LD 1

DRAFT Proposed Amendment to Replace Bill as Printed
Proposed by Sen. Jackson, Bill's Sponsor
For HCIFS Committee Consideration at 2/16 Public Hearing

Proposed Amendment to LD 1, An Act To Establish the COVID-19 Patient Bill of Rights

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the spread of the novel coronavirus disease referred to as COVID-19 has created a public health emergency; and

Whereas, in response to COVID-19, the World Health Organization has declared a pandemic, the President of the United States has declared a national emergency and the Governor of Maine has declared a civil state of emergency; and

Whereas, in response to COVID-19, the Governor of Maine has also proclaimed an insurance emergency pursuant to the Maine Revised Statutes, Title 24-A, section 471 and, pursuant to that proclamation, the Superintendent of Insurance has issued orders relating to health insurance coverage for COVID-19 testing and immunization during the civil state of emergency; and

Whereas, in response to COVID-19, the Governor of Maine has also issued executive orders relating to the ability of Maine residents to ensure continued access to health care services through telehealth and to necessary prescription drugs; and

Whereas, it is important to maintain these important consumer protections related to health insurance coverage once the civil state of emergency expires; and

Whereas, the purpose of this legislation is to ensure that those consumer protections are codified in state law; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-2. 22 MRSA §1718-G is enacted to read:

§1718-G. Notice of Costs for COVID-19 Screening and Testing

1. Notice of Costs for COVID-19 Screening and Testing. A provider shall, before providing screening or testing services for coronavirus diseases 2019, SARS-CoV-2 or a virus mutating therefrom, referred to in this section as "COVID-19":

A. Provide notice of any payment or upfront charge that will be due from the individual for the services, including charges or payments which the individual will need to submit to their insurance carrier or to the Department of Health and Human Services ("DHHS") for reimbursement;

B. Disclose the total cost for the services and visit and an explanation of what each charge is for;

C. Provide instructions for how the individual can submit that charge to their insurance carrier, if the individual is insured, or provide the form for requesting coverage from DHHS through Emergency MaineCare, if the individual is uninsured; and

D. Inform any individual that will be required to make an upfront payment of locations where screening and testing services are provided without such payments.

2. Prohibition of Costs for COVID-19. A provider may not charge an uninsured individual any amount for administering a COVID-19 vaccine, and may not charge any associated costs such as processing fees and clinical evaluations for a vaccine appointment.

3. Rules. The department may adopt rules to implement and administer this section to align with any applicable federal requirements. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. A-2. 24-A MRSA §4320-P is enacted to read:

§4320-P. Coverage for health care services for COVID-19

Notwithstanding any other requirements of this Title to the contrary, a carrier offering a health plan in this State shall provide, at a minimum, coverage as required by this section for health care services for coronavirus diseases 2019, SARS-CoV-2 or a virus mutating therefrom, referred to in this section as "COVID-19."

1. Testing. A carrier shall provide coverage for screening and testing for COVID-19 as follows.

A. A carrier shall provide coverage for screening and testing for COVID-19, except for when such screening and testing is part of a surveillance testing program. For the purposes of this paragraph, a "surveillance testing program" is a structured program of asymptomatic testing at a community or population level to understand the incidence or prevalence of the disease in a group. Testing that occurs less than once per month per individual is deemed not to be part of a "surveillance testing program."

B. A carrier may not impose any deductible, copayment, coinsurance or other cost-sharing requirement.

C. A carrier may not make coverage without cost sharing as required by paragraph B dependent on any prior authorization requirement.

D. A carrier may not make coverage without cost sharing as required by paragraph B dependent on the use of a provider in a carrier's network unless an enrollee is offered screening and testing by a network provider without additional delay and the enrollee chooses instead to obtain screening from an out-of-network provider or to be tested by an out-of-network laboratory.

E. A carrier shall provide coverage for any administrative or facility fees associated with the administration of any COVID-19 screening or testing that must be covered pursuant to the above sections, including all associated costs such as processing fees and clinical evaluations. For the purposes of this section, bills for out of network COVID-19 screening and testing are bills for out-of-network emergency services under section 4303-C.

