

BEFORE THE MARYLAND INSURANCE ADMINISTRATION

MARYLAND INSURANCE ADMINISTRATION*
200 ST. PAUL PLACE, SUITE 2700 *
BALTIMORE, MARYLAND 21202 *

vs. *

OPTIMUM CHOICE, INC. *
10175 LITTLE PATUXENT PKWY *
6TH FLOOR *
COLUMBIA MD 21044 *

CASE NO: MIA-2023-03-010

NAIC# 96940 *

CONSENT ORDER

This Consent Order is entered into by the Maryland Insurance Commissioner and OPTIMUM CHOICE, INC. (“OCI” or “Respondent”) pursuant to §§ 2-108 and 2-204 of the Insurance Article, and § 19-730 of the Health-General Article, Maryland Code Annotated, to resolve the matter before the Maryland Insurance Administration (“Administration”).

I. RELEVANT REGULATORY FRAMEWORK

1. Each health maintenance organization (“HMO”) that uses provider panels for health benefit plans offered in the State must assure that its provider panels meet certain adequacy standards. On July 1 of each year each HMO is required to file a report with the Administration demonstrating the HMO’s compliance with those standards.

2. Section 15-112 of the Insurance Article provides, in pertinent part:

(a) (1) In this section the following words have the meanings indicated.

* * *

(5) (i) “Carrier” means:

* * *

3. a health maintenance organization;

(b) (1) Subject to paragraph (3) of this subsection, a carrier that uses a provider panel shall:

- (i) if the carrier is an insurer, nonprofit health service plan, health maintenance organization, or dental plan organization, maintain standards in accordance with regulations adopted by the Commissioner for availability of health care providers to meet the health care needs of enrollees;

* * *

(c) (1) This subsection applies to a carrier that:

- (i) is an insurer, a nonprofit health service plan, or a health maintenance organization; and
 - (ii) uses a provider panel for a health benefit plan offered by the carrier.
- (2) (i) On or before July 1, 2018, and annually thereafter, a carrier shall file with the Commissioner for review by the Commissioner an access plan that meets the requirements of subsection (b) of this section and any regulations adopted by the Commissioner under subsections (b) and (d) of this section.

3. The regulations referenced in § 15-112(c)(2)(i) of the Insurance Article are set forth in COMAR 31.10.44.

4. The network adequacy standards are set forth in COMAR 31.10.44.04 -.06 and consist of travel distance standards (COMAR 31.10.44.04), appointment waiting time standards (COMAR 31.10.44.05), and provider-to-enrollee ratio standards (COMAR 31.10.44.06) (collectively, the "Standards").

5. The access plan content and filing requirements are set forth in COMAR 31.10.44.03, which provides, in pertinent part:

.03 Filing of Access Plan.

C. Each annual access plan filed with the Commissioner shall include:

- (1) An executive summary in the form set forth in Regulation .09 of this chapter;
- (2) The information and process required by Insurance Article, §15-112(c)(4), Annotated Code of Maryland, and the methods used by the carrier to comply with the monitoring requirement under §15-112(c)(5);
- (3) Documentation justifying to the Commissioner how the access plan meets each network sufficiency standard set forth in Regulations .04—.06 of this chapter; and
- (4) A list of all changes made to the access plan filed the previous year.

6. COMAR 31.10.44.07 allows a carrier to apply for a temporary waiver from compliance with one or more of the Standards provided that certain criteria are met.

7. The criteria that must be met in order to qualify for a waiver of a Standard are set forth in COMAR 31.10.44.07, which states, in pertinent part:

.07 Waiver Request Standards

A. A carrier may apply for a network adequacy waiver, for up to 1 year, of a network adequacy requirement listed in this chapter.

B. The Commissioner may find good cause to grant the network adequacy waiver request if the carrier demonstrates that the physicians, other providers, or health care facilities necessary for an adequate network:

- (1) Are not available to contract with the carrier;
- (2) Are not available in sufficient numbers;
- (3) Have refused to contract with the carrier; or
- (4) Are unable to reach agreement with the carrier.

C. A carrier seeking a network adequacy waiver shall submit a written request to the Commissioner that includes the following information:

* * *

(2) A list of physicians, other providers, or health care facilities within the relevant service area that the carrier attempted to contract with, identified by name and specialty, if any, or health care facility type;

(3) A description of how and when the carrier last contacted the physicians, other providers, or health care facilities;

(4) A description of any reason each physician, other provider, or health care facility gave for refusing to contract with the carrier;

(5) Steps the carrier will take to attempt to improve its network to avoid future network adequacy waiver requests.

II. FINDINGS

8. OCI holds a Certificate of Authority to act as a HMO in the State and uses provider panels for health benefit plans offered in the State. As such, it is subject to § 15-112 of the Insurance Article and the network adequacy standards set forth in COMAR 31.10.44.04 - .06. In addition, OCI is required to file a network adequacy plan in accordance with COMAR 31.10.44.03.

