

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 Arbitration Reg. [21 DE Reg. 197 (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 arbitration process which enables 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. Non-attorney representation in grievance procedures prior to arbitration is also contemplated by Department of Insurance regulation. See 18 DE Reg. 1301.2.0, definition of "authorized representative". It would therefore be inconsistent to limit DOJ assistance solely to attorneys. 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 arbitration proceedings within the scope of this regulation. The Department of Justice may be reached by calling 302-577-4206.¹

¹H.B. No. 100 (line 24) contemplates the use of "experts" in substance abuse insurance

The addition of this sentence would clarify that the DOJ can utilize substance abuse experts to represent covered persons in arbitration proceedings. Cf. §2.0, definition of “provider” which lists several types of experts who could be well qualified to present arbitration cases on behalf of a covered person.

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

Third, House Bill No. 100 can only be effective if covered persons denied substance abuse treatment receive timely and prominent notice of the availability of DOJ assistance. The Department of Insurance is charged with developing the language in such notices (lines 51-53). Unfortunately, this arbitration regulation omits any reference to such notice and does not otherwise inform persons of the availability of such assistance. At a minimum, the Department should consider adding a provision notifying an aggrieved person contesting denial of substance abuse treatment of possible DOJ assistance in §3.14 and §3.5

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

Sincerely,

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

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 arbitration proceedings authorized by 18 DE Admin Code Part 1315.