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CPEHN
California Pan-Ethnic Health Network

February 28, 2017

Department of Health Care Services
Sacramento, CA 95814
Via email: dhcsmcqmdnau@dhcs.ca.gov

Re: Department of Health Care Services: Network Adequacy Policy Proposal

To Whom it May Concern:

CPEHN appreciates to the opportunity to comment on the Department of Health Care Services' "Medicaid Managed Care Final Rule: Network Adequacy Policy Proposal", dated February 2, 2017. As required by the Rule, DHCS proposes time and distance and timely access standards for primary care (adult and pediatric), specialty care (adult and pediatric), behavioral health (including substance use disorder treatment), OB/GYN, hospital, pharmacy, pediatric dental, and LTSS.

California has enrolled 80% of Medi-Cal enrollees (approximately 11 million Californians) into Medi-Cal Managed Care, including transitioning seniors and persons with disabilities. The 2016 Medicaid Managed Care Final Rule, issued by the Centers for Medicare and Medicaid Services (CMS), significantly strengthens consumer protections for the majority of Medi-Cal consumers now enrolled in managed care. The Final Rule has stated goals of aligning Medicaid and CHIP managed care requirements with other major health coverage programs; enhancing the beneficiary experience of care and strengthening beneficiary protections; strengthening actuarial soundness payment provisions and program integrity; promoting quality of care; and supporting efforts to reform the delivery systems that serve Medicaid and CHIP beneficiaries.

Key to strengthening consumer protections for California's Medi-Cal enrollees is the requirement that:

- Mental Health Plans, Organized Delivery Systems for Substance Use Disorder Treatment, and Dental Managed Care Plans, as well as Managed Care Plans, meet many of components of the Final Rule.
- States establish time and distance standards for specified providers and;
- Network adequacy standards account for cultural and linguistic access to Medicaid services including timely access to interpreter services as required by California law.
- ***Implementation of Standards***

DHCS proposes to adopt the network adequacy standards through amending contracts held between DHCS and plans, and through the use of All Plan Letters and County Information Notices. DHCS does not propose to comply with the Medicaid Managed Care Final Rule Network Adequacy Standards via the promulgation of regulations or the enactment of statutes. While this provides a measure of flexibility, it is not appropriate for the adoption of statewide network adequacy standards, which are sufficiently broad in scope to require the adoption of regulations. CPEHN recommends that DHCS collaborate with the Legislature and stakeholders to codify the time and distance and timely access standards.

- ***Cultural and Linguistic Access to Services***

Timely Access to Interpreter Services: DHCS' Network Adequacy Proposal fails to address existing standards for timely access to interpreter services as required by California law. Specifically, interpreter services must be provided to enrollees at no cost, and in a manner that ensures the provision of interpreter services at the time of the appointment.[1] Thirty-eight percent of adults enrolled in Medi-Cal speak a language other than English, and 29% of adults who gained coverage through the Medi-Cal expansion speak English less than very well.[2] Therefore, language access and the provision of interpreter services is central to ensuring timely access to services. CPEHN recommends that DHCS include in its Network Adequacy Proposal a methodology for monitoring timely access to interpreter services. Alternatively it should ensure compliance with timely access to interpreter services be incorporated into the existing oversight authority of the Department of Managed Health Care. CPEHN further recommends that DHCS issue guidance to plans in order to reinforce that interpreter services are required at the time of appointment.

Cultural and Linguistic Access to Services including for people with disabilities, regardless of gender, sexual orientation or gender identity: The Final Rule requires that network adequacy standards account for "physical access, reasonable accommodations, culturally competent communications, and accessible equipment for Medicaid enrollees with physical or mental disabilities." DHCS states in the Policy Proposal that nine factors were considered in determining network adequacy, including the ability of network providers to communicate in non-English languages, the ability of network providers to ensure accessible, culturally competent care to people with disabilities. However, it does not specify how it will take these considerations into account in verifying network adequacy as required by the final rule. DHCS' Group Needs Assessment (GNA) is an outdated, inadequate tool to measure cultural and linguistic access to services. CPEHN urges DHCS to articulate the specific methodologies it will use to account for and to adequately serve the diversity of Medi-Cal recipients. We strongly recommend DHCS convene a workgroup tasked with developing cultural and linguistic access adequacy standards.

