

**BEFORE THE MARYLAND INSURANCE ADMINISTRATION**

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

**vs.** \*

**CAREFIRST BLUECHOICE, INC.** \*  
**840 FIRST ST., NE** \*  
**WASHINGTON, DC 20065** \*

**CASE NO: [MIA-2023-03-022](#)**

**NAIC# 96202** \*

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**CONSENT ORDER**

This Consent Order is entered into by the Maryland Insurance Commissioner and CAREFIRST BLUECHOICE, INC. (“BlueChoice” 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. BlueChoice 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, BlueChoice is required to file a network adequacy plan in accordance with COMAR 31.10.44.03.

9. On July 1, 2021, BlueChoice submitted a Network Adequacy Plan (the “BlueChoice 2021 Access Plan”) to the Administration, supplemented with additional information and documentation on March 31, 2022, May 16, 2022, July 7, 2022, and September 20, 2022.

10. On July 7, 2022, BlueChoice requested a temporary waiver from compliance with certain unmet travel distance standards (“the Travel Distance Waiver Request”).

11. On September 12, 2022, BlueChoice submitted additional information to the Administration supplementing the Travel Distance Waiver Request.

**A. The Access Plan-Travel Distance Standards**

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

13. 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
<b>Provider Type:</b>			

Allergy and Immunology	15	30	75
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\* \* \*

Cardiovascular Disease	10	20	60
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Dermatology	10	30	60
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\* \* \*

ENT/Otolaryngology	15	30	75
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\* \* \*

Gynecology, OB/GYN	5	10	30
Gynecology Only	15	30	75

\* \* \*

Oncology – Medical and Surgical	10	20	60
Pediatrics- Routine/Primary Care	5	10	30

\* \* \*

Pulmonology	10	30	60
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<b>Facility Type:</b>			
Acute Inpatient Hospitals	10	30	60
Critical Care Services /	10	30	100

Intensive Care Units			
Outpatient Infusion/Chemotherapy	10	30	60

\* \* \*

Other Behavioral Health/Substance Abuse Facilities	10	25	60
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14. The data self-reported by BlueChoice disclosed the following deficiencies based on distance of a provider to an enrollee’s address:

- (a) Allergy and immunology providers met the required standard for 99.4% of suburban enrollees, leaving 931 members outside the travel distance standard of thirty miles in zip code 21842.
- (b) Cardiovascular disease providers met the required standard for 99.9% of urban enrollees, leaving 1 member outside the travel distance standard of ten miles in zip code 21052.
- (c) Dermatology providers met the required standard for 99.9% of urban enrollees, leaving 42 outside the travel distance standard of ten miles in zip code 21052.
- (d) ENT/Otolaryngology providers met the required standard for 99.9% of suburban enrollees, leaving 46 members outside the travel distance standard of thirty miles in zip code 21664.
- (e) Gynecology, OB/GYN providers met the required standard for 99.7% of urban enrollees, leaving 409 members outside the travel distance

standard of five miles in three zip codes. The required standard was met for 99.3% of suburban enrollees, leaving 886 members outside the travel distance standard of 10 miles in six zip codes.

Urban zip codes

- (i) Zip code 21403 has 365 members outside the standard.
- (ii) Zip code 21052 has 42 members outside the standard.
- (iii) Zip code 21133 has 2 members outside the standard.

Suburban zip codes

- (i) Zip code 21716 has 492 members outside the standard.
- (ii) Zip code 20764 has 258 members outside the standard.
- (iii) Zip code 21842 has 136 members outside the standard.
- (iv) Zip code 20625 has 59 members outside the standard.
- (v) Zip code 21913 has 26 members outside the standard.
- (vi) Zip code 20765 has 4 members outside the standard.

- (f) Gynecology Only providers met the required standard for 99.5% of suburban enrollees, leaving 768 members outside the travel distance standard of thirty miles in three zip codes. The required standard was met for 99% of rural enrollees, leaving 1,505 members outside the travel distance standard of seventy-five miles in twelve zip codes.

Suburban zip codes

- (i) Zip code 21842 has 715 members outside the standard.
- (ii) Zip code 21664 has 46 members outside the standard.
- (iii) Zip code 20686 has 7 members outside the standard.

Rural zip codes

- (i) Zip code 21550 has 725 members outside the standard.
- (ii) Zip code 21536 has 207 members outside the standard.
- (iii) Zip code 21520 has 141 members outside the standard.
- (iv) Zip code 21561 has 124 members outside the standard.



