

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Maryland Insurance Administration
(DLS Control No. 17-170)**

Overview and Legal and Fiscal Impact

The regulations establish, under a new Chapter 45, Dental Network Adequacy (1) the scope of and defined terms used in Chapter 45; (2) standards that the provider panels of insurers authorized to sell dental insurance, nonprofit health service plans that provide coverage for dental services, and dental plan organizations (collectively, “carriers”) must meet to ensure that dental plan enrollees have access to services to meet their dental care needs; (3) a process by which a carrier may obtain a dental network adequacy waiver from the Maryland Insurance Commissioner; (4) a process a carrier may use to request that specified information in a dental network adequacy waiver request filed with the Commissioner not be disclosed under the Public Information Act; and (5) requirements regarding providing network sufficiency results for each provider panel used by a carrier for a dental plan.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Maryland Insurance Administration:

Health Insurance - General: Dental Network Adequacy: COMAR 31.10.45.01-.06

Legal Analysis

Background

Section 15-112(b)(1)1 of the Insurance Article requires insurers, nonprofit health service plans, and dental plan organizations that use a provider panel to maintain standards in accordance with regulations adopted by the Commissioner for availability of health care providers to meet health care needs of enrollees. Chapter 309 of 2016 added § 15-112(e) of the Insurance Article to require the Commissioner, in consultation with appropriate stakeholders, to adopt on or before December 31, 2017, regulations to specify the standards under § 15-112(b)(1)1 for dental services for a carrier that is a dental plan organization or an insurer or nonprofit health service plan that provides coverage for dental services. The regulations must (1) ensure that all enrollees, including adults and children, have access to providers and covered services without unreasonable delay and travel; (2) ensure access to providers, including essential community providers, that serve

predominantly low-income, medically underserved individuals; and (3) require the carrier to specify how the carrier will monitor, on an ongoing basis, the ability of its participating providers to provide covered services to its enrollees. The statute also authorizes the Commissioner, in adopting the regulations, to consider the appropriateness of quantitative and nonquantitative criteria.

To comply with the requirement in § 15-112(e) of the Insurance Article that the dental network adequacy regulations be adopted in consultation with appropriate stakeholders, the Maryland Insurance Administration indicates that it held a meeting in January 2017 to discuss those regulations. The meeting was part of a series of nine stakeholder meetings, which began in June 2016, held to develop network adequacy regulations. The meetings included representatives from insurance companies, consumer advocates, and practicing medical professionals. In addition, the Associate Commissioner for Life and Health also held discussions with the State Board of Dental Examiners regarding these regulations.

While Chapter 309 also addresses access to health care services, other than dental services, offered by insurers, nonprofit health service plans, and health maintenance organizations and requirements for network directories maintained by carriers, these regulations are intended only to implement the requirements for dental network adequacy standards.

Summary of Regulation

As discussed above, Regulations .01 through .06 under the new Chapter 45, Dental Network Adequacy, implement the provisions of § 15-112(e) of the Insurance Article which govern dental network adequacy standards.

Regulation .01 specifies that Chapter 45 applies to carriers that issue or renew dental plans in Maryland and use a provider panel for a dental plan offered in Maryland. Regulation .02 defines terms used in the chapter, including “essential community provider,” “dentist,” and “specialty provider.”

Regulations .03 and .04 establish the maximum travel distance and appointment waiting time, respectively, that each provider panel used by a carrier for a dental plan must meet to ensure the provider panel is sufficient to meet the dental care needs of enrollees in the plan.

Under Regulation .03A, each provider panel of a carrier must have, within the geographic area served by the carrier’s network or network, sufficient dentists, including specialty providers, and facilities to meet the maximum travel distance standards listed in the chart contained in § A(2). The chart specifies the maximum travel distances for various providers in an “urban area,” a “suburban area,” and a “rural area,” as those terms are defined under regulation .02B. Regulation .03 also specifies the minimum percentage of available essential community providers that must be included on a carrier’s provider panel in each of the urban, suburban, and rural areas. As defined in regulation .02B(6), an “essential community provider” is “a provider that serves predominantly low-income or medically underserved individuals” and includes local health departments.

Regulation .04 establishes maximum appointment waiting time standards for urgent care, general dentistry services, and nonurgent specialty care. A carrier's provider panel must meet the waiting time standards for at least 95% of the enrollees covered under dental plans that use the provider panel. The regulation specifies when telehealth appointments may be considered by a carrier as part of its meeting the waiting time standards under the regulation, and authorizes preventive care services and periodic follow-up care to be scheduled in advance consistent with professionally recognized dental standards of practice as determined by the treating provider acting within the scope of the provider's license.

Under Regulation .05, a carrier is authorized to apply to the Commissioner for a dental network adequacy waiver, for up to one year, of a dental network adequacy standard listed in Regulation .03 or .04. The request must be in writing and contain the information specified in Regulation .05C. The regulation also establishes the circumstances under which the Commissioner may find good cause to grant the waiver.

Regulation .06 requires a carrier, for each provider panel used by the carrier for a dental plan, to provide network sufficiency results for the dental plan service area. Information is required relating to each of the standards – travel distance and appointment waiting time – with which a carrier must comply. The regulation also specifies the format in which the information must be provided and provides that information included in the executive summary is not confidential.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The administration cites §§ 2-109(a)(1) and 15-112(a)(4), and 15-112(e) of the Insurance Article as statutory authority for the regulations. Section 2-109(a)(1) establishes the general authority of the Commissioner to adopt regulations to carry out the Insurance Article. Section 15-112(e), which provides authority for the regulations, is discussed above in the *Background* section of this analysis. The remaining cited authority is not relevant to these regulations.

The relevant cited authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

On September 13, 2017, staff for the administration notified the Department of Legislative Services that they had made minor changes to update the language in Regulation .06. More specifically, the revised language clarifies the information that a carrier must provide regarding network sufficiency results for the dental plan service area. The department was notified on September 18, 2017, that staff for the administration had made an additional change to Regulation .06. A new Section B was added to require each carrier to provide a description of

how it will monitor the ability of participating providers to provide covered services to the carrier's enrollees on an ongoing basis.

In response to suggestions from the department, staff for the administration agrees to (1) clarify that the circumstances listed in Regulation .05 are the only circumstances under which the Commissioner is authorized to find good cause to grant a dental network adequacy waiver request and (2) make various technical corrections to Regulations .02 and .03.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulations implement provisions of Chapter 309 of 2016 (House Bill 1318), which, among other things, requires the Maryland Insurance Commissioner, by December 31, 2017, to adopt regulations to specify network adequacy standards for dental services for specified insurance carriers. The Maryland Insurance Administration advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The Maryland Insurance Administration advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

Legal Analysis: Jodie L. Chilson – (410) 946/(301) 970-5350

Fiscal Analysis: Jennifer B. Chasse – (410) 946/(301) 970-5510