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BULLETIN NO. 19-07

TO: ALL AUTHORIZED OR ADMITTED INSURERS OFFERING ACCIDENT AND SICKNESS POLICIES, DISABILITY POLICIES, LIFE INSURANCE POLICIES, AND ANNUITY CONTRACTS IN NEW JERSEY

FROM: MARLENE CARIDE, COMMISSIONER

RE: USE OF CERTAIN PRESCRIPTION DRUG INFORMATION IN THE UNDERWRITING PROCESS WHEN NOT RELATED TO APPLICANT HEALTH STATUS

The purpose of this Bulletin is to provide guidance to insurance companies ("insurers") that issue accident and sickness insurance, disability, life insurance, or annuity contracts, where medical underwriting is permitted, as to the use of certain prescription drug information in those underwriting processes. New Jersey law provides that "no person shall make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any policy of life insurance." N.J.S.A. 17B:30-12 and N.J.S.A. 17:29B-4(7). Therefore, insurers are hereby advised that applicants should not be adversely evaluated based on the applicant having obtained prescription drugs for conditions that are not relevant to an applicant's health or actual risk.

The Department of Banking and Insurance ("Department") understands that as part of the underwriting process, insurers may collect and consider information about the applicant's medical history, including information about the applicant's use of prescription medications, and that information may be used to determine the applicant's health status and his or her risk level. However, the Department has become aware of circumstances where medications may be prescribed or dispensed without a prescription but are not indicative of the applicant's health status or actual risk. Insurers must consider that New Jersey law permits the prescribing and dispensing of naloxone to individuals without substance use disorder. For example, a prescription may be provided to medical professionals, friends, family members, and other professionals that work to assist people who use opioids. Additionally, insurers must consider that prescriptions for medications such as emtricitabine/tenofovir may be intended to prevent, not treat, HIV infection.

Furthermore, the Department directs that prior to making an underwriting decision, insurers must obtain information sufficient to determine if an applicant has obtained a prescription for a medication that is not relevant to the applicant's health or is designed to prevent, rather than treat,

a disease. Ultimately, it is required that the insurer evaluate the applicant's actual risk based upon full information. New Jersey, like many other jurisdictions, has taken significant steps to address the opioid epidemic, including the adoption of recent legislation to expand access to health insurance coverage for substance use disorders through enhanced limits on the use of utilization management and limitations on the prescribing of opioids. In fact, the Legislature has declared that, "Encouraging the wider prescription and distribution of naloxone or similarly acting drugs to those at risk for an opioid overdose, or to members of their families or peers, would reduce the number of opioid overdose deaths and be in the best interests of the citizens of this State." N.J.S.A. 24:6J-2. Additionally, the Legislature has permitted a prescriber or other health care practitioner to, among other things, prescribe or dispense an opioid antidote directly or through a standing order, to any recipient who is deemed by the health care practitioner to be capable of administering the opioid antidote to an overdose victim in an emergency. N.J.S.A. 24:6J-4. Therefore, pharmacists and pharmacies can apply to the Department of Health for a standing order to dispense naloxone to individuals without prescriptions. Moreover, naloxone may be provided, with or without a prescription, to medical professionals, friends, family members, and other professionals that work to assist people who use opioids rather than dispensed directly to the opioid user.

The Department is also aware that there are medications that may be used to both prevent certain illnesses or diseases from impacting an individual and to treat an infected individual. For example, a combination of emtricitabine and tenofovir not only treats HIV infection, it is also a pre-exposure prophylactic to prevent HIV infections. As such, it may be prescribed to persons who have not been infected with HIV. Such prescriptions, like vaccinations, are intended to address a potential public health problem by reducing the individual's risk of being impacted by a disease or illness. These prescriptions may be written to prevent an illness or disease from occurring rather than to treat an existing illness or disease. It is incumbent upon insurers to obtain the necessary information to distinguish between treatment and preventive uses.

It would defeat the State's important public health efforts if applicants for accident and sickness insurance policies, disability, life insurance policies, or annuity contracts were unfavorably impacted solely because the applicant had obtained naloxone or some other opioid antagonist to address opioid overdoses of other persons or had a prescription written to prevent illness or disease. The Department is providing this guidance to insurers to ensure that the reason for and intended user of a prescription drug is determined prior to issuing an underwriting decision. It is the insurer's responsibility to actively seek additional information to determine whether the prescription drug is relevant to the applicant's health and actual risk. If the medication is not indicative of the applicant's health and actual risk, the insurer shall disregard the information concerning the prescription drug in the underwriting process. An underwriting decision must not adversely impact an applicant if the prescription is determined not to be relevant to the applicant's health or actual risk.

If you have any questions, please contact the Department's Life and Health Unit.

6/24/19
Date


Mariene Caride
Commissioner