9. OCI uses two provider panels for health benefit plans offered in the State, the OCI network and the OCI IEX network.

10. On July 1, 2021, OCI submitted a Network Adequacy Plan for the OCI network (the "OCI 2021 Access Plan") and a Network Adequacy Plan for the OCI IEX network (the "OCI IEX 2021 Access Plan") to the Administration, supplemented with

additional information and documentation on November 16, 2021, January 21, 2022, March 14, 2022, May 9, 2022, July 22, 2022, and August 11, 2022.

11. On July 1, 2021, OCI requested a temporary waiver from compliance with the travel distance standards for the OCI network (“the OCI Travel Distance Waiver Request”) for the following provider types: Applied Behavioral Analyst, Gynecology OB/GYN, and Pediatrics-Routine/Primary Care; and for the following facility types: Acute Inpatient Hospitals, Critical Care Services / Intensive Care Units, Inpatient Psychiatric Facility, Outpatient Infusion / Chemotherapy, Skilled Nursing Facilities, and Other Behavioral / Substance Abuse Facilities.

12. On November 16, 2021, January 21, 2022, March 14, 2022, May 9, 2022, July 22, 2022, and August 11, 2022, OCI submitted additional information to the Administration supplementing the OCI Travel Distance Waiver Request.

13. On January 21, 2022, OCI requested a temporary waiver from compliance with the travel distance standards for the OCI IEX network (“the OCI IEX Travel Distance Waiver Request”) for the following provider types: Applied Behavioral Analyst, ENT/ Otolaryngology, Gynecology - OB / GYN, Pediatrics-Primary / Routine Care, and Urology; and for the following facility types: Inpatient Psychiatric Facility, Other Behavioral Health / Substance Abuse Facilities, and, for zip codes 21061 and 21114, Acute Inpatient Hospitals, Critical Care Services / Intensive Care Units, and Outpatient Infusion/Chemotherapy.

14. The OCI IEX Travel Distance Waiver Request did not include a request for a temporary waiver from compliance with the travel distance standard for Inpatient Psychiatric Facility in suburban areas or for Acute Inpatient Hospitals, Critical Care

Services / Intensive Care Units, and Outpatient Infusion/Chemotherapy in urban zip codes other than 21061 and 21114.

15. On March 14, 2022, May 9, 2022, July 22, 2022, and September 1, 2022 OCI submitted additional information to the Administration supplementing the OCI IEX Travel Distance Waiver Request.

A. THE OCI 2021 ACCESS PLAN

1. Travel Distance Standards

16. The data submitted by OCI in connection with the OCI 2021 Access Plan failed to demonstrate compliance with the Travel Distance Standards.

17. COMAR 31.10.44.04 provides, in pertinent part:

.04 Travel Distance Standards

A. Sufficiency Standards.

(1) Except as stated in §B of this regulation, each provider panel of a carrier shall have within the geographic area served by the carrier's network or networks, sufficient primary care physicians, specialty providers, behavioral health and substance use disorder providers, hospitals, and health care facilities to meet the maximum travel distance standards listed in the chart in §A(5) of this regulation for each type of geographic area. The distances listed in §A(5) of this regulation shall be measured from the enrollee's place of residence.

(2) When an enrollee elects to utilize a gynecologist, pediatrician, or certified registered nurse practitioner for primary care, a carrier may consider that utilization as a part of its meeting the primary care provider standards listed in §A(5) of this regulation.

* * *

(5) Chart of Travel Distance Standards.

	Urban Area Maximum Distance (miles)	Suburban Area Maximum Distance (miles)	Rural Area Maximum Distance (miles)
Provider Type:			

Applied Behavioral Analyst	15	30	60
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Gynecology, OB/GYN	5	10	30
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Pediatrics-Routine/Primary Care	5	10	30
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Facility Type:			
Acute Inpatient Hospitals	10	30	60
Critical Care Services-Intensive Care Units	10	30	100

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Inpatient Psychiatric Facility	15	45	75
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Outpatient Infusion/Chemotherapy	10	30	60
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Skilled Nursing Facilities	10	30	60
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Other Behavioral Health/Substance Abuse Facilities	10	25	60
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18. The data self-reported by OCI disclosed the following deficiencies based on distance of a provider to an enrollee's address:

- (a) Applied behavioral analyst providers met the required standard for 99.5% of suburban enrollees, leaving 34 members outside the travel distance standard of thirty miles in four zip codes:

Suburban zip codes

- (i) Zip code 20625 has 4 members outside the standard.
- (ii) Zip code 20634 has 22 members outside the standard.
- (iii) Zip code 20688 has 2 members outside the standard.
- (iv) Zip code 21664 has 6 members outside the standard.

