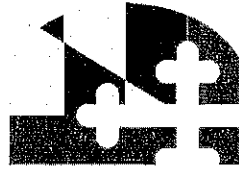


LARRY HOGAN
Governor

BOYD K. RUTHERFORD
Lt. Governor



Maryland

INSURANCE ADMINISTRATION

KATHLEEN A. BIRRANE
Commissioner

TAMMY R. J. LONGAN
Acting Deputy Commissioner

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
Direct Dial: 410-468-2009 Fax: 410-468-2020
Email: melanie.gross@maryland.gov
1-800-492-6116 TTY: 1-800-735-2258
www.insurance.maryland.gov

December 7, 2022

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
REGULAR MAIL

EMAIL TO: angela.adams@medpro.com

Wellfleet Insurance Company
Attn: Andrew DiGiorgio
President
P.O. Box 15369
Springfield, MA 01115-5369

Re: MIA v. Wellfleet Insurance Company
Case No.: MIA-2021-12-015

Dear Parties:

A copy of the fully executed Consent Order is enclosed for your records.

Sincerely,

A handwritten signature in black ink that reads "Melanie Gross". The signature is fluid and cursive.

Melanie Gross
Executive Assistant to the Deputy Commissioner

Enclosure

cc: Tammy R. J. Longan, Acting Deputy Commissioner
David Cooney, Associate Commissioner
J. Van Lear Dorsey, Principal Counsel
Brianna Davidson-Jarrett, Assistant Attorney General
Craig Ey, Director of Communications

BEFORE THE MARYLAND INSURANCE ADMINISTRATION

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

vs. *

WELLFLEET INSURANCE COMPANY *
PO BOX 15369 *
SPRINGFIELD, MA 01115-5369 *

CASE NO: MIA-2021-12-015

NAIC# 32280 *

AMENDED CONSENT ORDER

This Amended Consent Order is entered into by the Maryland Insurance Commissioner and WELLFLEET INSURANCE COMPANY ("Wellfleet" or "Respondent") pursuant to §§ 2-108, 2-204, and 4-113 of the Insurance Article, Maryland Code Annotated, to resolve the matter before the Maryland Insurance Administration ("Administration").

A Consent Order was entered into by the Administration and Wellfleet on [DATE] to resolve this matter (the "Consent Order"). The Consent Order is superseded by this Amended Consent Order.

I. RELEVANT REGULATORY FRAMEWORK

1. Each insurer 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 insurer is required to file a report with the Administration demonstrating the insurer'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:

* * *

1. an insurer;

(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.

II. FINDINGS

7. Wellfleet holds a Certificate of Authority to act as an insurer 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, Wellfleet is required to file a network adequacy plan in accordance with COMAR 31.10.44.03.

8. On July 31, 2019, Wellfleet submitted a Network Adequacy Plan (the "Wellfleet 2019 Access Plan") to the Administration. The filing was submitted thirty days past the required July 1, 2019 filing date.

9. The Wellfleet 2019 Access Plan included an executive summary form and several proprietary and confidential items, including details of the methodology Wellfleet used to measure and assess its performance in meeting the network adequacy

standards. As part of the Wellfleet 2019 Access Plan, Wellfleet noted that it utilizes the Cigna network in Maryland and responses were developed in conjunction with Cigna.

10. On August 1, 2019, the Administration reached out to Wellfleet requesting additional information and clarification of the information provided in the Wellfleet 2019 Access Plan.

11. On August 13, 2019, Wellfleet submitted the additional information.

12. On September 5, 2019, the Administration and Wellfleet had a conference call to address the Administration's questions regarding the Wellfleet 2019 Access Plan.

13. On September 25, 2020 the MIA sent a letter to Wellfleet requesting additional information.

14. On November 2, 2020, Wellfleet submitted the additional information. The information included an explanation of Wellfleet's methodology for selecting Essential Community Providers ("ECPs") and a chart listing the percentages of available ECPs that are participating providers in each urban, rural, and suburban area.

A The Access Plan-Travel Distance Standards

15. The data submitted by Wellfleet in connection with the Wellfleet 2019 Access Plan failed to demonstrate compliance with the Travel Distance Standards.

16. 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.

* * *

(5) Chart of Travel Distance Standards.

