

September 22, 2017

Leslie W. Ledogar, Regulatory Specialist  
Delaware Department of Insurance  
841 Silver Lake Drive  
Dover, DE 19904

**Re: Department of Insurance Health Insurance Claim Review Reg. [21 DE Reg. 192 (9/1/17)]**

Dear Ms. Ledogar:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Insurance proposal to amend its regulations covering the internal review and utilization review processes which enable covered persons to contest adverse insurer decisions. The proposed amendment implements House Bill No. 100, which amends 18 Del.C. §332 to now require that an insurance carrier, when informing a covered person of its internal review process, must inform the covered person of the availability of legal assistance from attorneys working for the Delaware Department of Justice (DOJ) in the preparation of an appeal of an adverse determination involving treatment for substance abuse. House Bill No. 100 was signed into law on May 30, 2017 and becomes effective on September 27, 2017. Council **endorses** the proposed amendment subject to the revisions suggested in the observations below.

First, although House Bill No. 100 (lines 37-38) and the current RFQ contemplate retention of attorneys to represent individuals in substance abuse insurance disputes, it may be preferable to not categorically limit DOJ assistance to attorneys. For example, non-attorney family members and providers are included in the scope of "authorized representatives" in the current regulation. See 18 DE Reg. 1301.2.0, definition of "authorized representative". Therefore it would be inconsistent to limit DOJ assistance to attorneys only. The Department could consider inserting the following underlined sentence to the proposed revision to §2.0:

In cases involving the existence or scope of private or public coverage for substance abuse treatment, an attorney retained or employed by the Delaware Department of Justice may serve as an authorized representative, regardless of whether the covered person has

been determined by a physician to be incapable of assigning the right of representation. Such attorney may authorize an expert to act on the attorney's behalf in proceedings within the scope of this regulation. The Department of Justice may be reached by calling 302-577-4206.<sup>1</sup>

The addition of this sentence would clarify that the DOJ could utilize substance abuse experts to represent covered persons in mediation (§4.0), IHCAP (§5.0), and expedited IHCAP (§6.0) proceedings. Cf. §2.0, definition of “provider” which lists several types of experts who could be well qualified to present cases on behalf of a covered person. This option would preserve DOJ resources by allowing the DOJ to send an expert to a mediation proceeding in lieu of an attorney.

Second, the Department should consider providing a specific DOJ website address (with description of its substance abuse legal assistance program) in addition to a phone number.

Third, the Department should reconsider the proposed notice of DOJ assistance in §4.0. Consider the following:

A. The notice is “buried in the boilerplate” and not prominent. To fulfill the spirit of House Bill No. 100, the Department could consider a separate heading (e.g., “Substance Abuse Treatment Denials: Special Assistance”) followed by a brief explanation and DOJ contact information (website and phone number).

B. The notice only informs an aggrieved person of the availability of DOJ assistance with mediation. See §4.0. This is misleading since DOJ assistance is also available in the internal review process (§3.0), IHCAP procedure (§5.0), and expedited IHCAP procedure (§6.0). Apart from carrier notice of the availability of DOJ assistance in contexts other than mediation, the Department could consider including a notice of DOJ assistance as a complement to the notice in §5.4.

C. The proposed notice indicates that DOJ assistance is only available if “you are approaching the deadline for filing your appeal”. This limitation is not authorized by law and will deter requests for DOJ assistance.

D. To encourage individuals to consider DOJ assistance, it would be preferable to clarify that DOJ assistance is “free”. This could be easily accomplished by revising the relevant language to “...receive free legal assistance”.

Thank you for your consideration of our observations. Please contact me or Wendy Strauss at the GACEC office if you have any questions.

Sincerely,

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<sup>1</sup>H.B. No. 100 (line 24) contemplates the use of “experts” in substance abuse insurance disputes. The term “expert” is not defined and could encompass professionals in the field of addiction who, under attorney supervision, could appear on a covered person’s behalf in proceedings authorized by 18 DE Admin Code Part 1301.

Dafne A. Carnright  
Chairperson

DAC:kpc

CC: The Honorable Matthew Denn, Attorney General  
The Honorable Helene Keeley, Delaware State House of Representatives  
Christian Wright, Deputy Attorney General  
Kathlene Brittingham, DSAMH Advisory Council  
Barbara Messick, DPBHS Advisory Council