- (b) Gynecology, OB/GYN providers met the required standard for 99.7% of urban enrollees, leaving 21 members outside the travel distance standard of five miles in two zip codes. The standard was met for 99.8% of suburban enrollees, leaving 11 members outside the travel distance standard of ten miles in two zip codes:

Urban zip codes

- (i) Zip code 21052 has 7 members outside the standard.
- (ii) Zip code 21403 has 14 members outside the standard.

Suburban zip codes

- (i) Zip code 20625 has 4 members outside the standard.
- (ii) Zip code 21913 has 7 members outside the standard.

- (c) Pediatrics-routine/primary care providers met the required standard for 99.8% of urban enrollees, leaving 15 members outside the travel distance standard of five miles in two zip codes. The standard was met for 99.8% of suburban enrollees, leaving 11 members outside the travel distance standard of ten miles in two zip codes:

Urban zip codes

- (i) Zip code 21052 has 7 members outside the standard.
- (ii) Zip code 21403 has 8 members outside the standard.

Suburban zip codes

- (i) Zip code 20625 has 4 members outside the standard.
- (ii) Zip code 21913 has 7 members outside the standard.

- (d) Acute inpatient hospitals met the required standard for 99.7% of urban enrollees, leaving 20 members outside the travel distance standard of 10 miles in three zip codes:

Urban zip codes

- (i) Zip code 21040 has 5 members outside the standard.
- (ii) Zip code 21052 has 7 members outside the standard.
- (iii) Zip code 21114 has 8 members outside the standard.

- (e) Critical care services / intensive care units met the required standard for 99.7% of urban enrollees, leaving 20 members outside the travel distance standard of ten miles in three zip codes:

Urban zip codes

- (i) Zip code 21040 has 5 members outside the standard.
- (ii) Zip code 21052 has 7 members outside the standard.
- (iii) Zip code 21114 has 8 members outside the standard.

- (f) Inpatient psychiatric facilities met the required standard for 97.1% of urban enrollees, leaving 179 members outside the travel distance standard of fifteen miles in three zip codes:

Urban zip codes

- (i) Zip code 21040 has 26 members outside the standard.
- (ii) Zip code 21402 has 1 member outside the standard.
- (iii) Zip code 21403 has 152 members outside the standard.

- (g) Outpatient infusion/chemotherapy facility providers met the required standard for 99.7% of urban enrollees, leaving members 20 members outside the travel distance standard of ten miles in three zip codes:

Urban zip codes

- (i) Zip code 21040 has 5 members outside the standard.
- (ii) Zip code 21052 has 7 members outside the standard.
- (iii) Zip code 21114 has 8 members outside the standard.

- (h) Skilled nursing facilities met the required standard for 99.9% of urban enrollees, leaving 9 members outside the travel distance standard of ten miles in two zip codes:

Urban zip codes

- (i) Zip code 21052 has 5 members outside the standard.
- (ii) Zip code 21403 has 4 members outside the standard.

- (i) Other behavioral health/substance abuse facility providers met the required standard for 99.6% of urban enrollees, leaving 22 members outside the travel distance standard of ten miles in two zip codes:

Urban zip codes

- (i) Zip code 20745 has 21 members outside the standard.
- (ii) Zip code 20748 has 1 member outside the standard.

19. With regard to lack of access to skilled nursing facilities for the 9 members in zip code 21052 and 21403, OCI stated in its May 9, 2022 *“UnitedHealthcare Companies Waiver Request for Optimum Choice, Inc.”* that it had resolved the travel distance deficiency. OCI and the facility had reached an agreement, but were unable to execute in time for the 2021 access plan annual reporting. OCI is currently contracted with the skilled nursing facility within the travel distance standard.

20. Based on updated information provided to the Administration by the Maryland State Department of Planning and the U.S. Census Bureau, the population density classifications for certain zip codes were changed for the 2022 access plan filings. To match the surrounding zip codes, zip code 21052 was reclassified as suburban and zip code 21664 was reclassified as rural. Additionally, the Administration determined that zip code 21052 is associated with Fort Howard Post Office Boxes and zip code 21664 is associated with Secretary Post Office Boxes. The original population density classifications designated zip code 21052 as urban and zip code 21664 as suburban, due to the large number of Post Office Boxes within a small geographic area. While the 21052 and 21664 zip codes were not officially reclassified as suburban and rural, respectively, for the 2021 access plan filing, the Administration determined that it was appropriate to apply the suburban standards for zip code 21052 and the rural standards for zip code 21664, rather than the urban and suburban standards. Therefore, the Administration has concluded that the OCI 2021 Access Plan meets the travel distance standards for the following provider and facility types in zip codes 21052 and 21664:

- (a) With regard to the lack of applied behavioral analysts within the regulatory standard of 30 miles for the 6 members in zip code 21664,

OCI reports that the nearest contracted applied behavioral analyst is located 32.5 miles from the furthest point in zip code 21664. The rural standard is 60 miles.

