LAW WITHOUT GOVERNOR'S SIGNATURE

MARCH 25, 2021

CHAPTER

28

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-ONE

S.P. 29 - L.D. 1

An Act To Establish the COVID-19 Patient Bill of Rights and To Amend the Governor's Emergency Powers

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the spread of the novel coronavirus disease referred to as COVID-19 has created a public health emergency; and

Whereas, in response to COVID-19, the World Health Organization has declared a pandemic, the President of the United States has declared a national emergency and the Governor of Maine has declared a civil state of emergency; and

Whereas, in response to COVID-19, the Governor of Maine has also proclaimed an insurance emergency pursuant to the Maine Revised Statutes, Title 24-A, section 471 and, pursuant to that proclamation, the Superintendent of Insurance has issued orders relating to health insurance coverage for COVID-19 screening, testing and immunization during the civil state of emergency; and

Whereas, it is important to maintain these important consumer protections related to health insurance coverage once the civil state of emergency expires; and

Whereas, the purpose of this legislation is to ensure that those consumer protections are codified in state law; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 22 MRSA §1718-D, sub-§2, as amended by PL 2019, c. 668, §1, is further amended to read:

2. Prohibition on balance billing. An out-of-network provider reimbursed for a surprise bill or a bill for covered emergency services under Title 24-A, section 4303-C or, if there is a dispute, under Title 24-A, section 4303-E or a bill for COVID-19 screening and testing under Title 24-A, section 4320-P may not bill an enrollee for health care services beyond the applicable coinsurance, copayment, deductible or other out-of-pocket cost expense that would be imposed for the health care services if the services were rendered by a network provider under the enrollee's health plan. For an enrollee subject to coinsurance, the out-of-network provider shall calculate the coinsurance amount based on the median network rate for that health care service under the enrollee's health plan. An out-of-network provider is also subject to the following with respect to any overpayment made by an enrollee.

A. If an out-of-network provider provides health care services covered under an enrollee's health plan and the out-of-network provider receives payment from the enrollee for health care services for which the enrollee is not responsible pursuant to this subsection, the out-of-network provider shall reimburse the enrollee within 30 calendar days after the earlier of the date that the provider received notice of the overpayment and the date the provider became aware of the overpayment.

B. An out-of-network provider that fails to reimburse an enrollee for an overpayment as required by paragraph A shall pay interest on the overpayment at the rate of 10% per annum beginning on the earlier of the date the provider received notice of the overpayment and the date the provider became aware of the overpayment. An enrollee is not required to request the accrued interest from the out-of-network provider in order to receive interest with the reimbursement amount.

Sec. A-2. 22 MRSA §1718-G is enacted to read:

§1718-G. Requirements for notice to patients of costs for COVID-19 screening and testing and prohibited charges for COVID-19 vaccination for uninsured patients

1. COVID-19 defined. For the purposes of this section, "COVID-19" has the same meaning as in Title 24-A, section 4320-P, subsection 1, paragraph A.

2. Notice of costs for COVID-19 screening and testing. A provider, as defined in Title 24-A, section 4301-A, subsection 16, shall, at the time a patient schedules or registers for screening or testing services and before providing screening or testing services for COVID-19:

A. Provide notice of any payment or upfront charge and the amount of that payment or charge that will be due from the patient for the services, including payments or charges for which the provider will submit a claim on the patient's behalf or for which the patient will need to submit a claim for reimbursement to the patient's health insurance carrier or to the department;

B. To the extent applicable, provide the form for requesting coverage from the department through emergency MaineCare coverage; and

C. To the extent applicable, inform any patient who will be required to make a payment or upfront charge that there are locations where COVID-19 screening and testing services are provided without such payments and that those locations are identified on the State's publicly accessible website.

3. Charges to uninsured patients for COVID-19 vaccination prohibited. A provider, as defined in Title 24-A, section 4301-A, subsection 16, may not charge an uninsured patient any amount for administering a COVID-19 vaccine or any associated costs of administration.

4. Rules. The department may adopt rules to implement and administer this section to align with any applicable federal regulations. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. A-3. 24-A MRSA §4320-P is enacted to read:

§4320-P. Coverage for health care services for COVID-19

Notwithstanding any requirements of this Title to the contrary, a carrier offering a health plan in this State shall provide, at a minimum, coverage as required by this section for screening, testing and immunization for COVID-19.

