Texas Association of Health Plans
1001 Congress Ave., Suite 300
Austin, Texas 78701
P: 512.476.2091
www.tahp.org

September 5, 2024

Re: Review the current state of network adequacy in Texas, focusing on the availability and accessibility of healthcare providers within health insurance networks.

Dear Chairman Oliverson and Members of House Insurance Committee,

I am writing on behalf of the Texas Association of Health Plans (TAHP), representing the state's health insurers who are dedicated to ensuring Texans have access to affordable, high-quality health care coverage. Texas currently has the strictest network adequacy requirements in the country, surpassing even the federal requirements that apply to Affordable Care Act plans. TAHP supports strong and workable network adequacy standards that focus on the needs of patients and employers that provide coverage for most Texans.

There are two major issues that are adding significant costs for plans and their policyholders: the current misalignment with federal standards and the required waiver hearings that lack participation from provider groups that pushed hard for this new costly and time consuming requirement. Our member plans are committed to complying with these new state laws. However, the last several months of network filings have been unnecessarily burdensome.

We hope that lawmakers will understand how the new network adequacy requirements of HB 3359 (88th) have unfolded and look for ways to streamline the system. We also ask that Texas lawmakers take a step back and reconsider our state's overall approach to network mandates. Smaller, yet comprehensive, high value networks are a growing trend among self-funded employers seeking to control costs and engage patients in top quality care. Texas should consider how our laws can better allow for employers to have more flexible network options in the fully insured market.

Misalignment with Federal Rules

When HB 3359 was passed, stakeholders agreed to codify current federal network adequacy standards. These new federal standards are extremely strict. During the HB 3359 rulemaking process, though, TDI adopted an additional standard that goes well beyond these strict federal rules. HB 3359 requires "sufficient numbers and classes of preferred providers." This

Texas Association of Health Plans
1001 Congress Ave., Suite 300
Austin, Texas 78701
P: 512.476.2091
www.tahp.org

"sufficiency" standard was pulled directly from federal regulations, and the expectation was that the agency would use the federal standard, which requires that 90% of enrollees have access to at least one provider of each type. Aligning state and federal standards would have created administrative efficiencies for health plans. Texas is now the only state with a network adequacy mandate that exceeds federal ACA requirements.

Instead, the agency added a second provider to the standard, requiring that 90% of enrollees have access to two or more providers, and that 10% have access to one. In addition to misaligning federal and state standards, this change has resulted in a significant number of unnecessary waivers. Texas has large rural areas that may have one specialty doctor available, but not a second.

As a result of this singular change from the proposed TDI rules to the final rules, the state's largest fully insured health plan went from submitting a few hundred waivers per year to a few thousand for their broadest provider network. Importantly, this health plan network that now requires thousands of waivers actually includes nearly all health care providers in Texas. This example shows that the new standard is unrealistic and did not create any new access to care, but instead a significant new administrative burden and associated costs.

Unnecessary Waiver Hearings

HB 3359 created a system where, under most circumstances, network adequacy waivers require a public hearing. The only time a hearing is not required is if there are no uncontracted providers in the service area. To our knowledge, no other state has adopted similar requirements. Few, if any, providers have attended these waiver hearings. Instead, plans expend significant resources to prepare for and have staff attend the hearings, only for the hearing to end abruptly without any public input.

During discussions on the bill, TAHP explained that waivers are needed for two reasons: when providers are unavailable or unwilling to contract at reasonable market rates. We would strongly encourage the legislature to revisit these new requirements. If enrollees or providers have issues with a waiver, they are able to submit complaints directly to the agency outside of the waiver process. Alternatively, the legislature should consider creating a system where, if a provider or member of the public does not request a hearing, then no hearing is necessary. Plans have no problem responding to concerns in real time, but preparing for hearings that no one attends is unnecessary.