- (b) With regard to the lack of gynecology, OB/GYN providers within the regulatory standard of 5 miles for the 7 members in zip code 21052, OCI reports that the nearest contracted gynecology, OB/GYN provider is less than 8 miles from the furthest point in zip code 21052. The suburban standard is 10 miles.
- (c) With regard to the lack of pediatrics-routine/primary care providers within the regulatory standard of 5 miles for the 7 members in zip code 21052, OCI reports that the nearest contracted pediatrics-routine/primary care provider is less than 8 miles from the furthest point in zip code 21052. The suburban standard is 10 miles.
- (d) With regard to the lack of acute inpatient hospitals, critical care services / intensive care units, and outpatient infusion facilities within the regulatory standard of 10 miles for the 7 members in zip code 21052, OCI reports that the nearest contracted hospital, critical care services/intensive care unit, and outpatient infusion / chemotherapy facility is less than 12 miles away from the furthest point in zip code 21052. The suburban standard is 30 miles.

21. COMAR 31.10.44.04A(1) provides in pertinent part that: “.....The distances listed in §A(5) of this regulation shall be measured from the enrollee’s place of residence.” Since Post Office boxes are unlikely to identify the physical location of an

enrollee's residence, the Administration expects OCI to demonstrate an effort to find a physical rather than post office address for enrollees in future access plan filings.

2. The OCI Travel Distance Waiver Request

22. OCI did not satisfy the criteria for a waiver set forth in COMAR 31.10.44.07 and its Travel Distance Waiver Request for Inpatient Psychiatric Facility in zip codes 21402 and 21403 must be denied.

- (a) The OCI Travel Distance Waiver Request contained contradictory statements which reported that there were no providers available to contract within 15 miles of the 153 enrollees outside the standard (Sections II and IV), followed by a description of negotiations with a facility that would close the coverage gap as of March 1, 2022 (Section IV of the same document).
- (b) Supplementary information submitted to the Administration by OCI on August 11, 2022 in response to the Administration's questions regarding the waivers did not demonstrate that the gap had been closed as of that date.

23. OCI did not satisfy the criteria for a waiver set forth in COMAR 31.10.44.07 and its Travel Distance Waiver Request for Other Behavioral Health/Substance Abuse Facilities in zip codes 20745 and 20748 must be denied.

- (a) The Travel Distance Waiver Request included contradictory statements which reported that there were no providers available to contract within 10 miles of the 22 enrollees outside the standard (Sections II and IV), followed by a description of negotiations with a

facility that would close the coverage gap (Section IV of the same document).

- (b) Supplementary information submitted to the Administration by OCI on August 11, 2022 in response to the Administration's questions regarding the waivers did not demonstrate that the gap had been closed as of that date.

24. The Administration has found good cause to grant the OCI Travel Distance Waiver request for the following provider types: Applied Behavioral Analyst, Gynecology OB/GYN, and Pediatrics-Routine/Primary Care; and for the following facility types: Acute Inpatient Hospitals, Critical Care Services/Intensive Care Units, Inpatient Psychiatric Facility in zip code 21040, Outpatient Infusion /Chemotherapy and Skilled Nursing Facility. The waivers for the travel distance standards are granted for one year.

- (a) The OCI Travel Distance Waiver Request includes a description of unsuccessful efforts to locate any additional providers and health care facilities within the required distance standards in specific zip codes where deficiencies existed using both internal reporting, such as claims data and demographics, and external resources, including state-issued provider listings.
- (b) The OCI Travel Distance Waiver Request included declarations by OCI that it is contracted with the nearest available applied behavioral analysts for the 28 suburban enrollees residing outside of the regulatory standard. A contracted provider is located:
 - (i) 33.3 miles from the furthest point in zip code 20625 for the 4 enrollees outside of the 30-mile standard.

- (ii) 42.9 miles from the furthest point in zip code 20634 for the 22 enrollees outside of the 30-mile standard.
 - (iii) 39.8 miles from the furthest point in zip code 20688 for the 2 enrollees outside of the 30-mile standard.
- (c) The OCI Travel Distance Waiver Request included declarations by OCI that it is contracted with the nearest available gynecology, OB/GYN providers for the 14 urban enrollees and the 11 suburban enrollees residing outside of the regulatory standard. A contracted provider is located:
 - (i) 7.5 miles from the furthest point in zip code 21403 for the 14 urban enrollees outside of the 5-mile standard.
 - (ii) less than 24 miles from the furthest point in zip code 20625 for the 4 suburban enrollees outside of the 10-mile standard.
 - (iii) less than 11 miles from the furthest point in zip code 21913 for the 7 suburban enrollees outside of the 10-mile standard.
- (d) The OCI Travel Distance Waiver Request included declarations by OCI that it is contracted with the nearest available pediatric-routine/primary care providers for the 8 urban enrollees and the 11 suburban enrollees residing outside of the regulatory standard. A contracted provider is located:
 - (i) 7 miles from the furthest point in zip code 21403 for the 8 urban enrollees outside the 5-mile standard.
 - (ii) less than 25 miles from the furthest point in zip code 20625 for the 4 suburban enrollees outside the 10-mile standard.