1. Definitions. For the purposes of this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "COVID-19" means the coronavirus disease 2019 resulting from SARS-CoV-2, severe acute respiratory syndrome coronavirus 2, and any virus mutating from that virus.

B. "Surveillance testing program" means a structured program of asymptomatic testing at a community or population level to understand the incidence or prevalence of COVID-19 in a group. "Surveillance testing program" does not include a program of testing that occurs less often than once per month per individual.

2. Testing. A carrier shall provide coverage for screening and testing for COVID-19 as follows.

A. A carrier shall provide coverage for screening and testing for COVID-19, except when such screening and testing is part of a surveillance testing program.

B. A carrier may not impose any deductible, copayment, coinsurance or other cost-sharing requirement for the costs of COVID-19 screening and testing, including all associated costs of administration.

C. A carrier may not make coverage without cost sharing as required by paragraph B dependent on any prior authorization requirement.

D. A carrier may not make coverage without cost sharing as required by paragraph B dependent on the use of a provider in a carrier's network unless an enrollee is offered screening and testing by a network provider without additional delay and the enrollee chooses instead to obtain screening from an out-of-network provider or to be tested by an out-of-network laboratory.

E. For the purposes of this subsection, with respect to COVID-19 screening and testing rendered by an out-of-network provider, a carrier shall reimburse the out-of-network provider in accordance with section 4303-C, subsection 2, paragraph B.

3. Immunization; COVID-19 vaccines. A carrier shall provide coverage for COVID-19 vaccines as follows.

A. A carrier shall provide coverage for any COVID-19 vaccine licensed or authorized under an emergency use authorization by the United States Food and Drug

Administration that is recommended by the United States Centers for Disease Control and Prevention Advisory Committee on Immunization Practices, or successor organization, for administration to an enrollee.

B. A carrier may not impose any deductible, copayment, coinsurance or other cost-sharing requirement for the cost of COVID-19 vaccines, including all associated costs of administration.

C. A carrier may not make coverage without cost sharing as required by paragraph B dependent on any prior authorization requirement.

D. A carrier may not make coverage without cost sharing as required by paragraph B dependent on the use of a provider in a carrier's network unless an enrollee is offered immunization by a network provider without additional delay and the enrollee chooses instead to obtain immunization from an out-of-network provider.

4. Rules. The superintendent may adopt rules to implement and administer this section to align with any applicable federal requirements. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. A-4. Exemption from mandate review. Notwithstanding the Maine Revised Statutes, Title 24-A, section 2752, this Part is enacted without review and evaluation by the Department of Professional and Financial Regulation, Bureau of Insurance.

PART B

Sec. B-1. 24-A MRSA §4311, sub-§2-A is enacted to read:

2-A. Coverage of prescription during emergency declared by the Governor. Except as provided in this subsection, a carrier shall provide coverage for the furnishing or dispensing of a prescription drug in accordance with a valid prescription issued by a provider in a quantity sufficient for an extended period of time, not to exceed a 180-day supply, during a statewide state of emergency declared by the Governor in accordance with Title 37-B, section 742. This subsection does not apply to coverage of prescribed contraceptive supplies furnished and dispensed pursuant to section 2756, 2847-G or 4247 or coverage of opioids prescribed in accordance with limits set forth in Title 32.

Sec. B-2. 32 MRSA §13831, sub-§2-A is enacted to read:

2-A. Administration of COVID-19 vaccines. A pharmacist licensed in this State who meets the qualifications and requirements of section 13832 and rules adopted by the board may administer and order COVID-19 vaccines licensed or authorized under an emergency use authorization by the United States Food and Drug Administration that are recommended by the United States Centers for Disease Control and Prevention Advisory Committee on Immunization Practices, or successor organization, to a person 3 years of age or older. For the purposes of this subsection, "COVID-19" has the same meaning as in Title 24-A, section 4320-P, subsection 1, paragraph A.

Sec. B-3. Exemption from mandate review. Notwithstanding the Maine Revised Statutes, Title 24-A, section 2752, section 1 of this Part is enacted without review and evaluation by the Department of Professional and Financial Regulation, Bureau of Insurance.