- (v) Zip code 21541 has 123 members outside the standard.
  - (vi) Zip code 21531 has 106 members outside the standard.
  - (vii) Zip code 21523 has 23 members outside the standard.
  - (viii) Zip code 21538 has 20 members outside the standard.
  - (ix) Zip code 21521 has 16 members outside the standard.
  - (x) Zip code 21562 has 11 members outside the standard.
  - (xi) Zip code 21522 has 6 members outside the standard.
  - (xii) Zip code 21540 has 3 members outside the standard.
- (g) Oncology- Medical/Surgical providers met the required standard for 99.9% of urban enrollees, leaving 42 members outside the travel distance standard of ten miles in zip code 21052.
- (h) Pediatric providers met the required standard for 99.9% of urban enrollees, leaving 42 members outside the travel distance standard of five miles in zip code 21052.
- (i) Pulmonology providers met the required standard for 99.9% of suburban enrollees, leaving 46 members outside the travel distance standard of thirty miles in zip code 21664.
- (j) Acute inpatient hospitals met the required standard for 99.9% of urban enrollees, leaving 107 members outside the travel distance standard of ten miles in two zip codes:

Urban zip codes

- (i) Zip code 21040 has 65 members outside the standard.
  - (ii) Zip code 21052 has 42 members outside the standard.
- (k) Critical Care Services – Intensive Care Units met the required standard for 99.9% of urban enrollees, leaving 107 members outside the travel distance standard of ten miles in two zip codes:

Urban zip codes

- (i) Zip code 21040 has 65 members outside the standard.
- (ii) Zip code 21052 has 42 members outside the standard.

The required standard for critical care services was met for 99.9% of suburban enrollees, leaving 46 members outside the travel distance standard of thirty miles in zip code 21664.

- (l) Outpatient infusion/chemotherapy facility providers met the required standard for 98.1% of urban enrollees, leaving 2,615 members outside the travel distance standard of ten miles in four zip codes:

Urban zip codes

- (i) Zip code 21040 has 1,132 members outside the standard.
- (ii) Zip code 21052 has 20 members outside the standard.
- (iii) Zip code 21114 has 270 members outside the standard.
- (iv) Zip code 20904 has 1,193 members outside the standard.

- (m) Other behavioral health/substance abuse facility providers met the required standard for 98.8% of suburban enrollees, leaving 1,680 members outside the travel distance standard of twenty-five miles in zip code 21842.

15. With respect to the self-reported deficiencies for Gynecology, OB/GYN and Gynecology Only providers, BlueChoice asserts that “[i]f males were eliminated from the calculation, fewer members would fall outside of the distance standard (presumably only half would remain).” Additionally, with respect to the separate provider type of Gynecology, Only, BlueChoice contends that “it is entirely reasonable to conclude that

OBGYN providers provide both OB and GYN services” and states that “not including OBGYN providers in the GYN travel distance standard leads to misleading results.”

16. Regarding the self-reported deficiencies for outpatient infusion/chemotherapy facilities, BlueChoice states that “many infusion services are rendered within the regulated space of hospitals. CareFirst maintains 100% of the hospitals in Maryland in its networks and also makes every attempt to contract with outpatient infusion services through professional provider agreements when the centers are part of oncology or other specialty practices.”

17. 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 BlueChoice 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 cardiovascular providers within the regulatory standard of 10 miles for the one member in zip code 21052, BlueChoice reports the furthest average distance to a contracted cardiovascular provider is 11.5 miles. The suburban standard is 20 miles.
- (b) With regard to the lack of dermatology providers within the regulatory standard of 10 miles for the 42 members in zip code 21052, BlueChoice reports the furthest average distance to a contracted dermatology provider is 11.5 miles. The suburban standard is 30 miles.
- (c) With regard to the lack of ENT/Otolaryngology providers within the regulatory standard of thirty miles for the 46 members in zip code 21664, BlueChoice reports the furthest average distance to a contracted ENT/Otolaryngology provider is 34.8 miles. The rural standard is 75 miles.
- (d) With regard to the lack of Gynecology, OB/GYN providers within the regulatory standard of 5 miles for the 42 members in zip code 21052, BlueChoice reports the furthest average distance to a contracted Gynecology, OB/GYN provider is 8 miles. The suburban standard is 10 miles.
- (e) With regard to the lack of Gynecology Only providers within the regulatory standard of 30 miles for the 46 members in zip code 21664, BlueChoice reports the furthest average distance to a

contracted Gynecology Only provider is 36.2 miles. The rural standard is 75 miles.

