

NEVADA SOCIETY OF PATHOLOGISTS

February 8, 2017

**Submission of the Nevada Society of Pathologists
Before the Nevada Network Adequacy Advisory Council
Re: Request for Council Consideration**

On behalf of the Nevada Society of Pathologists, I am requesting that the Nevada Network Adequacy Advisory Council address at your next Council meeting a network adequacy issue that came to our attention. The matter we are raising was a focus of deliberations of this Council on August 17, 2016 and a written clarification from the Department issued on November 23, 2016 (attached) that appears to contradict the staff presentation made in August. The clarification came in response to our inquiry of September 20, 2016 (attached).

At the August 17, 2016 meeting of the Nevada Network Adequacy Advisory Council, Division of Insurance staff expressly affirmed that the Department's standard for assessing hospital network adequacy in a health plan (as provided under 695C.160) is based upon NRS 449.012, which defines a "hospital" as "an establishment for the diagnosis, care, and treatment of human illness, including care available 24 hours each day from persons licensed to practice professional nursing who are under the direction of a physician, services of a medical laboratory, and medical, radiological, dietary and pharmaceutical services."

The representation by staff at that meeting was sufficient to obviate the potential recommendation of the Advisory Council to expressly incorporate into the Network Adequacy rule the definition or citation of NRS 449.012. The representation regarding use of the definition was included in the PowerPoint of Division staff. Furthermore, Division staff stated at the meeting in response to the question of the meeting facilitator as follows:

Facilitator: "...it would just be a clarification that on the chart there will be footnote indicating what the definition of hospital is and that I think you guys mentioned that you can give instructions to the carriers and anyone filling in the data that they need to adhere to that definition..."

Staff: "OK"

Staff: "I think we can do it somewhere as a footnote"

....

Facilitator: I going to say this as for advisement, because this isn't or wasn't defined previously, in your network adequacy is it considered a recommendation or is it just simply you guys can make that clarification as a footnote to the table?"

Q "You are asking the division staff, right?"

A. Division staff (unidentified): "So that what is said in my presentation is what will do, we do an annual education process webinar for our network adequacy we will add that into our process to be clear what is specified as a hospital."

From the audio archive from that August 17 meeting, there appears to be no indication, nor representation, by staff that the statutory definition of hospital was not wholly controlling and applicable to the proposed network adequacy assessment. However, the Nevada Society of Pathologists received the attached letter from Division of Insurance, dated November 23, 2016 which states:

“...the network adequacy statute found at NRS 687B.490 preempts this regulation and NAC 695C.160 will be revised accordingly.”

In sum, the Council was never properly informed during its deliberation that the Nevada statutory definition of hospital, which specifically includes “services of a medical laboratory,” was not going to be applied to network adequacy criteria or materials that are given to health plans. In fact, the exact opposite impression was conveyed by Department staff to the Council who expressly assured the Council that the statutory definition, while omitted from the text of the rule, was going to be included in technical guidance and educational materials on network adequacy.

The reason this issue is of great importance to citizens and patients in Nevada is that, without the use of the current statutory definition of hospital, the rule has no basis for assessing the network adequacy of hospital based pathologists. Furthermore, if the Nevada statutory definition of hospital is not used to include basic services of pathologists, radiologists, emergency physicians and anesthesiologists, we believe the health insurance plan is not really constituted, nor contracted, to provide fundamental hospital-based physician services for their enrollees. The end result is that patients are misled by health insurance plans, thinking they will receive in-network physician services at in-network hospitals.

We urge the Council to take immediate action to rectify this situation. In July 2015, the national coalition of hospital based physicians urged the Nevada Department of Insurance to incorporate into the network adequacy rules an explicit assessment of hospital based physician network adequacy.

The July 2015 request and recommendation of the Coalition of Hospital Based Physicians was ignored by the Department in its rule-making process. Now, of equal concern to us, the Nevada Department of Insurance is attempting to de-link the Nevada statutory definition of hospital from the network adequacy rule. Thus, it is imperative that the Council act to ensure that the rule directly and unequivocally assesses network adequacy for hospital based physicians by evaluating whether health plans have contracted with the specialties of anesthesiology, radiology, emergency medicine and pathology at hospital facilities. We hope this important item will be placed on the Council's next agenda.

Thank you for your consideration.

Jonathan H. H. H., MD. Ph.D.



DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

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November 23, 2016

Jonathan H. Hughes, President
Nevada Society of Pathologists
8498 W Mistral Avenue
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SENT VIA FIRST CLASS MAIL

Re: Assignment No. 16-077

Dear Mr. Hughes:

Your September 20, 2016 letter addressed to Kimberly Everett, Assistant Chief, Life and Health Section, and Mark J. Krueger, former Insurance Counsel for the Division of Insurance, has been referred to me for review and response.

