BEFORE THE NEW MEXICO SUPERINTENDENT OF INSURANCE

IN THE MATTER OF THE ADOPTION OF AN EMERGENCY AMENDMENT TO 13.10.13 NMAC, SECTION 12	))))	**Docket No. 20-00016-RULE-LH**

FILED
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NM OFFICE OF SUPERINTENDENT OF INSURANCE

ORDER ADOPTING AN EMERGENCY AMENDMENT TO 13.10.13 NMAC, SECTION 12

THIS MATTER having come before the New Mexico Superintendent of Insurance ("the Superintendent") upon the direction of the Honorable Michelle Lujan Grisham, Governor of the State of New Mexico, in Executive Order 2020-004, to promulgate emergency rules maximizing the available insurance coverage for New Mexicans suffering from COVID-19, pneumonia, or influenza, while simultaneously ensuring that medical costs do not create a barrier to testing and treatment;

THE SUPERINTENDENT FINDS AND CONCLUDES:

1. The Superintendent has jurisdiction over this matter pursuant to the New Mexico Insurance Code, NMSA 1978, Sections 59A-1-1 et seq., the New Mexico Patient Protection Act, Section 59A-57-4(B) NMSA 1978 (1998), and the New Mexico Surprise Billing Protection Act, Sections 59A-57A-1 through -13 NMSA 1978 (2019);

2. The Governor of the State of New Mexico, the Honorable Michelle Lujan Grisham, has declared in Executive Order 2020-004, issued March 11, 2020, a public health emergency as the result of positive cases of COVID-19 in New Mexico;

3. Similarly situated states which have declared states of emergency have requested or ordered health care insurers to waive cost sharing (including copayments, deductibles, co-insurance, or similar charges) for health care services provided to patients who may need testing or treatment for COVID-19;

4. While cost sharing requirements are intended to discourage policyholders from unnecessarily using health care resources, those same cost sharing requirements may have the unintended consequence of discouraging policyholders from seeking testing or treatment when necessary during this public health emergency, thus endangering not only themselves but others with whom they may come into contact;

5. The symptoms of COVID-19 are similar to the symptoms of influenza, and COVID-19 can lead to pneumonia, such that a patient may not know whether he or she has COVID-19, pneumonia, or influenza;

6. Section 14-4-5.6(A)(1) NMSA 1978 (2017) permits an agency to promulgate an emergency rule if the agency finds that the time required to complete the rulemaking procedures would cause an imminent peril to the public health, safety or welfare;

7. Section 12-8-4(B) NMSA 1978 (1969) permits the Superintendent to promulgate emergency rules if the Superintendent finds that the immediate adoption of rules is necessary for the preservation of the public peace, health, safety or general welfare, or if the Superintendent for good cause finds that observance of the requirements of notice and public hearing would be contrary to the public interest, and the Superintendent may dispense with the requirements of notice and public hearing and adopt the rules as an emergency;

8. The immediate adoption of an emergency rule declaring presumptively unreasonable and prohibiting any cost sharing requirement for the provision of health care services for COVID-19, pneumonia, or influenza is necessary for the preservation of the public health, safety, and welfare because until the rule is adopted, the health, safety, and welfare of the people of New Mexico is impaired by the barriers to health care services for COVID-19, pneumonia, or influenza created by cost sharing requirements;

9. The Superintendent finds good cause that observance of the requirements of notice and public hearing before the emergency adoption of rules would be contrary to the public health, safety, welfare, and public interest because people who believe they may have COVID-19, pneumonia, or influenza may be discouraged from seeking health care services by cost sharing requirements;

10. The likelihood of future health emergencies counsels in favor of creating a rule of general application, not just for COVID-19, pneumonia, or influenza, to avoid the need for future emergency rulemaking;

11. For these reasons, the Superintendent is filing this date an emergency rule, effective immediately, to amend 13.10.13.12 NMAC to declare presumptively unreasonable and prohibit any cost sharing requirement for the provision of health care services for COVID-19, pneumonia,

influenza, or any disease or condition which is the cause of, or the subject of, a public health emergency; and

