

TRINIDAD NAVARRO
COMMISSIONER



STATE OF DELAWARE
DEPARTMENT OF INSURANCE

**DOMESTIC AND FOREIGN INSURERS BULLETIN NO. 116
PRODUCERS AND ADJUSTERS BULLETIN NO. 32**

**TO: ALL INSURANCE CARRIERS AUTHORIZED TO TRANSACT
BUSINESS IN DELAWARE and ALL LICENSED INSURANCE
PRODUCERS**

**RE: ADDITIONAL GUIDANCE RELATING TO COVID-19
(CORONAVIRUS)**

DATED: March 20, 2020

UPDATED: March 26, 2020

Beginning on Friday, March 13, 2020 at 8 a.m., Delaware has been under a State of Emergency to prevent the spread of coronavirus (COVID-19) in Delaware. The Department issued guidance to carriers in the form of Domestic and Foreign Insurers Bulletin No. 115, which may be downloaded from the Legal dropdown menu of the Department's website, insurance.delaware.gov.

The purpose of this bulletin is to issue additional guidance to carriers as the situation continues to evolve. The original version of this bulletin included the telemedicine provisions contained in paragraph 9 of the Governor's Second Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat, Wednesday, March 18, 2020 (Second Modification).

Since this bulletin was issued on March 20, 2020, the Governor has issued three additional declarations which are germane to the insurance industry:

- Fifth Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat, Sunday, March 22, 2020 (Fifth Modification);
- Declaration of a Public Health Emergency for the State of Delaware, Monday, March 23, 2020 (Declaration); and
- Sixth Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat, Tuesday, March 24, 2020 (Sixth Modification).

◆INSURANCE.DELAWARE.GOV◆

1351 W. NORTH ST., SUITE 101, DOVER, DELAWARE 19904-2465

(302) 674-7300 DOVER◆ (302) 259-7554 GEORGETOWN◆ (302) 577-5280 WILMINGTON

Additionally, the Department of Health and Social Services and the Delaware Emergency Management Agency issued a Joint Order on Tuesday, March 24, 2020 (Joint Order), which is also germane to health insurance carriers.

I. Suspension of Cancellations and Nonrenewals

The disruption caused by COVID-19 and the resultant State of Emergency has caused financial hardships on individuals and businesses alike. Many Delaware residents, especially those that work in the hospitality field, have found themselves out of work and without the income necessary to support themselves and their families.

In the original version of this Bulletin, the Commissioner encouraged carriers to accommodate policyholders in an efficient and compassionate manner and requested that all admitted and non-admitted carriers doing business in Delaware suspend cancellations and nonrenewals due to nonpayment of premium during the pendency of the Governor's declared State of Emergency, which applied to all lines of insurance.

The Sixth Modification now prohibits, without a court order, the suspension, cancellations and nonrenewals due to nonpayment of premium during the pendency of the Governor's declared State of Emergency as follows:

INSURANCE: No insurer may, without a court order, lapse, terminate or cause to be forfeited a covered insurance policy because a covered policyholder does not pay a premium or interest or indebtedness on a premium under the policy that is due during the pendency of the declared state of emergency. As used in this paragraph, (i) "covered insurance policy" means a policy for health insurance, life insurance, disability insurance, property insurance, motor vehicle insurance, and commercial/business insurance, and (ii) "covered policyholder" means any individual or business entity who, as a result of the conditions imposed under the COVID-19 State of Emergency (or Modifications) or the public health emergency, was laid off or fired from their employment or was required to close or significantly reduce its business.

Policyholders are encouraged to contact their carriers to discuss their options if they are suffering a hardship as a result of a COVID-19 related restriction. Additionally, all producer licensees are advised to take all necessary actions to ensure their ability to promptly service claims and provide other essential services to insureds affected by the COVID-19 crisis.

II. Telehealth and Telemedicine

With respect to health insurance carriers, the Governor's Emergency Order and Second Modification require that:

- Patients do not have to present in-person or before relevant services may be provided;
- Delaware residents do not need to be in Delaware at the time relevant services are provided; and

- Out-of-state providers who would be permitted to provide these services in Delaware if they were licensed under Title 24 may provide telemedicine services to a Delaware resident if they hold an active license in another jurisdiction.