Your inquiry, on behalf of the Nevada Society of Pathologists, requests technical clarification of Nevada's network adequacy rule for plan year 2017. In particular, you have raised the question of "whether a hospital in a geographic area, for the purposes of rule, would be considered by the Department to meet network adequacy for a health plan, if the components of services specifically delineated in NRS 449.012 were to not be a part of the health plan network?" Additionally, you have asked "if the medical laboratory of a hospital was not under contract with the health plan, is the hospital properly constituted to meet the definition and thereby be submitted by a health plan as meeting the requirements set forth under 695C.160?"

In addition to Nevada Revised Statute ("NRS") 449.012, the Nevada Division of Insurance ("Division") considers the definition of hospital provided by the Centers for Medicare and Medicaid Services ("CMS") for the purposes of determining network adequacy. Nevada is a state based market place which utilizes the Federally-Facilitated Marketplace and, as such, must align its procedures for determining network adequacy with the guidelines provided by CMS.

For the purpose of network adequacy, a carrier is considered to have satisfied the “Hospital” specialty type if the time and distance standards set forth in Nevada Administrative Code (“NAC”) 687B have been met for at least 90 percent of the population of the network’s service area. The time and distance standards that carriers must meet for network adequacy are currently set out in NAC 687B (adopted through R049-14)¹ and are currently being updated through the rulemaking process (proposed through T006-16). In determining network adequacy of a health plan network, the adequacy of a network hospital is independent of the network status of the services provided through the hospital.

In regards to your question relating to NAC 695C.160, the network adequacy statute found in NRS 687B.490 preempts this regulation, and NAC 695C.160 will be revised accordingly.

This letter responds to your inquiry concerning network adequacy standards related to hospitals and only pertains to the specific questions in the inquiry. Please note that the Division cannot provide legal advice or act as attorneys for private parties. As a result, this response does not constitute legal advice or legal representation.

Sincerely,

Jeremey Gladstone
Life and Health

¹ Note that R049-14 has not yet been codified. Adopted administrative regulations are available at <http://www.leg.state.nv.us/register>.

NEVADA SOCIETY OF PATHOLOGISTS

September 20, 2016

(Via e-mail keverett@doi.nv.gov/ mkrueger@doi.nv.gov)



Kimberly Everett
Assistant Chief, Life and Health Section
Nevada Division of Insurance
1818 E. College Pkwy., Suite 103
Carson City, NV 89706

Mark J. Krueger
Insurance Counsel,
Nevada Division of Insurance

Dear Assistant Chief Everett and Counsel Kruger:

I am writing on behalf of the Nevada Society of Pathologists to request technical clarification of the Nevada Network Adequacy rule as it is in effect for plan year 2017. The Nevada Society of Pathologists is a state medical specialty society representing many practicing pathologists in the State.

At the August 17 2016 meeting of the Nevada Network Adequacy Advisory Council, Division of Insurance staff expressly affirmed that the Department's standard for assessing hospital network adequacy in a health plan (as provided under 695C.160) is based upon NRS 449.012, which defines a "hospital" as "an establishment for the diagnosis, care, and treatment of human illness, including care available 24 hours each day from persons licensed to practice professional nursing who are under the direction of a physician, services of a medical laboratory, and medical, radiological, dietary and pharmaceutical services." The representation by staff at that meeting was sufficient to obviate the potential recommendation of the Advisory Council to expressly incorporate into the Network Adequacy rule the definition or citation of NRS 449.012.

The issue we request clarification on from the Department, is whether a hospital in a geographic area, for purposes of rule, would be considered by the Department to meet network adequacy for a health plan, if the components of services specifically delineated in NRS 449.012 were to not be a part of the health plan network? For example, if the medical laboratory of a hospital was not under contract with the health plan, is the hospital properly constituted to meet the definition and thereby be submitted by a health plan as meeting the requirements set forth under 695C.160?

It is the position of the Nevada Society of Pathologists that if any (or all) of the services defined in NRS 449.012 were not part of the plan's network at a hospital, the hospital would not meet the criteria of the definition and thus could not be considered by the Department for purposes of a health plan meeting the standards of network adequacy.

We look forward to the Department's staff clarification on this matter. Thank you for your courtesies and consideration of this request.

Sincerely,



Jonathan H. Hughes, President

Nevada Society of Pathologists

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cc: Barry R. Ziman, Director Legislation and Political Action,
College of American Pathologists