

## **DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code, Sections 311 and 332 (18 **Del.C.** §§ 311, 332 and 6401  
*et seq.*)  
18 **DE Admin. Code** 1301

### **FINAL**

### **ORDER**

Proposed changes to Regulation 1301 relating to the internal review, arbitration and independent utilization review of health insurance claims were first published in the *Delaware Register of Regulations* on February 1, 2007. The original comment period remained open until March 6, 2007. A public hearing on the proposed changes to Regulation 1301 was held on February 26<sup>th</sup>, 2007. Public notice of the proposed changes to Regulation 1301 in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law. As a result of the public comment, substantive changes were made to the proposed regulatory changes and Regulation 1301 was re-submitted for public comment.

#### **Summary of the Evidence and Information Submitted**

Prior to January 8, 2007, the Department of Health and Social Services (“DHSS”) had jurisdiction over MCOs insofar as the regulation of and MCO’s activities in the State of Delaware were concerned. As a result of Senate Bill 295 passed in the 143<sup>rd</sup> General Assembly, full jurisdiction over MCO’s was transferred to the Department of Insurance (“Department”). Regulation 1301, prior to January 8, 2007, governed MCOs with respect to the licensing of such entities and the nature of the insurance products they could offer. The proposed changes are designed to update the regulation and provide regulatory guidance for MCOs based on the now current law codified at 18 **Del.C.** Ch. 64.

BCBSD, Inc., Christiania Care, Peter Shanley, Esquire, the Delaware Developmental Disabilities Council and the State Council for Persons with Disabilities submitted written comment to the Department on the regulation. The Delaware Developmental Disabilities Council and the State Council for Persons with Disabilities were supportive of the regulation. BCBSD’s comments addressed a number of technical drafting issues. BCBSD also observed that Section 11.3.1.3, which requires coverage for non-network providers in accordance with the Patient’s Bill of Rights contains the requirement that the carrier “make acceptable service arrangements with the provider and prohibit balance billing”. While BCBSD acknowledges that this language was contained in the DHSS Regulation, it contended that it inappropriately exceeds the statutory language that is the basis for this requirement.

The written comments from Mr. Shanley and Christiania Care were similar to public comment from Mr. Shanley, Dr. Leonard Nitowski and Mr. Robert Lynn at the public hearing. At the public hearing several witnesses addressed matters in the law itself. To the extent those comments were directed to provisions in the law, it is not necessary to summarize them here since such comments are not directly relevant to a rule making process. The bulk of Dr. Nitowski’s comments addressed matters relating to proposed changes to Regulation 1301 and is not directly relevant to the proposed changes to Regulation 1301. Nevertheless, Dr. Nitowski’s comments relating to the reimbursement protocols for emergency room physicians are noteworthy insofar as they address problems in the prompt delivery of health care to Delaware’s citizens.

Mr. Shanley provided public comment on his own behalf and on behalf of EMCODE (“Emergency Medicine Coalition of Delaware”). EMCODE’s purpose is to participate when the opportunity presents itself whenever there is legislation or a regulation that affects the quality and availability of emergency medicine care in Delaware or the financing related to that care. He echoed Mr. Lynn’s comments that volunteer fire companies should be excluded from consideration since that is how they are treated for purposes of Regulation 1301. He recommended that the arbitration provisions of Regulation 1301 should be required under Regulation 1301. He also suggested (as did others) that the regulation make it clear that the geographic service is Delaware and that there is no coverage people who received emergency services in another state and then want to have follow-up care in Delaware by a local doctor or primary care physician.