

From: DMHC Licensing eFiling

Subject: APL 23-021 – Payment of COVID Claims for COVID-19 Tests
Delivered between March 4, 2020 and December 31, 2021

Date: Tuesday, November 14, 2023 1:43 PM

Attachments: APL 23-021 - Payment of COVID Claims for COVID-19 Tests.pdf

Dear Health Plan Representative:

The Department of Managed Health Care (DMHC) hereby issues this All Plan Letter (APL) 23-021, which provides information in regards to payment of COVID claims for COVID-19 tests delivered between March 4, 2020 and December 31, 2021.

Thank you.

ALL PLAN LETTER

DATE: November 14, 2023

TO: All Full-Service Commercial Health Care Service Plans¹

FROM: Sarah Ream
Chief Counsel

SUBJECT: APL 23 - 021: Payment of COVID claims for COVID-19 tests delivered between March 4, 2020 and December 31, 2021

Senate Bill (SB) 510, which took effect January 1, 2022, requires health plans to cover the costs of COVID-19 diagnostic and screening tests. Additionally, SB 510 prohibits a plan from delegating the financial risk for COVID-19 testing to a provider unless the plan and the provider “have negotiated and agreed upon a new provision of the parties’ contract pursuant to” the Health Care Providers’ Bill of Rights. SB 510 applies retroactively to March 4, 2020, which was the start of the California State of Emergency regarding COVID-19.

I. CAHP lawsuit challenging retroactive application of SB 510

Following enactment of SB 510, the California Association of Health Plans (CAHP) filed a lawsuit challenging the retroactive application of SB 510 to the beginning of the California State of Emergency (i.e., March 4, 2020). During the course of the litigation, CAHP asked the court to issue a preliminary injunction to prevent retroactive application of SB 510 while CAHP’s case was pending before the trial court. On July 5, 2022, the court granted CAHP’s request for a preliminary injunction.

On May 15, 2023, the trial court ruled against CAHP and held that SB 510 could apply retroactively to March 4, 2020. The court then stated that the preliminary injunction would dissolve when judgement was entered in the case, which occurred on June 27, 2023.² Accordingly, the preliminary injunction is no longer in effect and SB 510 requires health plans to comply with the provider reimbursement requirements in SB 510.

¹ This APL does not apply to Medi-Cal Managed Care Plans (MMCPs), Medicare Advantage, or specialized health care service plan products. It does apply to limited or restricted full-service health plans. MMCPs should refer to guidance issued by the California Department of Health Care Services.

² On July 14, 2023, CAHP filed a Notice of Appeal with the California Court of Appeal. At the time of issuance of this APL, CAHP’s appeal is pending.

II. All Plan Letter 22-014, issued on April 25, 2022.

On April 25, 2022, the DMHC issued [APL 22-014–SB 510 COVID-19 Testing and Vaccination Coverage Guidance](#). That APL provided guidance regarding health plan compliance with SB 510, including the minimum provider reimbursement amount for COVID-19 tests delivered between March 4, 2020 and December 31, 2021, and the timeframes in which plans had to reimburse providers. The DMHC directed plans to reimburse providers for such claims by the later of July 1, 2022 or within 45 days of receipt of the claim.

However, the DMHC did not enforce this deadline because the court issued the preliminary injunction (mentioned above), which prevented the DMHC from enforcing the relevant portion of SB 510. As stated above, on June 27, 2023, the preliminary injunction dissolved.

III. Reimbursement for COVID-19 testing claims for services rendered between March 4, 2020 and December 31, 2021

Now that the preliminary injunction is no longer in effect, the DMHC directs plans to reimburse providers for COVID-19 testing delivered between March 4, 2020, and December 31, 2021, if the health plan has not already reimbursed the providers for those services.

The DMHC will consider a plan to have complied with this APL if the plan does the following:

1. Reimburses the provider for COVID-19 testing delivered between March 4, 2020, and December 31, 2021, at either a specifically negotiated rate or at a rate that is at least 125% of the rate Medicare reimburses for the service in the geographic area where the service was delivered. "COVID-19 testing" includes: specimen collection and handling; hospital or health care provider office visits for the purpose of receiving testing for COVID-19; products related to testing and items or services furnished to an enrollee as part of the testing (e.g., the tests themselves); and COVID-19 antibody tests.
2. Includes interest as described in California Code of Regulations, title 28, section 1300.71, subdivision (i), calculated from June 27, 2023, which was the date the court lifted the preliminary injunction. If a plan fails to automatically include the interest due on the claim payment, then the plan shall pay the provider \$10 for that claim, in addition to any interest owed.
3. Reimburses the provider by **February 12, 2024**, for unpaid or underpaid COVID-19 testing claims, including interest calculated from June 27, 2023, for service delivered between March 4, 2020 and December 31, 2021.

Plans that fail to reimburse providers by that date in conformance with this APL may be subject to enforcement action by the DMHC.

This APL is not intended to impact a provider's ability to enforce through civil litigation, arbitration, or other private means any contractual or statutory rights the provider believes it may have.

In an effort to reduce the administrative burden on providers, the DMHC encourages plans to not require providers to resubmit claims when resubmission is not necessary for the plan to process and pay the claims. A plan shall not deny reimbursement for COVID-19 testing claims delivered between March 4, 2020 and December 31, 2021 on the grounds that the provider did not submit its claims within the claim filing deadlines contained in California Code of Regulations, title 28, section 1300.71(b).

Finally, if the plan delegated responsibility for paying COVID-19 testing claims to another health plan, including a restricted or limited licensee, or a Risk Bearing Organization (RBO) and the plan and the delegated entity disagree regarding which entity must pay "downstream" COVID-19 testing claims, the restricted/limited plan or RBO shall reimburse the downstream providers for their COVID-19 claims for services rendered between March 4, 2020 and December 31, 2021, as outlined in this APL. The delegated plan or RBO can then attempt to seek reimbursement from the fully licenced plan as appropriate.

If you have questions regarding this APL, please contact your health plan's assigned reviewer in the DMHC's Office of Plan Licensing.