

# DEPARTMENT OF INSURANCE

## OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 311 and 24 Delaware Code, Section 2621  
(18 Del.C. §311 & 24 Del.C. §2621)

### PROPOSED

### PUBLIC NOTICE

#### 1321 Compensation for Physical Therapy Services

##### A. Type of Regulatory Action Required

Proposal of new regulation

##### B. Synopsis of Subject Matter of the Regulation

The Department of Insurance hereby gives notice of proposed new Regulation 1321 relating to Compensation for Physical Therapy Services. The proposed new regulation would prohibit insurance carriers from including in any insurance policy terms and conditions that unreasonably discriminate against the payment for physical therapy care or services, prohibits numerical limits on physical therapy visits for the treatment of back pain, and puts in place a mechanism by which the Department of Insurance may enforce these prohibitions.

The Delaware Code authority for the new regulation is 18 Del.C. §311 and the amendments to 24 Del.C. Ch. 26, which added new section 2621 entitled "Physical therapists eligible for compensation from insurance." See Del. S.B. 225/S.A. 1/ S.A.2, 149<sup>th</sup> Gen. Assem. §2621 (2018), with an effective date of March 9, 2019.

The Department does not plan to hold a public hearing on 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 1<sup>st</sup> day of April, 2019. Any such requests should be directed to:

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#### 1321 Compensation for Physical Therapy Services

##### 1.0 Authority

This regulation is adopted pursuant to 18 Del.C. §311 and 24 Del.C. §2621 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. §2621.

##### 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.

**"Commissioner"** means the Commissioner of the Delaware Department of Insurance.

**"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.

**"Physical Therapist"** means a person who is licensed to administer physical therapy care or services pursuant to 24 **Del.C.** Ch. 26 and 24 **DE Admin. Code** 2600.

**"Physical therapy"** means **"physical therapy"** as defined in 24 **DE Admin. Code** 2600.

**"Physical therapy care or services"** means those practices that a licensed Physical Therapist is licensed to provide pursuant to 24 **Del.C.** Ch. 26 and 24 **DE Admin. Code** 2600.

## **5.0 Unreasonable and Discriminatory Access to Physical Therapy 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 physical therapy care or services, including but not limited to:

5.1.1 A cost containment or managed care provision that denies or restricts access to physical therapy 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 physical therapist 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 physical therapy practice;

5.1.2 A provision that classifies physical therapy care or services as "maintenance care" or "not medically necessary," solely for the purpose of denying access to physical therapy care or services;

5.1.3 A provision that requires a patient to pay a higher copay or deductible when being treated by a physical therapist 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 physical therapist 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 physical therapist for physical therapy care or services;

5.1.5 A provision that contains a utilization or compensation restriction or practice for a physical therapist that is more restrictive than a utilization or compensation restriction or practice placed on a provider who is not licensed as a physical therapist 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 physical therapy 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 physical therapy technique, method or diagnostic procedure if that physical therapy technique, method or diagnostic procedure is taught by an educational program described in 24 **Del.C.** §2606(a)(1), or has been approved by the Delaware Examining Board of Physical Therapists and Athletic Trainers.

5.2 No carrier shall include in any insurance policy, contract or certificate any provision that places any annual or lifetime numerical limits on physical therapy visits for the treatment of back pain.

## **6.0 Unreasonable and Discriminatory Compensation Prohibited**

- 6.1 No carrier or TPA shall discriminate against or unreasonably deny a physical therapist compensation for a physical therapy service rendered by that physical therapist if the carrier would otherwise compensate a provider who is not licensed as a physical therapist 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 physical therapy care or services, regardless of whether the care or services were delivered by a licensed physical therapist or by a provider who is not licensed as a physical therapist 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. §2621(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. §2621 or any provision of this regulation.

## **10.0 Effective Date**

This regulation shall be effective for all policies issued on or renewed on or after the effective date of 24 Del.C. §2621.  
**22 DE Reg. 756 (03/01/19) (Prop.)**