- (f) With regard to the lack of Oncology-Medical/ Surgical providers within the regulatory standard of 10 miles for the 42 members in zip code 21052, BlueChoice reports the furthest average distance to a contracted oncology-medical/surgical provider is 7.6 miles. The suburban standard is 20 miles.
- (g) With regard to the lack of pediatric providers within the regulatory standard of 5 miles for the 42 members in zip code 21052, BlueChoice reports the furthest average distance to a contracted pediatrics provider is 11.4 miles. The suburban standard is 10 miles.
- (h) With regard to the lack of pulmonology providers within the regulatory standard of 30 miles for the 46 members in zip code 21664, BlueChoice reports the furthest average distance to a contracted pulmonology provider is 33.1 miles. The rural standard is 60 miles.
- (i) With regard to the lack of acute inpatient hospitals within the regulatory standard of 10 miles for the 42 members in zip code 21052, BlueChoice reports the furthest average distance to a contracted acute inpatient hospital is 13.2 miles. The suburban standard is 30 miles.
- (j) With regard to the lack of critical care services within the regulatory standard of 10 miles for the 42 members in zip code 21052, BlueChoice reports the furthest average distance to a contracted

critical care service facility is 11.5 miles. The suburban standard is 30 miles.

(k) With regard to the lack of critical care services within the regulatory standard of 30 miles for the 46 members in zip code 21664, BlueChoice reports the furthest average distance to a contracted critical care service facility is 49.4 miles. The rural standard is 100 miles.

(l) With regard to the lack of outpatient infusion / chemotherapy facilities within the regulatory standard of 10 miles for the 42 members in zip code 21052, BlueChoice reports the furthest average distance to a contracted facility is 12.3 miles. The suburban standard is 30 miles.

**B. The Travel Distance Waiver Request**

18. The Commissioner finds that BlueChoice failed to satisfy the criteria for a waiver set forth in COMAR 31.10.44.07 and its Travel Distance Waiver Request was denied because the Commissioner determined the Travel Distance Waiver Request did not indicate clearly that the providers necessary for an adequate network were unavailable or that BlueChoice made an adequate search for additional providers to address the deficiency.

**C. The Access Plan-Appointment Waiting Time Standard**

19. 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

20. The data self-reported by BlueChoice in connection with the BlueChoice 2021 Access Plan shows compliance with the Appointment Waiting Time Standards. When asked to provide documentation to support 100% compliance for urgent care, BlueChoice responded in pertinent part on May 16, 2022: “We contract with urgent care centers and ensure that our members have adequacy [sic] geoaccess to these specific centers. All urgent care centers are contractually required to provide the following services, as such we meet 100% compliance.” BlueChoice’s response also included a description of contractual requirements it imposes on in-network urgent care centers with

respect to the types of services offered and the qualifications of health care providers practicing at urgent care centers.

21. In response to the Administration's requests for additional information related to the urgent care appointment waiting time category, BlueChoice provided supplementary information and documentation on June 2, 2022 and August 11, 2022, including urgent care claims data, documentation of the geographic distribution of urgent care centers that participate in the BlueChoice network, and further description of the contractual and credentialing requirements BlueChoice imposes on in-network urgent care centers with respect to hours of operation and qualifications to provide treatment for mental illness and substance use disorders.

22. The Administration acknowledges that it is reasonable to conclude that urgent care centers can provide urgent care within the required 72-hour waiting time for most enrollees. For the BlueChoice 2021 Access Plan, the Administration has determined that BlueChoice provided sufficient justification to demonstrate that at least 95% of urgent care appointments comply with the applicable standard, based on the documentation BlueChoice provided with respect to in-network urgent care centers. However, the Administration does not accept BlueChoice's contention that inclusion of such centers in the network is a sufficient sole indicator of enrollee waiting time for all services that satisfy the definition of "urgent care" in COMAR 31.10.44.02B(26). In future access plan filings, the Administration expects BlueChoice to demonstrate compliance with the appointment waiting time standard for urgent care by supplementing the documentation related to urgent care centers with additional information, such as surveys of a representative sample of in-network providers offering urgent care.

### **III. CONCLUSIONS OF LAW**



23. The Administration concludes that BlueChoice violated § 15-112 of the Insurance Article and COMAR 31.10.44.03C by submitting an access plan that failed to comply with the required travel distance standards.

24. 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[.]

26. 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 BlueChoice of \$30,000 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.

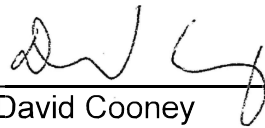
E. Respondent has had the opportunity to have this Order reviewed by legal counsel of its choosing, and is aware of the benefits gained and obligations incurred by the execution of the Order. Respondent waives any and all rights to any hearing or judicial review of this Order to which it would otherwise 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**



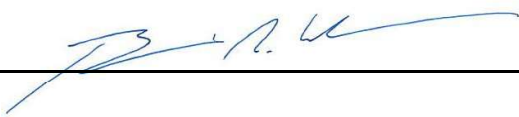
By: David Cooney  
Associate Commissioner, Life & Health

Date: March 15, 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: Brian R. Wheeler

Signature:  \_\_\_\_\_

Title: VP, Provider Collaboration & Network Transformation

Date: March 13, 2023