- (iii) less than 12 miles from the furthest point in zip code 21913 for the 7 suburban enrollees outside the 10-mile standard.
- (e) The OCI Travel Distance Waiver Request included declarations by OCI that it is contracted with the nearest available acute inpatient hospitals, critical care services / intensive care units, and outpatient infusion/chemotherapy facilities for the 13 urban enrollees residing outside of the regulatory standard. A contracted provider is located:
 - (i) less than 12 miles from the furthest point in zip code 21040 for the 5 enrollees outside the 10-mile standard.
 - (ii) less than 12 miles from the furthest point in zip code 21114 for the 8 enrollees outside the 10-mile standard.
- (f) The OCI Travel Distance Waiver Request included a declaration by OCI that it is contracted with the closest inpatient psychiatric facility for the 26 urban enrollees residing outside of the regulatory standard of 15 miles in zip code 21040, which is located 17.2 miles from the furthest point in zip code 21040.

3. Appointment Waiting Time Standard

25. The data submitted by OCI in connection with the OCI 2021 Access Plan failed to demonstrate compliance with Appointment Waiting Time Standards.

26. COMAR 31.10.44.05 states, in pertinent part:

.05 Appointment Waiting Time Standards

A. Sufficiency Standards.

(1) Subject to the exceptions in §B of this regulation, each carrier's provider panel shall meet the waiting time standards listed in §C of this regulation for at least 95 percent of the enrollees covered under health benefit plans that use that provider panel.

(2) When it is clinically appropriate and an enrollee elects to utilize a telehealth appointment, a carrier may consider that utilization as a part of its meeting the standards listed in §C of this regulation.

* * *

C. Chart of Waiting Time Standards

Waiting Time Standards	
Urgent care (including medical, behavioral health, and substance use disorder services)	72 hours
Routine Primary Care	15 Calendar Days
Preventive Visit/Well Visit	30 Calendar Days
Non-Urgent Specialty Care	30 Calendar Days
Non-urgent behavioral health/substance use disorder services	10 Calendar Days

27. The data self-reported by OCI disclosed the following deficiency:

- (a) Non-urgent behavioral health/substance use disorder services met the required standard of 10 calendar days for 94.66% of enrollees, representing a deficiency of .34 percentage points.

28. OCI stated in the 2021 access plan that the Covid-19 pandemic negatively impacted health care providers' appointment time availability.

29. For the other appointment waiting time categories, while the Administration is satisfied that OCI provided sufficient explanation and documentation to demonstrate that the wait time compliance standard of 95% has been met for 2021, it is

expected that if OCI intends to combine telehealth claims with provider survey results when measuring appointment waiting time in future access plan filings, OCI will utilize a methodology that ensures a proportional, representative balance of surveys and actual claims data.

B. THE OCI IEX 2021 ACCESS PLAN

1. Travel Distance Standards

30. The data submitted by OCI in connection with the OCI IEX 2021 Access Plan failed to demonstrate compliance with the Travel Distance Standards.

31. COMAR 31.10.44.04 provides, in pertinent part:

.04 Travel Distance Standards

A. Sufficiency Standards.

* * *

(5) Chart of Travel Distance Standards.

	Urban Area Maximum Distance (miles)	Suburban Area Maximum Distance (miles)	Rural Area Maximum Distance (miles)
Provider Type:			

Applied Behavioral Analyst	15	30	60
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ENT/Otolaryngology	15	40	90
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Gynecology, OB/GYN	5	10	30
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Pediatrics- Routine/Primary Care	5	10	30
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Urology	10	30	60
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Facility Type:			
Acute Inpatient Hospitals	10	30	60
Critical Care Services- Intensive Care Units	10	30	100

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Inpatient Psychiatric Facility	15	45	75
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Outpatient Infusion/ Chemotherapy	10	30	60
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Other Behavioral Health/Substance Abuse Facilities	10	25	60
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32. The data self-reported by OCI disclosed the following deficiencies based on distance of a provider to an enrollee's address. It is noted that (as explained in greater detail

below) there are certain inconsistencies and gaps in the information provided, despite attempts by the Administration to verify and obtain more complete and accurate data from OCI.

- (a) Applied behavioral analyst providers met the required standard for 99.5% of suburban enrollees, leaving 34 members outside the travel distance standard of thirty miles in four zip codes:

Suburban zip codes

- (i) Zip code 20625 has 4 members outside the standard.
- (ii) Zip code 20634 has 22 members outside the standard.
- (iii) Zip code 20688 has 2 members outside the standard.¹
- (iv) Zip code 21664 has 6 members outside the standard².

