



Illinois Department of Insurance

JB PRITZKER
Governor

ROBERT H. MURIEL
Director

MEMORANDUM

TO: All Health Insurance Issuers and Stop-Loss Insurance Issuers

FROM: Robert H. Muriel, Director of Insurance 

DATE: April 20, 2020

RE: Company Bulletin 2020-11 Emergency Rulemaking at 50 Ill. Adm. Code 2040, Effective Immediately

On March 9, 2020, Governor JB Pritzker proclaimed a statewide disaster due to the Coronavirus Disease 2019 (COVID-19) outbreak within the State of Illinois, and again on April 1, 2020 declared a statewide disaster in response to the exponential spread of COVID-19 (the “Gubernatorial Disaster Proclamations”). On March 20, 2020, the Governor issued Executive Order 2020-10 ordering Illinois residents to stay at home unless otherwise permitted under the order and that all non-essential business and operations within the State cease for the remainder of the Gubernatorial Disaster Proclamations. On April 1, 2020, the Governor issued Executive Order 2020-18 continuing and extending Executive Order 2020-10 in its entirety for the duration of the Gubernatorial Disaster Proclamations.

Today, the Illinois Department of Insurance (“Department”) filed an emergency rulemaking with the Secretary of State to address financial, coverage, and prescription drug supply concerns arising from the COVID-19 pandemic. Pursuant to Section 5-45(b) of the Illinois Administrative Procedure Act (5 ILCS 100/5-45(b)), these emergency rules are effective immediately. The rules will be reviewed by the Joint Committee on Administrative Rules at an upcoming meeting yet to be assigned. The emergency rules will be published in a forthcoming edition of the Illinois Register. Until that time, please consult the text of the filed rules attached to this bulletin.

In brief, the rules:

- provide for 30 or 60-day extensions on premium payment deadlines, depending on circumstances;
- prohibit an issuer of group HMO coverage from interfering with an employer that wants to keep their employees on their existing health coverage despite a reduction in hours or temporary lay-off;
- restrict the ability of an issuer of group HMO coverage to prevent a person whose employment-based coverage was terminated from electing COBRA or state continuation coverage;

- allow persons who qualify for a special enrollment period (“SEP”) due to loss of employment-based coverage to have their new coverage retroactively begin the day after their loss of the previous coverage;
- require coverage of off-formulary prescriptions if there is a shortage of a covered formulary drug; and
- require coverage of a 90-day supply of covered maintenance medications, other than those prone to misuse.

Group PPO, non-network group indemnity, and group voluntary health services plans are mostly exempt from the rule, except for the provision relating to coverage of off-formulary prescriptions. However, it should be noted that an employee’s loss of coverage under any of these group policies would still be the sort of trigger for an SEP that would require an issuer of new coverage that is subject to the SEP section to allow the employee to have a retroactive effective date. Regardless, the Department urges issuers of these group policies to voluntarily comply with all provisions affecting group health insurance coverage.

These emergency rules also do not apply to short-term, limited-duration health insurance coverage, excepted benefit policies (other than the premium payment extensions for dental benefits), or stop-loss insurance. However, stop-loss insurance plays a significant role in protecting self-insured employers and in incentivizing and restricting those employers’ decisions about the extent of coverage they will offer to their employees. The Department urges issuers of stop-loss insurance to comply with these rules as though they were issuers of group health insurance coverage to the maximum extent possible, and to avoid restricting or disincentivizing self-insured employers from making similar allowances for their employees.

Finally, the Department notes that, under normal circumstances, an issuer might raise a group’s premiums based on a drop in enrollment or participation. The Department urges issuers not to raise premiums on account of these drops occurring during the Gubernatorial Disaster Proclamations.

Questions about the emergency rulemaking may be directed to Robert Planthold at Robert.Planthold@illinois.gov.

The text of the filed emergency rulemaking begins on the next page.

