



May 4, 2022

Mr. Robert Planthold  
Acting Deputy General Counsel  
Illinois Department of Insurance  
122 S. Michigan Avenue, Floor 19  
Chicago, IL 60603

RE: Notice of Proposed Rules, Network Adequacy and Transparency (50 Ill. Adm. Code 4540)  
published on April 15, 2022 in Vol. 46, Issue 16 of the Illinois Register

Dear Mr. Planthold:

The Illinois State Medical Society on behalf of its members, offers the following comments on the proposed administrative rules implementing the Network Adequacy and Transparency Act (the NAT Act). The ISMS is sincerely appreciative of the Department's work on this important matter to ensure the NAT Act is fully implemented. We were pleased to see that the rules:

- Specify that time and distance standards are those established by the Centers for Medicare & Medicaid Services (CMS), and clarify how distance and time are to be estimated
- Codify specific provider ratios for all provider types listed in the NAT Act
- Require material changes to be submitted via a revised version of the complete network adequacy filing, including the changes indicated for each document that was revised from the previous version of the filing
- Require plans to file annual reports describing the verification process established to ensure accuracy of provider directories, audit their print and online directories every 90 days, and to submit these audits as an attachment to the annual filing describing the verification process
- Require plans to submit to the Department sample correspondence to beneficiaries and providers regarding network changes, and establish specific information that must be included in letters to patients, including the availability of transitional services; a description of who qualifies for transitional services; and the insurer's formal procedure for a beneficiary to request transitional services

The ISMS has identified additional issues which are important to physicians and we ask that you incorporate our recommendations:

### Section 4540.30 Definitions

- Definition of “2023 Letter”
  - Comment:
    - The proposed rules create a definition of “2023 Letter”, which is used to establish time and distance standards. However, this definition specifically states that only the 2023 Letter to Issuers in the Federally-facilitated Exchanges, published by the Centers for Medicare & Medicaid Services on January 7, 2022 can be used, and no later editions or amendments are allowed. Fixing the time and distance standards to this letter and specifically not allowing adjustment unless the rule is amended raises concerns regarding future state compliance with federal standards and updated guidance.
  - Suggestion:
    - The ISMS respectfully suggests that the definition of “2023 Letter” in Section 4540.30 be modified to read as follows:

“2023 Letter” means the “2023 Letter to Issuers in the Federally-facilitated Exchanges” published by the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244 (January 7, 2022) (~~no later or~~ the most recent editions or amendments).
- Definition of “MA Guidance”
  - Comment:
    - The proposed rules create a definition of “MA Guidance”, which is used to establish network adequacy criteria and forms the basis of other definitions. Similarly, this definition specifically states that only the Medicare Advantage Network Adequacy Criteria Guidance published by CMS on January 10, 2017 can be used, and no later editions or amendments are allowed. Fixing the criteria guidance to this letter and specifically not allowing adjustment unless the rule is amended raises concerns regarding future state compliance with federal standards and updated guidance.
  - Suggestion:
    - The ISMS respectfully suggests that the definition of “MA Guidance” in Section 4540.30 be modified to read as follows:

“MA Guidance” means the “Medicare Advantage Network Adequacy Criteria Guidance” published by the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244 (January 10, 2017) (~~no later or~~ the most recent editions or amendments), available online at [https://www.cms.gov/Medicare/MedicareAdvantage/MedicareAdvantageApps/Downloads/MA Network Adequacy Criteria Guidance Document 1-10-17.pdf](https://www.cms.gov/Medicare/MedicareAdvantage/MedicareAdvantageApps/Downloads/MA%20Network%20Adequacy%20Criteria%20Guidance%20Document%201-10-17.pdf).

### Section 4540.40 Filing Procedures

- Comment:
  - The rules do not currently address the extent to which telehealth providers count toward network adequacy standards.
- Suggestion:
  - We encourage clarification on this point, although we understand that the Department plans to wait for additional information and guidance from CMS, as they are currently soliciting stakeholder input about the use of telehealth providers in the context of network adequacy.

### Section 4540.70 Notice of Nonrenewal or Termination

- Comment:
  - Although plans are required to send a sample copy of the notice of nonrenewal or termination to the Department before the notice is sent to providers and beneficiaries, there is no specified amount of time for this notification to the Department. While plans must include a sample in their annual filing as required under Section 4540.40(k), Section 4540.70 requires the Department to receive a sample copy of the actual notice that is going to providers and beneficiaries prior to a nonrenewal or termination; it is possible that this will vary from what was included in the annual filing as a sample of what might be sent. Sufficient prior notice to the Department regarding the impending nonrenewal or termination would allow the Department the opportunity to review the proposed language and inform the plan of any deficiencies, where applicable.
- Suggestion:
  - The ISMS respectfully suggests that Section 4540.70(a) be modified to read as follows:
    - a) Beginning on September 1, 2022, at least 30 days before sending any notice of nonrenewal or termination required under Section 15 of the Act, an insurer shall file informationally a sample copy of the notices to providers and to beneficiaries with the Department through SERFF. An insurer shall include these notices in its filing under Section 10 of the Act.

Thank you for the opportunity to comment on this matter. ISMS respectfully requests a copy of the second notice materials when submitted to the Joint Committee on Administrative Rules. If you have any questions, please do not hesitate to contact David Porter at 312-580-2468 or [davidporter@isms.org](mailto:davidporter@isms.org).

Sincerely,



Thomas M. Anderson, MD  
Chair, Board of Trustees  
Illinois State Medical Society

cc: Clarence W. Brown, Jr., MD  
Rodney S. Alford, MD  
Alexander R. Lerner