

From: DMHC Licensing eFiling
Subject: APL 20-028 – Emergency Regulation Regarding COVID-19 Diagnostic Testing
Date: Thursday, July 23, 2020 4:39 PM
Attachments: APL 20-028 – Emergency Regulation Regarding COVID-19 Diagnostic Testing (7.23.20).pdf

Dear Health Plan Representative:

Please see the attached APL 20-028 in regards to emergency regulation regarding COVID-19 diagnostic testing.

Thank you.



Gavin Newsom, Governor
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ALL PLAN LETTER

DATE: July 23, 2020
TO: All Full-Service Commercial Health Care Service Plans
FROM: Sarah Ream
Acting General Counsel
SUBJECT: APL 20-028 – Emergency Regulation Regarding COVID-19 Diagnostic Testing

On July 17, 2020, the California Office of Administrative Law approved an emergency regulation submitted by the Department of Managed Health Care (DMHC) regarding COVID-19 diagnostic testing. The emergency regulation took effect July 17, 2020.

I. Applicability of the regulation:

The emergency regulation applies to all full-service commercial health care service plans, including restricted health plans. The regulation does not apply to Medi-Cal plans or products or to Medicare Advantage plans or products. The regulation does not apply to specialized health plans.

The emergency regulation supersedes the DMHC's All Plan Letter (APL) 20-006, issued on March 5, 2020, to the extent the regulation conflicts with that APL.

II. Overview of the Regulation

A. Access requirements for COVID-19 testing

For purposes of access to COVID-19 testing, enrollees are classified into one of three broad categories: (1) enrollees (including "essential workers"¹) with symptoms of or exposure to COVID-19; (2) asymptomatic enrollees who are "essential workers" who have not been exposed to COVID-19; and; (3) asymptomatic enrollees who are *not* "essential workers" and who have *not* been exposed to COVID-19. As described below, the access requirements differ for each of these groups.

¹ A list of the categories of "essential workers" is attached to this APL.

1. Access for enrollees (including “essential workers”) with symptoms of COVID-19 or known/suspected exposure to COVID-19

Per federal law, an enrollee with symptoms of COVID-19 or who has known or suspected exposure to COVID-19 may access testing from any provider (in or out of network) without first going through the enrollee’s health plan.² Health plans must reimburse providers for COVID-19 tests administered to enrollees with symptoms of COVID-19 or known/suspected exposure to COVID-19, regardless of whether the enrollee received the test from an in-network or out-of-network provider. A health plan may not limit the number or frequency of tests an enrollee receives when the enrollee has symptoms of COVID-19 or known or suspected exposure to COVID-19.

2. Access requirements for asymptomatic “essential workers” who do not have a known or suspected exposure to COVID-19

The emergency regulation defines COVID-19 testing as medically necessary for enrollees who are “essential workers” regardless of whether the enrollee has symptoms of or suspected/known exposure to COVID-19. Because testing is deemed to be medically necessary, health plans may not require prior authorization for testing of “essential workers”. Accordingly, health plans must offer an enrollee who is an “essential worker” a COVID-19 testing appointment that will take place within 48 hours of the enrollee’s request. A health plan may not limit the number or frequency of tests an enrollee who is an essential worker receives.

Additionally, the appointment must be with a provider located within 30 minutes or 15 miles of the enrollee’s residence or workplace. If the plan does not offer the enrollee an appointment meeting these time and distance requirements, the enrollee may access a COVID-19 test from any available provider (whether in or out of network). In-network cost-sharing applies in such instances.

3. Access requirements for asymptomatic enrollees who are not “essential workers” and do not have a known/suspected exposure to COVID-19

The emergency regulation requires health plans to cover COVID-19 testing for enrollees who are not “essential workers” and who do not have symptoms of or exposure to COVID-19 when such testing is medically necessary. As such, a health plan may impose prior authorization requirements on such testing. If the health plan requires prior authorization and finds the testing to be medically necessary for the enrollee, the plan must offer the enrollee an appointment for a COVID-19 test to occur within 96 hours of the enrollee’s request.

The appointment for all other asymptomatic enrollees (who have had no exposure to COVID-19) must be with a provider located within 30 minutes or 15 miles of the

² Families First Coronavirus Response Act (FFCRA) (PL 116-127, March 18, 2020, 134 Stat 178); Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (PL 116-136, March 27, 2020, 134 Stat 281).

enrollee's residence or workplace. If the plan does not offer the enrollee an appointment meeting these time and distance requirements, the enrollee may access a COVID-19 test from any available provider (whether in or out of network). In-network cost-sharing applies in such instances.

B. Cost-sharing

The emergency regulation allows health plans to charge ordinary cost-sharing for COVID-19 testing, *unless otherwise provided by federal or state law*. The federal FFCRA and the CARES Act require health plans to provide COVID-19 testing at zero cost-sharing for enrollees with symptoms of COVID-19 or known or suspected exposure to someone with COVID-19. Accordingly, health plans must continue to impose no cost-sharing for COVID-19 testing for enrollees with symptoms of or known/suspected exposure to COVID-19.

