

BEFORE JAMES A. DODRILL, INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA

In the Matter of:

**COVID-19 STATE OF EMERGENCY,
PRESCRIPTION MEDICATION DELIVERY**

Emergency Proceeding: 20-EO-05

EMERGENCY ORDER

NOW COMES JAMES A. DODRILL, Insurance Commissioner for the State of West Virginia, who, by virtue of the authority vested in him pursuant to the Proclamation of the Governor of West Virginia issued March 16, 2020, does **FIND** and **DECLARE** as follows:

1. On March 13, 2020, the President of the United States declared a National Emergency in relation to the novel Coronavirus 2019 (COVID-19) pandemic;
2. On March 13, 2020, the Insurance Commissioner entered Emergency Order 20-01 declaring that an insurance emergency exists in the State of West Virginia, which insurance emergency declaration remains in full force and effect;
3. On March 16, 2020, the Governor of West Virginia issued a Proclamation declaring a State of Emergency for every county in the State of West Virginia with respect to the novel Coronavirus 2019 (COVID-19) pandemic, which State of Emergency remains in full force and effect, and in which the Governor recognized that it was of utmost importance for all Cabinet Secretaries, Commissioners and Directors have the ability to take all measures necessary to ensure the safety of citizens in this state, recognized that agencies can suspend certain rules that prohibit them from operating effectively, and delegated to all state agencies the authority to suspend rules if strict compliance therewith would in any way prevent, hinder or delay necessary action in coping with the emergency;

4. Due to recommendations and guidance by the Centers for Disease Control and the West Virginia Department of Health and Human Resources, and the issuance by the Governor of West Virginia of *Executive Order* No. 09-20, many citizens of West Virginia are self-quarantining, isolating, practicing various forms of social distancing, staying in their homes and otherwise maintaining a six-foot distance from other individuals to stem the transmission of COVID-19;

5. *Executive Order* No. 09-20, known as the Stay Home Order, requires citizens to remain at their places of residence unless performing an essential activity; however, many citizens of West Virginia, including older citizens and those with underlying health conditions, require the daily use of prescription medication and are sometimes forced to leave their homes to obtain such medication from retail pharmacies, thus putting at risk their security, safety and protection; and Chapter 15, Article Five, Section 6 of the Code of West Virginia authorizes the Governor to, among other things, perform and exercise other functions, powers and duties that are necessary to promote and secure the safety and protection of the civilian population;

6. The Insurance Commissioner, under the provisions of Chapter 33 and those additional powers delegated to him by the Governor pursuant to Chapter 15, Article Five of the Code of West Virginia, has broad authority to regulate the insurance industry in West Virginia, specifically including, but not limited to, accident and sickness or health insurance providers or carriers; hospital service, medical service and dental service corporations; healthcare corporations; health maintenance organizations; third-party administrators; pharmacy benefit managers; and pharmacy auditing entities; and

7. On March 13, 2020, the Insurance Commissioner issued Bulletin No. 20-05, which, in part, directed insurers to encourage insured individuals to take advantage of mail order prescription benefits, if available;

8. Additionally, on March 10, 2020, the Centers for Medicare and Medicaid Services (CMS) issued guidance encouraging Medicare Part D sponsors to, in situations when a disaster or emergency makes it difficult for enrollees to get to a retail pharmacy, or enrollees are actually prohibited from going to a retail pharmacy due to a quarantine, voluntarily relax any plan-imposed policies that may discourage certain methods of delivery, such as mail or home delivery, for retail pharmacies that choose to offer these delivery services in these instances.

Therefore, inasmuch as an insurance emergency and the Governor's declared State of Emergency continue to exist in the State of West Virginia, and inasmuch as it is essential for citizens of West Virginia to be able to remain in their places of residence and to otherwise self-quarantine or practice social distancing, especially older citizens and citizens with underlying health conditions in order to promote and secure their safety and protection, all the while being able to obtain needed prescription medication, effective immediately, it is hereby **ORDERED** as follows:

1. Pharmacies are permitted to deliver prescription medications for which a patient, insured or customer has a valid prescription, or pharmacy supplies or products, to patients, insureds or customers via common carrier, mail delivery or other home delivery methods or services if the pharmacy elects to do so;

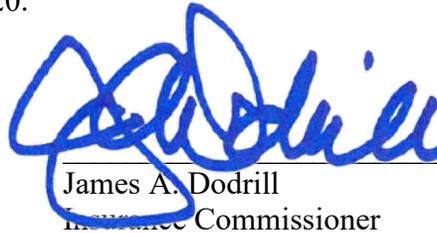
2. Health benefit plans, including health insurance plans offered by insurers, hospital service corporations, medical service corporations, dental service corporations, health maintenance organizations, and those administered by third-party administrators, pharmacy benefit managers, and pharmacy auditing entities are prohibited from enforcing contractual terms with pharmacies that prohibit pharmacies from delivering prescription medications or other pharmacy supplies or products via the mail, common carrier or other home delivery methods or services to patients, insureds or customers;

3. Health benefit plans, including health insurance plans offered by insurers, hospital service corporations, medical service corporations, dental service corporations, health maintenance

organizations, and those administered by third-party administrators, pharmacy benefit managers, and pharmacy auditing entities are prohibited from refusing to pay or reimburse pharmacies, and are prohibited from recouping payments already made to pharmacies discovered during a subsequent audit, if prescription medications or pharmacy supplies are delivered via mail, common carrier or other home delivery methods or services to a patient, insured or customer during the COVID-19 emergency.

It is further **ORDERED**, that this *Emergency Order* shall remain in force and effect until further notice. The Commissioner will continue to review and assess circumstances as they arise or change, and will amend, revise or rescind this *Emergency Order*, in full or in part, as necessary or appropriate.

ENTERED this 27th day of March, 2020.



James A. Dodrill
Insurance Commissioner