

**Maryland General Assembly
Department of Legislative Services**

**Emergency/Proposed Regulations
Maryland Insurance Administration**
(DLS Control No. 20-095)

Overview and Legal and Fiscal Impact

These regulations extend the applicability of Chapter .02 to certain pharmacy benefits managers. Additionally, these 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, testing, and treatment of a specified illness, including vaccination for the illness.

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, .03, .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 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 Regulations

Regulation .02 extends the applicability of Chapter .02 to “each pharmacy benefits manager registered to do business in Maryland”. Additionally, Regulation .03 defines the terms “copayment”, “deductible”, “eligible individual”, and “specified illness”.

Regulation .06 authorizes 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 a specified illness, regardless of the setting for the testing; 2) laboratory fees to diagnose or test for a specified illness; 3) vaccination for a specified illness; and 4) treatment for a specified illness. The Commissioner is authorized to require a health carrier to make claims payment for treatment for a specified illness 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 a specified illness 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 a specified illness are requirements that relate to the medical necessity of the testing. An adverse decision on a request for coverage of diagnostic services for a specified illness 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. 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. The Commissioner is authorized to require 1) pharmacy benefits managers and health carriers to suspend random audits of pharmacies unless there is a reasonable suspicion of fraud, and 2) health carriers to suspend, waive, or modify certain requirements. Finally, with respect to an eligible individual, a carrier is prohibited from 1) denying or conditioning the issuance or effectiveness of a Medicare supplement policy that is offered and is available for issuance to new enrollees by the issuer; 2) discriminating in the pricing of a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition; and 3) imposing an exclusion of benefits based on a preexisting condition under a Medicare supplement policy.

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 August 17, 2020 and expiring February 12, 2021. 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 address issues dealing with the diagnosis, treatment, and testing for a specified illness in response to the declaration of the state of emergency and the existence of a catastrophic health emergency by the Governor that has, according to the administration, continued longer than anticipated.

Technical Corrections and Special Notes

In response to suggestions from the Department of Legislative Services, staff for the administration agreed to correct an incorrect reference to §§ A(5) through (7) found in § J of Regulation .06. The language should reference §§ A(5) through (8). This analysis reflects this change.

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.

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