



COMMONWEALTH OF MASSACHUSETTS
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DIVISION OF INSURANCE

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COMMISSIONER OF INSURANCE

BULLETIN 2020-19

To: All Commercial Insurers, Blue Cross and Blue Shield of Massachusetts, Inc.,
and Health Maintenance Organizations

From: Gary D. Anderson, Commissioner of Insurance

Date: June 8, 2020

Re: Flexibility with Early Intervention Services *Due to the COVID-19 Health Emergency*

The Division of Insurance (“Division”) issues this Bulletin 2020-19 (*Flexibility with Early Intervention Services During the COVID-19 Health Emergency*) to provide information to Commercial Health Insurers, Blue Cross and Blue Shield of Massachusetts, Inc., and Health Maintenance Organizations (“Carriers”) about the Division’s expectations regarding Carrier flexibility in the administration of Early Intervention services.

The Coronavirus Risk

As the Division has noted in other recent bulletins, the public health and societal consequences resulting from the spread of the novel coronavirus have dramatically impacted the Commonwealth. In order to minimize the impacts going forward, it is essential that government and business leaders take all appropriate steps to safeguard the general public and well-being of the Commonwealth’s citizens. The Commonwealth has taken numerous steps to ensure that exposure to the coronavirus is minimized and that appropriate testing and treatment for those afflicted by COVID-19 are available for Massachusetts residents.

Many administrative processes have been interrupted during this time, and it has been a challenge to find appropriate ways to make our systems work. Consistent with other bulletins issued by the Division over the past few months, Bulletin 2020-19 sets forth the Division’s expectation that Massachusetts Carriers shall provide necessary flexibility in their administration of covered benefits in order for certain impacted members to continue to have access to necessary care until the return to more commonplace processes and routines.

Early Intervention

Under Massachusetts statutes – M.G.L. c. 175 § 47C; M.G.L. c. 176A § 8B; M.G.L. c. 176B § 4C; and M.G.L. c. 176G § 4 – insured health benefit plans are to provide Early Intervention benefits that are consistent with the following:

The dependent coverage of any such policy shall also provide coverage for medically necessary early intervention services delivered by certified early intervention specialists, as defined in the early intervention operational standards by the department of public health and in accordance with applicable certification requirements. Such medically necessary services shall be provided by early intervention specialists who are working in early intervention programs certified by the department of public health, as provided in sections 1 and 2 of chapter 111G, for children from birth until their third birthday. Reimbursement of costs for such services shall be part of a basic benefits package offered by the insurer or a third party and shall not require co-payments, coinsurance or deductibles; provided, however, that co-payments, coinsurance or deductibles shall be required if the applicable plan is governed by the Federal Internal Revenue Code and would lose its tax-exempt status as a result of the prohibition on co-payments, coinsurance or deductibles for these services.

Under state special education statutes, for those children who qualify for the noted benefit, Local Education Agencies (“LEA”) are responsible to work with families during the six months prior to the child’s third birthday to evaluate a child and develop an Individualized Educational Program (“IEP”) that will identify the child’s special educational needs and how the LEA will coordinate and fund services to meet the needs identified within the IEP. It is necessary that an IEP is developed for each child so that there is an appropriate transition as the child moves from Early Intervention to Special Education services.

COVID-19’s Impact on Early Intervention

In order to prevent the spread of COVID-19, Governor Baker has issued a number of Emergency Orders to impose preventive measures to reduce exposure to the coronavirus. As part of these orders, all public and private elementary and secondary (K-12) schools in the Commonwealth were required to suspend normal in-person instruction as of the end of the school day on March 16, 2020 and for the remainder of the 2019-2020 school year. Governor Baker also issued an Emergency Order on March 23, 2020 that instructed businesses and organizations that were not identified as Essential Businesses to close until ordered by the Governor. On May 15, 2020, Governor Baker issued guidance to begin to reopen the Massachusetts economy, but he ordered that businesses follow a staged return to normal processes according to timelines identified in the order. In the May 15, 2020 order, it was acknowledged that plans are not yet complete about access to summer programs or school for the 2020-2021 year.

Although some services have been made available to students on a virtual basis since March, in some cases evaluations for special education services have not occurred for children nearing their third birthdays who are receiving Early Intervention services. Without evaluations, children who are currently being served in Early Intervention programs may not have the appropriate transition to Special Education services through an IEP once they reach their third birthdays. Ongoing Early Intervention services are essential to avoid regression that can occur if appropriate care is not available.

Flexibility with Provision of Early Intervention Services

The Division expects Carriers to extend coverage for Early Intervention services provided between June 1, 2020 and October 15, 2020 to those children who turn three between March 15, 2020 and August 31, 2020 and who meet either of the following criteria:

- Have been referred to their LEA to be evaluated for federal IDEA Part B (Special Education) services but have not yet been evaluated to determine eligibility for Part B services due to delays related to the COVID-19 public health emergency; or,
- Have a signed IEP and continued EI services are necessary to support the transition to Early Childhood Special Education (“ECSE”).

Such extension of Early Intervention benefits should continue for children who meet either of the above-noted criteria until the LEA is able to both complete a comprehensive Part B eligibility evaluation and determine that the child has successfully transitioned to ECSE, or until October 15, 2020, whichever occurs sooner.

Please be aware that Carriers are permitted to contact LEAs for recoupment of any amounts expended for Early Intervention costs incurred for children after they have reached their third birthdays if those children have been determined eligible for Early Childhood Special Education services that are reflected in a signed IEP.

Carriers Acting As Administrators

Due to the public health crisis caused by coronavirus, when Carriers are acting as administrators for employment-sponsored non-insured health benefit plans, the Division expects Carriers to encourage plan sponsors to take steps that are consistent with the provisions of Bulletins 2020-19. Plan sponsors should be made aware of how COVID-19 has impacted all Massachusetts residents, and Carriers should do all they can to encourage plan sponsors to take steps to remove barriers to accessing medically necessary Early Intervention services when IEPs have not been developed and implemented due to COVID-19 closure orders.

If you have any questions about this Bulletin, please contact Kevin Beagan, Deputy Commissioner for the Health Care Access Bureau, at (617) 521-7323.