For all other enrollees (i.e., enrollees without symptoms of or known/suspected exposure to COVID-19), health plans may impose ordinary cost-sharing for COVID-19 testing.

C. Utilization management requirements

1. Enrollees with COVID-19 symptoms or known or suspected exposure to COVID-19

Per the FFCRA and the CARES Act, health plans may not impose utilization management or prior authorization requirements on testing for enrollees who have symptoms of COVID-19 or known or suspected exposure to someone with COVID-19.

2. "Essential workers" *without* COVID-19 symptoms and *without* known or suspected exposure to COVID-19

The DMHC's emergency regulation defines "essential workers" for purposes of the regulation and deems COVID-19 testing to be medically necessary for "essential workers" regardless of whether the "essential worker" has symptoms of or exposure to COVID-19.

If an enrollee who is an "essential worker" has symptoms of or suspected exposure to COVID-19, the FFCRA and the CARES Act allow the enrollee to receive COVID-19 testing without prior authorization or utilization management.

If an enrollee who is an "essential worker" does not have symptoms of or known/suspected exposure to COVID-19, the emergency regulation nevertheless deems COVID-19 testing to be medically necessary for the "essential worker." Accordingly, the health plan may not require utilization management or prior authorization for the enrollee's COVID-19 test(s).

Additionally, plans may not limit the frequency with which an “essential worker” obtains COVID-19 testing.

3. Enrollees *without* COVID-19 symptoms, *without* known or suspected exposure to COVID-19 who *are not* “essential workers”

Finally, health plans may impose ordinary utilization management requirements, including prior authorization requirements, in regard to an enrollee’s (or an enrollee’s provider’s) requests for a COVID-19 test only if the enrollee: (1) has no symptoms of or known/suspected exposure to COVID-19; and, (2) the enrollee is not an “essential worker.”

D. COVID-19 testing is “urgent” care during the California state of emergency due to the coronavirus.

The emergency regulation provides that medically necessary diagnostic testing for COVID-19 is an urgent health care service during the California state of emergency declared in response to the coronavirus. Under existing law, a health plan (or delegated provider) must offer an enrollee a medically necessary urgent care appointment consistent with the timeframes specified in California Code of Regulations, title 28, section 1300.67.2.2 (c)(5). These timeframes differ depending on whether the services *do not* require prior authorization (appointment within 48 hours) or *do* require prior authorization (appointment within 96 hours).

E. Shortages of testing capacity

The DMHC and the California Department of Public Health (CDPH) continue to monitor the availability of COVID-19 testing across the state. The DMHC expects health plans to comply with the emergency regulation. If a health plan experiences difficulty securing COVID-19 testing appointments for its enrollees due to regional or state-wide testing shortages, the health plan should contact its assigned reviewer in the DMHC’s Office of Plan Licensing.

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

Categories of “Essential Workers”

“Essential worker” means any of the following:

- (A) A person working in the health care sector who has frequent interactions with the public or with people who may have COVID-19 or have been exposed to SARS-CoV-2. The health care sector includes: hospitals; skilled nursing facilities; long-term care facilities; ambulatory surgery centers; health care providers’ offices; health care clinics; pharmacies; blood banks; dialysis centers; hospices; and, home health providers.
- (B) A person who provides care to an elderly person or a person with a disability in the home, including a person providing care through California’s In-Home Supportive Services Program.
- (C) A person working in a congregate care facility, including shelters for people experience homelessness and residential care facilities for the elderly.
- (D) A person working in the retail or manufacturing sectors who has frequent interactions with the public or who works in an environment where it is not practical to maintain at least six feet of space from other workers on a consistent basis.
- (E) A person working in the emergency services sector who has frequent interactions with the public or with people who may have COVID-19 or have been exposed to SARS-CoV-2. The emergency services sector includes police and public safety departments, fire departments, and emergency service response operations.
- (F) A person working in the food services sector who has frequent interactions with the public. The food services sector includes grocery stores, convenience stores, restaurants, and grocery or meal delivery services.
- (G) A person working in the agricultural or food manufacturing sector who has frequent interactions with the public or who works in an environment where it is not practical to maintain at least six feet of space from other workers on a consistent basis. The agricultural or food manufacturing sector includes food production and processing facilities, slaughter facilities, harvesting sites or facilities, and food packing facilities.
- (H) A person working in the public transportation sector who has frequent interactions with the public. The public transportation sector includes public transit, passenger rail service, passenger ferry service, public airports, and commercial airlines.
- (I) A person working in a correctional facility.
- (J) A person working in the education sector who has frequent interactions with students or the public. The education sector includes public and private childcare establishments; public and private pre-kindergarten programs; primary and secondary schools; and public and private colleges and universities.