State of Rhode Island and Providence Plantations

Gina M. Raimondo
Governor

SECRETARY OF STATE
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EXECUTIVE ORDER

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April 27, 2020

TWENTY-SIXTH SUPPLEMENTAL EMERGENCY DECLARATION – PROMOTING BETTER COORDINATION OF HEALTH CARE COVERAGE

WHEREAS, on March 9, 2020, I declared a state of emergency due to the dangers to health and life posed by the outbreak of COVID-19 and that declaration has been extended until at least May 8, 2020;

WHEREAS, pursuant to Chapter 27-18.9 of the Rhode Island General Laws, the Benefit Determination and Utilization Review Act ("BD/UR Act") aims at fostering greater coordination between health care providers, patients, health care entities, health benefit plans and utilization-review entities to ensure public health well-being;

WHEREAS, pursuant to Chapter 27-18.8 of the Rhode Island General Laws, the Health Care Accessibility and Quality Assurance Act sets forth statutory objectives and requirements for health care entities and their network plans to ensure adequate, available, accessible, timely and quality personnel and facilities for the provision of necessary health care services for the State's patients and for public health well-being;

WHEREAS, the COVID-19 public health emergency is placing unprecedented demands on health care providers for critical services and on health care entities for essential coverage;

WHEREAS, on March 22, 2020, I ordered all gatherings to be no more than 10 people and all business service personnel who could work from home be required to do so or be limited to minimal personnel on business premises for continuing critical operations;

WHEREAS, on March 28, 2020, in response to continued increases in cases of COVID-19 in the State, I ordered that the number of people permitted at any gathering in a public or private space be reduced to no more than 5 people;

WHEREAS, the COVID-19 public health emergency has led to dramatic changes in staffing by health care providers, in the manner in which many health care services are delivered, and in reimbursement patterns relied upon by provider practices;

WHEREAS, all such operational changes have unexpectedly strained the health care network while health care providers must at the same time continue to comply with applicable administrative requirements (such as notifications, referrals, prior authorizations, credentialing and re-credentialing);

WHEREAS, the existing statutory and regulatory frameworks on benefit determination and network plans do not contemplate drastic increase in demands for health care delivery and corresponding insurance reimbursements, providers' decreased administrative bandwidth, changes in utilization patterns and anticipated streams of income, the need for alternative methods and sites of care delivery, and the anticipated shortage of available direct care workers and providers, all resulting from the COVID-19 public health emergency;

WHEREAS, as a consequence of these developments, and after consultation with the Rhode Island Health Insurance Commissioner and the Director of the Rhode Island Department of Health, it has become clear that health care entities and health care providers will need further flexibility in order to sustain adequate and responsive networks by better enabling continuing delivery of critical services, by facilitating reimbursements to providers for necessary health care services, and by easing and accelerating patients' access to necessary health care services; and

WHEREAS, Rhode Island General Laws § 30-15-9(e)(1) authorizes the suspension of any regulatory statute prescribing the procedures for conducting state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with this emergency.

NOW THEREFORE, I, GINA M. RAIMONDO, by virtue of the authority vested in me as Governor of the State of Rhode Island and Providence Plantations, pursuant to Article IX of the Rhode Island Constitution and the Rhode Island General Laws, including, but not limited to, Title 30, Chapter 15, do hereby order and direct the following:

Benefit Determination and Utilization Review (BD/UR)

1. The statutory 3-year minimum recertification frequency contained in Rhode Island General Laws § 27-18.9-3(d) and the regulation 2-year recertification frequency contained in 230-RICR-20-30-14.4.B.3 are hereby suspended.

2. Rhode Island General Laws § 27-18.9-3(f), which provides that a review agent certificate shall be issued to applicants who meet the minimum standards set forth in the BD/UR Act and associated regulations, is hereby suspended.

3. The statutory and regulation 30-day advance notice period requirements contained in Rhode Island General Laws § 27-18.9-3(g) and 230-RICR-20-30-14.4(B)(4) are hereby suspended. Review agents may make systemic changes to their policies and/or procedures to control, contain and/or address the COVID-19 pandemic. Systemic changes shall only be implemented in accordance with guidance issued by the Office of the Health Insurance Commissioner (OHIC) and/or any OHIC emergency resolutions.

