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Jolie Matthews
Senior Health and Life Policy Counsel
National Association of Insurance Commissioners
700 Hall of the States
444 North Capitol Street, NW
Washington, DC 20001-1509

Sent via email to: jmatthews@naic.org

Re: Revisions to NAIC Managed Care Plan Network Adequacy Model Act (#74)

Dear Ms. Matthews:

The American Nurses Association (ANA) welcomes the opportunity to comment on the National Association of Insurance Commissioners (NAIC) Managed Care Plan Network Adequacy Model Act (#74). As the only full-service professional organization representing the interests of the nation's 3.1 million registered nurses (RNs), ANA is privileged to speak on behalf of its state and constituent member associations, organizational affiliates, and individual members. RNs serve in multiple direct care, care coordination, and administrative leadership roles, across the full spectrum of healthcare settings. ANA members also include advanced practice registered nurses (APRNs) such as nurse practitioners, certified registered nurse anesthetists, clinical nurse specialists, and certified nurse midwives.

ANA is concerned that NAIC's draft Model Act does not adequately reflect the non-discrimination requirements in §1201 of the Patient Protection and Affordable Care Act, *Non-Discrimination in Health Care: Providers* [codified in §2706(a) of the U.S. Public Health Service Act]. Section 2706(a) states 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. This section shall not require that a group health plan or health insurance issuer contract with any health care provider willing to abide by the terms and conditions for participation established by the plan or issuer. Nothing in this section shall be construed as preventing a group health plan, a health insurance issuer, or the Secretary from establishing varying reimbursement rates based on quality or performance measures.*"

The most recent version of section 6(F) of the draft Model Act *removed* language stating that the provisions of the Model Act do not require health carriers (or intermediaries or the provider networks with which they contract) to employ specific *types of providers*, or to contract with or retain more *types of providers* than necessary to maintain a sufficient provider network. Removing that language brings the Model Act closer to compliance with section 2706(a). However, ANA recommends that

NAIC further revise the Model Act language to state that plans must contract with a sufficient number of each type of provider licensed to provide specific covered health care services or benefits. Despite the documentation of high quality services and high patient satisfaction with APRNs, private health insurers have not made significant steps to include them in private health insurance networks. Tine Hansen-Turton and colleagues from the National Nursing Centers Consortium have conducted repeated studies of the credentialing behavior of private health insurers. They reported managed care organization (MCO) credentialing rates for NPs of 33% in 2005[1] and 53% in 2007.[2] A more recent survey in this series focused on the credentialing policies of health maintenance organizations (HMOs) within managed care organizations during 2011-2012.[3] Sixty-seven percent of HMOs with significant commercial product lines credentialed nurse practitioners (NPs) as primary care providers. Those HMOs with significant Medicare or Medicaid product lines exhibit higher credentialing rates of 76% and 83%, respectively. This might be considered an improvement were it not for the fact that NP services are by law included in the benefit packages of both of those programs. That one sixth to one quarter of these private plans could not comply with Medicare and/or Medicaid credentialing requirements suggests the need for more explicit guidance in the Model Act to address this issue.

The credentialing rate of another category of APRNs – certified nurse midwives – is even lower. The American College of Nurse-Midwives (ACNM) recently completed a survey of marketplace insurers regarding coverage of midwifery services. Among their findings: 17% of plans do not cover primary care services offered by certified nurse midwives (CNMs) even though ACNM standards defining the scope of practice for these providers include primary care services, and 14% of plans indicated they impose restrictions on CNM practice that conflict with their scope of practice under state laws and regulations.[4]

This issue takes on new significance in light of comments from the Centers for Medicare & Medicaid Services (CMS), which recently stated that it will await the results of the NAIC Model Act workgroup before proposing any significant changes to its regulation on network policy.[5] In order to ensure compliance with section 2706(a), it is essential that NAIC's draft Model Act clearly articulate that plans cannot discriminate against an entire class of clinicians such as APRNs licensed by a State to provide specific covered health care services, and cannot retain blanket exclusion rules with respect to categories of clinicians. Further, differences in allowances (approved charges) for the same service provided by clinicians of different professions cannot be maintained if not evidence-based with respect to quality or specific performance.

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[1] Hansen-Turton T, Ritter A, Begun H, Berkowitz SL, Rothman N, Valdez B. "Insurers' contracting policies on nurse practitioners as primary care providers: The current landscape and what needs to change" *Policy Politics & Nursing Practice* 2006; 7:216–226.

[2] Hansen-Turton T, Ritter A, Torgan R. "Insurers' contracting policies on nurse practitioners as primary care providers: Two years later" *Policy Politics & Nursing Practice* 2008; 9:241–248.

[3] Hansen-Turton T, Ware J, Bond L, Doria N, Cunningham P, "Are Managed Care Organizations in the United States Impeding the Delivery of Primary Care by Nurse Practitioners? A 2012 Update on Managed Care Organization Credentialing and Reimbursement Practices" *Population Health Management*, 2013 Oct;16(5):306-9. doi: 10.1089/pop.2012.0107. Epub 2013 Mar 29.

[4] American College of Nurse Midwives News Release (September 18, 2014). Retrieved from: http://www.midwife.org/acnm/files/ccLibraryFiles/Filename/000000004403/ACNMSurveyofHealthPlansReleaseFinalVersionforWebsite.pdf.

[5] *HHS Notice of Benefit and Payment Parameters for 2016*, 79 Fed. Reg. 70674, dated November 26, 2014.

We appreciate the opportunity to provide comments on NAIC's Model Act. If you have questions, please contact Peter McMenamin, Senior Policy Fellow-ANA Health Economist (peter.mcmenamin@ana.org, or (301) 628-5073), or Jane Clare Joyner, Senior Policy Fellow-Health Systems and Regulatory Policy (janeclare.joyner@ana.org or 301-628-5083).

Sincerely,

Debbie Hatmaker

Debbie D. Hatmaker, PhD, RN, FAAN
Executive Director

cc: Pamela Cipriano, PhD, RN, NEA-BC, FAAN, ANA President
Marla Weston, PhD, RN, FAAN, ANA Chief Executive Officer