January 7, 2015

Ms. Jolie Matthews
NAIC Senior Health and Life Policy Counsel
National Association of Insurance Commissioners
444 North Capitol Street, NW
Suite 700
Washington, DC 20001
Letter via email to: jmatthews@naic.org

RE: Revisions to Model #74 – Health Benefit Plan Network Access and Adequacy Model Act

Dear Ms. Matthews:

On behalf of the American College of Nurse-Midwives (ACNM) I wish to submit the following comments in response to the proposed changes to the National Association of Insurance Commissioner’s (NAIC) Model #74 – Health Benefit Plan Network Access and Adequacy Model Act.¹ We appreciate the opportunity afforded for comment by the NAIC and hope you find our feedback constructive and helpful.

BACKGROUND

ACNM represents the majority of the nation’s 11,500 certified nurse-midwives (CNMs) and certified midwives (CMs) who practice in all 50 states, the District of Columbia and the US territories. In 2013 CNMs/CMs collectively attended more than 8% of all births in the entire country and 12% of all vaginal births. In eighteen states they attend between 10% - 27% of births.² CNMs/CMs are thus major providers of maternity and newborn care.

SPECIFIC COMMENTS

Section 5. Network Adequacy

Under this section, the Model Act describes requirements that must be met by health carriers to meet state network adequacy requirements. It is clear from the draft document, as well as numerous public statements by NAIC staff that the committee drafting the document intentionally avoided establishing explicit standards with regard to the number and type of providers that must be included in a carrier’s network. This is understandable given the variety

¹ See: http://www.naic.org/documents/committees_b_rff_namr_sg_exposure_draft_proposed_revisions_mcpna_model_act.pdf
² CDC Vital Stats, Births - Available at: http://www.cdc.gov/nchs/data_access/vitalstatis/vitalstatis_births.htm
of conditions across the country and the need for the Model Act to accommodate that fact. ACNM recognizes the need for such flexibility.

ACNM has two specific concerns with Section 5 of the Model Act. First, the lack of a mechanism for determining when a sufficient range of different provider types has been included in the network and second, the absence of a provision related to state duties to enforce Section 2706(a) of the Public Health Service Act.

1. Determining Sufficiency of the Range of Provider Types

The Model Act requires carriers to establish a provider network “that is sufficient in numbers and types of providers to assure that all services to covered persons will be accessible without unreasonable delay.” The drafting note under Section 5, Subsection B discusses the possibility of states using various mechanisms for determining an appropriate number of providers, but does not contemplate how states may ensure inclusion in the network of an appropriate range of provider types.

Subsection C provides for coverage at in-network levels of services provided by out-of-network providers when the type of services rendered by the out-of-network provider are not available in network. Again, however, there is no discussion of how a plan or a state might determine whether the type of service at issue is available under the plan. This very important question remains unaddressed by the Model Act.

The hallmark of midwifery practice is to focus on fostering normal physiologic birth, which emphasizes practices that support the occurrence of innate, hormonally driven processes. This practice differs significantly from that of physicians who are trained to use interventions to address complications as they arise. Multiple studies have validated that CNM/CM led care results in fewer inductions of labor, lower levels of analgesia, fewer cesarean births, fewer perineal tears, and fewer pre-term births.

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Petra ten Hoope-Bender, et. al., “Improvement of maternal and newborn health through midwifery,” The Lancet, Published online June 23, 2014.


Laurie Cawthon, MD, MPH, “Assessing Costs of Births in Varied Settings,” presentation before the Institute of Medicine, March 7, 2013, available at: [http://www.iom.edu/~/media/Files/Activity%20Files/Women/BirthSettings/6-MAR-2013/Cawthon%20PDF.pdf](http://www.iom.edu/~/media/Files/Activity%20Files/Women/BirthSettings/6-MAR-2013/Cawthon%20PDF.pdf)


Marian F. MacDorman and Gopal K. Singh, “Midwifery care, social and medical risk factors, and birth outcomes in the USA,” *J
empirically different than the prevalent medicalized model. Midwifery fosters occurrence of normal birth, while physician care is meant to address occurrence of complications. **For purposes of the NAIC’s Model Act, the key fact to keep in mind is that physician-led maternity care and midwife-led maternity care, while complimentary, are not interchangeable. Inclusion of one type of maternity care within a plan’s network does not equate to inclusion of the other.** The reality is that both types of care are necessary and should be available through a carrier’s network.

