



OFFICE OF
INSURANCE COMMISSIONER

EMERGENCY ORDER NO. 20-06

TO: ALL HEALTH CARRIERS AUTHORIZED OR ADMITTED TO OFFER HEALTH PLANS OR SHORT TERM LIMITED DURATION MEDICAL PLANS IN WASHINGTON STATE THAT ARE REGULATED BY THE INSURANCE COMMISSIONER

FROM: MIKE KREIDLER, INSURANCE COMMISSIONER

RE: ADDRESSING MEDICAL COVERAGE FOR COVID-19 TESTING

PURSUANT TO RCW 48.02.060(4), the Insurance Commissioner of the state of Washington ("Insurance Commissioner") orders all health carriers authorized or admitted to offer health plans or short term limited duration medical plans in Washington State that are regulated by the Insurance Commissioner (hereafter "Regulated Entities"), as follows:

- A. Regulated Entities must hold harmless Washington-resident enrollees from balance billing for COVID-19 diagnostic testing processed by in-state, out-of-network laboratories and out-of-state, out-of-network laboratories, when COVID-19 diagnostic testing is determined to be medically necessary by the enrollee's health care provider.
- B. Carriers are encouraged to notify the Insurance Commissioner if out-of-network laboratories submitting claims have failed to publish a cash price, or fail to accept the published cash price of COVID-19 diagnostic testing as the full and final payment for COVID-19 diagnostic testing.

BASIS

1. On February 29, 2020, Governor Inslee issued Proclamation 20-05 declaring an emergency related to the COVID-19 outbreak. The proclamation provides in pertinent part as follows (emphasis added):

I, Jay Inslee, Governor of the state of Washington, as a result of the above noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim that a State of Emergency exists in all counties in the state of Washington, and direct the plans and procedures of the Washington State Comprehensive Emergency Management Plan be implemented. State agencies and departments are directed to utilize state resources and to do everything reasonably possible to assist affected political subdivisions in an effort to respond to and recover from the outbreak.

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2. On March 5, the Office of the Insurance Commissioner issued emergency order 20-01 requiring health carriers and short-term limited duration medical plans to cover federal Food and Drug Administration authorized COVID-19 testing prior to application of any deductible and with no cost-sharing. On May 1, 2020, that order was extended for an additional 30 days.
3. Subsequent to issuance of Order 20-01, on March 18, 2020, Congress enacted the Families First Coronavirus Relief Act (FFCRA). Section 6001 of the FFCRA generally requires group health plans and health insurance issuers offering group or individual health insurance coverage to provide benefits for certain items and services related to diagnostic testing for the detection of SARS-CoV-2 or the diagnosis of COVID-19 (referred to collectively in this document as COVID-19) when those items or services are furnished on or after March 18, 2020, and during the federally declared state of emergency. Under the FFCRA, plans and issuers must provide this coverage without imposing any cost-sharing requirements (including deductibles, copayments, and coinsurance) or prior authorization or other medical management requirements.
4. Congress enacted the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) on March 27, 2020. Section 3201 of the CARES Act amended section 6001 of the FFCRA to include a broader range of diagnostic items and services that plans and issuers must cover without any cost-sharing requirements or prior authorization or other medical management requirements. Additionally, section 3202 of the CARES Act generally requires plans and issuers providing coverage for these items and services to reimburse any provider of COVID-19 diagnostic testing an amount that equals the negotiated rate or, if the plan or issuer does not have a negotiated rate with the provider, the cash price for such service that is listed by the provider on a public website. The plan or issuer may negotiate a rate with the provider that is lower than the cash price. Providers that fail to publish a cash price for COVID-19 testing and fail to complete a corrective action plan are subject to a \$300 fine for each day that they fail to publish a cash price.
5. On April 11, 2020, the Department of Labor, Department of Health and Human Services and the Treasury Department published guidance related to implementation of the COVID-19 testing provisions of the FFCRA and CARES Acts.
6. The intent of State and Federal Law appears to be to ensure that the threat of balance billing from out-of-network labs is not a barrier to consumer access to COVID-19 diagnostic testing. However, current federal law does not plainly prohibit balance billing. Therefore, an order providing clarity for consumers and carriers will ensure that consumers can access needed COVID-19 diagnostic testing, and will be protected from balance billing for out-of-network COVID-19 lab testing.
7. The Insurance Commissioner finds that the cost of health care is a critical concern during the current pandemic. Washington residents who worry about out-of-pocket costs are more reluctant to seek care. For those with private health insurance, out-of-pocket costs may take the form of deductibles, copayments, or coinsurance. When receiving services from an out-of-network provider, patients may also face balance bills. When an individual faces high costs for seeking COVID-19 related services, it is not only a concern for that person, but a public health threat to everyone.

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8. RCW 48.02.060(4)(d) provides, in pertinent part, that when the Governor proclaims a state of emergency under RCW 43.06.010(12), the Insurance Commissioner may issue an order that addresses matters related to insurance policies issued in this state, including but not limited to, medical coverage to ensure access to care.
9. RCW 48.02.060(5) provides that an order by the Insurance Commissioner under subsection (4) of this section may remain effective for not more than sixty (60) days unless the Insurance Commissioner extends the termination date for the order for an additional period of not more than thirty (30) days. The Insurance Commissioner may extend the order if, in the Insurance Commissioner's judgment, the circumstances warrant an extension. An order of the Insurance Commissioner under subsection (4) of this section is not effective after the related state of emergency is terminated by proclamation of the Governor under RCW 43.06.210. The order must specify, by line of insurance: (a) the geographic areas in which the order applies, which must be within but may be less extensive than the geographic area specified in the Governor's proclamation of a state of emergency and must be specific according to an appropriate means of delineation, such as the United States postal service zip codes or other appropriate means; and (b) the date on which the order becomes effective and the date on which the order terminates.
10. The COVID-19 outbreak has harmed or threatened to harm the property, safety and welfare of Washington citizens who have been rendered ill or whose lives or employment have been otherwise disrupted by the COVID-19 outbreak in the state of Washington.
11. The geographical extent of this state of emergency is the entire state of Washington.
12. Emergency action by the Insurance Commissioner is necessary to protect the property, safety and welfare of Washington citizens affected by the COVID-19 outbreak in the state of Washington.

ORDER

NOW, THEREFORE, the Insurance Commissioner hereby activates the provisions of RCW 48.02.060(4)(d) in order to protect the property, safety and welfare of Washington citizens affected by the COVID-19 outbreak in the state of Washington, as set forth above. The geographical extent of this Emergency Order is the entire state of Washington.

This Order shall remain in effect until July 31, 2020, subject to the further order of the Insurance Commissioner extending its effect.

THIS ORDER IS EFFECTIVE IMMEDIATELY AND IS ENTERED at Olympia, Washington, this
____ 1st ____ day of ____ June ____, 2020.



MIKE KREIDLER
Insurance Commissioner