STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: January 31, 2022

TO: Regulatory Specialist
Delaware Department of Insurance

FROM: Terri Hancharick, Chairperson TH
State Council for Persons with Disabilities

RE: Proposed Department of Insurance Regulation 1322, Requirements for Mandatory Minimum Payment Innovations in Health Insurance, 25 Del. Register of Regulations 684 (January 1, 2022)

The State Council for Persons with Disabilities (SCPD) has reviewed the proposed regulation which implements Senate Substitute 1 for Senate Bill 120 that was signed into law on October 21, 2021. This law addressed a number of healthcare issues by placing greater emphasis on primary care as a way to keep individuals healthy, to move to a patient-centered outcome approach, and to control healthcare costs. This regulation will be effective on March 11, 2022.

The proposed regulation was published as 25 DE 684 in the January 1, 2022 issue of the Register of Regulations. SCPD endorses the proposed regulation and has the following observations.

The purpose of the regulation "is to establish a process through which carriers must demonstrate compliance with requirements for mandatory minimum payment innovations, including alternative payment models, provider price increases, carrier

investment in primary care, and other activities deemed necessary to support a robust system of primary care by January 1, 2026 . . . ." (2.0).

The vehicle to establish mandatory minimums for payment innovations and alternative payment models is the Office of Value-Based Health Care Delivery (OVBHCD). Section 334 created the OVBHCD within the insurance department for the purpose of "reduc[ing] health-care costs by increasing the availability of high quality, cost-efficient health insurance products that have stable, predictable, and affordable rates." 18 Del. C. §§ 334(a).

The regulation defines primary care services or primary care as "the provision of integrated, accessible health care services by primary care providers and their health care teams who are accountable for addressing a large majority of personal health care needs, developing a sustained partnership with patients, and practicing in the context of family and community. The care is person-centered, team-based, community-aligned, and designed to achieve better health, better care, and lower costs." (4.0).

The regulation defines primary care provider (PCP) as "an individual licensed . . . . to provide health care, with whom the patient has initial contact and by whom the patient may be referred to a specialist. This definition includes family practice, pediatrics, internal medicine, and geriatrics. (4.0).

Because of the emphasis on primary care, insurance carriers in their rate filings are required to provide spending on primary care as a percentage of the total cost of medical care in at least the minimum amounts as follows: Seven percent (7%) in their rate filing in 2022 for plan year 2023 (6.1.1); eight and a half percent (8 ½ %) in their rate filing in 2023 for plan year 2024 (6.1.2); ten percent (10%) in their rate filing in 2024 for plan year 2025 (6.1.3); and eleven and a half percent (11 ½ %) in their rate filing in 2025 for plan year 2026 (6.1.4). The plans must also include how the insurance carriers will make progress toward having participation by seventy-five percent (75%) of PCP's for 2023 and the progress made by the insurance carriers toward the seventy-five percent (75%) goal for 2024, 2025, and 2026. (6.2.2.1; 6.2.2.2.).

The regulation also requires rate filings by insurance carriers with more than 10,000 members to have fifty percent (50%) of the total cost of care tied to an alternative payment model that meets the Health Care Payment Learning and Action Network

(HCP-LAN)[1] definition for shared savings or shared savings with a downside risk by 2023, with a minimum of twenty-five percent (25%) of total cost of care covered by an alternative payment model that meets the definition of HCP-LAN, which includes only contracts with downside risk. (8.2).

The regulation also requires the inclusion of affordability standards in the benefit plan reimbursement structure and fee schedule submitted by all insurance carriers. (9.1). These standards include an increase in primary care expenditures (in accordance with section 6.0), a limit in price increases for non-professional services (in accord with sections 7.0 and 7.1.3), and the adoption of an alternative payment model (in accordance with section 8.0).

The Department of Insurance is charged with monitoring the compliance by the insurance carriers with this regulation. (10.0). The Insurance Commissioner has the authority to enforce compliance and can impose restrictions and administrative penalties and fines. (10.4).

As stated above, this regulation implements Senate Substitute 1 for Senate Bill 120, which was a law aimed at strengthening the delivery of primary healthcare services in the state. The law and bill create the OVBHCD within the insurance department to reduce health-care costs through the development of innovative and affordable health insurance products. The regulation incrementally increases spending yearly for primary care services; reigns in price increases for non-professional services; and requires the adoption of an alternative payment model.

SCPD endorses the proposed regulation since the law and regulation are laudable attempts to improve the health of all Delawareans. The emphasis is to use primary care providers and primary care services to engage patients, build upon the relationship between a PCP and his or her patient, and provide quality care to find and treat illnesses or medical problems in the early stages rather than when the problems become severe and require hospitalization and have poorer outcomes.

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[1] "The Health Care Payment Learning and Action Network (LAN) is a group of public and private health care leaders dedicated to providing thought leadership, strategic direction, and ongoing support to accelerate our health care system's adoption of alternative payment models (APMs). It was launched by U.S. Department of Health and Human Services (through CMS) in March 2015 to align with public and private sector stakeholders in shifting away from the current FFS [fee for service], volume-based payment system to one that pays for high-quality care and improved health. The LAN mobilizes a network of over 7,000 payers, providers, purchasers, patients, product manufacturers, policymakers, and others in a shared mission to promote APMs and reduce the barriers to APM participation, as ways to lower care costs and improve patient experiences and outcomes." https://innovation.cms.gov/innovation-models/health-care-payment-learning-and-action-network.
"The LAN conducts a national assessment every year to measure the growing adoption of APMs over time and track progress towards the LAN's goals. The Measurement Effort has evolved to incorporate data from a large sample of payers that represent nearly 80% of covered Americans, and serves as the most comprehensive snapshot available for measuring progress on payment reform." Id

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position or comments on the proposed regulation.

cc: Mr. Trinidad Navarro, Insurance Commissioner
Ms. Laura Waterland, Esq., DLP
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council