

MARYLAND REGISTER

Emergency Action on Regulations

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| TO BE COMPLETED BY AELR COMMITTEE | EMERGENCY Transmittal Sheet | TO BE COMPLETED BY DSD |
| Date Received by AELR Committee | | Date Filed with Division of State Documents |
| 04/13/2020 | | Document Number |
| Emergency Status Approved | | Date of Publication in MD Register |
| _Yes _No | | |
| Emergency Status Begins On | | |
| Emergency Status Ends On | | |
| Name of AELR Committee Counsel | | |

1. COMAR Codification

Title Subtitle Chapter Regulation

31 01 02 02, .06

2. Name of Promulgating Authority

Maryland Insurance Administration

3. Name of Regulations Coordinator

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4. Name of Person to Call About this Document

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5. Check applicable items:

- New Regulations
- Amendments to Existing Regulations
- Repeal of Existing Regulations
- Incorporation by Reference of Documents Requiring DSD Approval

6. Date Requested for Emergency Status to Begin: 4/15/2020

Date Requested for Emergency Status to Expire: 10/12/2020

7. Agency Will Take the Following Action on These Regulations

- Promulgate them in accordance with State Government Article, §§ 10-101 -- 10-126
- Allow them to expire

8. Is there proposed text which is identical to emergency text:

- Yes - No

9. Check the following item if it is included in the attached document:

- Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

10. Reason for Request for Emergency Status

Following the Governor's declaration of a State of Emergency on March 5, 2020, the rapidly escalating COVID-19 pandemic prompted the Governor, on March 16, 2020, to direct the Maryland Department of Health to increase hospital capacity by an additional 6,000 beds to prepare for the expected surge in COVID-19 in-patient hospitalizations. As the number of confirmed COVID-19 cases in Maryland continued to escalate, the Governor issued a Stay at Home Order on March 30, 2020. Pursuant to Insurance Article Section 2-115, Annotated Code of Maryland, the Insurance Administration is adopting changes to COMAR 31.01.02 Emergency Powers to provide safeguards to consumers with respect to their dealings with entities licensed or registered to transact insurance business in the State during the COVID-19 crisis. The adoption of these regulatory amendments are necessary to make certain that consumers and providers of essential medical and pharmaceutical services do not have barriers to receiving and providing essential medical treatment during the COVID-19 crisis. Specifically, the regulatory changes would require insurance carriers to relax utilization review requirements for inpatient hospitalizations, and would require insurance carriers and pharmacy benefits managers to relax auditing requirements for pharmacies. These measures will allow hospitals and pharmacists to direct additional critical resources to patient care, rather than less essential administrative tasks, resulting in an increase in the availability and timeliness of care provided to consumers.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by J. Van Dorsey, Assistant Attorney General, (telephone #410-468-2023) on 04/10/2020. A signed copy of the approval is on file at this agency.

Name of Authorized Officer

Alfred W. Redmer, Jr.

Title

Insurance Commissioner

Telephone No.

410-468-2090

Date

04/13/2020

Title 31 MARYLAND INSURANCE ADMINISTRATION

Subtitle 01 GENERAL PROVISIONS

31.01.02 Emergency Powers

Authority: Health-General Article, §19-706; Insurance Article, §2-115; Annotated Code of Maryland

Notice of Emergency Action

□

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to COMAR 31.01.02 Emergency Powers, regulations .02 and .06.

Emergency status began:

Emergency status expires:

Comparison to Federal Standards

There is no corresponding federal standard to this emergency action.

Estimate of Economic Impact

I. Summary of Economic Impact.

The primary impact of the proposed regulation is to increase the capacity of hospitals and pharmacies to provide medical and pharmaceutical care if there is a strain on the supply of providers due to the surge of patients related to the COVID-19 crisis. Any economic impacts of the regulation are secondary and indirect. The economic impact on hospitals, pharmacies, and consumers would be positive as the suspension of utilization

review and auditing practices may result in payments being made by insurance carriers that would otherwise have been denied. Additionally, hospital and pharmacy staffing costs to handle the administrative tasks related to utilization review and auditing would be reduced. Conversely, the economic impact on insurance carriers would be negative as the suspension of utilization review and auditing practices may result in payments being made by insurance carriers that would otherwise have been denied. The magnitude for these fiscal impacts is impossible to quantify at this time since the hospital and pharmacy staff that would handle the utilization review and auditing will instead be performing direct patient care, and because it is unknown whether the suspension of utilization review and auditing will actually result in carriers paying for services that would otherwise have been denied. To the extent an independent pharmacy is a small business, the economic impact would be positive, as described above. Otherwise, these proposed regulations will have no direct impact on small businesses.

| II. Types of Economic Impact. | Revenue (R+/R-) | Magnitude |
|---|-------------------------|----------------|
| | Expenditure (E+/E-) | |
| A. On issuing agency: | NONE | |
| B. On other State agencies: | NONE | |
| C. On local governments: | NONE | |
| | Benefit (+) Cost (-) | Magnitude |
| D. On regulated industries or trade groups: | NONE | |
| (1) Cost | (+) | Likely minimal |
| E. On other industries or trade groups: | NONE | |
| F. Direct and indirect effects on public: | NONE | |
| (1) Benefit | (+) | Likely minimal |

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

D(1). Assuming benefits may be paid that would otherwise be denied based on utilization review or auditing practices that are suspended, could increase insurance carriers costs

F(1). Assuming benefits may be paid that would otherwise be denied based on utilization review and auditing practices that are suspended, consumers would incur a benefit of having services covered.

Economic Impact on Small Businesses

The emergency action has minimal or no economic impact on small businesses.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2020

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

No additional funds are needed for the implementation of these regulations.

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

Many independent pharmacies are small businesses and the suspension of random audits by PBMs will reduce administrative costs; however, the reduction is thought to be minimal.

G. Response to small business worksheet:

Attached Document:

Title 31 MARYLAND INSURANCE ADMINISTRATION

Subtitle 01 GENERAL PROVISIONS

Chapter 02 Emergency Powers

Authority: Health-General Article, §19-706; Insurance Article, §2-115; Annotated Code of Maryland

.02 Applicability.

A. This chapter applies to:

(1) – (2) (text unchanged)

(3) *Each pharmacy benefits manager registered to do business in Maryland.*

B. (text unchanged)

.06 Life and Health.

A.– G. (text unchanged)

H. *Subject to §M of this regulation, the [The] only prior authorization requirements a health carrier may utilize relating to testing for COVID-19 shall relate to the medical necessity of that testing.*

I.– K. (text unchanged)

L. The Commissioner may require pharmacy benefits managers and health carriers to suspend random audits, including, but not limited to in-person or “desk” audits, of pharmacies, unless there is a reasonable suspicion of fraud.

M. The Commissioner may 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.