**Subject:** Message from the NM Office of Superintendent of Insurance on Reimbursement for COVID-Related Services

Greetings –

The Office of the Superintendent of Insurance has received reports that some commercial payers are requiring copayments or even payment in full by New Mexico consumers for COVID vaccines and COVID tests. In addition, we have received reports from multiple providers that some carriers have reduced their reimbursement rates for administration of the COVID vaccine to inappropriate amounts.

The Superintendent reminds all New Mexico licensed health insurers that we are still in a Public Health Emergency (PHE).  Per 13.10.13.12.B NMAC, *“Any cost sharing requirement for the provision of testing and delivery of health care services for COVID-19 (including testing/screening for pneumonia and influenza, treatment for pneumonia when due to or a result of COVID-19 infection, and treatment for influenza when a co-infection with COVID-19) or any disease or condition which is the cause of, or subject of, a public health emergency is presumptively unreasonable and is prohibited.  For purpose of this rule, a public health emergency exists when declared by the state of New Mexico or federal government.”*  In addition, please see Bulletin 2021-004, issued a year ago stating that individuals shall not be charged any cost-sharing for the COVID-19 vaccine.

Our Office has also received reports that some commercial payers are reimbursing pharmacies for the administration of the COVID vaccine well below the Medicare and Medicaid $40 rate.  On March 15, 2021, CMS issued a notice that it had increased the Medicare vaccine administration payment to $40. The notice contained the following guidance: *“Current regulations provide that out-of-network rates must be reasonable, as compared to prevailing market rates, and reference the Medicare reimbursement as a potential guideline for insurance companies. In light of CMS’s increased Medicare payment rates, CMS will expect commercial carriers to continue to ensure that their rates are reasonable in comparison to prevailing market rates*.”  The federal regulation referenced by CMS, 85 FR 71142-01, specifically states that “The Departments will consider the amount of payment to be reasonable if the plan or issuer pays the provider the amount that would be paid under Medicare for the item or service.”

Given that the federal departments of Health and Human Services, Labor and Treasury all find the Medicare $40 administration rate to be the reasonable rate, and that many payers use Medicare rates as a benchmark for their reimbursement rates, and given that over one million New Mexicans are covered by Medicaid or Medicare, the Superintendent considers $40 the “prevailing market rate” for administration of the COVID-19 vaccine. Carriers who are paying less than the $40 vaccine rate should immediately adjust their rates and accept requests for payment adjustments if a carrier has been paying less than the prevailing market rate.

The Superintendent urges insurers in New Mexico to comply with state regulations and federal guidance. Thank you for your cooperation.

Julie B Weinberg

Director, Life and Health Products Division

NM Office of Superintendent of Insurance

505-629-8578

[julie.weinberg2@state.nm.us](mailto:julie.weinberg2@state.nm.us)