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- 1) Heading of the Part: Temporary Health Coverage Requirements During an Epidemic or Public Health Emergency
- 2) Code Citation: 50 Ill. Adm. Code 2040
- 3)

<u>Section Numbers:</u>	<u>Emergency Actions:</u>
2040.10	New Section
2040.20	New Section
2040.30	New Section
2040.40	New Section
2040.50	New Section
2040.60	New Section
2040.70	New Section
2040.80	New Section
- 4) Statutory Authority: 215 ILCS 5/143, 5/355a, and 5/401; 215 ILCS 125/1-2, 125/4-13, and 125/5-7; 215 ILCS 134/45.1 and 134/105; and 215 ILCS 165/10 and 165/13.
- 5) Effective Date of Emergency Rules:
- 6) If these emergency rules are to expire before the end of the 150-day period, please specify the date on which it is to expire: None.
- 7) Date Filed with Index Department:
- 8) A copy of the emergency rules, including any material incorporated by reference, is on file in the principal office of the Department of Insurance and is available for public inspection.
- 9) Reason for Emergency: The COVID-19 epidemic has resulted in sudden, widespread loss of employment and loss of income in Illinois. It is also straining health care delivery systems and could cause sudden prescription drug shortages. Immediate action is needed to help keep individuals enrolled in quality, affordable health insurance coverage while they find other employment or government assistance, and to prepare for any potential drug supply shortage.
- 10) A Complete Description of the Subjects and Issues Involved: This Part is intended to help protect insured individuals' access during an epidemic or public health emergency to timely, affordable health care services by requiring temporary accommodations or

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exceptions to the terms of the health benefits arrangement that insures them or their employers. The COVID-19 epidemic is causing significant economic impact, including loss of income, wages, and working hours, for Illinois residents and employers. These losses will temporarily reduce either their ability to pay for coverage or to qualify for their employment-based coverage under the terms of their health benefits arrangement. A widespread loss of coverage combined with a loss in income is likely to undermine public health officials' efforts to contain the illness or health condition causing the public health emergency because affected individuals may delay seeking testing or treatment. Additionally, it is likely to place a financial strain on health care providers if increasing numbers of uninsured individuals use health care services, whether related or not to the illness or health condition causing the public health emergency. The outbreak is also likely to place a strain on the ability of health care providers to deliver services quickly and efficiently to the increased number of patients who need them, particularly if those services are subject to utilization review. Such an epidemic or emergency could also cause shortages or disruptions to prescription drug supplies. This Part is intended to prevent or mitigate the impact of the above problems.

First, the rules will require health insurance issuers to extend premium payment deadlines by 60 days, and will prohibit cancellations based on nonpayment of premium for 60 days after the rules take effect. For binder payments to secure new coverage, payment deadlines will be extended by 30 days.

The rules will also prohibit health insurance issuers from interfering with employers that want to keep their employees on their existing health coverage despite a reduction in hours or temporary lay-off.

The rules will also ensure that, as long as at least one employee remains actively employed, a health insurance issuer shall not prevent an employee whose coverage was terminated from electing COBRA or state continuation coverage.

The rules will also provide an accommodation for employees whose employment-based coverage has been terminated since the disaster proclamations took effect so that, in any special enrollment period for which they otherwise qualify, their new coverage can retroactively take effect immediately after their prior coverage terminated.

The rules will also require health insurance issuers to cover off-formulary drug alternatives if there is a shortage in a formulary drug, and such coverage shall not impose additional prior authorization or step-therapy requirements, nor impose cost-sharing greater than would have applied to the formulary drug. Issuers will also be required to

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cover at least a 90-day supply refill for maintenance medications other than those susceptible to misuse.

The rules will exempt short-term, limited duration health insurance coverage, as well as excepted benefit policies, except where specified for dental benefits. The rules will not apply to group health insurance coverage unless it is provided by a health maintenance organization, except where specified in Section 2040.80.

- 11) Are there any proposed rulemakings to this Part pending? No
- 12) Statement of Statewide Policy Objectives: This rule will not require a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.
- 13) Information and questions regarding this rule shall be directed to:

Robert Planthold
Assistant General Counsel
Illinois Department of Insurance
122 S. Michigan Ave, 19th Fl
Chicago, IL 60603

or

Susan Anders
Rules Coordinator
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The full text of the Emergency Rules begins on the next page.