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[1] Title 28, CCR Section 1300.67.2.2.

[2] Research and Analytic Studies Division, September 2016. Medi-Cal Monthly Enrollment Fast Facts, June 2016. California Department of Health Care Services.

- ***Time and Distance Standards***

DHCS proposes to create time and distance standards in three county regions for adult and pediatric specialty care, OB/GYN specialty care, non-physician mental health care, substance use disorder outpatient services and opioid treatment programs, and pharmacy. The regions are determined by county population. However, the geography and access within counties varies widely. Urban counties contain rural areas, and rural counties sometimes contain densely populated areas with sufficient numbers of providers. Therefore, CPEHN believes that one statewide standard is most appropriate.

Additionally, it is critically important that consumers be well-informed as to their rights to timely access to services. California consumers are mobile, particularly communities of color who have recently been disparately impacted by rising housing costs and displacement. If the time and distance standards vary from county to county, consumers may have difficulty knowing which standard applies to them in any place. It will also be difficult to inform consumers of their rights. DHCS' proposal itself requires multiple charts and an appendix in order to explain which standard applies to which specialty and which county falls into which region. It is difficult to imagine how this will translate to robust consumer informing materials.

Finally, while DHCS has the ability to grant exceptions to the standards on a case-by-case basis, there should be clear and transparent standards set forth for exceptions. Plans should be required to document that there is no provider in the geographic region, whether in or out of network, in order to be granted an exception.

- ***Monitoring and Enforcement***

Monitoring and enforcing compliance with the network adequacy standards is essential to realizing access for consumers. However, the monitoring plans proposed by DHCS are vague and insufficient to ensure compliance of plans with the standards set forth. Importantly, there should be a role for DMHC in monitoring compliance with the network adequacy standards, consistent with their current authority.

DMHC's recently released *Timely Access Report: Measurement Year 2015* found that almost all plans submitted inaccurate data, with some plans submitting data for providers not in the network, counting providers multiple times, or other significant errors. This makes it impossible for the state and consumers to analyze the reality of access to providers. The report should have been the first time data was provided by lines of business, and the data that is required for the reporting is much more detailed than anything currently required to be submitted to DHCS, or that appears to be proposed by DHCS in the monitoring plan set forth in this proposal. This raises concerns both about the accuracy of data plans currently report to DHCS, and the extent to which DHCS plans to validate data submitted by Medi-Cal managed care plans, Mental Health Plans, and Dental Managed Care plans.

Mental Health Plans: DHCS proposes to utilize the MHP performance dashboard currently posted on its website, in addition to triennial compliance reviews to monitor Mental Health Plan compliance with network adequacy standards. MHPs currently do not have statewide time and

distance or timely access standards. Therefore, a collaborative process to monitor compliance with the new standards is particularly important. The referenced MHP performance dashboard currently only utilizes claims data to report utilization and penetration rates. It is critical that DHCS collaborate with the Legislature and stakeholders to develop a statewide performance outcomes reporting system for Mental Health Plans.

Monitoring Access for Subpopulations: The Final Rule 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." CPEHN recommends that DHCS establish a framework to monitor network adequacy for historically underserved subpopulations, including enrollees of diverse cultural and ethnic backgrounds, limited English proficient enrollees, and enrollees with disabilities, including those with serious mental illness.

- ***On-Going Stakeholder Involvement***

While DHCS notes that on-going stakeholder involvement will occur through existing forums, CPEHN recommends that DHCS establish a workgroup, including consumer advocates, to focus specifically on core issues to the implementation of the network adequacy standards. These include cultural and linguistic access and monitoring. Additionally, we note that the only forum named in the proposal that appears to be for specific review of implementation of the MHP standards is the County Behavioral Health Directors Association of California, which represents the MHPs. CPEHN recommends that DHCS establish a behavioral health stakeholder forum to provide input on the mental health and substance use standards, as well as implementation of other aspects of the Final Rule that impact mental health and substance use.

Once again, we appreciate the opportunity to comment on DHCS' Policy Proposal and look forward to continued collaboration. If you have any questions about CPEHN's recommendations, please contact Kiran Savage-Sangwan at ksavage@cpehn.org or 916-447-1299.

Sincerely,

Kiran Savage-Sangwan, MPA

Health Integration Policy Director
California Pan-Ethnic Health Network (CPEHN)