Because the Model Act does not currently contain a mechanism for determining when an appropriate range of provider types has been included, we are concerned that carriers may assert that inclusion of only physicians in their network would be sufficient to meet the need to cover maternity and newborn care.

**Recommendation**

The Model Act should be revised to include a drafting note indicating states must have a mechanism in place for determining that a carrier has a sufficient range of provider types. ACNM recommends the standard that should be used consist of state scope of practice laws for the various professions. Specifically, if a state, through its scope of practice laws, has allowed a given provider type to render a particular category of health care services and covered benefits under a plan fall into such category, carriers should be required to include a sufficient number of providers of that type to ensure access to their services.

For example, many plans are required to cover essential health benefits, which include the category of “maternity and newborn care.” Both physicians and CNMs/CMs, under applicable state scope of practice laws and regulations are permitted to render maternity and newborn care. Thus, carriers should be required to include a sufficient number of both physicians and CNMs/CMs in their provider networks, or make their services available out-of-network at a cost to the beneficiary that is equal to the in-network rate.

**2. Enforcement of Section 2706(a) of the Public Health Service Act**

The provisions of Section 2706(a) of the Public Health Service Act (PHSA) state, in part, that:

> A group health plan and a health insurance issuer offering group or individual health insurance coverage shall not discriminate with respect to participation under the plan or coverage against any health care provider who is acting within the scope of that provider’s license or certification under applicable State law.

Section 2722 of the PHSA provides for state enforcement of the language in Section 2706(a). ACNM is concerned that the Model Act does not address these provision of law. ACNM is particularly concerned about the absence of such language in the Model Act because of data we

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*Epidemiol Community Health, 1998; 52: 310-317.*
have developed as a result of a recent survey of health carriers operating through the health insurance marketplaces.

In 2014, ACNM conducted a survey of such health carriers, to inquire regarding the inclusion of CNMs/CMs in their networks and coverage of their services. Key findings include the following:

- Twenty percent of plans do not contract with CNMs to include them in their provider networks, even though CNMs are licensed to practice in all 50 states and the District of Columbia.
- Seventeen percent of plans do not cover primary care services offered by CNMs, even though ACNM standards defining the scope of practice for these providers, often incorporated by reference by state law, include primary care services.
- Fourteen percent of plans indicated they impose restrictions on CNM practice that conflict with their scope of practice under state laws and regulations.
- Twenty-four percent of plans will not cover CNM professional services provided in a birth center and 56% will not reimburse CNMs for home birth services.
- Ten percent of plans that contract with CNMs do not list them in their provider directories, making them invisible to potential and current enrollees.
- Forty percent of plans listing CNMs in their provider directories list them under the obstetrician-gynecologist category, which may make it difficult for women searching for “midwives” to find them.
- Forty-seven percent of plans do not contract with birth centers to cover facility costs associated with births in that setting, despite studies showing very good outcomes and low costs associated with these facilities.
- Eight percent of plans contracting with birth centers indicated they did not list them in their provider directory.

It is a serious matter that a major provider of maternity and newborn care is being systematically excluded or discriminated against by plans participating in the exchanges.

State regulators have a strong interest in ensuring that high-value, low cost providers are included in the networks of plans operating in their states. Further, they have a legal responsibility to ensure that plans do not discriminate against providers acting within the scope of their license.

Recommendation

ACNM recommends the Model Act be revised to include a provision reflective of the language of Section 2706(a). Further, we recommend that a drafting note be included indicating that states should establish a regulatory mechanism for enforcement of the provisions of Section 2706(a).

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5 A copy of the final survey report is available at: http://www.midwife.org/ACNM/files/ccLibraryFiles/Filename/000000004394/EnsuringAccessstoHighValueProviders.pdf
We understand the Department of Health and Human Services may regulate on this provision in the future and recommend the language of the drafting note take this eventuality into account.

CONCLUSION

We thank the NAIC for the opportunity to comment on this important document and look forward to the final product. Should you have any questions about the issues we have raised, please do not hesitate to contact me.

Sincerely,

/JSB/

Jesse S. Bushman, MA, MALA
Director
Advocacy and Government Affairs
American College of Nurse-Midwives
8403 Colesville Road, Suite 1550
Silver Spring, MD 20910
jbushman@acnm.org
240 485-1843