The OCI IEX 2021 executive summary states that applied behavioral analysts met the required standard for 92.0% of rural enrollees, however the OCI IEX 2021 Access Plan does not identify the number of rural enrollees outside the standard of sixty miles or the zip codes where the standards are not met.

- (b) ENT/otolaryngology providers met the required standard for 99.9% of suburban enrollees, leaving 1 member outside the travel distance standard of thirty miles in one zip code, 21826.
- (c) Gynecology OB/GYN providers met the required standard for 99.8% of urban enrollees, leaving 3 members outside the travel distance standard of five miles in one zip code, 21403. The standard was met

¹ The network analysis documentation provided by OCI does not support this deficiency. The MD Provider/Member maps show no enrollees in zip code 20688.

² The network analysis documentation provided by OCI does not support this deficiency. The MD Provider/Member maps show no enrollees in zip code 21664.

for 98.9% of suburban enrollees, leaving 11 members outside the travel distance standard of ten miles in one zip code, 21716.

- (d) Pediatrics-routine/primary care providers met the required standard for 98.9% of suburban enrollees, leaving 11 members outside the travel distance standard of ten miles in one zip code, 21716.
- (e) Urology providers met the required standard for 99% of urban enrollees, leaving 13 members outside the travel distance standard of ten miles in one zip code, 21061.
- (f) The OCI IEX 2021 executive summary states that acute inpatient hospitals met the required standard for 95.4% of urban enrollees, however, the OCI IEX 2021 Access Plan only identified the number of urban enrollees outside the standard of ten miles for two zip codes:

Urban zip codes

- (i) Zip code 21061 has 18 members outside the standard.
- (ii) Zip code 21114 has 1 member outside the standard.

The OCI IEX 2021 Access Plan does not identify the total number of urban enrollees outside the standard or the additional zip codes where the standards are not met.

- (g) The OCI IEX 2021 executive summary states that critical care services/intensive care units met the required standard for 95.4% of urban enrollees, however, the OCI IEX 2021 Access Plan only identified the number of urban enrollees outside the standard of ten miles for two zip codes:

Urban zip codes

- (i) Zip code 21061 has 18 members outside the standard.
- (ii) Zip code 21114 has 1 member outside the standard.

The OCI IEX 2021 Access Plan does not identify the total number of urban enrollees outside the standard or the additional zip codes where the standards are not met.

- (h) Inpatient psychiatric facilities met the required standard for 97.5% of urban enrollees, leaving 34 members outside the travel distance standard of fifteen miles in two zip codes. The OCI IEX 2021 executive summary states that inpatient psychiatric facilities met the required standard for 99.9% of suburban enrollees, however the OCI IEX 2021 Access Plan does not identify the number of suburban enrollees outside the standard of forty-five miles or the zip codes where the standards are not met.

Urban zip codes

- (i) Zip code 21403 has 21 members outside the standard.
- (ii) Zip code 21114 has 13 members outside the standard.

- (i) The OCI IEX 2021 executive summary states that outpatient infusion/chemotherapy providers met the required standard for 95.4% of urban enrollees, however, the OCI IEX 2021 Access Plan only identified the number of urban enrollees outside the standard of ten miles for two zip codes:

Urban zip codes

- (i) Zip code 21061 has 18 members outside the standard.
- (ii) Zip code 21114 has 1 member outside the standard.

The OCI IEX 2021 Access Plan does not identify the total number of urban enrollees outside the standard or the additional zip codes where the standards are not met.

- (j) Other behavioral health/substance abuse facilities met the required standard for 99.3% of urban enrollees, leaving 9 members outside the travel distance standard of ten miles in one zip code, 20745.

2. The OCI IEX Travel Distance Waiver Request

33. OCI did not satisfy the criteria for a waiver set forth in COMAR 31.10.44.07 and its OCI IEX Travel Distance Waiver Request for Applied Behavioral Analyst must be denied.

- (a) The Travel Distance Waiver Request does not correspond to the travel distance standard deficiencies reported in the 2021 OCI IEX executive summary. The executive summary reported 92% of enrollees with access in rural areas, but the Travel Distance Waiver Request for Applied Behavioral Analyst does not include rural zip codes.
- (b) The geoaccess maps submitted in the OCI IEX 2021 Access Plan show no in-network applied behavioral analyst providers on Maryland's Eastern Shore. The geoaccess maps submitted for the OCI 2021 Access Plan, however, show 2 in-network applied behavioral analyst providers on the Eastern Shore, indicating that there are practicing providers available and willing to contract with Optimum Choice to participate in the network for an HMO plan within the impacted geographic area.

- (c) The supporting documentation submitted by OCI contradicts the Travel Distance Waiver Request for the 8 suburban enrollees without access in zip codes 21664 and 20688. The geoaccess maps submitted in the OCI IEX 2021 Access Plan for 2021 show no enrollees in these zip codes.
- (d) Supplementary information submitted by OCI on September 1, 2022 in response to the Administration's questions regarding the OCI IEX Travel Distance Waiver Request did not reconcile the deficiencies reported on the executive summary with the data submitted in the waiver requests.

