TO: ALL DOMESTIC INSURERS, ALL NON-DOMESTIC INSURERS WITH OFFICES IN NEW MEXICO, AND ALL PRODUCERS WITH OFFICES IN NEW MEXICO

RE: MARCH 23, 2020 New Mexico Department of Health Public Health Emergency Order Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19

On March 11, 2020, New Mexico Governor Michelle Lujan-Grisham declared a public health emergency in the state of New Mexico because of the spread of the novel Coronavirus Disease (“COVID-19”). On March 23, 2020, New Mexico Department of Health Cabinet Secretary Kathyleen Kunkle issued a public health emergency order (“DOH Emergency Order”) which, among other things, served to close all businesses and non-profit entities except for those deemed essential.

The DOH Emergency Order defines “Essential business” as any business or non-profit entity falling within one or more of the 22 listed categories. In relevant part, category “p” includes insurance providers and category “q” includes title companies and related services. Accordingly, all insurance companies, underwriters, agents, brokers and producers with offices in New Mexico are deemed essential businesses for purposes of the DOH Emergency Order. We are pleased by the Governor’s recognition of the key role of the insurance industry.

Pursuant to the DOH Emergency Order, essential businesses may remain open provided they minimize their operations and staff to the greatest extent possible. Further, all essential businesses shall, to the greatest extent possible:

- adhere to social distancing protocol and maintain at least six-foot social distancing from other individuals (including other employees);
- avoid person-to-person contact wherever possible;
- query those coming into an office, whether employees, contractors or members of the public, as to whether they have travelled to areas with high COVID-19 penetration, been exposed to anyone being tested or diagnosed with COVID-19, or...
have any of the symptoms; and if they answer in the affirmative to any of the questions, direct them to home or other place of self-isolation;

- avoid having meetings with five or more people;
- avoid non-essential travel; and
- have employees wash their hands frequently and ensure that all surfaces are cleaned routinely.

The DOH Emergency Order does not in any way restrict the conduct of business operations through telecommuting or otherwise working from home in which an employee only interacts with clients or customers remotely.

Should any insurance company, underwriter, agent, broker or producer with an office in New Mexico wish to keep its physical office space open to the public, it should do so in strict compliance with the requirements of the DOH Emergency Order outlined above. Alternatively, should any insurance company, underwriter, agent, broker or producer with an office in New Mexico wish to close a physical office space to the public, it must ensure that it continues business operations through telecommuting and that it provides reasonable access to its clients or customers remotely.

Please be reminded that the order specifically requires that all call centers situated in New Mexico “reduce their in-person workforce by 100%”.

We also ask for your assistance in fighting fraud or scams related to COVID-19. Please see the information on our website related to this: https://www.osi.state.nm.us/wp-content/uploads/2020/03/Anti-Fraud-Consumer-Notice-March-2020.pdf.

Finally, we want to remind you of the importance of advising individuals seeking health coverage that if an excepted benefits policy is being presented or recommended, it must include the notice that was included in our Notice and Order of March 12, 2020. A copy of the required notice is attached to this bulletin.

Thank you for your cooperation and for taking action to ensure the safety of New Mexicans.

ISSUED this 26th day of March, 2020.

RUSSELL TOAL
SUPERINTENDENT OF INSURANCE
PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT OF HEALTH
CABINET SECRETARY KATHYLEEN M. KUNKEL

MARCH 24, 2020

Public Health Emergency Order Imposing Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries; Providing Guidance on those Restrictions; and Requiring a Report from Certain Health Care Providers

WHEREAS, on January 30, 2020, the World Health Organization announced the emergence of a novel Coronavirus Disease 2019 ("COVID-19") that had not previously circulated in humans, but has been found to have adapted to humans such that it is contagious and easily spread from one person to another and one country to another;

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary declared a public health emergency as a precautionary tool to facilitate preparation and availability of resources to assure that the federal government had appropriate resources to combat the spread of the COVID-19 virus in our nation through its support of state and community-led preparedness and response efforts;

WHEREAS, on March 11, 2020, the New Mexico Department of Health confirmed the first cases of individuals infected with COVID-19 in New Mexico and additional cases have been confirmed each day since then;

WHEREAS, on March 11, 2020, Michelle Lujan Grisham, the Governor of the State of New Mexico, declared in Executive Order 2020-004 ("EO 2020-004") that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked the All Hazards Emergency Management Act by directing all cabinets, departments and agencies to comply with the directives of the declaration and the further instructions of the Department of Health;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from the COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), the potential for displacements of persons, and potential closures of schools or other places of public gathering;

WHEREAS, the United States Centers for Disease Control and Prevention ("CDC") recommends the use of personal protective equipment ("PPE")—including gloves, medical masks, goggles or a face shield, gowns, and in some cases respirators (N95 or FFP2 standard or equivalent) and aprons—for patients and health care workers as an essential part of treating and preventing the spread of COVID-19;
WHEREAS, due to delayed deliveries of PPE from the Strategic National Stockpile, the high demand for PPE throughout the United States and globally, and other supply chain interference related to the COVID-19 pandemic, there is both a statewide and national shortage of PPE and the PPE supplies of New Mexico’s hospitals, health care facilities, and first responders are critically low;