Texas Association of Health Plans
1001 Congress Ave., Suite 300
Austin, Texas 78701
P: 512.476.2091
www.tahp.org

Allowing High Value, Innovative Networks

High-value networks are becoming increasingly popular with employers due to their ability to offer cost-effective, high-quality care and avoid over-priced provider outliers. According to Mercer's Health & Benefit Strategies for 2024 Survey Report, 43% of employers are exploring or using high-performance networks to lower costs & improve quality. Similarly, 21% of employers are using strategies like tiered networks to steer employees to high-value care. Among employers with 20,000 or more employees, this figure jumps to 46%.

Concepts like direct or advanced primary care build on this idea by enabling a single provider group to handle all of the front line health care needs for a patient's routine and/or urgent care. 44% of employers are adopting or evaluating strategies to steer towards advanced primary care. State network adequacy laws aren't built to incorporate these benefit designs. Employers are leaving the state regulated insurance market and choosing ERISA self-funded alternatives, so they can adopt more innovative coverage designs. For example, 18% of small employers now opt for self-funded plans—an 80% increase since 2003. Texas should reevaluate network adequacy laws to recognize the potential of high value networks which lower costs for both patients and employers.

Accounting for Anticompetitive Provider Consolidation

State network adequacy laws also do not account for the dysfunctional markets created by the rapid consolidation of health care providers in Texas. In particular, Texas has seen rapid consolidation through physician staffing firms, which are often backed by private equity funding. With greater market concentration, these groups can negotiate higher reimbursement rates with insurers. For example, a single ER physician staffing firm has a 61% market share in Austin, Texas.

The same is true for hospital system consolidation These higher rates are passed on to employers and patients in the form of increased premiums, co-pays, and out-of-pocket expenses. Network adequacy requirements should take into account these scenarios where health care provider consolidation has created anticompetitive market environments that result in ever increasing prices.

Texas Association of Health Plans
1001 Congress Ave., Suite 300
Austin, Texas 78701
P: 512.476.2091
www.tahp.org

Reconsidering the State's Approach

Texas's network adequacy requirements—while intended to ensure access to care—are unintentionally overly burdensome and add administrative costs that impact Texas families and employers. Potentially more concerningly, providers with significant market power can exploit these regulations to force health plans into paying higher rates. In many cases, plans are forced to apply for hundreds if not thousands of waivers simply because there are no available providers in certain areas. Texas should also consider expanding the standards to account for innovative care models, such as those that employ telehealth.

The current system fails to account for the real-world complexities of health care delivery in Texas. Even the largest health plan networks, which include nearly every provider, face a dramatically increased number of waiver requests without having made significant changes to their networks. We believe there are ways to ensure network adequacy patient protections without creating this level of unnecessary administrative burden and opportunity for heavily consolidated provider groups to abuse these laws to inflate prices.

Recommendations:

- **Align Federal and State Network Adequacy Standards:** Texas should revise its network adequacy laws to add a definition of "sufficient." This definition should align with the federal definition of sufficient, which is 90% of enrollees having access to one provider for each specialty type. This would provide consistency across CMS and TDI standards and significantly reduce the number of unnecessary waivers.
- **Reform the Waiver Process:** Texas should streamline the waiver process to reflect the lessons learned during the last round of network adequacy filings. Providers and enrollees have shown no interest in attending waiver hearings. Waiver hearings should be removed entirely or be required only upon request from a provider.
- **Reform Laws to Allow for High Value Networks:** Texas should embrace the trend towards networks that support employers and patients through a curated network of high-value providers. Businesses are increasingly looking to these arrangements to address rising health care costs.
- **Account for Anticompetitive Health Care Provider Market Share in Waivers:** Texas should not reward consolidation that raises prices and harms employers and patients. Waiver hearings and network adequacy requirements should account for circumstances in

Texas Association of Health Plans
1001 Congress Ave., Suite 300
Austin, Texas 78701
P: 512.476.2091
www.tahp.org

which health plans lack a meaningful opportunity to negotiate for fair in-network rates in a functioning market.

Sincerely,

Jamie Dudensing, RN
CEO
Texas Association of Health Plans