Accordingly, the Department requires carriers who are covering claims under insurance policies to which the telemedicine provision applies to reimburse providers who are providing telemedicine services through telehealth in accordance with the law. Since COVID-19 is a communicable disease, some insureds may choose to seek medical advice through these services instead of in-person health care services for any care, including but not limited to symptoms that relate to COVID-19. Accordingly, this provision applies to all telehealth and telemedicine services, not just those provided in connection with the testing and treatment of COVID-19.

Additionally, the Joint Order provides that Delaware will now allow any licensed U.S. health care worker to practice in Delaware amid the coronavirus outbreak and that any out-of-state health care provider, inactive health care provider, or qualified person appointed pursuant to this order shall be considered a public employee under 10 *Del. C.* §§ 4001- 4002. While reimbursement for services provided by these now-authorized providers may be subject to network rules, carriers are reminded of their responsibilities under 18 *Del. C.* §§ 3348 and 3564 and are encouraged, notwithstanding contractual network rules, to help prevent community spread by authorizing reimbursement for health care services provided through telemedicine by any provider authorized by law to provide those services.

III. Waiver of Pre-Authorization Requirements

Early diagnosis and treatment of COVID-19 is imperative to preventing the continued spread of the virus. Prior authorization requirements should not be a barrier to access to diagnosis and treatment. In the prior version of this Bulletin, the Commissioner encouraged carriers to waive all pre-authorization requirements for the lab testing and treatment of confirmed or suspected COVID-19 patients. Carriers had already voluntarily waived insured's cost sharing requirements for COVID-19 treatments.

The Fifth Modification makes the Commissioner's request mandatory by providing that:

- All COVID-19 testing shall be made available to those persons who meet criteria for such testing as established and modified from time to time, by the CDC;
- All health care providers, facilities and entities that decide to offer testing shall make that testing available to any person presenting at the testing site who meets the CDC criteria without regard to that person's ability to pay, type of health insurance, or participation in any particular provider network; and
- Health care providers shall provide testing and, to the extent that testing costs are not covered by the payments by individuals and health insurance carriers, such costs will

be covered by Delaware's Health Care Connection Program.

Furthermore, the Declaration at paragraph 5a provides that as of March 23, 2020, "all insurers issuing policies subject to state regulation under Title 18 of the Delaware Code shall waive all prior authorization requirements for the lab testing and treatment of confirmed or suspected COVID19 patients"

Accordingly, the Department expects carriers to abide by the Governor's Fifth Modification and his Declaration as described above.

Moreover, the Federal Families First Coronavirus Response Act mandates that private insurance waive cost sharing for testing and the associated visit as follows:

Private insurance, including group and individual plans, including grandfathered plans to cover the detection of SARS-CoV-2 or the diagnosis of the virus that causes COVID-19, provided the diagnostic has received Emergency Use Authorization (EUA) under Section 564 of the Federal Food, Drug, and Cosmetic Act (FD&C Act), and the associated visit in a range of settings without cost-sharing, without needing to meet deductible, without prior authorization or other utilization management (during the emergency period).

Note that for purposes of the federal legislation, those in other types of non-compliant plans (such as short-term policies) are considered uninsured.

IV. Enforcement under Catastrophic Health Coverage Plans

A catastrophic health plan generally may not provide coverage of an essential health benefit before an enrollee meets the plan's deductible. As of the date this Bulletin was first issued, the Department announced that, like the federal Centers for Medicare and Medicaid Services (CMS), the Department will not take enforcement action against any health insurance issuer that amends its catastrophic plans to provide pre-deductible coverage for services associated with the diagnosis and/or treatment of COVID-19. The purpose of this use of the Department's enforcement discretion is to remove barriers and financial disincentives to COVID-19 diagnosis and treatment.

V. Communication with Enrollees

The Department is aware that many carriers, producers and adjusters are abiding by "work-from-home" orders. Accordingly, if carriers, producers and adjusters do not have personnel available to mail hard-copy information to enrollees and providers, it is acceptable to communicate with enrollees and providers electronically and telephonically, as long as the carrier, producer or adjuster maintains a log or record of the communications. Carriers, producers and adjusters shall provide otherwise required hard-copy information to enrollees and providers subsequent to an electronic or telephonic communication if specifically requested by the enrollee or provider.

Questions concerning this Bulletin should be directed to consumer@delaware.gov.

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