2. Immunization; COVID-19 vaccines. A carrier shall provide coverage for the costs and all associated costs of administration of COVID-19 vaccines as follows.

A. A carrier shall provide coverage for any COVID-19 vaccine licensed or authorized under an Emergency Use Authorization by the United States Food and Drug Administration that is recommended by the United States Centers for Disease Control and Prevention Advisory Committee on Immunization Practices, or successor organization, for administration to an enrollee.

B. A carrier may not impose any deductible, copayment, coinsurance or other cost-sharing requirement.

C. A carrier may not make coverage without cost sharing as required by paragraph B dependent on any prior authorization requirement.

D. A carrier may not make coverage without cost sharing as required by paragraph B dependent on the use of a provider in a carrier's network unless an enrollee is offered immunization by a network provider without additional delay and the enrollee chooses instead to obtain immunization from an out-of-network provider.

E. A carrier shall provide coverage for any administrative or facility fees associated with the administration of any COVID-19 vaccine that must be covered pursuant to the above sections, including all associated costs such as processing fees and clinical evaluations.

3. Rules. The superintendent may adopt rules to implement and administer this section to align with any applicable federal requirements. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

PART B

Sec. B-1. 32 MRSA §2213 is enacted to read:

§2213. Prescriptions during a state of emergency

An individual licensed under this chapter whose scope of practice includes prescribing medication may prescribe to a patient a supply of a prescription drug for an extended period of time, not to exceed a 180-day supply, during a state of emergency declared by the Governor in accordance with Title 37-B, section 742, except for a drug prescribed in accordance with section 2210 and except for instances where such extended prescriptions would be inconsistent with public safety or contrary to the applicable standard of care.

Sec. B-2. 32 MRSA §2600-G is enacted to read:

§2600-G. Prescriptions during a state of emergency

An individual licensed under this chapter whose scope of practice includes prescribing medication may prescribe to a patient a supply of a prescription drug for an extended period of time, not to exceed a 180-day supply, during a state of emergency declared by the Governor in accordance with Title 37-B, section 742, except for a drug prescribed in accordance with section 2600-C and except for instances where such extended prescriptions would be inconsistent with public safety or contrary to the applicable standard of care.

Sec. B-3. 32 MRSA §3300-J is enacted to read:

§3300-J. Prescriptions during a state of emergency

An individual licensed under this chapter whose scope of practice includes prescribing medication may prescribe to a patient a supply of a prescription drug for an extended period of time, not to exceed a 180-day supply, during a state of emergency declared by the Governor in accordance with Title 37-B, section 742, except for a drug prescribed in accordance with section 3300-F and except for instances where such extended prescriptions would be inconsistent with public safety or contrary to the applicable standard of care.

Sec. B-4. 32 MRSA §3658 is enacted to read:

§3658. Prescriptions during a state of emergency

An individual licensed under this chapter whose scope of practice includes prescribing medication may prescribe to a patient a supply of a prescription drug for an extended period of time, not to exceed a 180-day supply, during a state of emergency declared by the Governor in accordance with Title 37-B, section 742, except for a drug prescribed in accordance with section 3657 and except for instances where such extended prescriptions would be inconsistent with public safety or contrary to the applicable standard of care.

Sec. B-5. 32 MRSA §13786-E is enacted to read:

§13786-E. Prescriptions during a state of emergency

A pharmacist may dispense to a patient a supply of a prescription drug for an extended period of time, not to exceed a 180-day supply, during a state of emergency declared by the Governor in accordance with Title 37-B, section 742, unless the prescription drug order is prescribed in accordance with section 2210, 2600-C, 3300-F, 3657 or 18308 and except for

instances where such extended prescriptions would be inconsistent with public safety or contrary to the applicable standard of care.

Sec. B-6. 32 MRSA §13831, sub-§2-A is enacted to read:

2-A. Administration of COVID-19 vaccines. A pharmacist licensed in this State who meets the qualifications and requirements of section 13832 and rules adopted by the board, in addition to influenza vaccines under subsection 1 and other vaccines under subsection 2, may administer and order coronavirus disease 2019, or COVID-19, vaccines licensed or authorized under an Emergency Use Authorization by the United States Food and Drug Administration and that are recommended by the United States Centers for Disease Control and Prevention Advisory Committee on Immunization Practices, or successor organization, to a person 3 years of age or older.

