February 24, 2017

California Department of Health Care Services
Delivered via email to: dhcsmcqmdnau@dhcs.ca.gov

Re: Medicaid Managed Care Final Rule: Network Adequacy Proposal

The SCAN Foundation (Foundation) appreciates the opportunity to comment on the department's Network Adequacy Proposal, in accordance with the Medicaid Managed Care Final Rule (final rule). The final rule modernizes the Medicaid managed care regulations to reflect the transition to Medicaid managed care across states. Of particular importance to the Foundation is the critical role that Managed Long-Term Services and Supports (MLTSS) plays in the delivery of services to older adults and people with disabilities. We believe the Centers for Medicare & Medicaid Services (CMS) final rule makes a significant contribution to ensuring that the managed care delivery system provides low income older adults and people with disabilities appropriate access to medical care and LTSS in accordance with the person's needs, desires and preferences. As such, we offer the following comments and recommendations to strengthen the state's proposal for MLTSS network adequacy standards.

Background

In the final rule, CMS requires states to adopt MLTSS network adequacy standards "to ensure the availability of critical services and supports for beneficiaries as more… transition to MLTSS programs."[1] These provisions apply to the identified services as follows:

- Statewide: CBAS as a Medi-Cal managed care benefit in all 58 counties;
- County Organized Health Systems: Skilled Nursing Facility (SNF) care as a Medi-Cal managed care benefit in 22 County Organized Health System counties; and
- The Coordinated Care Initiative: operating in seven counties through 11 managed care plans integrating In-Home Supportive Services (IHSS), Community-Based Adult Services (CBAS), Multipurpose Senior Services Program (MSSP), and SNF care.

The department's proposed LTSS network adequacy standards outline provisions for CBAS, MSSP and SNF care. Per the governor's 2017 proposed budget, IHSS will cease to be a Medi-Cal managed care benefit effective January 1, 2018 and therefore, is not part of the proposed standards.

[1] Centers for Medicare & Medicaid Services. Medicaid and Children's Health Insurance Program (CHIP); Medicaid managed care, CHIP delivered in managed care, and revisions related to third party liability. 2016; https://www.gpo.gov/fdsys/pkg/FR-2016-05-06/pdf/2016-09581.pdf. Accessed February 22, 2017.

The final rule distinguishes requirements pertaining to LTSS providers into two categories – if the beneficiary is traveling to the provider, or the provider is traveling to the beneficiary. The department indicates that network adequacy standards are required only if the beneficiary is traveling to the provider, and that time and distance standards are not needed for the MSSP, SNF, or Intermediate Care Facility (ICF) providers as these providers either travel to the beneficiary to provide services or the beneficiary resides at the facility for care. However, in 42 CFR, §438.68 (b)(2), the federal regulations require states to develop standards "other than time and distance for LTSS provider types that travel to the enrollee to deliver services." Therefore, it appears that the department's interpretation of what is required under LTSS network adequacy standards does not comport with the intent of the final rule.

Interpretation of Final Rule

SNF time and distance standards: The department states that time and distance standards are not needed for SNF providers as the beneficiary resides at the facility for care. However, we believe that the department's proposal does not address adequacy of services for individuals transitioning to a nursing facility from the community or at the critical time of hospital discharge. Without time and distance standards for nursing facility benefits, individuals are at risk of being placed in facilities that are a great distance from their homes. This would make it difficult for family caregivers to stay actively engaged in the care experience and/or help the individual's transition to home. For example, according to the Sacramento Bee, potential closure of facilities owned by Brius Healthcare in the North Coast will result in a loss of 258 of skilled nursing beds (nearly a 60 percent reduction), sending residents hundreds of miles away from their communities to access care.[2]

MSSP timely access requirements: Because MSSP providers travel to the individual to deliver services, time and distance standards do not apply. The department further proposes that MSSP services are limited by slots and service requirements set forth in the Section 1115 Medi-Cal 2020 Special Terms and Conditions (STCs)[3] and 1915(c) waiver,[4] rendering timely access requirements inapplicable. However, the MSSP service requirements were developed prior to implementation of the federal regulations. Currently, each of the 12 MSSP sites operating in the CCI counties maintains a waitlist for services, ranging from 30 to 365 days, indicating that the current network is not adequate to meet existing need. As noted previously, CMS intends that states adopt MLTSS network adequacy requirements in order to "ensure the availability of critical services and supports for beneficiaries." To this end, we believe that maintaining waitlists for MSSP does not comply with the intent of the federal rule.

