

LEGAL UPDATES

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## Service

Insurance

## Industry

Healthcare

# 2019 Wisconsin Act 185: Health Insurance

On April 15, 2020, Governor Evers signed into law the 2019 Wisconsin Act 185 with bipartisan support, a state response to the COVID-19 pandemic enacting certain provisions implemented in previously issued emergency orders.

Several of the provisions focus on easing burdens imposed on healthcare providers and accessing federal funding impacting the healthcare industry.

Key provisions relate to healthcare regulatory, healthcare insurance, unemployment, K-12 education, food and personal care return, and property tax.

The Act contains several items affecting healthcare insurance in Wisconsin.

### **A. No cost sharing for COVID-19 testing**

Sections 92 and 96 of Act 185 provide that cost sharing (copayments or coinsurance) for COVID-19 testing is prohibited for any health insurance policy, disability insurance policy or self-insured health plan of the state or of a county, city, town, village or school district that generally covers testing for infectious diseases under the policy or plan. This prohibition applies to any COVID-19-related testing conducted prior to March 13, 2021 – one year after President Trump declared a national emergency in response to the coronavirus outbreak on March 13, 2020.

### **B. No coverage discrimination based on COVID-19**

Sections 93 through 95 of Act 185 provide that insurers, pharmacy benefit managers or self-insured health plans are prohibited from using a current or past diagnosis, or suspected diagnosis, of COVID-19 as the basis for doing the following: (1) establishing rules, applicable to an individual or employer or other group, for eligibility for enrollment, continued eligibility to remain enrolled, or renewal of coverage; (2) canceling coverage during a contract

term; (3) establishing rates for coverage; or (4) refusing to grant a grace period for the payment of premium (if a grace period for payment of premium would generally be granted under the plan).

### **C. Prohibition on certain prescription drug limits**

Section 97 of Act 185 prohibits any health insurance policy, state employee health plan or self-insured health plan offered by a local government or school district, or a pharmacy benefit manager acting on behalf of a policy or plan from doing the following: (1) requiring prior authorization for early refills of a prescription drug or otherwise restricting the period of time in which a prescription drug may be refilled; or (2) imposing a limit on the quantity of prescription drugs that may be obtained if the quantity is no more than a 90-day supply; however, this prohibition does not apply to controlled substances. This prohibition is effective during the period covered by the state of emergency related to public health declared by the Governor on March 12, 2020, under Executive Order 72.

### **D. Restrictions on out-of-network charges for health services**

Section 89 of Act 185 provides that, for the duration of the state of emergency declared by the Governor and for 60 days thereafter, any defined network or preferred provider health plan may not require an enrollee to pay an out-of-network provider more than the enrollee would pay if the service, treatment or supply was rendered by an in-network provider. This restriction applies if the following conditions are met: (1) the service, treatment or supply is related to a diagnosis or treatment for COVID-19; and (2) the service, treatment or supply is rendered by an out-of-network provider because no in-network provider is available due to the state public health emergency. If these conditions are met, the plan must reimburse the out-of-network provider at 225 percent of the rate the federal Medicare program reimburses the provider for the same or a similar service, treatment or supply in the same geographic area. To prevent “balance billing,” out-of-network healthcare providers who render the COVID-19-related services outlined above must accept as payment in full any payment that is at least 225 percent of the Medicare rate for a similar service, treatment or supply in the same geographic area.

### **Comprehensive CARES Act and COVID-19 guidance**

Husch Blackwell’s CARES Act resource team helps clients identify available assistance using industry-specific updates on changing agency rulemakings. Our COVID-19 response team provides clients with an online legal Toolkit to address challenges presented by the coronavirus outbreak, including rapidly changing orders on a state-by-state basis. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic