

**Maryland General Assembly  
Department of Legislative Services**

**Emergency Regulations  
Maryland Insurance Administration**  
(DLS Control No. 20-036)

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**Overview and Legal and Fiscal Impact**

The regulations (1) apply the provisions governing the Maryland Insurance Administration’s emergency powers to each pharmacy benefits manager registered to do business in the State; (2) authorize the Maryland Insurance Commissioner to require pharmacy benefits managers and health carriers to suspend random audits unless there is a reasonable suspicion of fraud; and (3) authorize the Commissioner to require health carriers to suspend, waive, or modify requirements related to prior authorization, concurrent review, retrospective review, and notification of inpatient acute care, post–discharge care, and facility transfers.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

**Regulations of COMAR Affected**

**Maryland Insurance Administration:**

General Regulations: Emergency Powers: COMAR 31.01.02.02, and .06

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**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 (4) 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 apply the provisions governing the administration's emergency powers to each pharmacy benefits manager registered to do business in the State. The regulations also authorize the Commissioner to (1) require pharmacy benefits managers and health carriers to suspend random audits unless there is a reasonable suspicion of fraud and (2) require health carriers to suspend, waive, or modify requirements related to prior authorization, concurrent review, retrospective review, and notification of inpatient acute care, post-discharge care, and facility transfers.

## **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 April 15, 2020, and expiring October 12, 2020. This emergency period is within the normal time frames approved by the Joint Committee on Administrative, Executive, and Legislative Review. The administration indicates the emergency status is necessary to ensure that consumers and providers of essential medical and pharmaceutical services do not have barriers to receiving or providing essential medical treatment during the state of emergency described above under the Background section of the Legal Analysis. The intent of the regulations is to allow hospitals and pharmacies to direct critical resources to patient care, rather than administrative tasks that are not as essential. This will aid to increase the care that is available to consumers and the timely provision of that care. Additionally, the Governor has declared that immediate adoption of the regulations is necessary to protect public health or safety.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

### **Agency Estimate of Projected Fiscal Impact**

The administration advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs.

### **Impact on Budget**

There is no impact on the State operating or capital budget.

### **Agency Estimate of Projected Small Business Impact**

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

## **Contact Information**

**Legal Analysis:** Jodie L. Chilson – (410) 946/(301) 970-5350

**Fiscal Analysis:** Jennifer B. Chasse – (410) 946/(301) 970-5510