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TITLE 50: INSURANCE

CHAPTER I: DEPARTMENT OF INSURANCE

SUBCHAPTER z: ACCIDENT AND HEALTH INSURANCE

PART 2040

TEMPORARY HEALTH COVERAGE REQUIREMENTS DURING AN EPIDEMIC OR
PUBLIC HEALTH EMERGENCY

Section

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2040.80 Access to Covered Prescription Drugs

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AUTHORITY: Implementing Sections 143, 155.36, and 355a of the Illinois Insurance Code [215 ILCS 5], Sections 1-2, 4-13, and 5-7 of the Health Maintenance Organization Act [215 ILCS 125], Section 45.1 of the Managed Care Reform and Patient Rights Act [215 ILCS 134], and Sections 10 and 13 of the Voluntary Health Services Plans Act [215 ILCS 165], and authorized by Sections 355a, and 401 of the Code, Sections 1-2 and 5-7 of the Health Maintenance Organization Act, Section 105 of the Managed Care Reform and Patient Rights Act, and Section 10 of the Voluntary Health Services Plans Act. (See 1 Ill Adm Code 100.320)

SOURCE: Emergency rules adopted at 44 Ill. Reg _____, effective _____ for a maximum of 150 days.

Section 2040.10 Purpose

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This Part is intended to help protect insured individuals' access during an epidemic or public health emergency to timely, affordable health care services by requiring temporary accommodations or exceptions to the terms of their health insurance coverage. As demonstrated during the COVID-19 outbreak, an epidemic or public health emergency that rises to the level of a statewide disaster is likely to result in significant economic impact, including loss of income, wages, and working hours, for Illinois residents and employers. These losses will temporarily reduce either their ability to pay for coverage or to qualify for their employment-based coverage under the terms of their health insurance coverage. A widespread loss of coverage combined with a loss in income is likely to undermine public health officials' efforts to contain the illness or health condition causing the public health emergency because affected individuals may delay seeking testing or treatment. Additionally, it is likely to place a financial strain on health care providers if increasing numbers of uninsured individuals use health care services, whether related or not to the illness or health condition causing the public health emergency. Such an epidemic or emergency is also likely to place a strain on the ability of health care providers to deliver services quickly and efficiently to the increased number of patients who need them, particularly if those services are subject to utilization review. Such an epidemic or emergency could also cause shortages or disruptions to prescription drug supplies. This Part is intended to prevent or mitigate the impact of the above problems and to relieve insureds of policy restrictions or requirements that become unfair or unjust under extraordinary circumstances.

**Section 2040.20 Applicability
EMERGENCY**

- a) Except as provided in subsection (b), this Part applies regarding all policies, contracts, and certificates of health insurance coverage that are or will be in-force, issued, delivered, amended, or renewed in this State and subject to the Director's authority under any insurance law.
- b) This Part does not apply to short-term, limited-duration health insurance coverage or policies of excepted benefits except where specifically provided for dental benefits. This Part does not apply to any group health insurance coverage that is not provided by a health maintenance organization except as specified in Section 2040.80.
- c) The provisions of this Part generally apply only while the Governor has a disaster proclamation in effect for all counties of the State pursuant to Section 7 of the Illinois Emergency Management Agency Act [20 ILCS 3305] that is predicated on an epidemic or public health emergency, and only if, pursuant to that proclamation, the Governor has generally ordered individuals to stay at their

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home or place of residence or has generally ordered the cessation of non-essential business and operations in this State. However, any provision of this Part that requires an action or period to last for a specific length of time shall apply as written even if that time goes beyond the disaster proclamation period, provided that the trigger for that requirement occurred while the disaster proclamation was in effect. Continuous renewals or extensions of a disaster proclamation shall be treated as creating a single disaster proclamation period.

