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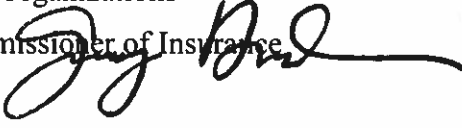
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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

BULLETIN 2023-01

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

From: Gary D. Anderson, Commissioner of Insurance 

Date: January 4, 2023

Re: Abortion and Abortion-Related Care

The Division of Insurance (“Division”) issues this Bulletin 2023-01 to Commercial Health Insurers, Blue Cross and Blue Shield of Massachusetts, Inc., and Health Maintenance Organizations (“Carriers”) to identify the Division’s expectations regarding Carriers’ requirement to provide coverage for abortion and abortion-related care. The Division issues this Bulletin pursuant to Sections 21, 22, 24, 25, 26, 27, 28, 29, 30 and 31 of Chapter 127 of the Acts of 2022, which amend M.G.L. c. 175, §47F; M.G.L. c. 176A, §8H; M.G.L. c. 176B, §4H; and M.G.L. c. 176G, §4I (“Statutes”). The amendments to the Statutes apply to all insured health plans that are delivered, issued, or renewed on or after January 1, 2023.

Abortion and Abortion-Related Care

Under the Statutes, insured health plans that are delivered, issued, or renewed in Massachusetts on or after January 1, 2023 are required to cover all abortion and abortion-related care when provided to persons covered under the insured health plan, including subscribers, spouses, and any covered dependents.

For the purpose of these Statutes, “abortion” is defined under M.G.L. c. 112, § 12K, as “any medical treatment intended to induce the termination of, or to terminate, a clinically diagnosable pregnancy except for the purpose of producing a live birth; provided, however, that “abortion” shall not include providing care related to a miscarriage.” While care related to a pregnancy or miscarriage is not considered within the definition of “abortion,” care for pregnancy and miscarriages are otherwise expected to be covered in all insured health plans under the federal Affordable Care Act and the Statutes.

Further, as referenced in the Statutes, “abortion-related care” includes services defined as “abortion-related services.” Under 130 CMR 484.005, “the following services [are abortion-related services] when they are provided in conjunction with a payable abortion procedure: (1) pre-operative evaluation and examination; (2) pre-operative counseling; (3) laboratory services, including pregnancy testing, blood type, and Rh factor; (4) Rh (D) immune globulin (human); (5) anesthesia (general or local); (6) post-operative care; (7) follow-up; and (8) advice on contraception or referral to family planning services.” The Division considers ultrasounds, pre-abortion evaluation and examination, and post-abortion care provided in conjunction with a covered surgical or medication-based abortion to be “abortion-related care” under this definition.

Although Carriers may require that services be subject to plan network and utilization review procedures, Carriers are not permitted to impose any unreasonable restrictions or delays in access to care, and the benefits shall not be subject to any deductible, coinsurance, copayment, or other cost-sharing requirements, except as described below.

When administering benefits for abortion and abortion-related care, the Division reminds Carriers of the requirement to adhere to those confidentiality provisions that are outlined in Bulletins 2017-02 and 2017-07.

Exemptions

When a Carrier is offering an insured health plan to an employer that is a church or qualified church-controlled organization, as those terms are defined in the Statutes, the insured health plan shall be exempt from covering abortion or abortion-related care for that employer if so requested. When an employer invokes this exemption, the employer is required to provide written notice to prospective enrollees prior to enrollment with the employer’s plan, and such notice shall list the health care methods and services that the employer will not cover for religious reasons. Carriers will also be expected to clearly disclose whenever the insured health plan does not cover abortion services.

When a Carrier is offering an insured health plan that is a High-Deductible Health Plan under the federal Internal Revenue Code that an employer offers with a federally qualified Health Savings Account, the Carrier is not prohibited from applying deductibles, coinsurance, copayments, or other cost-sharing requirements to the covered abortion and abortion-related care if the High-Deductible Health Plan would lose its tax-exempt status as a result of the prohibition on deductibles, coinsurance, or copayments for these services. Carriers are expected to clearly disclose in health plan materials when the insured health plan is a High-Deductible Health Plan that is applying deductibles, coinsurance, copayments, or other cost-sharing requirements to services provided under these Statutes.

Education

Carriers are expected to take necessary and appropriate steps to educate relevant in-network providers of abortion and abortion-related care about the relevant requirements herein so that providers are able to educate patients who are plan members. Carriers are also to prepare clear and concise descriptions of coverage benefits for abortion and abortion-related services, which should be made available to English and non-English speakers and be included in all insured health coverage that is issued or renewed on or after January 1, 2023. Coverage benefits should also be posted clearly on Carrier websites and sent in response to inquiries about coverage. Carriers should ensure that

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member-facing staff are prepared to educate members on access to abortion and abortion-related services and that staff are prepared to refer members to network providers that provide abortion and abortion-related services.

Carriers Acting as Administrators

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 this Bulletin 2023-01.

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