



State of Vermont
Department of Financial Regulation
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MEMORANDUM

To: The Honorable Ginny Lyons, Chair, Senate Committee on Health & Welfare
The Honorable Bill Lippert, Chair, House Committee on Health Care

From: Michael Pieciak, Commissioner, Department of Financial Regulation

Date: May 1, 2020

Re: Follow-up Questions from Joint Hearing on April 29, 2020

Dear Senator Lyons and Representative Lippert,

Thank you for the opportunity to testify during your committee's joint hearing to discuss the Department's COVID-19 insurance initiatives and the financial impact of COVID-19 on Vermont's health-insurers. There were two questions raised during the hearing that required follow-up and please find responses to those questions below.

1. Question from Representative Houghton: Do our emergency regulations cover provider reimbursement for store-and forward?

Yes. As you know, on March 30, 2020, pursuant to Act 91, the Department implemented Emergency Rule H-2020-02-E requiring coverage of health care services delivered by store-and forward-means. Section 5 of the Emergency Rule addresses store and forward, providing:

Coverage of Store and Forward Services. (a) All health insurance plans shall provide coverage and reimbursement for store and forward HCPCS code G2010 (remote evaluation of a recorded video or image) to determine whether an office visit or other service is needed without member cost-sharing.

The Department understands insurers' systems might not have been set up to approve reimbursements on March 30, 2020 but they are now. Any providers who had store-and-forward bills for services that were provided after March 13 and not paid, should resubmit them. If they continue to not be paid, the Department encourages providers to contact Sebastian Arduengo (Sebastian.Arduengo@vermont.gov).

2. Question from Representative Lippert: What authority does the State have to require public reporting by self-funded plans?

Unfortunately, very limited to none. Under the U.S. Supreme Court's decision in *Gobeille v. Liberty Mutual Ins.*, 136 S. Ct. 936 (2016), the State is most likely preempted from requiring self-funded ERISA plans to disclose or report information about their benefits or even simply requiring them to disclose whether they self-insure.¹

The Department has and will continue to encourage self-funded ERISA plans to comply with our emergency rules, bulletins, and guidance for health care plans. The Department will also continue to do our best to communicate the scope of our directives to ensure consumers understand.

Conclusion

Thank you, again, for the opportunity to address your committees and for your hard work during this uncertain and challenging time. Please do not hesitate to contact me or Jill Rickard, our Director of Policy by email (Jill.Rickard@vermont.gov), if your or your committee members have any follow-up questions. Many thanks.

All the best,



Michael Pieciak

CC: *Representative Lori Houghton*

¹ For a fuller analysis of the permissible scope of state regulation under ERISA, please see the Department's memorandum dated February 15, 2020 regarding the progress of rulemaking required by Act 54 of 2019, which can be accessed here: <https://legislature.vermont.gov/assets/Legislative-Reports/TPA-Legislative-Memorandum-signed.pdf>.