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BULLETIN 20-36

Date: September 4, 2020
To: All Health Carriers
Re: COVID-19 State of Emergency: Renewal/Reactivation of Emergency Powers

On March 5, 2020, Governor Larry Hogan issued a Proclamation declaring a State of Emergency and that a Catastrophic Health Emergency exists in the State of Maryland. The Proclamation was renewed on May 6, 2020, June 3, 2020, July 1, 2020, July 31, 2020, and August 10, 2020.

On March 9, 2020, changes to the Code of Maryland Regulations (“COMAR”) 31.01.02.03 and .06 took effect on an emergency basis and remain in effect through September 5, 2020. The Commissioner activated those provisions on March 10, 2020, via Bulletin 20-06. On April 28, 2020, additional changes to COMAR 31.01.02.02 and .06 took effect on an emergency basis and remain in effect through October 12, 2020. The Commissioner activated one of those provisions, COMAR 31.01.02.06L, on April 30, 2020 via Bulletin 20-22.

To address the renewed State of Emergency in Maryland and the impending expiration of the prior emergency regulations, the Commissioner promulgated new emergency regulations that incorporated the provisions from the March 9, 2020, and April 28, 2020, regulations, and also included additional provisions. The new emergency regulations, which include changes to COMAR 31.01.02.02, .03 and .06, took effect on an emergency basis on September 1, 2020. The Commissioner also submitted a proposed regulation to AELR on August 14, 2020 to make these changes permanent.

Pursuant to § 2-115 of the Insurance Article and COMAR 31.01.02.05 and 06, the Commissioner is invoking her emergency powers, and the provisions of COMAR 31.01.02.06A(5), (6) and (7), F, G, I, J, and N are activated. As a result, health carriers are required to:

- Waive any cost-sharing, including co-payments, coinsurance, and deductibles for any visit to diagnose or test for COVID-19 regardless of the setting of the testing.
- Waive any cost-sharing, including co-payments, coinsurance, and deductibles for laboratory fees to diagnose or test for COVID-19.
- Waive any cost-sharing, including co-payments, coinsurance and deductibles for vaccination for COVID-19, when a vaccine becomes available.

- 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 of the out-of-network provider is medically necessary or appropriate.
- Consider an adverse decision on a request for coverage of diagnostic services for COVID-19 an emergency case for which an expedited grievance procedure is required under § 15-10A-02 of the Insurance Article.

The cost-sharing waivers do not apply to a Medicare supplement policy as defined by § 15-901(k) of the Insurance Article. Additionally, with respect to an eligible individual, a carrier in the Medicare supplement market may not:

- Deny or condition the issuance or effectiveness of a Medicare supplement policy that is offered and is available for issuance to new enrollees by the issuer;
- Discriminate in the pricing of a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition; and
- Impose an exclusion of benefits based on a preexisting condition under a Medicare supplement policy.

“Eligible individual” is defined in COMAR 31.01.02.03B(13) as an individual who:

- Enrolled in Medicare Part B while enrolled in the Maryland Medical Assistance Program;
- Remained in the Maryland Medical Assistance Program due to a suspension of terminations by the Maryland Medical Assistance Program during a state of emergency, and was not disenrolled until or terminated until at least 6 months following the effective date of enrollment in Part B of Medicare;
- Seeks to enroll in a Medicare supplement policy during the 63 day period following the later of notice of termination or disenrollment or the date of termination from the Maryland Medical Assistance Program; and
- Submits evidence of the date of termination or disenrollment from the Maryland Medical Assistance Program with the application for a Medicare supplement policy.

These regulations shall be in effect along with those activated in Bulletins 20-05 and 20-30 (Revised) until the emergency declaration is lifted or the Commissioner issues a Bulletin deactivating the regulations at issue. COMAR 31.01.02.06H and K, which were activated via Bulletin 20-06 and related to prior authorization for COVID-19 testing and the waiver of the deductible under a high deductible health plan, are hereby deactivated. These two provisions were superseded by federal laws and guidance that became effective during the federal Public Health Emergency. COMAR 31.01.02.06L, which was activated via Bulletin 20-22 and related to the suspension of random audits of pharmacies, is also hereby deactivated.

Questions about this Bulletin may be directed to the Life & Health Unit of the Maryland Insurance Administration at 410-468-2170.

KATHLEEN A. BIRrane.
Commissioner

By: **SIGNATURE ON ORIGINAL**

David Cooney
Associate Commissioner
Life and Health