

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))

PROPOSED

PUBLIC NOTICE

1318 Compensation for Chiropractic Services

A. Type of Regulatory Action Required

Re-proposal of New Regulation

B. Synopsis of Subject Matter of the Regulation

At 21 DE Reg. 19 (July 1, 2017), the Department of Insurance (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 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. In response to the comments received, the Department redrafted the proposed new regulation, and gave notice of its re-proposal at 21 DE Reg. 610 (February 1, 2018). The proposed new regulation as redrafted prohibits 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 also prohibits compensation of doctors of chiropractic that is unreasonable or discriminatory, as detailed in the proposed new regulation. Comments on the re-proposal were accepted until March 5, 2018. The Department did not hold a public hearing on the re-proposal.

Summary of Comments Received and the Department's Response

The Department received comments on the re-proposal from two commenters, copies of which are on file with the Department.

In addition to several non-substantive changes to the text for consistency, the Department has determined to make four changes which are substantive in nature and therefore require the Department to solicit public comment pursuant to the Delaware Administrative Procedures Act.

First, the Department has determined to delete subsection 5.1.5.3, which prohibits an insurance carrier from including in any insurance policy, contract or certificate any provision that unreasonably discriminates against access to chiropractic care or services, including but not limited to "a provision that requires a patient who wishes to seek the care or services of a doctor of chiropractic to first obtain a referral or other approval from a health-care provider who is not a doctor of chiropractic." This subparagraph added unnecessary confusion to the regulation. Additionally, the concept of prohibiting unreasonable discrimination concerning access to care is already clearly set forth in subsection 5.1.

Second, the Department has determined to delete subsection 6.3, which prohibited carriers and third party administrators (TPAs) from utilizing "a cost containment or managed care strategy concerning reimbursement for chiropractic care or services, when any one of chiropractic, medical, osteopathic or pharmaceutical care would be a medically suitable treatment for a patient's particular condition and would otherwise be eligible for reimbursement." This subsection could arguably be considered contrary to the underlying statute at 24 Del.C. §716(b), which states "nothing shall prevent the operation of reasonable and nondiscriminatory cost containment or managed care provisions"

Third, the Department has determined that subsections 5.2 and 6.3 address the same issue, which is the statutory provision at 24 Del.C. §716(b) that allows carriers and TPAs to implement reasonable and nondiscriminatory cost containment and managed care provisions. Accordingly, the Department is combining these two paragraphs into a new section 7.0 entitled "Reasonable and Nondiscriminatory Provisions."

Fourth, the Department has determined to change the effective date of the regulation. As proposed, Section 5.0 of this regulation would have become effective on or after January 1, 2019, for any policy newly written or renewed, while all other sections of the regulation would have become effective on or after the effective date of this regulation. The Department has determined to make the entire regulation effective on or after January 1, 2019.

The Department does not plan to hold a public hearing on the redrafted version of the proposed new regulation. The proposed new regulation appears below and may also be viewed at the Department's 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 2nd day of July, 2018. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist
Delaware Department of Insurance
841 Silver Lake Drive
Dover, 19904
(302) 674-7379
Email: Leslie.Ledogar@state.de.us

1318 Compensation for Chiropractic Services

1.0 Authority

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.
21 DE Reg. 954 (06/01/18) (Prop.)