

COVID-19: CORONAVIRUS' IMPACT ON HEALTHCARE PROVIDER PAYMENT RELATIONSHIPS

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U.S. Health Care Alert

In some of the states hardest hit by the novel coronavirus (COVID-19), state governments have ordered insurers - or worked with insurers -- to waive patient coronavirus-related out-of-pocket expenses, such as copayments, coinsurance, and deductibles. In some instances, insurers have voluntarily waived certain coronavirus-related out-of-pocket expenses. However, these measures are very idiosyncratic, vary by state, and vary by type of insurance.

In such waiver circumstances, providers should coordinate closely with waiving insurers to make sure the insurer is still fully reimbursing the provider. If the waiving insurer is in-network with the provider, the math of such monitoring should be relatively clear cut. Tracking the waivers will be the key. For out-of-network waivers -- which can occur under some carve-outs described below -- providers will need to be vigilant to ensure that the insurers are not simply passing along the waived amount to the provider through refusal to pay reasonable and customary rates (since there will be no contract rate).

INSURERS WAIVING ON THEIR OWN

First, some insurers are voluntarily waiving all out-of-pocket expenses for coronavirus testing for their fully insured plan members. For example, Cigna Corp. recently announced that it was doing so. Also, Highmark Blue Cross Blue Shield is waiving all out-of-pocket expenses for its fully insured, Medicare Advantage, and Affordable Care Act plan members. It is important to emphasize that these waivers are only for Cigna and Highmark *fully insured* plans. Employers with self-insured plans, which comprise most of the insured population, will be able to opt out of such waivers.

STATE / INSURER AGREEMENTS -- OREGON

In Oregon, Governor Kate Brown's office reached an agreement with eight major Oregon private insurers to spare insured Oregonians from copayments and other such out-of-pocket costs for coronavirus testing and a vaccine if one becomes available. The deal covers about one million Oregonians with private insurance. However, the Oregon waiver deal is subject to the following exceptions:

1. Waivers apply only to testing at in-network providers or emergency departments.

2. Four of the state's 10 largest insurers -- United Healthcare; Cigna; Aetna; and Health Care Insurance Corporation -- are not yet participating.
3. The waivers do not cover self-insured plans. However, Governor Brown's office is exploring a similar deal with self-insured plans.
4. Finally, the waivers do not cover short-term health insurance plans, health insurance ministry plans, and other types of coverage that fall short of "full insurance."

The Oregon Governor's staff has also reached out to the federal government to clarify whether the state can take the same steps of waiving costs for those with Medicare Advantage plans and health savings accounts.

STATE ORDER -- WASHINGTON

Washington State took measures one step further. Washington Insurance Commissioner Mike Kreidler issued an Order requiring insurers to waive cost-sharing for COVID-19 testing. The Order was authorized because Washington Governor Jay Inslee previously declared a state of emergency over the outbreak, a step Oregon has not taken. The Washington Order accomplishes the following:

5. It allows a one-time early refill for prescription drugs.
6. It suspends any prior authorization requirement for treatment or testing of COVID-19.
7. If an insurer does not have enough medical providers in its network to provide testing or treatment for COVID-19, the insurer must allow enrollees to be treated by another provider within a reasonable distance at no additional cost.

The order is effective immediately and applies to all state-regulated, fully insured health insurance plans and short-term limited duration medical plans until May 4, 2020.

STATE ORDER -- CALIFORNIA

California similarly ordered insurance companies to waive out-of-pocket costs for coronavirus testing. The California Department of Insurance and Department of Managed Health Care ordered all full-service commercial and Medi-Cal plans to "immediately reduce cost-sharing -- including, but not limited to, co-pays, deductibles or coinsurance -- to zero for all medically necessary screening and testing for COVID-19, including hospital, emergency department, urgent care and provider office visits where the purpose of the visit is to be screened and/or tested for COVID-19."

Outlining the scope of the Waiver Order, California Insurance Commissioner Ricardo Lara issued an extensive March 5 Memorandum, directing all California insurers providing commercial health insurance coverage to do the following:

8. Immediately reduce cost-sharing (including, but not limited to, co-pays, deductibles, or coinsurance) to zero for all medically necessary screening and testing for COVID-19, including hospital, emergency

department, urgent care, and provider office visits where the purpose of the visit is to be screened and/or tested for COVID-19.

9. Notify, as expeditiously as possible, the insurer's contracted providers that the insurer is waiving cost-sharing as described above.
10. Ensure the insurer's advice nurse line and customer service representatives are adequately informed that the insurer is waiving cost-sharing as described above and clearly communicate this to insureds who contact the insurer seeking medically necessary screening and testing for COVID-19.
11. Inform the insurer's call center staff to advise insureds to call their provider's office or advice nurse line for instructions about how best to access care for screening and treatment of COVID-19 prior to in-person visits to a clinic or emergency department.
12. Prominently display on the insurer's public website a statement that the insurer is waiving cost-sharing for medically necessary screening and testing for COVID-19, as well as guidance to insureds on how to access care as described above.

CONCLUSION

Thus, as providers and their patients navigate such announced waivers, they will need to discern precisely where such waivers are applicable and -- for providers -- how that impacts total reimbursement. Some payors will no doubt do better than others with respect to prospectively clarifying what out-of-pocket costs are waived and under what circumstances. For the most part, these announced waivers cover only fully insured plans and do not -- at least thus far -- cover employer self-insured plans. If the coronavirus becomes more significantly widespread before dissipating, more states and insurers will likely take similar measures.

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