

The COVID-19 Crisis has engaged Congress, the United States Department of Health and Human Services (HHS) and all state insurance regulators in an unprecedented manner.

Over the past three weeks, numerous bulletins, directives and data calls have been issued to insurance companies. On Friday, March 20, the National Association of Insurance Commissioners (NAIC) hosted a teleconference regarding COVID-19 updates that was attended by more than 2,500 listeners.

The following summary highlights these unprecedented regulatory actions, including the NAIC update, health insurance coverage issues, state data calls, state insurance department operational changes, shelter in place orders and business interruption coverage discussions.

### **NAIC COVID-19 Teleconference**

On March 20, 2020, the NAIC held a multidisciplinary session on COVID-19. Speakers included a public health expert from the Center for Disease Control, actuarial experts on pandemic modeling, health insurance market experts, industry representatives and regulatory experts on health insurance and financial regulation.

- On health insurance, speakers discussed H.B. 6021 (see below), noting that CMS will likely open up the federal health insurance marketplace for special enrollments, and said no one is certain yet of the financial impact of COVID-19 on insurance company reserves or 2021 rates.
- On financial regulation, Virginia Insurance Commissioner Scott White said that COVID-19 would not have an immediate impact on insurance companies if “the curve flattens.” If the curve does not flatten, he noted that some insurance companies could experience financial stress. He noted that regulators were looking at actuarial models to evaluate the situation.
- Several industry representatives spoke regarding specific coverages, the status of each line and how regulators could assist with the crisis. These speakers noted that most commercial liability policies that included business interruption coverage exclude viral outbreaks, so COVID-19 claims should not stress companies if claims were not forced outside of existing reserves. These speakers asked regulators to work together for more uniform data calls and to consider that all companies were working in remote environments, so sudden deadlines were problematic. Pennsylvania Commissioner Jessica Altman summarized the state responses to date, highlighting various methodologies among the states.

### **Congressional Action**

**H.R. 6201 - The Families First Coronavirus Response Act Enacted to Extend COVID-19 Coverage to Self-funded Programs, All Group Plans, Medicaid/CHIP Plans and the Uninsured**

On March 18, 2020, Congress passed the [Families First Coronavirus Response Act \(H.R. 6201\)](#), the second relief package for the coronavirus pandemic. H.R. 6201 extends coronavirus coverage for free testing to all group health insurance plans, including self-funded plans and Medicaid beneficiaries. Existing federal rules adopted by the Centers for Medicare & Medicaid Services (CMS) under the Affordable Care Act (ACA) already mandated coverage of COVID-19 testing and treatment by insurance companies writing individual and small group coverage. See our prior summary of these mandates [here](#). H.R. 6201 now imposes coverage of COVID-19 testing and treatment by self-funded programs, large group plans and all private and public payers. H.R. 6201 also mandates that healthcare providers provide COVID-19 testing and treatment to the uninsured.<sup>1</sup>

H.R. 6201 mandates health insurance company individual and group coverage with zero cost sharing for COVID-19 testing and treatment, including deductibles, copayments and coinsurance. Cost-sharing is prohibited for testing and treatment associated with any provider visit, whether in-person, telehealth-enabled, at an urgent care center or in an emergency room visit associated with COVID-19. H.R. 6201 also waives prior authorization and other “medical management requirements,” such as utilization review.

Medicaid and Children’s Health Insurance Program (CHIP) are also required to cover all testing with a zero cost share and the federal government will provide funds to do so. The federal government is promising approximately \$1.3 billion in federal healthcare spending for testing and about \$50 billion for other Medicaid costs. House Speaker Nancy Pelosi said in a statement when H.R. 6201 was passed in the House that the bill “ensur[es] free coronavirus testing for everyone who needs a test, including the uninsured. Our legislation also increases funding for Medicaid to support local, state, tribal and territorial health systems, so that they have the resources needed to combat this public health emergency.”

## State Actions

### State Insurance Department Bulletins Address COVID-19 Testing and Treatment

Many state insurance departments issued emergency bulletins or provided notices to health insurers prohibiting cost-sharing for COVID-19 testing and treatment, encouraging the use of telemedicine, limiting pre-authorizations for testing and treatment associated with COVID-19, permitting early prescription refills for 30 to 90 days of additional medication and keeping policyholders informed. States have worked to ensure that cost-sharing is limited and, as described above, H.R. 6201 supplements those state directives. Many states, including Alaska<sup>2</sup>, Maryland<sup>3</sup>, Nevada<sup>4</sup>, Ohio<sup>5</sup> and Washington<sup>6</sup>, mandate these coverage changes occur immediately. Other states, such as Mississippi<sup>7</sup>, North Dakota<sup>8</sup> and Texas<sup>9</sup>, request that health insurance companies adopt these changes. A few states, including California<sup>10</sup>, Missouri<sup>11</sup> and New Mexico<sup>12</sup>, mandated the revisions and require regular reporting on delivery of these benefits. Health insurance companies are working diligently to meet these requirements on a state-by-state basis.