WHEREAS, local, national, and global health experts predict that the expected continued rise in cases of COVID-19 will strain the capacity and resources of health care providers, including available space and equipment in health care facilities; and

WHEREAS, during a declared Public Health Emergency, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Emergency Response Act to “utilize, secure or evacuate health care facilities for public use.” NMSA 1978, § 12-10A-6(A)(1). The Department of Health is also permitted to “regulate or ration health care supplies” if “a public health emergency results in a statewide or regional shortage of health care supplies.” § 12-10A-6(A)(2), (B). This authority permits the Department of Health to “control, restrict and regulate the allocation, sale, dispensing or distribution of health care supplies.” § 12-10A-6(B). The Department of Health also has authority to “control and abate the causes of disease, especially epidemics” and to “maintain and enforce rules for the control of conditions of public health importance.” NMSA 1978, § 24-1-3(C) & (Q).

NOW, THEREFORE, I, Kathleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and through the Public Health Emergency declared in EO 2020-004 and by virtue of the Governor’s direction under her power to “provide those resources and services necessary to avoid or minimize economic or physical harm until a situation becomes stabilized,” NMSA 1978, § 12-10-4(B)(3), do hereby ORDER and DIRECT as follows:

1. All hospitals and other health care facilities, ambulatory surgical facilities, dental, orthodontic and endodontic offices in the State of New Mexico are prohibited from providing non-essential health care services, procedures, and surgeries.

2. For purposes of this Order, “non-essential health care services, procedures, and surgeries” include those which can be delayed for three (3) months without undue risk to the patient’s health. Examples of criteria to consider in distinguishing between essential and non-essential actions include: (a) threat to a patient’s life; (b) threat of permanent dysfunction of an extremity, including teeth, jaws, and eyes; (c) risk of metastasis or progression of staging; (d) prenatal and postnatal care; and (e) any other factors that will conserve medical resources without creating an undue risk of permanent harm to patients.

3. This Order’s prohibition on non-essential health care services, procedures, and surgeries is not meant to apply to: (a) the provision of emergency medical care or any actions necessary to provide treatment to patients with emergency or urgent medical needs; (b) any surgery or treatment that if not performed would result in a serious condition of a patient worsening (e.g.,
removing a cancerous tumor or a surgery intended to manage an infection); and (c) the full suite of family planning services.

4. The prohibition on non-essential health care services, procedures, and surgeries will take effect on March 27, 2020.

5. Within three (3) days of the date of this Order, each health care provider or facility that is subject to the prohibition on non-essential health care services, procedures, and surgeries shall submit to the New Mexico Department of Health a policy addressing how it will comply with this Order and identifying those procedures that will generally be deemed essential and non-essential.

6. A person who willfully violates this Order may be subject to civil administrative penalties, including fines up to $5,000 per violation, in addition to other civil or criminal penalties that may be available at law.

I FURTHER DIRECT as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.

(3) This Order shall remain in effect for the duration of Executive Order 2020-004. This Order may be renewed consistent with any direction from the Governor.

THIS ORDER supersedes any other previous orders, proclamations, or directives in conflict. This Order shall take effect immediately and shall remain in effect for the duration indicated in the Order unless otherwise rescinded.

DONE AT THE EXECUTIVE OFFICE
THIS 24TH DAY OF MARCH 2020

WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO

KATHYLEEN M. KUNKEL
SECRETARY OF THE STATE OF NEW MEXICO
DEPARTMENT OF HEALTH
Notice for Holders or Purchasers of Excepted Benefits Policies

The coverage provided under your benefits plan or policy underwritten by [insert name of underwriter] is limited in nature and may not provide financial protection for significant costs that you could incur for the diagnosis or treatment of COVID-19 ("Coronavirus") related illness.

If you do not have comprehensive major medical coverage, in addition to the plan or policy issued by [company name], you may incur significant uninsured medical expenses associated with the diagnosis and treatment of illness caused by COVID-19.

Major medical plans offer robust consumer protections, and are required to waive all deductibles, co-pays and other cost sharing expenses for the diagnosis or treatment of COVID-19 related illness. Your policy or plan with [excepted benefits company] is not a major medical plan and does not provide such protections.

If you do not have major medical coverage, you may:

1. Contact a licensed insurance broker or agent to see about major medical coverage availability.

2. To see if you are eligible for a special enrollment period for major medical coverage through the New Mexico Health Insurance Exchange, contact beWellnm toll-free at 1-833-862-3935.

3. To see if you are eligible for Medicaid coverage and to complete an application, please call the Human Services Department's Medicaid Expansion Hotline toll-free at 1-855-637-6574 or visit https://www.yes.state.nm.us/yesnm/home/index.

4. To see if you are eligible for high risk pool coverage, please contact the New Mexico Medical Insurance Pool (the "High Risk Pool") at 1-844-728-7896 or https://nmmnip.org/. If you are uninsured and have a COVID-19 diagnosis, your condition qualifies you for Pool coverage.

The Centers for Disease Control and the New Mexico Department of Health each have websites with considerable information on COVID-19. Visit each website at https://www.cdc.gov/ or http://cv.nmhealth.org/.

Individuals who have symptoms consistent with COVID-19 should immediately call the NM Department of Health at 1-855-600-3453.