

**BEFORE THE NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE**

IN THE MATTER OF COVID-19 PUBLIC )  
HEALTH EMERGENCY PREVENTATIVE )  
SERVICES COVERAGE MANDATES AND )  
COST SHARING DIRECTIVES )

Docket No. 20-00070-COMP-LH

020 DEC 19 AM 10:16  
FILED  
SUPERINTENDENT  
OF INSURANCE

**NOTICE AND ORDER**

**NOTICE IS HEREBY GIVEN** to every person subject to the Superintendent’s jurisdiction under § 59A-15-16 NMSA 1978, and who provides health benefits, other than excepted benefits, for any New Mexico resident, that the Superintendent of Insurance (“Superintendent”), on his own motion, finds, concludes and orders as follows:

**FINDINGS AND CONCLUSIONS:**

1. Section 3203 of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, requires, in relevant part, that every issuer of a non-grandfathered group or individual health insurance policy or plan shall cover any qualifying coronavirus preventive service, including a COVID-19 vaccine, without imposing any cost-sharing requirements, such as a copay, coinsurance, or deductible, and without any prior authorization requirement. A subject issuer also is required to cover at least one COVID-19 vaccine within 15 days of the vaccine being recognized as: (1) an evidence-based item or service that has in effect a rating of “A” or “B” in the current recommendations of the United States Preventive Services Task Force (“USPSTF”); or (2) an immunization that has in effect a recommendation from the Advisory Committee on Immunization Practices (“ACIP”).

2. On October 28, 2020 the Departments of Treasury, Labor, and Health and Human Services (the “Departments”) issued an Interim Final Rule (“IFR”) that implements Section 3203 of the CARES Act. The full text of the IFR can be found here:

<https://www.cms.gov/files/document/covid-vax-ifc-4.pdf>.

3. Under the IFR, subject issuers are required to provide the mandated COVID-19 vaccine coverage, even if the vaccine is administered by an out-of-network provider or if the ACIP has not recommended the vaccine for routine use.

4. The CARES Act and the IFR provide minimum federal standards, while permitting a state to mandate broader coverage for delivery or administration of a COVID-19 vaccine.

5. The Insurance Code, NMSA 1978, § 59A-15-16, grants the Superintendent jurisdiction over every person who provides coverage in this state for health benefits, unless that person proves subjectivity to the exclusive jurisdiction of another agency of this state or of the federal judgment.

6. Article 18 of the Insurance Code expressly “applies as to all insurance policies \* \* \* of authorized insurers covering individuals resident \* \* \* in this state \* \* \*.”

7. The Insurance Code, NMSA 1978, § 59A-18-16.2(A)(3), further mandates that specified carriers “provide coverage without cost sharing for preventative benefits \* \* \*.”

8. OSI Rule, 13.10.13.12 NMAC mandates that “. . . all copayments required of covered persons by the health care insurer or health care plan for the provision of health care services shall be reasonable. . . .” Both the Superintendent and the Departments recognize that imposing any cost sharing for administration of a COVID-19 vaccine is unreasonable.

9. The protections of the Surprise Billing Act (SBA) shall apply if a covered person does not have the ability or opportunity to receive a covered service from an in-network provider. *See* NMSA 1978, § 59A-57A-4(A)(1). COVID-19 vaccine delivery and administration will be prioritized and coordinated between public and private actors, leaving the decision of provider selection beyond the control of a covered person. That being so, the Superintendent finds and concludes that NMSA 1978, § 59A-57A-4(A)(1) is satisfied whenever a covered person is vaccinated against COVID-19 by an out-of-network provider.

10. The CARES Act mandates (as supplemented by the IFR) the removal of certain significant cost and provider barriers to COVID-19 vaccine administration, but it leaves other barriers in place. Specifically, those laws are not applicable to all payers and plans regulated by the Superintendent. They permit a subject insurer to limit coverage to only a single COVID-19 vaccine and wait 15 days after a COVID-19 vaccine is approved by the APIC or USPSTF before providing coverage for the vaccine administration.

11. Because of the foregoing, the Superintendent finds that it is in the best interests of New Mexicans to remove the coverage barriers left in place under the CARES Act and the IFR, and that he has the authority to do so.

**IT IS THEREFORE ORDERED:**

A. Every person subject to the Superintendent’s jurisdiction under the New Mexico Insurance Code, NMSA 1978, § 59A-15-16, and who provides health benefits, other than excepted benefits, for any New Mexico resident shall immediately provide coverage for every currently FDA

approved COVID-19 vaccine, and any such prospectively approved vaccine as a preventative service without any cost-sharing, and shall do so without any prior authorization requirements.

**B.** The coverage mandated by Paragraph A applies regardless of whether the covered person receives a COVID-19 vaccination from an in-network or out-of-network healthcare provider.


**C.** The coverage mandated by Paragraph A also is subject to the directives and requirements of the SBA, OSI Rule 13.10.13.12 NMAC, and OSI Bulletins 2020-009 and 2020-016.

**D.** Under no circumstances may a covered person be charged any cost-sharing amount relating to the delivery or administration of a COVID-19 vaccination.

**E.** This Order is effective upon distribution through the OSI government relations newsletter, and shall remain in effect until otherwise ordered by the Superintendent.

**F.** This docket shall remain open until further written order of the Superintendent.

**DONE AND ORDERED** this 18<sup>th</sup> day of December, 2020.



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**HON. RUSSELL TOAL**  
**SUPERINTENDENT OF INSURANCE**

**CERTIFICICATE OF SERVICE**

**I HEREBY** certify that on the 18<sup>th</sup> day of December 2020, a true and correct copy of the forgoing *Notice and Order* was sent via electronic mail to the following individuals:

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OFFICE OF THE SUPERINTENDENT  
OF INSURANCE