Sec. B-7. 32 MRSA §18309 is enacted to read:

§18309. Prescriptions during a state of emergency

An individual licensed under this chapter whose scope of practice includes prescribing medication may prescribe to a patient a supply of a prescription drug for an extended period of time, not to exceed a 180-day supply, during a state of emergency declared by the Governor in accordance with Title 37-B, section 742, except for a drug prescribed in accordance with section 18308 and except for instances where such extended prescriptions would be inconsistent with public safety or contrary to the applicable standard of care.

PART C

Sec. C-1. 24 MRSA §2904, sub-§1, ¶A is amended to read:

A. A licensed health care practitioner who voluntarily, without the expectation or receipt of monetary or other compensation either directly or indirectly, provides professional services, including services provided through telehealth as defined in Title 24-A, section 4316, subsection 1, paragraph ~~E~~ C, within the scope of that health care practitioner's licensure:

(1) To a nonprofit organization;

(2) To an agency of the State or any political subdivision of the State;

(3) To members or recipients of services of a nonprofit organization or state or local agency;

(4) To support the State's response to a public health threat as defined in Title 22, section 801, subsection 10;

(5) To support the State's response to an extreme public health emergency as defined in Title 22, section 801, subsection 4-A; or

(6) To support the State's response to a disaster as defined in Title 37-B, section 703, subsection 2;

Sec. C-2. 24-A MRSA §4316, sub-§1, ¶C is amended to read:

C. "Telehealth," as it pertains to the delivery of health care services, means the use of interactive real-time visual and audio or other electronic media for the purpose of consultation and education concerning and diagnosis, treatment, care management and self-management of an enrollee's physical and mental health and includes real-time interaction between the enrollee and the telehealth provider, synchronous encounters, asynchronous encounters, store and forward transfers and telemonitoring. "Telehealth" does not include the use of ~~audio-only telephone,~~ facsimile machine, e-mail or texting. "Telehealth" is generally expected to include the use of audio and visual interaction, except that it may include the use of audio-only telephone in limited cases when the enrollee is unable to participate in an audio and visual interaction and the use of audio-only telephone is medically appropriate and the only available option for delivering needed care.

Sec. C-3. 24-A MRSA §4316, sub-§1, ¶E is repealed.

Sec. C-4. 24-A MRSA §4316, sub-§2 is amended to read:

2. Parity for telehealth services. A carrier offering a health plan in this State may not deny coverage on the basis that the health care service is provided through telehealth if the health care service would be covered if it were provided through in-person consultation between an enrollee and a provider. A carrier may not reimburse at a lower rate for the telehealth service than would be reimbursed if it were provided by the same provider through in-person consultation. Coverage for health care services provided through telehealth must be determined in a manner consistent with coverage for health care services provided through in-person consultation. If an enrollee is eligible for coverage and the delivery of the health care service through telehealth is medically appropriate, a carrier may not deny coverage for telehealth services. A carrier may offer a health plan containing a provision for a deductible, copayment or coinsurance requirement for a health care service provided through telehealth as long as the deductible, copayment or coinsurance does not exceed the deductible, copayment or coinsurance applicable to a comparable service provided through in-person consultation. A carrier may not exclude a health care service from coverage solely because such health care service is provided only through a telehealth encounter, as long as telehealth is appropriate for the provision of such health care service.

Sec. C-5. 24-A MRSA §4316, sub-§5 is repealed.

PART D

Sec. D-1. Permitted Delegation of COVID-19 Vaccine Administration at point of dispensing (POD) vaccine sites for immunizations against coronavirus diseases 2019, SARS-CoV-2 or a virus mutating therefrom. This section governs the permitted delegation of COVID-19 vaccine administration at point of dispensing vaccine sites for immunizations against coronavirus diseases

2019, SARS-CoV-2 or a virus mutating therefrom, collectively referred to in this section as COVID-19.