34. OCI did not satisfy the criteria for a waiver set forth in COMAR 31.10.44.07 and its Travel Distance Waiver Request for ENT/Otolaryngology must be denied.

- (a) The Travel Distance Waiver Request for ENT/ Otolaryngology states that there are no ENT/Otolaryngology providers within a 15-mile boundary for the member residing in zip code 21826. This statement is contradicted by supporting documentation provided in the OCI 2021 Access Plan, which includes a map of provider and enrollee locations showing an ENT/Otolaryngology provider in the OCI network within a 15-mile radius of zip code 21826.

35. OCI did not satisfy the criteria for a waiver set forth in COMAR 31.10.44.07 and its Travel Distance Waiver Request for Inpatient Psychiatric Facility must be denied.

- (a) The OCI IEX Travel Distance Waiver Request for Inpatient Psychiatric Facility includes an inconsistent statement regarding the location of the nearest inpatient psychiatric facility to the 21 enrollees in urban zip code 21403, when compared to the OCI Travel Distance Waiver Request. The OCI IEX Travel Distance Waiver Request states that the nearest available inpatient psychiatric facility is 27.5 miles away from the furthest point in zip code 21403, while the OCI Travel Distance Waiver request reports that there is an inpatient psychiatric facility within the 15-mile standard in zip code 21403 that will close the coverage gap.
- (b) The OCI IEX Travel Distance Waiver Request for Inpatient Psychiatric Facility in zip code 21114 includes a statement claiming that there are no inpatient psychiatric facilities within a 15-mile boundary for the 13 enrollees outside the standard. This statement is contradicted by supporting documentation provided for the OCI 2021 Access Plan, which includes a map of provider and enrollee locations showing inpatient psychiatric facilities in the OCI network within a 15-mile radius of this zip code.

36. OCI did not satisfy the criteria for a waiver set forth in COMAR 31.10.44.07 and its Travel Distance Waiver Request for Other Behavioral Health/Substance Abuse Facilities must be denied.

- (a) The OCI IEX Travel Distance Waiver Request includes contradictory statements within the waiver request for “BH/All Other Facilities³” in zip code 20745, which reported that there were no providers available to contract within 10 miles of the 9 enrollees outside the standard (Sections II and IV), followed by a description of negotiations with a facility that would close the coverage gap (Section IV).

37. The Administration has found good cause to grant the OCI IEX Travel Distance Waiver Request for the following provider types: Gynecology OB/GYN, Pediatrics-Routine/Primary Care, and Urology; and for the following facility types in urban zip codes 21061 and 21114: Acute Inpatient Hospitals, Critical Care Services/Intensive Care Units, and Outpatient Infusion /Chemotherapy. The waivers for the travel distance standards are granted for one year.

- (a) The OCI IEX Travel Distance Waiver Request includes a description of unsuccessful efforts to locate any additional providers and provider types within the required travel distance standards in specific zip codes using both internal reporting, such as claims data and demographics, and external resources, including state-issued provider listings.
- (b) The OCI IEX Travel Distance Waiver Request includes declarations by OCI that it is contracted with the nearest available gynecology,

³ The title of the waiver request is not accurate and should instead read: “Other Behavioral Health/Substance Abuse Facilities” (COMAR 31.10.44.04A(5)). There is no category in the Chart of Travel Distance Standards entitled “Behavioral Health/All Other Facilities.”

OB/GYN providers for the 3 urban enrollees and the 11 suburban enrollees residing outside of the regulatory standards. A contracted provider is located:

- (i) 7.5 miles from the furthest point in zip code 21403 for the 3 urban enrollees outside of the 5-mile standard.
 - (ii) 16 miles from the furthest point in zip code 21716 for the 11 suburban enrollees outside of the 10-mile standard.
- (c) The OCI IEX Travel Distance Waiver Request includes a declaration by OCI that it is contracted with the nearest available pediatrics-routine/primary care provider for the 11 suburban enrollees residing outside of the regulatory standard of 10 miles in zip code 21716, who is located 15 miles from the furthest point of zip code 21716.
- (d) The OCI IEX Travel Distance Waiver Request includes a description of ongoing negotiation and continued good faith efforts to contract with providers previously identified for urology providers who, if contracted, would resolve the deficiencies for the 13 suburban enrollees outside the travel distance standard in zip code 21061.
- (e) The OCI IEX Travel Distance Waiver Request includes a description of ongoing negotiation and continued good faith efforts to contract with the only available acute inpatient hospitals, critical care services/intensive care units and outpatient infusion/chemotherapy facilities, which if contracted, would resolve the deficiencies for the 18 urban enrollees residing outside of travel distance standard in zip

code 21061, including a declaration that OCI has recently finalized negotiations with a facility that will close the coverage gap.