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

* * *

Pediatrics- Routine/Primary Care	5	10	30
Allergy and Immunology	15	30	75
ENT/Otolaryngology	15	30	75
Gastroenterology	10	30	60

* * *

Gynecology, OB/GYN	5	10	30
Gynecology Only	15	30	75
Neurology	10	30	60
Oncology- Radiation/Radiation Oncology	15	40	90
Ophthalmology	10	20	60
Rheumatology	15	40	90
Urology	10	30	60

* * *

Facility Type:			
Acute Inpatient Hospitals	10	30	60

Critical Care Services- Intensive Care Units	10	30	100
Diagnostic Radiology	10	30	60
Outpatient Dialysis	10	30	50
Outpatient Infusion/ Chemotherapy	10	30	60

* * *

Skilled Nursing Facilities	10	30	60
Surgical Services (Outpatient or Ambulatory Surgical Center)	10	30	60

17. COMAR 31.10.44.09 provides, in pertinent part:

.09 Network Adequacy Access Plan Executive Summary Form

A. For each provider panel used by a carrier for a health benefit plan, the carrier shall provide the network sufficiency results for the health benefit plan service area as follows:

(1) Travel Distance Standards

* * *

(b) List the total number of certified registered nurse practitioners counted as a primary care provider.

(c) List the total percentage of primary care providers who are certified registered nurse practitioners.

18. The data self-reported by Wellfleet included data for zip codes outside of the State. Wellfleet advised that it offers student health plans to colleges and universities in the State. The student demographic data used to create the network data reports

includes all addresses received from their students, which may be the home address or the school address.

19. The data self-reported by Wellfleet disclosed the following deficiencies based on distance of a provider to an enrollee's address:

- (a) Pediatrics-Routine/Primary Care providers met the required standard for 99.9% of urban enrollees, leaving 1 enrollee outside the travel distance standard of five miles in zip code 10109. The standard was met for 98.5% of suburban enrollees, leaving 1 enrollee outside the travel distance standard of ten miles in zip code 23225
- (b) Allergy and Immunology providers met the required standard for 99.9% of suburban enrollees, leaving 1 enrollee outside the travel distance standard of thirty miles in zip code 23225.
- (c) ENT/Otolaryngology providers met the required standard for 99.9% of suburban enrollees, leaving 1 enrollee outside the travel distance standard of thirty miles in zip code 23225.
- (d) Gastroenterology providers met the required standard for 99.9% of urban enrollees, leaving 1 enrollee outside the travel distance standard of ten miles in zip code 10109.
- (e) Gynecology, OB/GYN providers met the required standard for 99.9% of urban enrollees, leaving 1 enrollee outside the travel distance standard of five miles in zip code 10109. The standard was met for 98.5% of suburban enrollees, leaving 1 enrollee outside the travel distance standard of ten miles in zip code 23225.

- (f) Gynecology Only providers met the required standard for 99.9% of urban enrollees, leaving 1 enrollee outside the travel distance standard of fifteen miles in zip code 10109.

- (g) Neurology providers met the required standard for 99.9% of urban enrollees, leaving 1 enrollee outside the travel distance standard of ten miles in zip code 10109.

- (h) Oncology-Radiation/Radiation Oncology providers met the required standard for 99.9% of urban enrollees, leaving 1 enrollee outside the travel distance standard of fifteen miles in zip code 10109.

- (i) Ophthalmology providers met the required standard for 99.9% of urban enrollees, leaving 1 enrollee outside the travel distance standard of ten miles in zip code 10109.

- (j) Rheumatology providers met the required standard for 99.9% of urban enrollees, leaving 1 enrollee outside the travel distance standard of fifteen miles in zip code 10109.

- (k) Urology providers met the required standard for 99.9% of urban enrollees, leaving 1 enrollee outside the travel distance standard of ten miles in zip code 10109.

- (l) Acute inpatient hospital facility providers met the required standard for 99.9% of urban enrollees, leaving 1 enrollee outside the travel distance standard of ten miles in zip code 10109.

(m) Critical Care Services- Intensive Care Units Facility providers met the required standard for 99.9% of urban enrollees, leaving 1 enrollee outside the travel distance standard of ten miles in zip code 10109.

(n) Diagnostic radiology facility providers met the required standard for 99.9% of urban enrollees, leaving 1 enrollee outside the travel distance standard of ten miles in zip code 10109.

(o) Outpatient dialysis facility providers met the required standard for 99.9% of urban enrollees, leaving 1 enrollee outside the travel distance standard of ten miles in zip code 10109. The standard was met for 97.3% of rural enrollees, leaving 4 enrollees outside the travel distance standard of fifty miles.

Rural Zip Codes

- i. Zip code 21502 has 3 members outside the travel distance standard.
- ii. Zip code 21550 has 1 member outside the travel distance standard.
- iii. Zip code 01330 has 1 member outside the travel distance standard.
- iv. Zip code 00611 has 1 member outside the travel distance standard.

(p) Outpatient infusion/chemotherapy facility providers met the required standard for 42% of urban enrollees, leaving 374 enrollees outside the travel distance standard of ten miles. The standard was met for 92.3% of suburban enrollees, leaving 6 enrollees outside the travel distance standard of thirty miles.