1. Applicability. This section applies only to point of dispensing vaccine sites that have a written Memorandum of Understanding with the Maine Department of Health and Human Services, Center for Disease Control and Prevention to administer vaccines against COVID-19. This section is effective only during the state of emergency declared by the Governor in accordance with Maine Revised Statutes, Title 37-B, section 742 and Maine Revised Statutes, Title 22, sections 802, subsection 2-A and 801, subsection 4-A.

2. Permitted Delegation of COVID-19 Vaccine Administration. An on-site clinician in charge of a point of dispensing vaccine site with a Memorandum of Understanding that complies with the requirements of section 4 may delegate the administration of COVID-19 vaccines within the State to employees, staff, agents, or volunteers; provided, however, that the on-site clinician in charge is currently licensed by the State as a physician, advanced practice registered nurse or physician assistant and that any employee, staff member, agent or volunteer to whom such authority is delegated under this subsection is subject to the supervision and control of the point of dispensing vaccine site and on-site clinician in charge and has completed the training and observation required in section 3. Any individual to whom vaccine administration is delegated under this section is authorized to administer any COVID-19 vaccine identified as a "covered countermeasure" in the Fourth Amendment to the declaration under the PREP Act, or in any subsequent declaration under that Act, and that meets 42 U.S.C. 247d–6d(i)(1)'s definition of ''covered countermeasure."

3. Training and Observation. Anyone to whom vaccine administration is delegated under section 2 must prior to undertaking any vaccine administration complete the U.S. Centers for Disease Control and Prevention COVID-19 Vaccine Training Module; any applicable training required by the Public Readiness and Emergency Preparedness Act, known as the PREP Act, or any declaration issued pursuant to that Act for medical countermeasures against COVID-19 or guidance from an authority having jurisdiction under such declaration; and any applicable observation period by a currently practicing healthcare professional adequately experienced in vaccination who confirms competency in preparation and administration of the particular COVID-19 vaccine(s) to be administered by the individual, if required by the PREP Act or in any Declaration or guidance under that Act. The individual must provide documentation of any training and observation required by this subsection to the point of dispensing vaccine site and on-site clinician in charge prior to any administration of a COVID-19 vaccine as authorized by this section.

4. Requirements for the Memorandum of Understanding and Other Recordkeeping. An on-site clinician in charge of a point of dispensing vaccine site may make a delegation under subsection 2 only if the point of dispensing vaccine site's Memorandum of Understanding identifies the clinician in charge by name. The point of dispensing vaccine site and the Maine Center for Disease Control shall each retain a copy of the Memorandum of Understanding for a period of 3 years. The point of dispensing vaccine site and on-site clinician in charge are each responsible for retaining for a period of 3 years a record of the name of each individual to whom vaccine administration is delegated under section 2 and evidence of their completion of the required training and observation.

5. **Delegation Authority Under Other State Law.** The authority to delegate the administration of COVID-9 vaccines granted in this section is in addition to any delegation authority that may otherwise exist under State law. Clinicians in charge who exercise delegation authority pursuant to other State law are not required to comply with the requirements of this section.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This bill establishes certain requirements for the protection of health care consumers with regard to testing, treatment and immunization for COVID-19. The bill also makes changes to improve access to prescription drugs and to health care services through telehealth.

Part A of the bill requires health insurance carriers to provide coverage for COVID-19 screening, testing and immunization services and prohibits a carrier from imposing any cost-sharing requirements on consumers for those services.

Part B of the bill authorizes a pharmacist to administer and order COVID-19 vaccines licensed by the United States Food and Drug Administration that are recommended by the United States Centers for Disease Control and Prevention Advisory Committee on Immunization Practices for administration. Part B also provides that advanced practice registered nurses with prescriptive authority, providers of osteopathic medicine, providers of allopathic medicine, podiatrists and dentists may prescribe to a patient a prescription drug for an extended period of time, not to exceed a 180-day supply, during a state of emergency declared by the Governor.

Part C of the bill authorizes the delivery of health care services through telehealth by audio-only telephone and requires payment parity by carriers for telehealth services.

Part D of the bill allows delegation of authority by an on-site clinician to certain persons for the administration of COVID-19 vaccines at point of dispensing vaccine sites.