PART C

Sec. C-1. 37-B MRSA §742, sub-§1, ¶E is enacted to read:

E. In dealing with a declared state of emergency under this subsection, the Governor shall ensure that:

(1) Medical privacy and confidentiality requirements, including but not limited to requirements under the federal Health Insurance Portability and Accountability Act of 1996, are followed; and

(2) Health care services and surgeries are not considered to be nonessential services.

PART D

Sec. D-1. Permitted delegation of COVID-19 vaccine administration at point-of-dispensing vaccine sites for immunizations against COVID-19. This section governs the permitted delegation of COVID-19 vaccine administration at point-of-dispensing vaccine sites for immunizations against COVID-19. For the purposes of this section, "COVID-19" means the coronavirus disease 2019 resulting from SARS-CoV-2, severe acute respiratory syndrome coronavirus 2, and any virus mutating from that virus.

1. Applicability. This section applies only to point-of-dispensing vaccine sites that have a written memorandum of understanding with the Department of Health and Human Services, Maine Center for Disease Control and Prevention to administer vaccines against COVID-19. This section is effective only during the state of emergency declared by the Governor due to COVID-19 as of March 15, 2020 and any renewals of that declaration in accordance with the Maine Revised Statutes, Title 37-B, section 742 and Title 22, section 801, subsection 4-A and section 802, subsection 2-A.

2. Permitted delegation of COVID-19 vaccine administration. Any on-site clinician in charge of a point-of-dispensing vaccine site with a memorandum of understanding that complies with the requirements of subsection 4 may delegate the administration of COVID-19 vaccines within the State to employees, staff, agents or volunteers as long as the on-site clinician in charge is currently licensed by the State as a physician, advanced practice registered nurse or physician assistant and any employee, staff member, agent or volunteer to whom such authority is delegated under this section is subject to the supervision and control of the point-of-dispensing vaccine site and any on-site clinician in charge and has completed the training and observation required in subsection 3. Any individual to whom vaccine administration is delegated under this section is authorized to administer any COVID-19 vaccine identified as a "covered countermeasure" in the 4th amendment to the declaration by the Secretary of the United States Department of Health and Human Services under the federal Public Readiness and Emergency Preparedness Act, referred to in this section as "the PREP Act," or in any subsequent declaration under that Act, and that meets the 42 United States Code, Section 247d-6d(i)(1) definition of "covered countermeasure."

3. Training and observation. Prior to undertaking any vaccine administration, anyone to whom vaccine administration is delegated under subsection 2 must complete the United States Department of Health and Human Services, Centers for Disease Control and Prevention COVID-19 vaccine training modules; any applicable training required by the PREP Act or any declaration issued pursuant to that Act for medical countermeasures

against COVID-19 or guidance from an authority having jurisdiction under such declaration; and any applicable observation period by a currently practicing health care professional adequately experienced in vaccination who confirms competency in preparation and administration of the particular COVID-19 vaccine or vaccines to be administered by the individual, if required by the PREP Act or in any declaration or guidance under that Act. The individual must provide documentation of any training and observation required by this section to the point-of-dispensing vaccine site and the on-site clinician in charge prior to any administration of a COVID-19 vaccine as authorized by this section.

4. Requirements for the memorandum of understanding and other record keeping. Any on-site clinician in charge of a point-of-dispensing vaccine site may make a delegation under subsection 2 only if the point-of-dispensing vaccine site's memorandum of understanding or addendum to that memorandum of understanding identifies the clinician in charge by name. The point-of-dispensing vaccine site and the Department of Health and Human Services, Maine Center for Disease Control and Prevention shall each retain a copy of the memorandum of understanding for a period of 3 years. The point-of-dispensing vaccine site and on-site clinician in charge are each responsible for retaining for a period of 3 years a record of the name of each individual to whom vaccine administration is delegated under subsection 2 and evidence of each individual's completion of the required training and observation.

5. Delegation authority under other state law. The authority to delegate the administration of COVID-19 vaccines granted in this section is in addition to any delegation authority that may otherwise exist under state law. Clinicians in charge who exercise delegation authority pursuant to other state law are not required to comply with the requirements of this section.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.