Urban Zip Codes

- i. Zip code 21114 has 1 member outside the travel distance standard.

- ii. Zip code 21236 has 3 members outside the travel distance standard.
- iii. Zip code 20814 has 16 members outside the travel distance standard.
- iv. Zip code 20816 has 7 members outside the travel distance standard.
- v. Zip code 20892 has 1 member outside the travel distance standard.
- vi. Zip code 20815 has 25 members outside the travel distance standard.
- vii. Zip code 20877 has 9 members outside the travel distance standard.
- viii. Zip code 20895 has 11 members outside the travel distance standard.
- ix. Zip code 20886 has 3 members outside the travel distance standard.
- x. Zip code 20850 has 21 members outside the travel distance standard.
- xi. Zip code 20851 has 4 members outside the travel distance standard.
- xii. Zip code 20852 has 35 members outside the travel distance standard.
- xiii. Zip code 20853 has 5 members outside the travel distance standard.

- xiv. Zip code 20901 has 7 members outside the travel distance standard.
- xv. Zip code 20902 has 11 members outside the travel distance standard.
- xvi. Zip code 20903 has 3 members outside the travel distance standard.
- xvii. Zip code 20904 has 5 members outside the travel distance standard.
- xviii. Zip code 20906 has 15 members outside the travel distance standard.
- xix. Zip code 20910 has 32 members outside the travel distance standard.
- xx. Zip code 20912 has 16 members outside the travel distance standard.
- xxi. Zip code 20722 has 1 member outside the travel distance standard.
- xxii. Zip code 20743 has 8 members outside the travel distance standard.
- xxiii. Zip code 20740 has 58 members outside the travel distance standard.
- xxiv. Zip code 20747 has 5 members outside the travel distance standard.
- xxv. Zip code 20770 has 11 members outside the travel distance standard.

- xxvi. Zip code 20781 has 3 members outside the travel distance standard.
- xxvii. Zip code 20782 has 6 members outside the travel distance standard.
- xxviii. Zip code 20783 has 23 members outside the travel distance standard.
- xxix. Zip code 20784 has 3 members outside the travel distance standard.
- xxx. Zip code 20785 has 1 member outside the travel distance standard.
- xxxi. Zip code 20706 has 4 members outside the travel distance standard.
- xxxii. Zip code 20745 has 1 member outside the travel distance standard.
- xxxiii. Zip code 20750 has 1 member outside the travel distance standard.
- xxxiv. Zip code 20737 has 5 members outside the travel distance standard.
- xxxv. Zip code 20903 has 1 member outside the travel distance standard.
- xxxvi. Zip code 20746 has 4 members outside the travel distance standard.
- xxxvii. Zip code 20912 has 3 members outside the travel distance standard.

xxxviii. Zip code 20748 has 5 members outside the travel distance standard.

xxxix. Zip code 10109 has 1 member outside the travel distance standard.

Suburban Zip Codes

i. Zip code 20603 has 4 members outside the travel distance standard.

ii. Zip code 20744 has 1 member outside the travel distance standard.

iii. Zip code 23225 has 1 member outside the travel distance standard.

(q) Skilled nursing facility providers met the required standard for 99.9% of urban enrollees, leaving 1 enrollee outside the travel distance standard of ten miles in zip code 10109.

(r) Surgical Services (Outpatient or Ambulatory Surgical Center) facility providers met the required standard for 99.9% of urban enrollees, leaving 1 enrollee outside the travel distance standard of ten miles in zip code 10109.

20. Wellfleet submitted an executive summary plan form as a part of the Wellfleet 2019 Access Plan. The executive summary provides that nurse practitioners provide primary care service to enrollees in accordance with their policy; however, the Cigna reporting system (which is used because Wellfleet contracts with Cigna for provider network services in Maryland) does not currently distinguish nurse practitioners by specialty.

21. The Wellfleet 2019 Access plan has failed to include in the executive summary, the number of certified registered nurse practitioners counted as a primary care

providers and the total percentage of primary care providers who are certified registered nurse practitioners.

B. The Access Plan-Essential Community Providers

22. COMAR 31.10.44.04C(1) provides that each provider panel of a carrier, that is not a group model HMO provider panel, shall include at least 30 percent of the available essential community providers in each of the urban, rural, and suburban areas.

23. On November 2, 2020, Wellfleet submitted a geographical distribution chart listing the percentages of available essential community providers that are participating providers in each urban, rural, and suburban area.

24. The data self-reported by Wellfleet disclosed the following deficiencies:

(a) In urban areas, 90 essential community providers participate in the network, representing 17.6% of available essential community providers, a deficiency of 12.4 percentage points.

