

**Maryland General Assembly
Department of Legislative Services**

**Emergency Regulations
Maryland Insurance Administration**
(DLS Control No. 20-022)

Overview and Legal and Fiscal Impact

The regulations authorize the bulletin issued by the Commissioner during a state of emergency to waive certain cost-sharing requirements and make other changes related to health carrier coverage and handling of claims related to the diagnosis of, testing of, and vaccinations for COVID-19.

The regulations present no legal issues of concern.

There is no fiscal impact on the Maryland Insurance Administration to implement the regulations. Any impact on expenditures for the State Employee and Retiree Health and Welfare Benefits Program or self-insured local governments cannot be reliably estimated at this time.

Regulation of COMAR Affected

Maryland Insurance Administration:

General Regulations: Emergency Powers: COMAR 31.01.02.03 and .06

Legal Analysis

Background

Section 2-115(a)(1) of the Insurance Article requires the Maryland Insurance Commissioner to adopt regulations that may be applied when the Governor declares a state of emergency for the State or an area within the State under § 14-407 of the Public Safety Article. To activate a regulation adopted under the section, the Commissioner is required to issue a bulletin specifying that 1) the requirement that is being activated; 2) the line or lines of business to which the requirement applies; 3) the geographic areas to which the requirement applies; and 3) the period of time for which the requirement applies. The activated requirement cannot apply beyond the geographic area included in the declaration or beyond the duration of the declaration or renewal of the state of emergency. The Commissioner must provide a copy of the bulletin to the disaster contact personnel identified in accordance with regulations and may post a copy on the Maryland Insurance Administration's website.

On March 5, 2020, the Governor issued a proclamation declaring a state of emergency and the existence of a catastrophic health emergency due to the outbreak of the disease, COVID-19,

which is caused by the coronavirus. This declaration activated the statutory authority of the Commissioner to activate emergency regulations.

Summary of Regulation

The regulations authorize the bulletin issued by the Commissioner during a state of emergency to waive any cost-sharing, including copayments, coinsurance, and deductibles, for 1) any visit to diagnose or test for COVID-19, regardless of the setting of the testing; 2) laboratory fees to diagnose or test for COVID-19; and 3) vaccination for COVID-19. The Commissioner is authorized to require a health carrier to make claims payment for treatment for COVID-19 that the health carrier has denied as experimental. A health carrier is required to evaluate a request to use an out of network provider to perform diagnostic testing of COVID-19 solely on the basis of whether the use is medically necessary or appropriate. The only prior authorization requirements that a health carrier may use relating to the testing for COVID-19 are requirements that relate to the medical necessity of the testing. An adverse decision on a request for coverage of diagnostic services for COVID-19 is required to be considered an emergency case for which an expedited grievance procedure is required under the insurance laws of the State. The requirements regarding the waiver of cost-sharing do not apply to a Medicare supplement policy. Finally, a carrier is not required to waive the deductible for an insured covered under a high deductible health plan if the waiver would disqualify the plan from being considered a high deductible health plan under federal law.

Additionally, the regulations define the terms “copayment”, “COVID-19”, and “deductible.”

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The administration cites § 19-706 of the Health – General Article and § 2-115 of the Insurance Article as statutory authority for the regulations. More specifically, § 2-115(a)(1) of the Insurance Article requires the Commissioner to adopt regulations that may be applied when the Governor declares a state of emergency for the State or an area within the State under § 14-407 of the Public Safety Article. The regulations adopted under the section may apply to any person regulated by the Commissioner under the Insurance Article or Title 19, Subtitle 7 of the Health – General Article, which governs health maintenance organizations and may address any activity necessary to protect the residents of the State. The remaining cited authority is not relevant to these regulations.

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

Emergency Status

The administration requests emergency status beginning March 9, 2020, and expiring September 5, 2020. This emergency period is within the normal time frames approved by the Joint Committee on Administrative, Executive, and Legislative Review. The emergency status is necessary for the administration to respond to the declaration of the state of emergency and the existence of a catastrophic health emergency by the Governor as described above in the Background section of the Legal Analysis.

Fiscal Analysis

There is no fiscal impact on the Maryland Insurance Administration to implement the regulations. Any impact on expenditures for the State Employee and Retiree Health and Welfare Benefits Program or self-insured local governments cannot be reliably estimated at this time.

Agency Estimate of Projected Fiscal Impact

The cost of waiving cost-sharing and providing coverage for specified medical services associated with COVID-19 will be incurred by health insurance carriers and self-insured entities. These costs are indeterminate and cannot be quantified at this time. The State Employee and Retiree Health and Welfare Benefits Program is largely self-insured, as are some local governments; therefore, costs increase for these entities by an indeterminate amount beginning in fiscal 2020 to comply with the regulations.

Impact on Budget

Any impact on the State fiscal 2020 or 2021 operating budget cannot be reliably estimated at this time. The capital budget is not affected.

Agency Estimate of Projected Small Business Impact

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

Additional Comments

On March 6, 2020, the Insurance Commissioner issued [Bulletin 20-05](#) regarding COVID-19. The bulletin requires carriers to waive any time restrictions on prescription refills and authorize payments to pharmacies for at least a 30-day supply of any prescription medication regardless of when the prescription has been most recently filled to allow individuals to obtain medication in advance of any quarantine. The bulletin advised that the Commissioner would promulgate emergency regulations to require health carriers to waive any cost-sharing for (1) any visit to diagnose or test for COVID-19 regardless of the setting of the testing; (2) laboratory fees to diagnose or test for COVID-19; and (3) vaccination for COVID-19. Carriers must also make a

claims payment for treatment for COVID-19 that a carrier has denied as experimental; evaluate a request to use an out-of-network provider to perform diagnostic testing of COVID-19 solely on the basis of medical necessity; limit prior authorization requirements for testing for COVID-19; and treat an adverse decision on a request for coverage of diagnostic services for COVID-19 as an emergency case for an expedited grievance procedure.

The bulletin also asked carriers to consider removing cost barriers to testing, such as waiving cost-sharing for in-network provider office visits, urgent care center visits, and emergency department visits that result in testing for COVID-19; encouraging the use of telehealth services, as appropriate, to reduce the likelihood of exposure to and transmission of COVID-19; and consider treatment of COVID-19 an emergency case for purposes of expediting a review of an adverse decision.

Senate Bill 1079 and House Bill 1661 of 2020, emergency legislation introduced on behalf of the Administration, would authorize the Governor to transfer up to \$50.0 million from the State Rainy Day Fund to cover State agency costs associated with COVID-19. The transfer is subject to review and comment by the Legislative Policy Committee and subsequent reporting. A portion of those monies may be able to be used to cover any additional health care costs incurred for State employees and retirees due to these regulations.

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