CBAS time and distance standards: CBAS is authorized statewide as a Medi-Cal managed care benefit in all counties. In theory, CBAS benefit should be available to any eligible beneficiary, regardless of the county of residence. In reality, 241 CBAS centers operate in 26 counties, leaving 32 counties without an operating center. The Department suggests that the current CBAS requirements set forth in the Medi-Cal 2020 STCs are sufficient. However, as indicated previously, CMS intends that states adopt MLTSS network adequacy requirements in order to "ensure the availability of critical services and supports for

[2] Lundstrom M. Nursing home magnate rocks Humboldt County with plans to close three of the area's six facilities. The Sacramento Bee 2016; http://www.sacbee.com/news/investigations/nursing-homes/article103845521.html. Accessed February 22, 2017.
[3] Centers for Medicare & Medicaid Services. California Medi-Cal 2020 demonstration special terms and conditions. 2017; http://www.dhcs.ca.gov/provgovpart/Documents/MediCal2020STCTCjan192017.pdf. Accessed February 22, 2017.
[4] California Department of Health Care Services. MSSP Waiver Renewal Approval Announcement. 2017; http://www.dhcs.ca.gov/services/ltc/Pages/MSSP.aspx. Accessed February 22, 2017.

beneficiaries." Therefore, we believe that the state's proposed CBAS standard is inadequate and does not meet the spirit of the federal rule.

Recommendations for MLTSS Network Adequacy

The purpose of LTSS network adequacy standards is to ensure individuals can access the range of necessary services across the continuum of care, including home and community-based services. Access to home and community-based services as alternatives to institutionalization is a principle affirmed by the U.S. Supreme Court's Olmstead decision, which supports an individual's right to reside in the least restrictive, most integrated setting. We believe that waitlists and lack of availability of home and community-based services do not meet the intent of the Court's decision. Establishing strong network adequacy standards will help to improve access to the spectrum of MLTSS, providing individuals with choices to best meet their needs, in the most appropriate setting possible. Additionally, strong network adequacy standards would also provide data the state can utilize in future planning to address LTSS demand and infrastructure needs.

Barriers to network adequacy in California include lack of adequate access (amount of services); varying levels of service mix in a given community; and broad disparities in geographic distribution. Nevertheless, health plans should be held accountable for meeting two key network adequacy components:

- Access to care coordinators for people with complex needs (through MSSP or other plan-provided services) leading to the development of a community-based plan of care for LTSS, and
- The majority of services within that plan of care meet realistic time and distance standards consistent with those applied to providers in other sections of the department's proposal.

Toward that end, we recommend the department take the following initial steps toward developing comprehensive network adequacy standards.

Convene a task force to develop MLTSS network adequacy standards: We recognize the difficulty of establishing these standards for LTSS, and therefore recommend that the department convene a task force consisting of providers, consumers, academics and advocates in the development of LTSS network adequacy standards. The task force should consider physical and communication accessibility as factors for network adequacy.

Develop a five-year LTSS infrastructure plan for network adequacy: An LTSS plan addressing integrated service delivery beyond 2019 would help address questions for the state and providers about how to develop the LTSS infrastructure and meet network adequacy requirements as the state's aging population dramatically increases.

Develop time and distance standards for SNFs: While individuals access LTSS onsite at a SNF, they should maintain the ability to select the SNF in which to receive services. The department should establish time and distance standards for SNFs relative to the location of a person's home or community-based residence.

Consider MSSP waitlists when determining network adequacy: In order to comply with the federal rule, we believe that the state should ensure eligible beneficiaries have access to MSSP as a managed care benefit, and eliminate waitlists in CCI.

Develop network standards for CBAS: To meet the intent of the federal regulations, we recommend the state develop network standards that take into account location of current CBAS sites, geographic areas of need, as well as linguistic and cultural competency issues.

Thank you for the opportunity to comment. Please feel free to contact us for any additional information.

Sincerely,

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President and CEO