(b) In suburban areas, 30 essential community providers participate in the network, representing 16% of available essential community providers, a deficiency of 14 percentage points.

(c) In rural areas, 110 essential community providers participate in the network, representing 29.8% of available essential community providers, a deficiency of .2 percentage points.

C The Access Plan-Appointment Waiting Time Standards

25. The data submitted by Wellfleet in connection with the Wellfleet 2019 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 Wellfleet disclosed the following deficiencies:

- (a) Urgent care (behavioral health/substance use disorder) waiting time was measured using a 48-hour standard, in place of the 72-hour

State standard. Also, the data was obtained from a National Customer Survey and not limited to Maryland enrollees. Using this data, Wellfleet reported that the standard was met for 53% of enrollees, representing a deficiency of 42 percentage points.

- (b) Urgent Care (medical specialty care) met the 72-hour standard for 93% of enrollees, representing a deficiency of 2 percentage points.
- (c) Preventive visit/well visit met the 30 calendar day standard for 93% of enrollees, representing a deficiency of 2 percentage points.
- (d) Non-Urgent Behavioral Health/Substance Use Disorder Services met the required standard of 10 calendar days for 76% of enrollees, representing a deficiency of 19 percentage points. This data was also obtained from the National Customer Survey and not limited to Maryland enrollees.

28. Wellfleet has acknowledged the deficiencies in its self-reported data regarding appointment waiting time standards. Wellfleet reported that the 48-hour urgent care (behavioral health/substance use disorder) access standard was developed in accordance with NCQA accreditation standards. Wellfleet also acknowledged that it used its National Customer Survey measure, as opposed to Maryland specific data, because that was the only data available at the time of the 2019 data submission. Wellfleet reported that the issue has since been remediated and its 2020 data submission included Maryland specific access to care data.

III. CONCLUSIONS OF LAW

29. The Administration concludes that Wellfleet violated § 15-112 of the Insurance Article and COMAR 31.10.44.03C by submitting the Wellfleet 2019 Access Plan thirty days beyond the July 1, 2019 filing date, by filing an access plan that failed to comply with the required travel distance standards and appointment waiting time standards, by failing to include in the executive summary plan form the required information regarding certified registered nurse practitioners, and by filing an access plan that failed to comply with the requirement that at least 30 percent of the available essential community providers in each of the urban, rural, and suburban areas are included in the network.

30. Section 4-113 of the Insurance Article states in pertinent part:

(b) The Commissioner may deny a certificate of authority to an applicant or, subject to the hearing provisions of Title 2 of this article, refuse to renew, suspend, or revoke a certificate of authority if the applicant or holder of the certificate of authority:

(1) violates any provision of this article other than one that provides for mandatory denial, refusal to renew, suspension, or revocation for its violation[.]

* * * *

(d) Instead of or in addition to suspending or revoking a certificate of authority, the Commissioner may:

(1) impose on the holder a penalty of not less than \$100 but not more than \$125,000 for each violation of this article[.]

ORDER

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

A. That, pursuant to § 4-113 of the Insurance Article, based on consideration of COMAR 31.02.04.02, the Administration imposes an administrative penalty on

Wellfleet of \$40,000 for the violations of § 15-112 of the Insurance Article and COMAR 31.10.44.03C identified here;

B. The obligation of Wellfleet to pay the aforesaid administrative penalty is hereby suspended pending the Administration's (i) review of the access plan submitted by Wellfleet in 2021; (ii) determination as to whether the 2021 access plan substantiates representations made by Wellfleet related to its intent to adjust record keeping methodologies and to improve its compliance with the Standards; and (iii) based on such review and determination, decision on whether the administrative penalty should be paid, reduced, or rescinded.

OTHER PROVISIONS

C. 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.

D. 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.

E. The parties acknowledge that this Order resolves all matters, subject to Paragraph B above, 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.

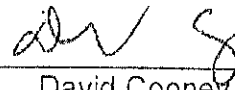
F. Respondent has had the opportunity to have this Order reviewed by legal counsel of its choosing, and is aware of the benefits gained and obligations incurred by the execution of the Order. Respondent waives any and all rights to any hearing or judicial review of this Order to which it would otherwise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

G. This Order contains the entire agreement between the parties relating to the administrative actions addressed herein, subject to Paragraph B above. 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.

H. 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.

I. 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: 12/17/2022

RESPONDENT'S CONSENT

RESPONDENT hereby CONSENTS to the representations made in, and to the terms of, the above Amended 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: Andrew DiGiorgio

Signature:  Drew DiGiorgio (Nov 29, 2022 08:50 EST)

Title: President

Date: 11/29/2022