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TAMMY R. J. LONGAN
Acting Deputy Commissioner

DAVID COONEY
Associate Commissioner
Life and Health

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
Direct Dial: 410-468-2170 Fax: 410-468-2204
Email: david.cooney@maryland.gov
410-468-2000 1-800-492-6116
TTY: 1-800-735-2258
www.insurance.maryland.gov

March 7, 2023

Ms. Christina Stecki
MHA National Regulatory Affairs
UnitedHealthcare Employer & Individual
5701 Katella Ave, Mailstop CA120-0353
Cypress, California 90630

Re: MIA v. 2021 Optimum Choice, Inc.
Case No.: MIA-2021-05-014
2019 Network Adequacy Access Plan Filing

Dear Ms. Stecki:

The Maryland Insurance Administration (“Administration”) and 2021 Optimum Choice, Inc. (“OCI”) entered into a Consent Order on May 18, 2021 (the “Consent Order”) to resolve matters related to the OCI 2019 Network Adequacy access plan.

In the Consent Order, the Administration concluded that OCI violated § 15-112 of the Insurance Article and COMAR 31.10.44.03C by filing an access plan that:

- failed to comply with certain required travel distance standards and appointment waiting time standards; and
- failed to demonstrate 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.

The Administration imposed an administrative penalty on OCI of \$40,000 for the violations, but suspended the penalty pending the Administration’s (i) review of the access plan submitted by OCI in 2021; (ii) determination as to whether the 2021 access plan substantiates representations made by OCI related to its intent to improve its compliance with the access standards; (iii) review of all evidence submitted by OCI demonstrating good faith efforts to meet all the applicable standards; and (iv) based on such review and determination, decision on whether the administrative penalty should be paid, reduced, or rescinded.

The Administration has completed its review of the OCI 2021 access plan filed on July 1, 2021, 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. This filing was made pursuant to § 15-112(c)(2)(i) of the Insurance Article and COMAR 31.10.44, and the Administration and OCI entered into a Consent Order on March 7, 2023 (the “2021 Access Plan Consent Order”) to resolve matters related to the OCI 2021 access plan.

The OCI 2021 access plan failed to demonstrate that all of the deficiencies reported in the OCI 2019 access plan were either resolved, or were the result of circumstances that merited the granting of a waiver by the Administration of the otherwise applicable standard, as detailed in the 2021 Access Plan Consent Order. Specifically, the data self-reported by OCI in the 2021 access plan disclosed deficiencies in the travel distance standards for inpatient psychiatric facilities, where the standard was met for 97.1% of urban enrollees, impacting 153 enrollees in zip codes 21402 and 21403. Other behavioral health/substance abuse facilities met the standard for 99.6% of enrollees, impacting 21 members in zip code 20745.

OCI filed a waiver request for the deficiencies in the travel distance standards, but good cause does not exist to grant the waiver requests for the two deficiencies described above as the requests failed to demonstrate that the providers and facilities necessary for an adequate network in the impacted geographic regions (1) were not available to contract with the carrier; (2) were not available in sufficient numbers; (3) refused to contract with the carrier; or (4) were unable to reach agreement with the carrier (COMAR 31.10.44.07B). The Administration determined there was insufficient substantiation to justify granting a waiver based on contradictory statements and declarations related to contracting negotiations and the availability of inpatient psychiatric facilities and other behavioral health/substance abuse facilities within the impacted geographic regions.

The data self-reported by OCI in the 2021 access plan disclosed that the appointment waiting time standard of 10 calendar days for non-urgent behavioral health/substance use disorder services was met for 94.66% of enrollees, representing a deficiency of .34 percentage points. OCI stated in the 2021 access plan that the Covid-19 pandemic negatively impacted health care providers’ appointment time availability.

The data self-reported by OCI in the 2021 access plan showed general improvement in compliance with travel distance standards as compared to 2019. In 2019, however, travel distance metrics were reported in the aggregate by network across all UnitedHealthcare carriers, so a precise measurement of improvement for each individual carrier, including OCI, is not feasible. The reporting was corrected in the 2021 access plans.

The OCI 2021 access plan demonstrated to the satisfaction of the Administration that OCI has complied with the terms of the Consent Order in addressing the other deficiencies reported in the OCI 2019 access plan. The Administration has determined that the OCI 2021 access plan substantiates representations made by OCI related to its intent to:

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- improve its compliance with the required appointment waiting time standards;
- demonstrate 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; and
- except as described above, improve its compliance with the required travel distance standards.

The \$40,000 penalty, therefore, is hereby rescinded in its entirety, in accordance with the terms of the Consent Order.

This determination letter is limited to the OCI 2019 Access Plan, and is independent of the Administration's review of any other Network Adequacy Access Plans and submissions in connection thereof which are filed by OCI.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David Cooney', written over a faint horizontal line.

David Cooney
Associate Commissioner
Life and Health