Section 2040.30 Definitions
EMERGENCY

Except as provided below, terms used in this Part have the meanings given in Section 5 of the Illinois Health Insurance Portability and Accountability Act. The following definitions also apply to this Part:

"CMMS' enforcement discretion" means the non-enforcement policy expressed by the federal Centers for Medicare & Medicaid Services in the FAQ document dated March 24, 2020, addressed to "All Qualified Health Plan and Stand-alone Dental Plan Issuers on the Federally-facilitated Exchanges and State-based Exchanges on the Federal Platform", which had the subject heading "Payment and Grace Period Flexibilities Associated with the COVID-19 National Emergency" (Department of Health & Human Services, Centers for Medicare & Medicaid Services, 7500 Security Blvd., Mail Stop C4-21-26, Baltimore, MD 21244-1850) (no later editions or amendments included). Agency Note: the FAQ document may be available online at <https://www.cms.gov/files/document/faqs-payment-and-grace-period-covid-19.pdf>.

"Code" means the Illinois Insurance Code [215 ILCS 5].

"Cost-sharing" means any expenditure required by or on behalf of an enrollee related to health insurance coverage; such term includes deductibles, coinsurance, copayments, or similar charges, but excludes premiums, balance billing amounts for non-network providers, and spending for non-covered services.

"COVID-19" means the respiratory disease recognized by the United States Centers for Disease Control and Prevention as "coronavirus disease 2019," or the novel coronavirus named "SARS-CoV-2" that causes this respiratory disease.

"Department" means the Illinois Department of Insurance.

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"Employer" has the meaning given in 29 U.S.C. 1003(5).

"Excepted benefits" has the meaning given in the following federal regulations:

For individual health insurance coverage, the provisions in 45 C.F.R. 148.220;
and

For group health insurance coverage, the provisions in 45 C.F.R. 146.145(b).

"Exchange" means the Illinois Health Benefits Exchange established pursuant to 42 U.S.C. 18031(b) and 215 ILCS 122/5-5, also known as the Illinois Health Insurance Marketplace.

"Health care provider" or "provider" has the meaning given in Section 10 of the Managed Care Reform and Patient Rights Act [215 ILCS 134/10].

"Health care services" has the meaning given in Section 10 of the Managed Care Reform and Patient Rights Act [215 ILCS 134/10].

"Health maintenance organization" has the meaning given in Section 1-2(9) of the HMO Act.

"HMO Act" means the Health Maintenance Organization Act [215 ILCS 125].

"Insured" means a resident, employee, employer, or other natural or legal person that has a policy, contract, certificate, or other agreement with an issuer for health insurance coverage.

"Issuer" means a "health insurance issuer" as defined in Section 5 of the Illinois Health Insurance Portability and Accountability Act.

"Non-network provider" means any provider that has not entered into an agreement described in Section 370i of the Code or Section 2-8 of the Health Maintenance Organization Act [215 ILCS 125].

"Qualified health plan" has the meaning given in 45 C.F.R. 155.20.

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"Short-term, limited-duration health insurance coverage" has the meaning given in Section 5 of the Short-Term, Limited Duration Health Insurance Coverage Act [215 ILCS 190].

"Stand-alone dental plan" has the meaning given in 45 C.F.R. 156.400.

**Section 2040.40 Grace Periods and Terminations for Nonpayment of Premium
EMERGENCY**

Except as otherwise provided below, an issuer shall allow an insured, upon request, to defer premium payments without interest for health insurance coverage, including limited-scope dental benefits, for at least 60 calendar days from each original premium due date.

- a) For an insured who, as of the effective date of this Part under the emergency rulemaking, has already failed to make a sufficient premium payment by the due date but whose effective date of coverage termination has not yet occurred, an issuer shall, to the extent permitted by CMMS' enforcement discretion under federal law, refrain from cancelling or nonrenewing their health insurance coverage or their enrollment under such coverage based on nonpayment of premium for at least 60 days from this Part's effective date.
- b) For an insured who receives advance payments of premium tax credits for a qualified health plan or stand-alone dental plan under 42 U.S.C. 18082, an issuer shall delay the initiation of the federally mandated 3-month grace period in 45 C.F.R. 156.270, without pending any claims or imposing interest, for at least 30 calendar days from the missed payment date.
- c) Binder Payments
 - 1) An issuer of any qualified health plan or stand-alone dental plan in the individual market shall, to the extent permitted by CMMS' enforcement discretion under federal law, extend all existing deadlines to make a binder payment, interest free, until at least 30 days after the latest permissible deadline applicable to the circumstances under 45 C.F.R. 155.400(e).
 - 2) An issuer shall extend its existing deadlines to make a binder payment for all other health insurance coverage in the individual market, including limited-scope dental benefits, by 30 calendar days without interest.

