

**DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER**

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

FINAL

REGULATORY IMPLEMENTING ORDER

1318 Compensation for Chiropractic Services

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At 21 **DE Reg.** 19 (July 1, 2017), the Department published a notice of its intent to codify proposed new Regulation 1318, Compensation for Chiropractic Services, and solicited written comments from the public for thirty (30) days as mandated by 29 **Del.C.** §10118(a).

The proposed new regulation would prohibit insurance carriers and third party administrators who are regulated by the Department from including in any insurance policy terms and conditions that unreasonably discriminate against access to chiropractic care or services. It would also prohibit compensation of doctors of chiropractic that is unreasonable or discriminatory, as detailed in the proposed new rule. The Delaware Code authority for the proposed new regulation is 24 **Del.C.** §716(c) and 18 **Del.C.** §§102, 311 and 329.

The Department received several timely submitted comments, copies of which are on file with the Department. The Department did not hold a public hearing on the proposal. In response to the comments received, the Department redrafted the proposed new regulation, which was published at 21 **DE Reg.** 610 (February 1, 2018). The Department accepted written comments, suggestions, briefs, and compilations of data or other materials concerning the re-proposed regulation until the 5th day of March, 2018, which was thirty days from the date of publication.

The Department thereafter determined to further revise the proposed regulation. That proposal was published in the *Register of Regulations* at 21 **DE Reg.** 954 (June 1, 2017). The Department did not hold a public hearing on the re-proposal. The Department accepted written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment until the 2nd day of July, 2018, which was thirty days from the date of publication. The Department received no comments on the June 1, 2018 proposal.

II. FINDINGS OF FACTS

The Commissioner finds that it is appropriate to adopt 18 **DE Admin. Code** 1318 as proposed in the June 1, 2018 *Register of Regulations*, for the reasons set forth above and in the proposal.

III. DECISION TO ADOPT THE NEW REGULATION

For the foregoing reasons, the Commissioner concludes that it is appropriate to adopt 18 **DE Admin. Code** 1318, as discussed in the above Findings of Fact.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Commissioner pursuant to 18 **Del.C.** §§311, 314, and 526A on the date indicated below. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*. The effective date of the Regulation shall be as stated in the text of the Regulation.

IT IS SO ORDERED.

Trinidad Navarro
Commissioner
Delaware Department of Insurance
The 12th day of July, 2018

1318 Compensation for Chiropractic Services

This regulation is adopted pursuant to 18 Del.C. §§102, 311 and 329 and 24 Del.C. §716 and promulgated in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101.

2.0 Purpose

The purpose of this regulation is to implement 24 Del.C. §716.

3.0 Scope

3.1 This regulation shall apply to all carriers and to all third party administrators as defined herein.

3.2 This regulation shall not apply to personal injury protection automobile insurance that is required under 21 Del.C. Ch. 21.

4.0 Definitions

The following words and terms, when used in this regulation, should have the following meaning unless the context clearly indicates otherwise:

"Administrator" or **"third party administrator"** or **"TPA"** means **"Administrator"** or **"third party administrator"** or **"TPA"** as those terms are defined at 18 DE Admin. Code 1406-2.1.

"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 third-party administrator or other entity that adjusts, administers or settles claims in connection with health benefit plans.

"Chiropractic" means **"Chiropractic"** as defined in 24 Del.C. §701 and in 24 DE Admin. Code 700.

"Chiropractic care or services" means those practices that a licensed doctor of chiropractic is licensed to provide pursuant to 24 Del.C. Ch. 7 and 24 DE Admin. Code 700.

"Commissioner" means the Commissioner of the Delaware Department of Insurance.

"Doctor of chiropractic" means a person who is licensed to administer chiropractic care or services pursuant to 24 Del.C. Ch. 7 and 24 DE Admin. Code 700.

"Medically necessary" means the providing of health care services or products that a prudent physician would provide to a patient for the purpose of diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

- A. In accordance with generally accepted standards of medical practice;
- B. Consistent with the symptoms or treatment of the condition; and
- C. Not solely for anyone's convenience.

"Physician" means, for purposes of this regulation, anyone who is licensed as a physician pursuant to 24 Del.C. Ch. 17 or as a doctor of chiropractic pursuant to 24 Del.C. Ch. 7.

5.0 Unreasonable and Discriminatory Access to Chiropractic Care or Services Prohibited

5.1 No carrier shall include in any insurance policy, contract or certificate any provision that unreasonably discriminates against access to chiropractic care or services, including but not limited to:

5.1.1 A cost containment or managed care provision that denies or restricts access to chiropractic care or services in a manner that is more restrictive than a cost containment or managed care provision placed on a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to perform the same or substantially similar service, for the treatment of a patient with a condition that is within the scope of chiropractic practice;

5.1.2 A provision that classifies chiropractic care or services as "maintenance care" or "not medically necessary," solely for the purpose of denying access to chiropractic care or services;

5.1.3 A provision that requires a patient to pay a higher copay or deductible when being treated by a doctor of chiropractic than that patient would otherwise be required to pay for the same or substantially similar care or services had that care or services been rendered by a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to render that or a substantially similar care or service;

5.1.4 A provision that requires a patient to pay a copayment or coinsurance that is more than 25 percent of the fee due or to be paid to a doctor of chiropractic for chiropractic care or services;

5.1.5 A provision that contains a utilization or compensation restriction or practice for a doctor of chiropractic that is more restrictive than a utilization or compensation restriction or practice placed on a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to perform the same or substantially

similar care or service for the treatment of patients with conditions within the scope of chiropractic care or services, including but not limited to:

- 5.1.5.1 Unreasonable or discriminatory restrictions on the number of compensated visits per condition, or per episode, year, or other period; or
- 5.1.5.2 Unreasonable or discriminatory precertification requirements and allowances for initial or subsequent visits, or for the determination of medical necessity; or
- 5.1.6 Including a provision that would unreasonably deny coverage for a chiropractic technique, method or diagnostic procedure if that chiropractic technique, method or diagnostic procedure is taught by a Chiropractic College or University accredited by the Council on Chiropractic Education (CCE), or has been approved by the Delaware Board of Chiropractic.

6.0 Unreasonable and Discriminatory Compensation Prohibited

- 6.1 No carrier or TPA shall discriminate against or unreasonably deny a doctor of chiropractic compensation for a chiropractic service rendered by that doctor of chiropractic if the carrier would otherwise compensate a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to perform that same or substantially similar service.
- 6.2 Every carrier or TPA shall utilize nondiscriminatory cost containment and managed care payment strategies to provide payment for chiropractic care or services, regardless of whether the care or services were delivered by a licensed doctor of chiropractic or by a provider who is not licensed as a doctor of chiropractic but who is otherwise licensed to perform the same or substantially similar service.

7.0 Reasonable and Nondiscriminatory Provisions

Nothing in this regulation shall prohibit a carrier or a TPA from implementing reasonable and nondiscriminatory cost containment or managed care provisions as permitted by 24 Del.C. §716(b).

8.0 Waiver not permitted

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 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 on January 1, 2019.
22 DE Reg. 164 (08/01/18) (Final)