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BULLETIN 20-43

To: All Health Carriers

Re: Charges for Enhanced Infection Control and Personal Protective Equipment

Date: December 14, 2020

It has come to the attention of the Maryland Insurance Administration (the “MIA”) that some health care providers are attempting to charge patients additional fees for enhanced infection control and personal protective equipment (PPE) used by the provider in light of COVID-19. The MIA is also aware that in some cases, patients who are covered under health or dental plans have been billed directly for these additional fees, as though the use of PPE and other enhanced infection control measures are non-covered services provided to the patient. The purpose of this Bulletin is to explain the MIA’s enforcement position with respect to attempts by participating providers to hold individuals insured by licensed carriers responsible for such additional fees and the steps that the MIA expects licensed carriers to take to assure that their participating providers are not billing their insureds for such additional fees.

Background

On March 5, 2020, Governor Hogan declared a state of emergency and the existence of a catastrophic health emergency due to COVID-19. The declaration has been renewed and remains in effect. Governor Hogan has issued orders regarding health care procedures during the state of emergency, and, at times when community transmission of the novel coronavirus has been high, elective procedures have been discouraged or prohibited.

The Secretary of Health has issued guidance pursuant to the Governor’s Emergency Orders. The Secretary of Health issued Amended Directive and Order Regarding Various Healthcare Matters, MDH 2020-11-17-01, on November 17, 2020. Consistent with prior directives, it directed all health care providers to plan for and implement enhanced workplace infection control measures in accordance with the most current guidelines from the Centers for Disease Control and Prevention (CDC) and to wear appropriate face coverings. The CDC guidelines recommend that in areas with moderate to substantial community transmission, dental and other healthcare personnel should wear eye protection, face masks, and an N95 respirator during aerosol generating procedures.

The combination of increased costs for infection control equipment and decreased income from a reduction in elective procedures has led some health care providers to charge a fee to patients for the enhanced PPE.

On June 12, 2020, the Consumer Protection Division of the Office of the Attorney General wrote a public letter to the Maryland State Board of Dental Examiners and the Maryland State Dental Association. The letter informed dentists and consumers that the imposition of additional fees, particularly those charged upfront to all patients, may violate the Consumer Protection Act's prohibition against unfair or deceptive trade practices.

Enforcement Position of the Maryland Insurance Administration

It is the enforcement position of the MIA that PPE and additional infection control measures are an integral part of performing any health care service covered under a policy or contract involving physical patient contact. For this reason, a provider's use of such measures, including PPE, may not be considered a separate non-covered service under a carrier's contract with a member or provider, and a health care provider participating in the carrier's network may not charge an additional fee to the patient for PPE or other infection control measures.

Carrier responsibilities

The Maryland Insurance Administration requires carriers:

- To enforce their existing provider contracts with participating providers;
- To assure that no participating provider bills any member or subscriber for enhanced infection control and additional PPE;
- To provide clear guidance to providers on whether the carrier has elected to reimburse providers under their provider contracts for enhanced infection control and additional PPE, which includes providing information on the proper coding of claims for reimbursement and ensuring that participating providers are using appropriate billing codes so that no such allowed amounts are charged to members or subscribers;
- To remind providers of their obligations under the provider contract and/or Maryland law to accept the allowed amount as payment in full and not bill members for any additional amounts except for cost sharing obligations, provided that no member shall contribute to any amount that a carrier agrees to pay its participating providers for enhanced infection control and additional PPE;
- To provide members with accurate information as to their liability for charges by providers for additional PPE or enhanced infection control measures; and
- To consider whether it is appropriate to increase reimbursement rates to cover additional costs that providers are incurring for enhanced infection control measures.

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

By: **signature on original**

Kathleen A. Birrane
Commissioner