- (f) The OCI IEX Travel Distance Waiver Request includes a declaration by OCI that that it is contracted with the nearest available acute inpatient hospital, critical care services / intensive care unit, and outpatient infusion / chemotherapy facility for the 1 urban enrollee outside the regulatory standard of 10 miles in zip code 21114, which is less than 12 miles from the furthest point of zip code 21114.

3. Appointment Waiting Time Standards

38. The data reported by OCI indicates that all appointment waiting time standards have been met for the OCI IEX 2021 Access Plan. While the Administration is satisfied that OCI provided sufficient explanation and documentation to demonstrate that the wait time compliance standard of 95% has been met for 2021, it is expected that if OCI intends to combine telehealth claims with provider survey results when measuring appointment waiting time in future access plan filings, OCI will utilize a methodology that ensures a proportional, representative balance of surveys and actual claims data.

III. CONCLUSIONS OF LAW

39. The Administration concludes that OCI violated § 15-112 of the Insurance Article and COMAR 31.10.44.03C by failing to comply with the required travel distance standards, as reflected in the OCI IEX 2021 Access Plan.

40. Section 19-729(a) of the Health-General Article states in pertinent part:

- (a) A health maintenance organization may not:
 - (1) Violate any provision of this subtitle or any rule or regulation adopted under it[.]

41. Section 19-730 of the Health-General Article states in pertinent part:

- (a) If any person violates any provision of § 19-729 of this subtitle, the Administration may:
 - (1) Issue an administrative order that requires the health maintenance organization to:
 - (i) cease inappropriate conduct or practices by it or any of the personnel employed or associated with it;
 - * * *
 - (2) In addition to suspending or revoking a certificate of authority:
 - (i) impose a penalty of not less than \$100, but not more than \$125,000 for each violation[.]

ORDER

WHEREFORE, for the reasons set forth above, it is **ORDERED** by the Commissioner and consented to by the Respondent:

A. That, pursuant to § 19-730 of the Health-General Article, based on consideration of COMAR 31.02.04.02, the Administration imposes an administrative penalty on OCI of \$45,000 for the violations of § 15-112 of the Insurance Article and COMAR 31.10.44.03C identified here.

OTHER PROVISIONS

B. The executed Order and any administrative penalty shall be sent to the attention of: David Cooney, Associate Commissioner, Life and Health, 200 St. Paul Place, Suite 2700, Baltimore, MD 21202.

C. For the purposes of the Administration and for any subsequent administrative or civil proceedings concerning Respondent, whether related or unrelated to the foregoing paragraphs, and with regard to requests for information about the Respondent made under the Maryland Public Information Act, or properly made by governmental agencies, this Order will be kept and maintained in the regular course of business by the Administration. For the purposes of the business of the Administration, the records and publications of the Administration will reflect this Order.

D. The parties acknowledge that this Order resolves all matters relating to the factual assertions and agreements contained herein and are to be used solely for the purposes of this proceeding brought by or on behalf of the Administration. Nothing herein shall be deemed a waiver of the Commissioner's right to proceed in an administrative action or civil action for violations not specifically identified in this Order, including, but not limited to, specific consumer complaints received by the Administration, nor shall anything herein be deemed a waiver of the right of the Respondent to contest other proceedings by the Administration. This Order shall not be construed to resolve or preclude any potential or pending civil, administrative, or criminal action or prosecution by any other person, entity or governmental authority, including but not limited to the Insurance Fraud Division of the Administration, regarding any conduct by the Respondent including the conduct that is the subject of this Order.

E. Respondent has had the opportunity to have this Order reviewed by legal counsel of its choosing, and is aware of the benefits gained and obligations incurred by the execution of the Order. Respondent waives any and all rights to any hearing or judicial review of this Order to which it would otherwise be entitled under the Insurance Article with respect to any of the determinations made or actions ordered by this Order.

F. This Order contains the entire agreement between the parties relating to the administrative actions addressed herein. This Order supersedes any and all earlier agreements or negotiations, whether oral or written. All time frames set forth in this Order may be amended or modified only by subsequent written agreement of the parties.

G. This Order shall be effective upon signing by the Commissioner or his designee, and is a Final Order of the Commissioner under § 2-204 of the Insurance Article.

H. Failure to comply with the terms of this Order may subject Respondent to further legal and/or administrative action.

Kathleen A. Birrane
INSURANCE COMMISSIONER



By: David Cooney
Associate Commissioner, Life & Health

Date: March 7, 2023

RESPONDENT'S CONSENT

RESPONDENT hereby CONSENTS to the representations made in, and to the terms of, the above Consent Order. On behalf of Respondent, the undersigned hereby affirms that he or she has taken all necessary steps to obtain the authority to bind Respondent to the obligations stated herein and does in fact have the authority to bind Respondent to the obligations stated herein.

Name: Jessica Zuba

Signature: Jessica Zuba

Title: Assistant Secretary

Date: 2/27/2023