



RICARDO LARA
CALIFORNIA INSURANCE COMMISSIONER

NOTICE

TO: All Admitted and Non-Admitted Insurance Companies, All Licensed Insurance Adjusters and Producers, and Other Licensees and Interested Parties

FROM: Insurance Commissioner Ricardo Lara

DATE: August 21, 2020

RE: Pharmacy Network Adequacy and Prescription Drug Access during U.S. Postal Service Disruptions and Recent States of Emergency Related to Extreme Heat and Wildfires

The California Department of Insurance (Department) is aware that recent postal service disruptions are causing undue delays in delivery of mail order prescription medications. The reported postal service delays and disruptions come amid multiple statewide emergency declarations issued by the Governor due to extreme heat and fires affecting the state, further exacerbating Californians' access to medical care.¹

This Notice is to remind insurers of their existing obligations under the Department's network adequacy regulations² and statutory requirements prohibiting restrictions to retail pharmacy access³ and requiring provision of access to medically necessary health care services during a declared state of emergency.⁴

¹ See State of California Office of the Governor, Proclamation of State of Emergency, Aug. 16, 2020 (extreme heat event), <https://www.gov.ca.gov/wp-content/uploads/2020/08/8.16.20-Extreme-Heat-Event-Proclamation.pdf>; Proclamation of State of Emergency, Aug. 18, 2020 (fires and extreme weather conditions), <https://www.gov.ca.gov/wp-content/uploads/2020/08/8.18.20-Fire-State-of-Emergency-Proclamation.pdf>; Proclamation of State of Emergency, Mar. 4, 2020 (COVID-19), <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.

² Cal. Code. Regs., tit. 10, § 2240 *et seq.*

³ Ins. Code § 10123.201(c)(4).

⁴ Ins. Code § 10112.95.

Network Adequacy

A network must include an adequate number of retail pharmacies located in sufficient proximity to covered persons to permit adequate routine and emergency access.^{5, 6}

The requirement to provide insureds access to medically appropriate care includes access to prescription drugs, whether through retail or mail-order pharmacies. If mail-order prescription drugs cannot be provided within a medically appropriate time period, insurers must take steps to ensure access and arrange for insureds to obtain their drugs at network retail pharmacies or, if necessary, from out-of-network pharmacies. When assessing the steps necessary to provide medically appropriate access, insurers should also consider the impact of high temperatures on the medications, particularly when combined with extended mail delivery times, and implement measures to allow insureds to obtain their medications in a manner that avoids disruptions to care.

Retail Pharmacy Access

State law requires insurers to allow insureds to access prescription drug benefits at retail pharmacies unless the prescription drug is subject to restricted distribution by the U.S. Food and Drug Administration or requires special handling, provider coordination, or patient education that cannot be provided by a retail pharmacy.⁷ Accordingly, insurers cannot restrict access to retail pharmacies except under the narrow circumstances specified in statute.

Furthermore, the network adequacy obligations and requirements for providing access to medically necessary care during a state of emergency discussed in this Notice may require insurers to apply in-network cost sharing to prescriptions filled at out-of-network pharmacies and waive coverage limitations that are otherwise permitted by Insurance Code section 10123.201.

Emergency Declarations

State law requires health insurers to provide insureds who have been displaced by a state of emergency access to medically necessary health care services.⁸ In light of the multiple states of emergency declared by the Governor, insurers should consider several steps to mitigate access issues for insureds who may become displaced as a result of any of the states of emergencies currently in effect. These include but are not limited to:

- (1) Relaxing time limits for prior authorization, precertification, or referrals.
- (2) Extending filing deadlines for claims.
- (3) Suspending prescription refill limitations; allowing impacted insureds to refill prescriptions at out-of-network pharmacies and covering the prescriptions as if

⁵ Cal. Code Regs., tit. 10, § 2240.1(c)(10).

⁶ § 2240.1(e).

⁷ Ins. Code § 10123.201(c)(4).

⁸ Ins. Code § 10112.95(a).

they were obtained from a network pharmacy; allowing earlier refills; providing expedited shipping options for mail-order prescriptions at no additional cost to the insured; and waiving any increased cost sharing obligations for using retail pharmacies instead of mail-order pharmacies.

- (4) Authorizing an insured to replace medical equipment or supplies.
- (5) Allowing an insured to access an appropriate out-of-network provider if an in-network provider is unavailable due to the state of emergency or if the insured is out of the area due to displacement.
- (6) Providing a toll-free telephone number that an affected insured may call for assistance, including with lost health insurance identification cards, access to prescription refills, or actively arranging for access to medically necessary health care services.

Consumers with concerns or complaints about accessing care for COVID-19 under their health insurance policy are encouraged to contact the Department's Consumer Hotline at 1-800- 927-4357 or visit www.insurance.ca.gov.

Please contact Bruce Hinze at Bruce.Hinze@insurance.ca.gov or Julia Yee at Julia.Yee@insurance.ca.gov with any questions regarding this Notice.