

DEPARTMENT OF INSURANCE

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 329, and 24 Delaware Code, Section 716(c)
(18 Del.C. §§311 & 329; 24 Del.C. §716(c))

PROPOSED

PUBLIC NOTICE

1318 Compensation for Chiropractic Services

A. Type of Regulatory Action Required

Proposed New Regulation

B. Synopsis of Subject Matter of the Regulation

The Department of Insurance hereby gives notice of proposed new Regulation 1318 relating to Compensation for Chiropractic Services. The proposed new regulation would prohibit insurance carriers from including in any insurance policy terms and conditions that unreasonably discriminate against the payment for Chiropractic Care or Services, or Chiropractic Supportive Care, and puts in place a mechanism by which the Department of Insurance may enforce this prohibition. The Delaware Code authority for the new regulation is 24 Del.C. §716(c) and 18 Del.C. §§311 and 329.

The Department of Insurance does not plan to hold a public hearing on the proposed new regulation. The proposed new regulation appears below and can also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed new regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 31st day, July, 2017. Any such requests should be directed to:

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1318 Compensation for Chiropractic Services

1.0 Authority

This regulation is promulgated and adopted pursuant to 18 Del.C. §§311 and 329 and 24 Del.C. §716.

2.0 Purpose

The purpose of this regulation is to implement 24 Del.C. §716, which provides that if a chiropractor is authorized by law to perform a particular service, the chiropractor shall be entitled to compensation for that service under all insurance plans and under all contracts issued by health service corporations and health maintenance organizations.

3.0 Scope

This regulation shall apply to all carriers as defined herein.

4.0 Definitions

For purposes of this regulation:

"Carrier" means any entity that provides health insurance in this State. For the purposes of this regulation, carrier includes a health insurance company, health service corporation, health maintenance organization and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. "Carrier" also includes any 3rd-party administrator or other entity that adjusts, administers or settles claims in connection with health benefit plans.

"Chiropractic" means a drugless system of health care based on the principle that interference with the transmission of nerve impulses may cause disease.

"Chiropractic Care or Services" include, but are not limited to, the diagnosing and locating of misaligned or displaced vertebrae (subluxation complex), using x-rays and other diagnostic test procedures. The practice includes the use of telemedicine and may also include the practice of and participation in telehealth. Practice of chiropractic includes the treatment through manipulation/adjustment of the spine and other skeletal structures and the use of adjunctive procedures not otherwise prohibited by Chapter 7 of Title 24 of the Delaware Code.

"Chiropractic Supportive Care" means continuous, interval-based long-term treatment that is necessary for patients with chronic pain and/or disease. This care includes but is not limited to treatment for patients who must resume care, notwithstanding having been discharged from chiropractic care as cured for any particular ailment, because that person's body is unable to sustain those results due to treatment withdrawal.

"Chiropractor" means a person who is licensed to administer chiropractic care or services and chiropractic supportive care.

"Telehealth" means the use of information and communications technologies consisting of telephones, store and forward transfers, remote patient monitoring devices or other electronic means which support clinical health care, provider consultation, patient and professional health-related education, public health, and health administration services.

"Telemedicine" means a form of telehealth which is the delivery of clinical health-care services by means of real time 2-way audio, visual, or other telecommunications or electronic communications, including the application of secure video conferencing or store and forward transfer technology to provide or support health-care delivery, which facilitate the assessment, diagnosis, consultation, treatment, education, care management and self-management of a patient's health care by a health-care provider practicing within his or her scope of practice as would be practiced in-person with a patient, and legally allowed to practice in the State, while such patient is at an originating site and the health-care provider is at a distant site.

5.0 Unreasonable and Discriminatory Reimbursement Practices Prohibited

- 5.1 No carrier shall include in any insurance policy, contract or certificate any provision that unreasonably discriminates against the payment for Chiropractic Care or Services, or Chiropractic Supportive Care, including but not limited to:
- 5.1.1 A cost containment or managed care provision that denies or restricts payment for Chiropractic Care or Services, or Chiropractic Supportive Care;
 - 5.1.2 The classification of Chiropractic Supportive Care as "maintenance care" or "not medically necessary" for the purpose of denying payment;
 - 5.1.3 Requiring a patient to pay a higher copay or deductible to be treated by a chiropractor than that patient would otherwise be required to pay for the identical services had those services been rendered by a primary care medical or osteopathic physician;
 - 5.1.4 Requiring a patient to pay a copayment or coinsurance that is more than 25 percent of the fee due or to be paid to the Chiropractor for Chiropractic Care or Services, or Chiropractic Supportive Care;
 - 5.1.5 Including utilization or compensation restrictions or practices for Chiropractors that are not identical to the utilization or compensation restrictions or practices placed on medical and osteopathic physicians for the treatment of patients with conditions within the scope of chiropractic practice, including but not limited to:
 - 5.1.5.1 Restrictions on the number of compensated visits per condition or episode, year or other period, number of allowed services per day, and the reimbursement amount for each procedure performed; and
 - 5.1.5.2 Unfair or overly restrictive precertification requirements and allowances for initial or subsequent visits, and for the determination of medical necessity; and
 - 5.1.6 Any other cost containment or managed care provision that restricts or denies payment for Chiropractic Care when the patient who chooses to receive such care would otherwise be eligible to be reimbursed for medical, osteopathic or pharmaceutical care.
- 5.2 Nothing in this section shall prevent a carrier from implementing reasonable and nondiscriminatory cost containment or managed care provisions as provided in 24 Del.C. §716(b).

6.0 Compensation

No carrier shall deny a Chiropractor compensation for a service rendered by that Chiropractor if the carrier would otherwise reimburse a medical or osteopathic physician for that same service.

7.0 Penalty Assessment

The Commissioner upon a finding after notice and hearing conducted in accordance with the provisions of 18 Del.C.

Ch. 3, that a carrier has violated any provision of 24 Del.C. §716 or any provision of this regulation, may impose or order an administrative penalty in an amount of money up to \$50,000 per violation that the Commissioner determines is reasonable and appropriate, as provided by and in accordance with 18 Del.C. §329.

8.0 Waiver

The provisions of this regulation may not be waived, voided, or nullified by contract.

9.0 Causes of Action

This regulation shall not create a private cause of action for any person or entity, other than the Delaware Insurance Commissioner, against a carrier or its representative based upon a violation of 24 Del.C. §716 or any provision of this regulation.

10.0 Effective Date

This regulation shall become effective for all claims submitted for payment on or after {insert effective date of regulation}.

21 DE Reg. 19 (07/01/17) (Prop.)