4. The statutory and regulation timelines and notification requirements contained in Rhode Island General Laws § 27-18.9-6(a)-(b), 230-RICR-20-30-14.6.A.2 and 230-RICR-20-30-14.6.B.4(b)-(d) are hereby suspended. They shall be replaced by reasonable timelines and notification processes set forth by the *Benefit Determination Review – Waiver Guide* issued by OHIC on March 20, 2020 or by any OHIC emergency regulations. The suspension of laws in this paragraph does not apply to urgent and emergent health care service claims.

5. Rhode Island General Laws § 27-18.9-11(a) and 230-RICR-20-30-14.10.A, which limit OHIC's authority to waive requirements of the BD/UR Act or of the regulations promulgated pursuant thereto, are hereby suspended.

6. 230-RICR-20-30-14.2.E is hereby suspended. OHIC may place reasonable

limitations on review agents' utilization review practices, including, but not limited to, prior authorization requirements.

Health Care Accessibility and Quality Assurance/Network Plans

7. The requirement of OHIC that act on completed network plan applications within 90 days contained in Rhode Island General Laws § 27-18.8-3(a)(2) is hereby suspended.

8. The statutory 3-year minimum recertification frequency contained in Rhode Island General Laws § 27-18.8-3(a)(3) and the regulation 2-year recertification frequency contained in 230-RICR 20-30-9.4.A.2 are hereby suspended.

9. The statutory and regulatory 30-day advance notice period requirements contained in Rhode Island General Laws § 27-18.8-3(b)(3) and 230-RICR-20-30-9.4.A.3 are hereby suspended. Health care entities may make substantial systemic changes to control, contain and/or address the COVID-19 pandemic. Systemic changes shall only be and implemented in accordance with OHIC guidance and/or any emergency regulations.

10. The regulation 30-day maximum for complaint resolution as contained in 230-RICR-20-30-9.6.A.2 is hereby suspended to the extent that the health care entity complies with OHIC guidance and/or any emergency regulations.

11. 230-RICR-20-30-9.6.C.4 and the 30-day notice period requirement in 230-RICR-20-30-9.6.C.3 are suspended for non-adverse formulary changes (i.e., addition of a medication to the formulary, removal of a medication from the formulary when the medication has been determined by a state or federal agency to be harmful to beneficiaries, downward medication tiering changes and/or decreased cost sharing), provided that the health care entity complies with OHIC guidance on the removal of non-adverse formulary changes.

12. The minimum monthly frequency and daily provider directory updates requirements contained in 230-RICR-20-30-9.7.D.4 are hereby suspended, provided that the health care entity complies with applicable OHIC guidance.

13. The professional provider credentialing and recredentialing requirements contained in Rhode Island General Laws §§ 27-18.8-3(d)(2), (5), (7) and (10), 27-18-83, 27-19-74, 27-20-70, 27-41-87, 230-RICR-20-30-9.8.A-D and 230-

RICR-20-30-9.9.B-C are hereby suspended to the extent they conflict with a health care entity's ability to seek expedited approval from OHIC of temporary changes to its professional provider credentialing and re-credentialing policies when (1) the temporary changes are reasonable, (2) the temporary changes relate to the health care entity's need to respond to the COVID-19 pandemic's impact on provider (inclusive of facility provider) limitations, expedite credentialing in response to delivery system needs, (3) the temporary changes relate to health care entity contracting requirements for provisional and/or conditional and/or temporary provider contracting maintain the protections of Part 9.9.A.1.a-c, and (4) the temporary changes and procedure undertaken are consistent with any applicable OHIC guidance.

14. Rhode Island General Laws § 27-18.8-3(d)(6) and 230-RICR-20-30-9.9.G are hereby suspended to the extent that temporary and/or provisional and/or conditional physician or other provider contracts entered into during and because of the COVID-19 state of emergency are concerned. Such contracts may provide as a cause for termination that the health care entity or network plan no longer needs additional providers to address the COVID-19 state of emergency.

15. OHIC is hereby directed to issue guidance and/or emergency regulations on the implementation of this Order.

This Order shall take effect immediately and remain in full force and effect until May 27, 2020, unless renewed, modified or terminated by subsequent Executive Order.

So Ordered,

Gina M. Raimondo