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- d) Any communication from an issuer addressed to an insured regarding the payment extensions in this Section must clearly state the insured's obligation to pay back premiums or potentially be subject to billing from the issuer for paid claims or from health care providers for unpaid claims, and must clearly state the issuer's obligations during the payment extension period in light of this Section.

**Section 2040.50 Employee Eligibility for Existing Group Coverage
EMERGENCY**

- a) An issuer of group health insurance coverage under the HMO Act shall allow an employer to continue covering an employee even if the employee would otherwise become ineligible under the terms of the coverage or the group health plan due to a reduction in hours worked or temporary lay-off. This requirement to allow an employer to continue coverage does not mean coverage under a COBRA continuation provision or Section 4-9.2 of the HMO Act. An issuer may not prevent an employer from continuing to cover an employee at the employer's discretion as provided in this Section regardless of any "actively at work" or similar eligibility requirements in any group health insurance coverage or group health plan.
- b) An issuer may not discriminate among similarly situated individuals as provided in 50 Ill. Adm. Code 2001.9 when making the allowances required by this Section.

**Section 2040.60 Minimum Employment Required for Statutory Continuation Coverages
EMERGENCY**

- a) For an employer that employs 20 or more employees, as long as one person remains actively employed, an issuer shall not directly or indirectly prohibit an eligible employee from electing to continue coverage under a COBRA continuation provision using the normal notice and election procedures provided under the Employee Retirement Income Security Act of 1974.
- b) For any employer with group health insurance coverage, as long as at least one person remains actively employed and enrolled in the coverage, an issuer shall not directly or indirectly prohibit an eligible employee from electing to continue coverage under the state continuation coverage required by Section 4-9.2 of the HMO Act.

**Section 2040.70 Special Enrollment Effective Date for Off-Exchange Coverage
EMERGENCY**

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- a) For health insurance coverage that is not issued through the Exchange, an issuer shall waive the normal special enrollment procedures for an employee or former employee who has lost coverage under their employer or former employer's group health plan or group health insurance coverage to the extent necessary to allow the employee or former employee to obtain or enroll under health insurance coverage effective the day after their prior coverage terminated. This requirement applies even if the employee or former employee previously had the opportunity to enroll under the new health insurance coverage. Otherwise, existing requirements for limited and special enrollment periods contained in Title 45 of the Code of Federal Regulations and 50 Ill. Adm. Code 2001.4 continue to apply.
- b) An issuer may make the retroactive extension of coverage optional to the applicant rather than automatic.
- c) An issuer shall notify the applicant of the amount of premiums due and the due date based on the effective coverage date, accounting for the availability of an extension on the due dates under Section 2040.40.
- d) This Section applies with respect to employees or former employees whose coverage terminates on or after the Governor declares a disaster in all counties of the State. However, existing requirements for the length of the enrollment period in 50 Ill. Adm. Code 2001.4 continue to apply to each applicant.

**Section 2040.80 Access to Covered Prescription Drugs
EMERGENCY**

This Section applies to health insurance coverage that covers prescription drugs.

- a) An issuer shall cover off-formulary prescription drugs if there is not a formulary drug available to treat the insured. The issuer shall do so without any prior authorization or step-therapy requirements that are separate from or redundant to any requirements already satisfied for the unavailable formulary drug. No greater cost-sharing shall be imposed than would apply to the formulary drug. Group health insurance coverage is subject to this subsection even if it is not provided by a health maintenance organization.
- b) To the extent consistent with clinical guidelines, an issuer shall cover an insured to obtain at least a 90-day supply upon refill of a covered maintenance medication, though exceptions may be made for drug classes that are prone to misuse, such as opioids, benzodiazepines, and stimulants. Group health insurance

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coverage is subject to this subsection only if it is provided by a health maintenance organization.