

Applicability of Notice Regarding Coronavirus (COVID-19) Insurance Coverage (Notice 2020-03) to Issuers and Producers of Limited Benefit Policies; Notice 2020-09

In the March 21, 2020, Pennsylvania Bulletin (at 50 Pa.B. 1788), the Pennsylvania Insurance Department (“Department”), in collaboration with the Pennsylvania Department of Health, issued a Notice (Notice 2020-03) to assist individuals and entities regulated by the Department addressing health insurance related services that may arise in the context of the ongoing coronavirus (COVID-19) pandemic. Notice 2020-03 was directed to “[a]ll health insurers, other insurance industry representatives and other interested parties.”

The question has been raised as to what insurers are considered “health insurers” for purposes of Notice 2020-03. Notice 2020-03 was intended to include all insurers with accident and health authority that may issue policies in Pennsylvania providing coverage of health care services. This includes insurers that may offer comprehensive major medical policies, but also includes insurers that may offer limited or excepted benefit policies, including but not limited to short-term limited duration or specified disease policies.

Thus, if an insurer issues or may issue any policy in Pennsylvania under which a health care service may be covered, that insurer is expected to be responsive to the content of Notice 2020-03, and is asked, as stated in paragraph #9 of Notice 2020-03, to provide information on the steps it is taking in response to that Notice.

Additionally, in the context of the public’s heightened stress and potential vulnerability during the ongoing public health crisis, the Department reminds insurers and producers that may sell, solicit, or negotiate limited or excepted benefit policies, including but not limited to short-term limited duration or specified disease policies, of their obligations to adhere to the requirements of the Unfair Insurance

Practices Act (UIPA) (40 P.S. § 1171.5 et seq.). Specifically, the Department expects that insurers and producers will clearly and explicitly present the coverages – and the limitations of the coverages – of the policies they are selling, soliciting, or negotiating, to avoid misrepresentations or misleading statements to consumers. These obligations will be manifest most obviously in communications to consumers prior to and at the point of sale by insurers, producers, or affiliates, where those communications may address, for example:

- a. That the policy is not being made available pursuant to a Special Enrollment Period or other special enrollment opportunity.
- b. The scope of coverage of the policy, such as:
 - i. That it is not comprehensive major medical coverage under the Affordable Care Act, and is not eligible for premium tax credits or cost-sharing reductions;
 - ii. What coverage it provides, if any, for COVID-19 testing and treatment and what exclusions or limitations may be imposed on that coverage;
 - iii. If applicable, what cost-sharing or medical management criteria for COVID-19 testing and treatment may be required of the consumer;
- c. That the policy is not Medical Assistance (Medicaid) or Children’s Health Insurance Program (CHIP) coverage.
- d. The impact of COVID-19 testing or treatment on the renewability of the coverage.

Insurers should also consider what guidance they provide to producers marketing and offering the policy form in the Commonwealth to assure that the UIPA standards are satisfied when their products are sold, solicited, or negotiated.

In sum, in order to protect the public health and to assure full and complete information is available regarding whatever commercial health care coverage an individual may have, the Department asks for the cooperation of all insurers and producers that may sell, solicit, or negotiate limited or excepted benefit policies, including but not limited to short-term limited duration or specified disease policies, to identify and remove barriers to testing and treatment for COVID-19, and to assure that consumers with these policies are accurately informed of the limits of their policies both prior to and after purchase. The Department extends its appreciation to health insurers and producers who have already been working with the Commonwealth to address this public health challenge. Since the COVID-19 situation continues to evolve, health insurers should continually assess their readiness and be prepared to make any necessary adjustments.

Any questions regarding this Bulletin may be addressed to the Office of the Commissioner, Pennsylvania Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, or ra-in-commissioner@pa.gov.

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