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COMMISSIONER

STATE OF DELAWARE
DEPARTMENT OF INSURANCE

DOMESTIC AND FOREIGN INSURERS BULLETIN NO. 115

TO: **ALL INSURANCE CARRIERS AUTHORIZED TO TRANSACT HEALTH INSURANCE IN DELAWARE AND OTHER INTERESTED PARTIES**

RE: **COVERAGE FOR COVID-19 (CORONAVIRUS)**

DATED: **March 9, 2020**

The Department encourages health insurers to be proactive in planning for Coronavirus disease 2019 (COVID-19). While there are no cases of COVID-19 in Delaware to date, this is a developing public health issue that warrants taking immediate and appropriate precautionary steps.

I. What is COVID-19?

COVID-19 is a disease that is caused by a respiratory virus, first identified in Wuhan, China, named SARS-CoV-2. It has the potential to cause severe illness and pneumonia in some people. No cases have been confirmed in Delaware as of the date of this bulletin.

COVID-19 spreads through the air by coughing and sneezing, close personal contact such as touching or shaking hands, and touching an object or surface with the virus on it and then touching one's mouth, nose, or eyes.

The Delaware Division of Public Health's (DPH) website contains up-to-date information concerning COVID-19, including downloadable/printable materials. The website may be accessed at https://dhss.delaware.gov/dhss/dph/epi/2019novelcoronavirus.html. DPH has also set up a Coronavirus call center, 1-866-408-1899.

Additionally, the Federal Centers for Medicare and Medicaid Services (CMS) provides updated information on the range of CMS activities to address COVID-19 on its website, https://www.cms.gov/About-CMS/Agency-Information/Emergency/EPRO/Current-Emergencies/Current-Emergencies-page.

II. What obligations do carriers have under the Delaware Insurance Code?

Coverage requirements applicable to individual health insurance policies are promulgated at Title 18, Chapters 33 and 36, and provisions applicable to group and blanket health insurance are promulgated at Title 18, Chapter 35, Subchapter III. Some provisions that are particularly germane to COVID-10 preparations are discussed below.

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.

A. Testing for COVID-19

It is important to remove barriers to testing for COVID-19. Carriers are therefore reminded that laboratory tests are an essential health benefit ("EHB") that must be covered under individual and small group comprehensive health insurance policies and contracts, and that annual and lifetime dollar limits with respect to essential health benefits are prohibited (*see* 18 *Del.C.* §§3368 and 3571I).

B. Telemedicine and Telehealth

COVID-19 is a communicable disease, and therefore, some insureds may choose to seek medical advice through telehealth services instead of in-person health care services. Telehealth and telemedicine are defined at 18 *Del.C.* §§3370 and 3571R, which also prohibit carriers from excluding a service for coverage solely because the service is provided through telemedicine services.

Accordingly, carriers are directed to ensure that, as applicable, their telehealth and telemedicine programs with participating providers are robust and will be able to meet any increased demand. Services may be provided through a variety of platforms, including telephones, remote patient monitoring devices, and other electronic means such as web cameras and mobile facetime.

C. Network Adequacy and Access to Out-of-Network Services

Carriers are directed to verify that their provider networks are adequate to handle a potential increase in the need for health care services if any COVID-19 cases are diagnosed in Delaware.

Carriers are also reminded that the Delaware Insurance Code at 18 *Del. C.* §§3348 and 3564 provides that if a carrier does not have a health care provider in its network with the appropriate training and experience to meet the particular health care needs of an insured, the carrier must provide access to an out-of-network provider at the in-network cost-sharing reimbursement level.

D. Timely Utilization Review

Timely decision making is essential to responding appropriately to COVID-19, and it is particularly important with respect to utilization review. Carriers 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, appeals after claim denial must be timely addressed within the timeframes set forth 18 *Del.C.* §6416.

Carriers should not use pre-authorization requirements as a barrier to access necessary treatment for COVID-19 and should be prepared to expedite utilization review and appeal processes for services related to COVID-19 when medically appropriate. *See* Pre-Authorization

Transparency requirements set forth in 18 *Del.C.* Chapter 33, Subchapter II and Chapter 35, Subchapter V.

