State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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To: All Insurers, Agents and Interested Parties

From: Mark V. Afable, Commissioner of Insurance

Subject: Special COVID-19 Session Law 2019 Wisconsin Act 185

On April 15, 2020, Governor Tony Evers signed into law 2019 Wisconsin Act 185 (COVID-19 law). The new law affects several agencies in the State's response to the public health emergency. This bulletin provides a summary of the provisions that the Office of the Commissioner of Insurance (OCI) will be implementing.

The insurance provisions contained in the COVID-19 law are summarized below by topic. This summary is intended as information only, and not an interpretation of the law by OCI.

Out-of-Network Charges and Payments During a COVID-19 Public Health Emergency:

The COVID-19 law created s. 609.205, Stats., that applies to insurers offering a defined network plan or a preferred provider plan, collectively "the plan." The section requires the plan to provide coverage for services, treatment or supplies for COVID-19 from non-participating providers when there are access limitations to participating providers due to the public health emergency. In addition, the section requires coverage for services, treatment or supplies generally when a participating provider is not available due to the public health emergency. During a public health emergency when an insured receives services, treatments or supplies from a non-participating provider the plan may not require the insured to pay, including cost-sharing, an amount greater than the insured would have paid if the services, treatment or supplies were provided by a participating provider.

The plan shall reimburse the non-participating provider an amount that is at least 225 percent of the rate the federal Medicare program reimburses the provider for the same or similar service, treatment or supply in the same geographic area. Providers, including health care providers or facilities, shall accept as payment in full the plan's payment and the provider or facility may not charge the enrollee an amount that exceeds the amount paid by the plan when the payment is at least 225 percent of the Medicare reimbursement rate for the same geographic area.

This section is applicable for the period beginning March 12, 2020, and extends through 60-days following termination of the declared public health emergency.

Prohibition of Discrimination based upon COVID-19:

The COVID-19 law created s. 632.729, Stats., that applies to insurers offering individual or group coverage through health benefit plans, pharmacy benefit managers, or non-federal, governmental self-insured health plans. Upon issuance and renewal of coverage, insurers may not establish rules for eligibility that are based upon a suspected, current, or past diagnosis of COVID-19. Coverage may not be canceled, a rate filing may not be modified, nor may a grace period be refused on the basis that an insured is suspected of, or has a current or past diagnosis of, COVID-19.

This section is also applicable to limited health service organizations, defined network plans, and preferred provider plans under s. 609.846, Stats. Additionally, s. 625.12 (2), Stat., is amended to reflect the requirement set forth in s. 632.729, Stats, when classifying risks.

Cost-Sharing Provisions for COVID-19 Testing:

The COVID-19 law created s. 632.895 (14g), Stats., that applies to insurers offering disability insurance policies and every non-federal, governmental self-insured health plan. This section requires coverage of testing for COVID-19 without copayment or coinsurance if the plan or policy includes coverage for testing of infectious diseases.

This section is also applicable to limited health service organizations, defined network plans, and preferred provider plans under s. 609.885, Stats.

Prescription Drug Limitations Prohibited:

The COVID-19 law created s. 632.895 (16v), Stats., that applies to insurers offering disability insurance policy, pharmacy benefit managers, limited health service organizations, defined network plans, preferred provider plans, and every non-federal, governmental self-insured health plan. During periods of a public health emergency, this section prohibits a policy or plan that covers prescription drugs from doing the following:

- Require prior authorization for early refills of a prescription drug or restrict the period of time in which a prescription drug may be refilled.
- Impose a limit on the quantity of prescription drugs that may be obtained if the quantity is no more than a 90-day supply.

The prohibition contained in this section does not extend to prescription drugs that are a controlled substance as defined in s. 961.01 (4), Stats.

Healthcare Liability Coverage under Ch. 655

In addition, the Act includes a non-statutory provision related to the mandatory healthcare liability policy requirements of Ch. 655. During the public health emergency, a physician or nurse anesthetist for whom this state is not a principal place of practice but who is authorized to practice in this state on a temporary basis may fulfill the mandatory insurance requirements of s. 655.23 (3) (a), Stats., by filing with OCI a certificate of insurance for a policy of health care liability insurance issued by an insurer

that is authorized in a jurisdiction accredited by the National Association of Insurance Commissioners.

In addition, a physician or nurse anesthetist practicing temporarily in the state may elect to be subject to Ch. 655 and covered by the Injured Patients and Families Compensation Fund.

Any questions concerning this bulletin may be directed to Olivia Hwang, Director of Public Affairs, at Olivia.Hwang@wisconsin.gov.