(Via email networkadequacy.mia@maryland.gov & david.cooney@maryland.gov)

November 4, 2019

Mr. David Cooney
Associate Commissioner for Life and Health
Maryland Insurance Administration
200 St. Paul Place
Baltimore Maryland, 21202

Re: Comments on COMAR 31.10.44

Dear Associate Commissioner Cooney:

Pursuant to the notice of rule-making to consider enhancements to COMAR 31.10.44, we are again submitting a request to include in the health plan network adequacy rule a specific and explicit requirement for documentation of hospital-based physician network adequacy in the requisite access plans filed with your office by health insurance carriers. Accordingly, we are re-submitting our comments filed in 2017, delineating the rationale for this request, and amplifying with additional, subsequent information to further buttress the prior comments filed on the public policy merit for this position.

It is important to underscore patient advocacy group support for holding insurance plans accountable for hospital-based physician network adequacy. As evidence of this support we are submitting the attached "National Declaration On Patient Access", endorsed by numerous national patient advocacy groups and multiple physician organizations. This document unequivocally calls upon state and federal regulators to adopt requirements to assess health plan network adequacy for patient access to in-network hospital and facility-based specialty physicians.

Furthermore, since our 2017 correspondence, two states have enacted statutes to require their respective insurance departments to undertake this regulatory oversight activity of health plans seeking state approval. New Hampshire enacted RSJ 420-J:7 (2) (e), requiring the Insurance Commissioner to adopt health plan network adequacy standards to assess "in-network access to hospital-based providers, such as anesthesiologists, radiologists, pathologists, and emergency medicine physicians." (Effective July 1, 2018.)

The State of Washington enacted Chapter 427, Laws of 2019 (Section 25) (Effective January 1, 2020) similarly requiring their Insurance Department:

> "When determining the adequacy of a proposed provider network or the ongoing adequacy of an in-force provider network, the commissioner must consider whether the carrier's proposed provider network or in-force provider network includes a sufficient number of contracted providers of emergency and surgical or ancillary services at or for the carrier's contracted in-network hospitals or ambulatory surgical facilities to reasonably ensure enrollees have in-network access to covered benefits delivered at that facility."

Under the Washington State law, cited above, "ancillary providers" are defined as "surgery, anesthesiology, pathology, radiology, laboratory, or hospitalist services."

It should also be noted that Louisiana establishes in law (RS 22:1019.2) a network adequacy requirement that: "each health insurance issuer shall maintain a network of providers that includes but is not limited to providers that specialize in mental health and substance abuse services, facility-based physicians, and providers that are essential community providers." Under this section of Louisiana law a: "Facility-based physician" means a physician licensed to practice medicine who is required by the base health care facility to provide services in a base health care facility, including an anesthesiologist, hospitalist, intensivist, neonatologist, pathologist, radiologist, emergency room physician, or other on-call physician, who is required by the base health care facility to provide covered health care services." (see 1019.1. definitions).

Lastly, we note that the Office of the Maryland Attorney General, office of Health Education and Advocacy Unit (HEAU), in 2017, supported our position in calling for a specific requirement on this matter to be adopted by the Maryland Insurance Administration:

> "HEAU also believes consumers would be well-served by the express inclusion the following specifically enumerated hospital-based providers in Proposed 31.10.44.04: anesthesiology, emergency medicine, interhospital transportation services, neonatal-perinatal medicine and pathology."[1]

For these many reasons, we again urge the Department to incorporate the following requirement into COMAR 31.10.44:

> **The annual access plan filed by each carrier shall include: a report describing, for each network hospital, the percentage of physicians in each of the specialties of (A) emergency medicine, (B) anesthesiology, (C) radiology and radiation oncology, (D) pathology, and (E) hospitalists practicing in the hospital who are in the insurer's network(s) so as to ensure enrollees with reasonable and timely access to these in-network physicians.**

Thank you for your consideration of these comments.

Respectfully Submitted by:

Maryland Society of Pathologists
College of American Pathologists
Maryland Radiological Society
American College of Radiology

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[1] Correspondence of Patricia F. O'Connor, Maryland Assistant Attorney General, Deputy Director, Health Education and Advocacy Unit, to Lisa Larson, Regulations Manager, Maryland Insurance Administration, August 21, 2017, Page 4.

August 3, 2017

(*via email*: insurance.mia@maryland.gov & al.redmer@maryland.gov)
& for submission networkadequacy.mia@maryland.gov

Hon. Al Redmer Jr.
Maryland Insurance Commissioner
200 St. Paul Place, Suite 2700
Baltimore, Maryland 21202

Re: Reject the Proposed Network Adequacy Rule (Title 10, Subtitle 10, Chapter 44) Unless Amended

Dear Commissioner Redmer:

Members of the Coalition of Hospital-Based Physicians (American College of Radiology, American Society of Anesthesiologists, College of American Pathologists), and some of our Maryland state affiliates, are submitting these comments on the proposed "Network Adequacy" rule, published July 21, 2017, that is now open for public comment. We appreciate the opportunity to express strong concerns regarding omission of critical hospital-based physician specialties from the rule.

Of substantial concern, the proposed network adequacy rule does not evaluate health insurance plan network adequacy for hospital-based physician specialties at in-network hospitals and facilities.