E. Immunizations

A vaccine against COVID-19 is reportedly in development. Carriers are reminded that 18 *Del.C.* §§3363 and 3558 require carriers to cover certain immunizations for children and adults.

F. Prescription Drugs

Carriers are reminded that prescription drugs are an EHB, and therefore must be covered under individual and small group comprehensive health insurance policies and contracts. Additionally, 18 *Del.C.* §§3350B and 3566A set certain limitations on co-payment and co-insurance for prescription drugs, and carriers are required to abide by these limitations.

An expedited formulary exception may be requested if the insured is suffering from a health condition that may seriously jeopardize the insured's health, life, or ability to regain maximum function or if the insured is undergoing a current course of treatment using a non-formulary prescription drug. Additionally, a pharmacy benefit manager is prohibited from requiring prior authorization for coverage of a 72-hour supply of medication that is for a noncontrolled substance in an emergency. 18 *Del.C.* §3336A.

Additionally, access to health care services and supplies will become a concern if consumers are required to self-isolate in their homes with little notice without the ability to refill their prescription drugs or other necessary medical supplies. The Department expects insurers to provide for early refills or replacements of lost or damaged medications and expects this flexibility to continue when the potential for quarantine is high. It is expected that insurers will allow affected consumers to obtain emergency supplies or refills without applying additional authorization requirements.

In addition, consumers must be able to access their necessary prescriptions from a local retail pharmacy (*see* 18 *Del.C.* §7303), even if their prescription supply is normally provided by mail order, without concern of a penalty. Insurers may require that prescriptions containing opioids be obtained using the standard process.

G. Inpatient Hospital, Emergency and Ambulatory Patient Services

Carriers are reminded that hospitalization, ambulatory patient, and emergency services are categories of EHBs that individual and small group market carriers are generally required to include in their benefit packages. *See* 18 *Del.C.* Chapters 33 and 35.

H. Surprise Medical Bills

Carriers are reminded that the Delaware Patient Bill of Rights contains prohibitions against balance billing, starting with the definition of balance billing in Section 102 and going into prohibitions for balance billing in Chapters 33 and 35. Balance billing is defined in the Insurance Code at 18 *Del.C.* §102 as "a health-care provider's demand that a patient pay a greater amount

for a given service than the amount the individual's insurer, managed care organization or health service corporation has paid or will pay for the service."

Carriers should review and ensure compliance with Title 18 Sections 3348 and 3564 concerning referrals from an in-network provider to an out-of-network provider, Sections 3349 and 3565 concerning emergency care, and Sections 3370A and 3571S concerning non-network providers providing in-patient facility-based care.

III. What else can insurers do?

The Department applauds carriers who have already pledged to help meet the challenges posed by the Coronavirus strain COVID-19 by taking the following measures, and encourages all carriers to do the same:

- Ensure that out-of-pocket costs are not a barrier to people seeking testing for, and treatment of, COVID-19, **by covering diagnostic testing and waiving patient cost sharing** (deductibles, co-pays and coinsurance), including for in-person and telemedicine visits;

- Increase member communications as needed on such topics as when to seek medical care and the availability of options such as telemedicine and nurse lines that can provide quick access to care and limit exposure to new infections in waiting rooms.

- Provide access to accurate information and avoiding misinformation which is of critical importance. Therefore, carriers should devote resources to informing insureds of available benefits, quickly respond to insured inquiries, and consider revisions needed to streamline responses and benefits for insureds. Carriers should also make all necessary and useful information available on their websites and staff their nurse-help lines accordingly.

- As the COVID-19 situation continues to evolve, review and update contingency plans to ensure that those plans are up to date and add resources to answer calls, staff nurse lines or member chat services, or provide similar customer assistance.

IV. Conclusion

Carriers must be prepared to address COVID-19 cases in Delaware. In order to protect the public health, carriers should remove barriers to testing and treatment for COVID-19. Insureds must have access to all medically necessary covered health care services, and carriers must ensure that their provider networks are able to handle a potential increase in demand for health care services. Carriers must also cover out-of-network services if there is not an in-network provider who can meet the health care needs of an insured. In addition, since the COVID-19 situation continues to evolve, carriers should continually assess their readiness and be prepared to make any necessary adjustments.

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.

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