Dignity Health
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February 4, 2020

Dena Schmidt
Nevada Aging and Disability Services Division
3427 Goni Road, Suite 104
Carson City, NV 89706

Re: AB 469 Regulations; LCB File No. R101-19I

Dear Ms. Schmidt:

On behalf of our three larger community hospitals, four neighborhood hospitals, primary care physician group and wellness centers in Nevada, Dignity Health-St. Rose Dominican appreciates the opportunity to submit comments on the proposed regulations on arbitration for out-of-network (OON) claims under $5,000, the opt-in process for ERISA plans and other pieces of AB 469. Dignity Health is a part of CommonSpirit Health, a nonprofit, Catholic health system dedicated to advancing health for all people. With operations in 21 states and more than 140 hospitals, we are committed to creating healthier communities, delivering exceptional patient care and ensuring every person has access to quality health care. We appreciate the opportunity to submit comments on this important measure.

In our previous letter to you, dated September 27, 2019, St. Rose listed multiple issues and concerns that our internal operationalization working group had in the midst of guaranteeing that we could comply with the law on its effective date of January 1, 2020. We understand that the state has limited regulatory authority over the implementation of this law, but feel there are still many questions left unanswered as to how this law can be properly implemented. St. Rose would like to specifically thank Ms. Carrie Embree from the Office for Consumer Health Assistance (OCHA) for listening to our concerns and walking through some of these scenarios with us.

In addition to the questions and comments brought forth to you in our last comment letter, St. Rose would like to make the following comments and questions regarding the newly proposed regulations:

- **OON Providers and the Election Process:** One of the main concerns St. Rose has with this law is the difficulty of keeping track of a payer's participation, either due to the election process or the difficulty in determining whether or not an insurance plan was sold in Nevada. We understand that the elected plans will be listed on a website pursuant to section 18 of the bill, but we do not support section 5 of the proposed regulations that allows for a plan to opt-out with only a 30-day withdrawal provision and ask that the timeline be changed to that of an annual basis. This allows both for less administrative burden and less of a chance of abuse of the system.

- **Arbitration Process and Timeline:** St. Rose would like to thank the regulators for changing the request for arbitration timeline from 10 to 30 days in section 2. Per section 2.2.e.3, the state is requesting a representative sample of at least three (3) fees received by the OON provider for the same service. St. Rose requests that this be eliminated from the proposed regulations and it's outside the scope of what AB 469 requires. And as it pertains to the overall arbitration process, St. Rose requests a one-page 'rules of the road' fact sheet from OCHA that includes all materials to be provided so that providers and payers are doing things in the most efficient manner possible.
- **Overall Abuse of the System:** There are still concerns about those who decide to abuse the system. St. Rose understands that the state does not have the current means or regulatory authority to track who is abusing the system, nor to put fines in place for those that do (i.e.: under section 2 of 'Claims of less than $5,000'). We do understand that there is a reporting mechanism in place and data will be provided both to the public and legislators, but do not believe this goes far enough. St. Rose would like to put on the record that we believe this lack of oversight and accountability is short-sighted and the Assembly and Senate Committees on Health and Human Services should take a look at this provision during the 2021 Nevada Legislative Session.
- **Further Questions:** In addition to our questions previously asked in our letter dated September 27, 2019, these proposed regulations have generated further questions:
    - Section 5 – What about plans that have access to contracted networks? Would AB 469 apply if the patient's plan is mapped to a contracted network, or would a provider bill the plan based on the contracted network?

Questions and concerns from our previous letter dated September 27, 2019 that St. Rose would still like answered or legislated during the 2021 Nevada Legislative Session include:

- **Transfers Post-Stabilization and Medical Necessity:** In section 14.2.a of AB 469, an OON facility shall, when possible, notify the payer within eight hours that their member presented at their facility for medically-necessary emergency services. Further, in section 14.2.b of AB 469, the OON emergency facility shall notify the payer that the patient has stabilized and can be transferred within 24 hours. Questions:
    - What happens with payment if the physician isn't willing to transfer the patient to another in-network facility because of continuity of care?
    - What happens with payment if we give the payer 24 hours' notice and the payer isn't able to move the patient within that timeframe?
    - What happens if the patient refuses to transfer?
    - What happens if the payer at a later date determines the visit was not medically-necessary?
    - What happens if the contracted provider refuses the transfer?
    - What happens if there is not an available bed at the contracted provider?
- **Arbitration Process for Claims Under $5,000:** St. Rose believes a large portion of the claims it will see coming from this law will be under the $5,000 cap, and due to their low price point, understands that the cost and efficiency related to this type of arbitration will be very important. And given that contracts between payers and providers can fluctuate, we also understand that volume could dramatically increase if one provider and payer falls out of contract. St. Rose suggests that providers have the ability to submit for arbitration these smaller claims in bulk.

- **State-Purchased Health Insurance Policies:** Section 13.2 of AB 469 indicates that this bill does not cover policies sold outside of the State of Nevada. Hospitals do not have the ability to know when a patient comes in if the policy was sold within the state or not. For example, you could have a Nevada employer whose policy was sold in another state where their corporate headquarters are, and our emergency department staff would not know that from simply looking at the card. CommonSpirit Health suggests that along with ERISA plans that have opted-in to participate, state-purchased plans are also listed. This information will need to be easily accessed by our admitting staff in our emergency departments, not just for billing purposes, but in order to provide accurate patient estimates and contact the pertinent payer once the patient has reached stabilization.

Again, Dignity Health-St. Rose Dominican appreciates the opportunity to respond to these proposed regulations and hope our input is helpful as this matter proceeds. If you have any questions, please feel free to contact Katie Ryan, System Director of Nevada Government Relations at (702) 616-4847 or at katie.ryan@dignityhealth.org.

Very Truly Yours,

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