Thus, the proposed plan fails to provide Maryland patients with any assurance that in-network physicians will provide the continuum of care at an in-network hospital or facility. In a rather conspicuous omission, anesthesiology, pathology and emergency medicine are not listed medical specialties evaluated under the rule, and these critical specialties, including radiology and radiation oncology, are not evaluated for health plan network adequacy at hospitals. This omission is fundamentally inconsistent with the public policy objective of network adequacy: *to ensure that Maryland patients have access to high volume in-network physicians under their plans of insurance.*

You may note, the 2015 national model legislation/regulation on network adequacy ("Health Benefit Plan Network Access and Adequacy Model Act"), of the National Association of Insurance Commissioners (NAIC), placed a clear obligation on health insurance payers to declare, as part of their submission to the State, their "process for monitoring access to physician specialist services in emergency room care, anesthesiology, radiology, hospitalist care and pathology/laboratory services at their participating hospitals."

This particular network adequacy provision of the NAIC model was recently adopted in Oregon (OAR 836-053-0320 (l)), Colorado (3 CCR-7024-Reg 4-2-54 Section 6 (g)) under rules promulgated by the Insurance Departments of these respective states and in Connecticut (Conn. Gen. Stat. § 38a-472f (h) (2) (j)). This explicit requirement is also now, for the first time, embedded in the "Network Adequacy" application standard for the CMS Qualified Health Plan (QHP) Issuer Application Instructions for 2018 (issued April 13, 2017) applicable to QHPs seeking entry into the federally facilitated exchanges.

Furthermore, in March 2016, the State of California adopted new rules to assess the sufficiency of health plan networks for the provision of hospital based physician providers. Specifically, the new state rule (California Code of Regulations Title 10, Section 2240.5 (d) (14)) provides that health plans submit prior to approval:

> (14) A report describing, for each network hospital, the percentage of physicians in each of the specialties of (A) emergency medicine, (B) anesthesiology, (C) radiology, (D) pathology, and (E) neonatology practicing in the hospital who are in the insurer's network(s).

The Maryland proposed rule is also contrary to American Medical Association (AMA) policy (Network Adequacy- H.285.908), which states:

> Our AMA advocates that health plans should be required to document to regulators that they have met requisite standards of network adequacy including hospital based physician specialties (I.e. radiology, pathology, emergency medicine, anesthesiologists and hospitalists) at in-network facilities, and ensure in-network adequacy is both timely and geographically accessible.

Accordingly, in order to ensure that Maryland patients have access to in-network physician specialists at hospitals and other facilities we urge that rule be amended to include Insurance Department evaluation of health plan network adequacy for hospital-based physician specialists as delineated herein. Specifically, we urge inclusion of the following language:

> **.03 C. (5) a report describing, for each network hospital, the percentage of physicians in each of the specialties of (A) emergency medicine, (B) anesthesiology, (C) radiology and radiation oncology, (D) pathology, and (E) hospitalists practicing in the hospital who are in the insurer's network(s) so as to ensure enrollees with reasonable and timely access to these in-network physicians.**

Thank you for your consideration of our comments.

American Society of Anesthesiologists (ASA)
American College of Radiology (ACR)
Maryland Society of Radiologists
College of American Pathologists (CAP)
Maryland Society of Pathologists

cc: Hon. Dennis R. Schrader, Secretary of Health, via email Dennis.Schrader@maryland.gov
Lisa Larson, Esq., Director of Hearings and Regulations, Office of the Insurance Commissioner, via email Lisa.Larson@maryland.gov;
Gene M. Ransom, CEO, Maryland State medical Society via email gransom@medchi.gov;
Senate Education, Health and Environmental Affairs Committee
Chair Senator Joan Carter Conway
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Vice Chair Senator Paul G. Pinsky
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House Health and Governmental Operations Committee
Chair, Shane E. Pendergrass
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Vice Chair, Eric M. Bromwell
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April 24, 2019

Declaration on Network Adequacy and Patient Access to In-Network Physicians

The undersigned organizations believe that patients should have access to in-network physicians at in-network hospitals and facilities and that when health insurance plans fail to contract with hospital and facility-based physicians, such plans have not undertaken their contractual due diligence in providing access to essential in-network physician services for their enrollees.

Therefore, state insurance regulators, state legislatures and the federal government should adopt standards to ensure that patients have reasonable and timely access to in-network hospital based physician specialties (i.e. radiology, pathology, and hospitalists) at in-network facilities under any health plan, including any qualified health plan (QHP) approved by the state or federal government.

Specifically, every state or federal standard to govern health insurance plan network adequacy should assess whether the health plan network includes physicians who specialize in pathology, radiology and hospitalists in sufficient numbers at any in-network facility or in-network hospital included in such plan so that patients enrolled in these plans have reasonable and timely access to these in-network physician specialists.

If a health plan is inadequate for physician specialist services in hospitalist care, radiology and/or pathology/laboratory services the plan should be responsible under law for paying out-of-network physicians the reasonable and customary rates for out of network services and at no greater out-of-pocket expense to the patient as would be the case for an in-network physician service.

College of American Pathologists (CAP)
American College of Radiology (ACR)
Society of Hospital Medicine (SHM)
National Brain Tumor Society (NBTS)
Leukemia and Lymphoma Society (LLS)
National Kidney Foundation (NKF)
Congenital Adrenal hyperplasia Research, Education & Support Foundation (CARES Foundation, Inc.)
Epilepsy Foundation
Bladder Cancer Advocacy Network (BCAN)
Breast Cancer Action (BCA)
Ovarian Cancer Research Fund Alliance (OCRFA)
Kidney Cancer Association (KCA)
International Myeloma Foundation (IMF)
Huntington's Disease Society of America (HDSA)

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