

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311, 24 Delaware Code, Section 716(c) and 29 Delaware Code, Section §10113 (18 **Del.C.** §311, 24 **Del.C.** §716(c) & 29 **Del.C.** §10113)

FINAL

ORDER

1318 Compensation for Chiropractic Services

Regulation 1318, Compensation for Chiropractic Services, prohibits insurance carriers and third party administrators who are regulated by the Department from including in any health 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.

In the context of comments received on the Department's proposed new Regulation 1321, the Commissioner acknowledged that the term "certificate," as used in subsections 5.1 and 5.2 of that regulation, could imply extraterritoriality for that regulation, and that the underlying 24 **Del.C.** §2621 does not give the Commissioner extraterritorial jurisdiction (see adoption order published elsewhere in this edition of the *Register of Regulations*). Similarly, subsection 5.1 of Regulation 1318 would benefit from a similar clarification in that underlying 24 **Del.C.** §716 does not give the Commissioner extraterritorial jurisdiction. Accordingly, the Commissioner is clarifying that 18 **DE Admin. Code** 1318 § 5.1 applies only to certificates issued under Delaware policies or contracts.

This amendment is exempt from the requirement of public notice and comment because it is a non-substantive change in existing regulations to correct technical errors, pursuant to 29 **Del.C.** §10113(b)(4).

This order shall be effective 10 days after publication in the *Register of Regulations*.

IT IS SO ORDERED.

This 13th day of May, 2019

Trinidad Navarro
Commissioner
Delaware Department of Insurance

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, policy or~~ contract delivered or issued for delivery in Delaware or in any certificate issued under such a policy or contract 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)

22 DE Reg. 1019 (06/01/19) (Final)