12. This emergency rule will remain in effect for more than sixty days from this date but no longer than 180 days, and the Superintendent will issue a Notice of Proposed Rulemaking for the permanent adoption of an amendment to 13.10.13.12 NMAC to declare presumptively unreasonable and prohibit any cost sharing requirement for the provision of health care services for COVID-19, pneumonia, influenza, or any disease or condition which is the cause of, or the subject of, a public health emergency; and

IT IS THEREFORE ORDERED

A. That an emergency amendment to 13.10.13.12 NMAC, in the form attached hereto, is effective immediately, to declare presumptively unreasonable and prohibit any cost sharing requirement for the provision of health care services for COVID-19, pneumonia, influenza, or any disease or condition which is the cause of, or the subject of, a public health emergency.

B. Copies of this order shall be served electronically upon all persons listed on the attached Certificate of Service.

C. Staff Counsel shall upload the order on the OSI Newsletter and ensure the order is sent out as a large volume correspondence to all Health Insurers licensed in New Mexico on the State Based System; and

IT IS FURTHER ORDERED that a permanent amendment to 13.10.13.12 NMAC to declare presumptively unreasonable and prohibit any cost sharing requirement for the provision of health care services for COVID-19, pneumonia, influenza, or any disease or condition which is the cause of, or the subject of, a public health emergency will be the subject of a Notice of Proposed Rulemaking.

DONE AND ORDERED under the seal of the New Mexico Office of Superintendent of Insurance at Santa Fe, New Mexico, this 12th day of March, 2020.

HON. RUSSELL TOAL
Superintendent of Insurance

CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of the foregoing order was emailed to the following individuals, as indicated below, this 12th day of March, 2020.

Bryan Brock, General Counsel
Office of Superintendent of Insurance
P.O. Box 1689, Santa Fe, NM 87504-1689
bryan.brock@state.nm.us

Margaret Caffey-Moquin, Chief Staff Counsel
Office of Superintendent of Insurance
P.O. Box 1689, Santa Fe, NM 87504-1689
margaret.moquin@state.nm.us

Margaret "Kika" Pena, Director Life and Health
Office of Superintendent of Insurance
P.O. Box 1689, Santa Fe, NM 87504-1689
margaret.pena@state.nm.us

Melissa Y. Gutierrez

MELISSA Y. GUTIERREZ, Law Clerk
Office of General Counsel
Office of Superintendent of Insurance

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This is an emergency amendment to 13.10.13 NMAC, Section 12, effective 3/12/2020.

13.10.13.12 [~~COPAYMENTS~~] COST SHARING:

A. All [~~copayments~~] cost sharing (including copayments, deductibles, co-insurance, or similar charges) required of covered persons by the health care insurer or managed health care plan for the provision of health care services shall be reasonable and shall include any applicable state and federal taxes.

B. Any cost sharing requirement for the provision of testing and delivery of health care services for COVID-19, pneumonia, influenza, or any disease or condition which is the cause of, or subject of, a declared public health emergency is presumptively unreasonable and is prohibited. For purpose of this rule, a public health emergency exists when declared by the state or federal government, or by order of the superintendent.

[~~B~~] C. [~~Copayment~~] Cost sharing requirements, including any variations in contribution requirements based on the type of health care service rendered or provider used, shall be disclosed to covered persons in MHCP contracts, enrollment materials, and in the evidence of coverage.

[~~C~~] D. No female covered person shall be assessed a higher [~~copayment~~] cost sharing requirement, over and above the [~~copayment~~] cost sharing required of all covered persons to be seen by a primary care physician, for choosing a women's health care provider as her primary care physician

E. Health care services for any disease or condition for which cost sharing is prohibited, under Paragraph B of this section shall be subject to the Surprise Billing Protection Act, Section 59A-57A-1 through 13, NMSA 1978.

[13.10.13.12 NMAC - Rp, 13.10.13.27 NMAC, 09/01/2009; A/E, 3/12/2020]