



DOMESTIC AND FOREIGN INSURERS BULLETIN NO. 137

**TO: ALL INSURANCE CARRIERS AND PHARMACY BENEFITS MANAGERS
AUTHORIZED TO TRANSACT BUSINESS IN DELAWARE**

RE: GUIDANCE REGARDING NATIONWIDE DRUG SHORTAGE

DATED: February 6th, 2023

The Department is aware of the current nationwide drug shortage¹. The cause of the shortages is multifaceted and has been magnified by the current “triple-demic” (COVID, Flu, and RSV). This triple-demic has created a dangerously low supply of pediatric antibiotics, especially generic antibiotics. In addition to the nationwide shortage of pediatric antibiotics, there is also a severe shortage of ADHD medications due to the current mental health crisis impacting the country.

Because of the drug shortages impacting the availability of these drugs in the generic form, carriers and pharmacy benefits managers are encouraged to waive any prior authorization requirements for the brand-name equivalent of these drugs and allow pharmacies to substitute brand name drugs when the generic is not available at the pharmacy where the prescription is being filled. Carriers should be prepared to expedite utilization review and appeal processes for insureds impacted by these drug shortages and are reminded that utilization review decisions must be made in the timeframes set forth in Chapter 33 Subchapter II and Chapter 35, Subchapter V of the Insurance Code. Additionally, pharmacy benefits managers are prohibited from requiring prior authorization for coverage of a 72-hour supply of medication that is for a noncontrolled substance in an emergency. *See 18 Del. C. § 3336A.*

The Department encourages carriers and pharmacy benefits managers to remain flexible in their application of prior authorization requirements and utilization reviews while these drug shortages endure so that some of Delaware’s most vulnerable population do not go without necessary medications to treat their illness or ongoing medical conditions.

Questions, comments, or requests for clarification about this Bulletin should be emailed to compliance@delaware.gov.

¹ See <https://www.accessdata.fda.gov/scripts/drugshortages/default.cfm>

NOTE: This Bulletin is intended solely for informational purposes. It is not intended to set forth legal rights, duties, or privileges, nor is it intended to provide legal advice. Readers should consult applicable statutes and rules and contact the Delaware Department of Insurance if additional information is needed.

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This Bulletin shall be effective immediately and shall remain in effect unless withdrawn or superseded by subsequent law, regulation or bulletin.



Trinidad Navarro
Delaware Insurance Commissioner

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