### State Insurance Department Bulletins on Premium Payment and Nonrenewal Delays Impact All Lines of Insurance

Thus far, seven states – Alaska<sup>13</sup>, California<sup>14</sup>, Georgia<sup>15</sup>, Iowa<sup>16</sup>, Ohio<sup>17</sup>, Pennsylvania<sup>18</sup> and West Virginia<sup>19</sup> – have adopted bulletins that require or suggest that insurance companies allow policyholders to delay premium payments for the next 60 days. Four states – Alaska, Georgia, Iowa and Ohio – have mandated that insurance companies allow policyholders additional time for premium payments and delaying any action to non-renew coverage. Alaska and Georgia have mandated such delays, if needed by policyholders, for all lines of insurance. Iowa and Ohio have mandated delays, if needed by policyholders, for health insurance lines. Ohio requires health insurance companies to allow employers to keep formerly eligible employees on their plans where the employee hours have been reduced due to the state's COVID-19 prevention efforts. Iowa requests that companies consider waiving premium. West Virginia has issued a bulletin prohibiting cancellations and non-renewals "stemming from COVID-19." California and Pennsylvania each suggest that insurance companies writing all lines of insurance provide policyholders with an additional 60 days to pay premium and delay any action to non-renew these policies as well.

### Requirements for All Licensed Insurance Companies to Report Continuity of Operations Plans to Insurance Regulators

Several states have issued bulletins and notices that require insurance companies to provide the state departments of insurance with information regarding the company's continuity of operations plan (COOP) and if the company's COOP has been activated. For example, the Florida Office of Insurance Regulation (OIR) issued an Informational Memorandum to insurance companies requesting that all companies operating in Florida notify the OIR if the company's COOP has been activated.<sup>20</sup> Maine and Iowa remind insurance companies that they must have contingency plans in place.<sup>21</sup> New York<sup>22</sup> and West Virginia<sup>23</sup> have both issued detailed requirements for all insurance companies operating in their respective states to provide them with the company's plan of preparedness. Both states require these filings to be completed by April 10, 2020.

### State Insurance Department Data Calls

Several states have issued data calls to health and property casualty insurance companies regarding how coverage is being provided for losses associated with COVID-19.

- **Health Insurance Data Calls**

- **California.** On March 18, 2020, the California Department of Insurance issued a Notice<sup>24</sup> requesting a detailed report on how health insurance companies were providing coverage and support to policyholders regarding access to healthcare. As part of these reports, health insurance companies are required to inform the California Department of their contingency plan for continuing service with a shelter in place order in effect.
- **New Mexico.** New Mexico has made some of the most stringent demands of health insurance companies, requiring copies of notices sent to policyholders and providers, verifying billing system amendments to accommodate COVID-19 codes, providing updated staff training manuals, reporting on COVID-19 claims and verifying that the insurer is acting in conformance with a March 5, 2020 America's Health Insurance Plans (AHIP) Board of Director's Resolution on cost-sharing (now superseded by H.B. 6201).<sup>25</sup> Insurers are to report data to the Department beginning March 23, 2020 and on a continuing weekly basis.
- **Georgia and North Carolina.** Georgia<sup>26</sup> and North Carolina<sup>27</sup> issued Bulletins regarding COVID-19 testing and treatment, including waiver of cost sharing, network adequacy and providing policyholders with information, and requested a report from health insurers regarding their efforts to comply.

- **Property and Casualty Data Call – New York 308 Letter**

On March 10, 2020, the New York Department of Financial Services (DFS) issued a 308 Letter to all property and casualty insurance companies requesting certain data about commercial property exposures and details about business interruption coverage. The request focused on business owner policies, commercial multi-peril policies and specialized multi-peril policies. DFS noted that, given COVID-19-related business losses, insurers' obligations to policyholders is "a heightened priority." In addition to the

data request, DFS instructed insurers to provide policyholder notices with detailed explanations of coverages, such as business interruption, contingent business interruption, and coverage for civil authority actions and supply chain coverage. The notices were to include explanations of coverage limitations, such as covered perils and physical damage or loss requirements, to explain whether contamination related to a pandemic may constitute physical damage or loss, and to describe whether a civil authority that prohibits or limits policyholder access to property in connection with COVID-19 is sufficient for civil authority coverage. Responses were due March 18, 2020.

## Insurance Department Notifications to Insurance Companies and Agents Regarding Regulatory Functions, Agent Licensing and Operations

As state governments send employees to work remotely in response to social distancing requirements, some states have issued bulletins regarding an interruption of their activities and services. Four states – Alaska<sup>28</sup>, District of Columbia<sup>29</sup>, Kansas<sup>30</sup> and West Virginia<sup>31</sup> – have issued bulletins addressing filings with their departments of insurance. Alaska's bulletin details time extensions for prior approval and "file and use" filings. Kansas issued a bulletin suspending all "deemers" and specified that, if a rate or form filings was pending, it was not approved. The District of Columbia took a different tack, noting that all filing deadlines were waived during the emergency period. West Virginia noted that all claims payment deadlines were suspended and encouraged insurance companies to pay claims expeditiously.

