



January 17, 2016

Mr. Andy Slavitt
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attn: CMS-1631-P
PO Box 8013
Baltimore, MD 21244-8013
Letter Submitted via Email to: FFEcomments@cms.hhs.gov

RE: Draft 2017 Letter to Issuers in the Federally-facilitated Marketplaces

Dear Mr. Slavitt:

On behalf of the American College of Nurse-Midwives (ACNM) I am pleased to submit these comments in response to the “Draft 2017 Letter to Issuers in the Federally-facilitated Marketplaces.” We hope that you find our comments helpful and look forward to your response in the final rule.

The American College of Nurse-Midwives (ACNM) is the national professional association representing the interests of Certified Nurse-Midwives (CNMs) and Certified Midwives (CMs).

COMMENTS

Chapter 2, Section 3, Subsection ii. *State Review of Quantitative Network Adequacy Standard*

Under this subsection CMS discusses standards that could be used by states performing their own network adequacy reviews.

We support the agency’s requirement that qualified health plans participating in federally facilitated marketplaces (FFMs) maintain networks that are sufficient in numbers and types of providers to assure that all services to covered persons will be accessible to them without unreasonable delay. We also support the agency’s declaration that it will consider the National Association of Insurance Commissioner’s (NAIC) final recommendations of updates to their Network Adequacy Model law as it assesses these policies. We believe that patients benefit the greatest from a healthcare system where they receive easily accessible care from an appropriate choice of safe, high quality and cost-effective providers, such as CNMs and CMs.

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.¹ 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.²

The midwifery model of care is thus qualitatively and empirically different than the prevalent medicalized model. Midwifery fosters occurrence of normal birth, while physician care is more focused on addressing occurrence of complications. **For purposes of CMS' examination of plan network adequacy, 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 maternity care are necessary and should be available through a plan's network.

We are particularly concerned about this point because of information we obtained through a survey of health insurers participating in federally facilitated and state marketplaces. In 2014, ACNM conducted a survey of such insurers, to inquire regarding the inclusion of CNMs/CMs in provider networks and coverage of their services.³ 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.

¹ "Supporting Health and Normal Physiologic Childbirth: A Consensus Statement by ACNM, MANA and NACPM," May 14, 2012, available at: <http://midwife.org/ACNM/files/ACNMLibraryData/UPLOADFILENAME/000000000272/Physiological%20Birth%20Consensus%20Statement-%20FINAL%20May%2018%202012%20FINAL.pdf>

² Meg Johantgen, PhD, RN, et. al., "Comparison of Labor and Delivery Care Provided by Certified Nurse-Midwives and Physicians: A Systematic Review, 1990 to 2008," *Women's Health Issues* 22-1 (2012) e73–e81.

Sandall J, Soltani H, Gates S, Shennan A, Devane D, "Midwife-led continuity models versus other models of care for childbearing women (Review)," *The Cochrane Library*, 2013, Issue 8.

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

Elizabeth Schroeder, et. al., "Cost effectiveness of alternative planned places of birth in woman at low risk of complications: evidence from the Birthplace in England national prospective cohort study," *BMJ*, 2012;344:e2292.

Caroline S. Homer, et. al., "Community-based continuity of midwifery care versus standard hospital care: a cost analysis," *Australian Health Review*, Vol 24 • No 1, 2001.

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>

Davis, Lorna G., CNM, et. al., "Cesarean Section Rates in Low-Risk Private Patients Managed by Certified Nurse-Midwives and Obstetricians," *Journal of Nurse-Midwifery*, vol. 39, no. 2, March/April 1994, pp. 91-97.

Rosenblatt, RA, "Interspecialty differences in the obstetric care of low-risk women," *American Journal Of Public Health*, vol. 87, issue 3, March 1997.

Marian F. MacDorman and Gopal K. Singh, "Midwifery care, social and medical risk factors, and birth outcomes in the USA," *J Epidemiol Community Health*, 1998; 52: 310-317.

³ A copy of the final survey report is available at:

<http://www.midwife.org/ACNM/files/ccLibraryFiles/Filename/000000004394/EnsuringAccessToHighValueProviders.pdf>

- 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 purely on the basis of the type of license they hold.

Federal and 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, under the provisions of Section 2706(a) of the Public Health Service Act they have a legal responsibility to ensure that plans do not discriminate against providers acting within the scope of their license.

Recommendation

ACNM strongly recommends that CMS require states to put into place a mechanism for determining that plans have a sufficient range of all provider types, including CNMs/CMs. ACNM recommends the standard that should be used consist, at a minimum, 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, plans should be required to include a sufficient number of providers of that type to ensure access to their services.

For example, given that maternity and newborn care is a required essential health benefit, and under existing state scope of practice laws and regulations both physicians and CNMs/CMs are permitted to render maternity and newborn care, plans 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.

This same requirement should be used by CMS when it conducts reviews of plans that are not subject to state-based network adequacy review.

CONCLUSION

We thank you for the opportunity to comment on this proposed rule. Should you have any questions regarding our comments, please reach out to me directly.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jesse S. Bushman', with a long horizontal flourish extending to the right.

Jesse S. Bushman, MA, MALA
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