



COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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GARY D. ANDERSON
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Bulletin 2019-01

TO: Insurers Offering Individual Accident and Sickness Policies, Life Insurance Policies and Annuity Contracts in Massachusetts .

FROM: Gary D. Anderson, Commissioner of Insurance

DATE: February 1 , 2019

RE: Information About Certain Prescriptions Used in Underwriting Analyses

The purpose of this Bulletin is to provide guidance to insurance companies (“Carriers”) when going through underwriting and deciding whether to issue individual accident and sickness policies, life insurance policies and annuity contracts, and how Carriers consider information about an applicant’s obtaining (1) certain medications that are not relevant to a potential applicant’s health, and (2) other medications prescribed to prevent certain illnesses or diseases. The Division expects that Carriers will not adversely evaluate any application solely because the applicant may have obtained any such medications.

Prescriptions Not Relevant to the Applicant’s Health

The Commonwealth of Massachusetts, like many other jurisdictions, is pursuing all possible steps to address the opioid use public health crisis that has impacted our state and country, including recent legislation that expands the Commonwealth’s initiatives to prevent, intervene, treat and foster recovery from substance use disorders.¹ As part of the Commonwealth’s commitment to address the opioid epidemic, the Department of Public Health issued a statewide standing order pursuant to Section 32 of Chapter 208 of the Acts of 2018 for the broad distribution of naloxone to any resident of the Commonwealth. Massachusetts law allows naloxone or other medications that rapidly reverse opioid overdose to be dispensed without a prescription to family members, friends, or other persons in a position to assist individuals at risk of experiencing an opioid-related overdose. See M.G.L. c. 94C, §19(d). However, for health insurance billing and cost-sharing purposes, the pharmacy must treat the transaction as the dispensing of a prescription to the person purchasing naloxone. M.G.L. c. 94C, §19B(e). Additional information about the

¹ See Chapter 52 of the Acts of 2016, An Act Relative to Substance Use, Treatment, Education and Prevention (<https://malegislature.gov/Laws/SessionLaws/Acts/2016/Chapter52>) and Chapter 208 of the Acts of 2018, An Act for Prevention and Access to Appropriate Care and Treatment of Addiction (<https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter208>).

Commonwealth's initiatives surrounding substance use disorder may be found at <https://www.mass.gov/opioid-overdose-prevention-information>.

Prescriptions Designed to Prevent Diseases

The Division is aware that there are medications that may be used to both prevent certain illnesses or diseases from impacting an individual and to treat an infected individual. As an example, a combination of emtricitabine and tenofovir not only treats HIV infection, it is a pre-exposure prophylactic to prevent HIV infections. As such, it may be prescribed to persons who have not been infected with HIV. Such prescriptions are like vaccinations, which are intended to address a potential public health problem by reducing the individual's risk of being impacted by a disease or illness that is addressed by the pre-exposure prophylactic. These prescriptions may be written to prevent an illness or disease from occurring or to treat an existing illness or disease.

Use of Prescription Information in Underwriting

The Division understands that in the course of reviewing an application for an individual accident or sickness policy, life insurance policy or annuity contract, Carriers collect and consider information about the applicant's medical history, including information about the applicant's use of prescription medications. Carriers need to be aware that Massachusetts law permits the purchase of naloxone rescue kits by the friends and family of people who use opioids, and persons without substance use disorder may have prescriptions for or purchase naloxone in order to assist others. Carriers also need to be aware that prescriptions for medications such as emtricitabine/tenofovir may be intended to prevent, not treat an existing illness or disease.

The Division is issuing this Bulletin to highlight that these prescriptions are different from other prescriptions written, as the medication may be issued to a named individual for use by a different individual or prescribed to specifically prevent illness or disease.

The Division expects that prior to making an underwriting decision, Carriers will obtain information sufficient to determine if an applicant has obtained a prescription for a medication that is not relevant to the applicant's health or is designed to prevent disease. It would defeat the Commonwealth's important public health efforts if applications for individual accident and sickness insurance policies, life insurance policies and annuity contracts were unfavorably impacted solely because the applicant had obtained naloxone or some other opioid antagonist² to address opioid overdoses of other persons or had a prescription written to prevent illness or disease. We expect Carriers to carefully consider the reason for and intended user of the prescription prior to issuing an underwriting decision.

If you have any questions, please consider contacting Kevin Beagan, Deputy Commissioner, at kevin.beagan@mass.gov or (617) 521-7323.

² M.G.L. c. 94C, §19B(a) defines "opioid antagonist" to mean "naloxone or any other drug approved by the federal Food and Drug Administration as a competitive narcotic antagonist used in the reversal of overdoses caused by opioids."