Agent licensing, continuing education and license renewals were addressed by five states. The District of Columbia and Kentucky both extended license expirations, by 45 and 60 days respectively. Kentucky noted that it would only have one location for administration of licensing tests, while Georgia closed all of its testing sites. Alaska and Hawaii urged agents to renew licenses early and to use the NIPR system to do so.

## Shelter in Place Orders and Insurance Company Operations

To date, 11 state governors or public health officials have issued "stay at home" or "shelter in place" orders, with several large metropolitan areas joining these ranks as well. The following states have issued such orders: California, Connecticut, Delaware, Illinois, Kentucky, Louisiana, New Jersey, New York, Ohio, Oregon and Pennsylvania. The following metropolitan areas have issued similar orders: Athens/Clarke County, Georgia, Kansas City, New Orleans and St. Louis. All of these orders exempt from them financial service companies or, specifically, insurance companies, as "essential businesses." As a result, staff can remain at offices so long as the company practices the mandated social distancing requirements. This means that the company's office can be open to send and receive mail, coordinate business activities for remote colleagues and support daily operations. Only Pennsylvania does not include financial services companies as essential businesses.

## New Jersey and Business Interruption Coverage Mandate Attempt

In recent days, the New Jersey legislature introduced legislation (A. 3844) to force insurers to pay business interruption claims for insureds with less than 100 employees. If enacted, the law would declare the coronavirus 2019 pandemic to be a "covered peril" under "loss of use and occupancy and business interruption" insurance, and would require insurers to indemnify such insureds for loss of business or business interruption during the state of emergency recently declared by the New Jersey governor. However, the bill does not address the standard provision in business interruption forms that requires physical damage or loss to covered property as a condition precedent to coverage, and it is unclear whether the bill itself would constitute an unconstitutional infringement of the right to contract.

The bill provides for a special purpose apportionment to be paid by property and casualty insurers. Insurers that pay benefits pursuant to the legislation would be able to seek reimbursement. The industry has objected to the bill and it is not certain what the legislature may enact it into law. Notably, the benefit of this legislation, if enacted, would accrue only to certain smaller business. Larger businesses with the same policy forms would not benefit from the proposed legislation.

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## Endnotes

- 1 Coverage under Medicare Advantage and Part D plans was implicated by the emergency declaration requirement under 42 CFR 422.100(m).
- 2 Alaska Dept. of Ins. Bulletin B 20-04.
- 3 MD Dept. of Ins. Bulletin 20-05.
- 4 Nev. Dept. of Ins. Emergency NAC 687B s 1.
- 5 OH Dept. of Ins. Bulletin 2020-02.
- 6 WA Dept. of Ins. Emergency Order 20-01.
- 7 MS Dept. of Ins. Bulletin 2020-1.
- 8 ND Dept. of Ins. Bulletin 2020-1.
- 9 TX Dept. of Ins. Bulletin B-0005-20.
- 10 CA Dept. of Ins. Notice March 18, 2020.
- 11 Missouri Dept. of Ins. Bulletin 20-03.
- 12 NM Dept. of Ins. Bulletin 2020-005.
- 13 Alaska Dept. of Ins. Bulletin B 20-09.
- 14 California Dept. of Ins. Notice Dated March 18, 2020.
- 15 Georgia Dept. of Ins. Directive 20-Ex-5.
- 16 Iowa Div. of Ins. Bulletin 20-04.
- 17 Ohio Dept. of Ins. Bulletin 2020-03.
- 18 PA Dept. of Ins. Notice 2020-04.
- 19 WV Dept. of Ins. Emergency Order 20-EO-02.
- 20 FL OIR Informational Memorandum 20-03M.
- 21 IA Insurance Div. Bulletin 20-03; ME Dept. of Ins. Emergency Notice of March 19, 2020.
- 22 NYDFS Circular Letter 2020-5.
- 23 WV Dept. of Ins. Bulletin 2020-04.
- 24 CA. Dept. of Ins. Notice of March 18, 2020.
- 25 New Mexico Dept. of Ins. Data Call (March 12, 2020).
- 26 GA Dept. of Ins. Directive 20-EX-3.
- 27 NC Dept. of Ins. Bulletin No. 20-B-04.
- 28 Alaska. Dept. of Ins. Bulletin 20-06.
- 29 Dist. Of Columbia Bulletin B 719.
- 30 Kansas Dept. of Ins. Bulletin 2020-1.
- 31 WV Dept. of Ins. Emergency Order 20-EO-01.