address standards of physical, cultural, and language access. The Final Rule requires that network adequacy standards address "physical access, reasonable accommodations, culturally competent communications, and accessible equipment for Medicaid enrollees with physical or mental disabilities."[4] The Final Rule further requires that services be delivered in a "culturally competent manner to all enrollees, including those with limited English proficiency and diverse cultural and ethnic backgrounds, disabilities, and regardless of gender, sexual orientation or gender identity."[5]

Recommendation

The Network Adequacy Policy must include standards for physical, cultural, and language access. We recommend that DHCS convene a workgroup tasked with developing accessibility adequacy standards.

Thank you for the opportunity to comment. Please feel free to contact me to discuss our recommendations further.

Sincerely,

Amber C. Christ, Senior Staff Attorney

[4] §438.68(c)(vii-viii)
[5] §438.206(c)(2)