



COVID-19 spurs IRS relief for HDHPs, state insurance guidance

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March 18, 2020

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To encourage testing and treatment for the novel coronavirus (COVID-19), insurance regulators in several states have issued guidance to carriers and taken other urgent measures, such as expanding telehealth. According to [CMS](#), COVID-19 testing and treatment are Affordable Care Act (ACA) essential health benefits (EHBs) covered by all state benchmark plans, but cost-sharing and preauthorization requirements can vary. Even before Congress took action, some states started requiring that insurers waive cost sharing for COVID-19 screening, which had raised concerns about potential loss of health savings account (HSA) eligibility for individuals with high-deductible health plans (HDHPs). In response, IRS [Notice 2020-15](#) lets HDHPs cover COVID-19 testing and treatment free of cost, even if individuals have yet to satisfy their deductible. This GRIST provides brief summaries and links to state COVID-19 guidance for insurers, along with related considerations for employers.

COVID-19 issues for health plans

Just-passed federal legislation ([HR 6201](#)) requires group health plans and insurers offering group coverage or individual health insurance (including grandfathered plans) to provide COVID-19 testing — including related office, telehealth, urgent care center or emergency room services — without applying any cost-sharing, prior-authorization and other medical-management requirements. However, states have not waited for federal legislation and have issued their own insurance directives that may go beyond the federal cost-sharing ban for COVID-19 testing.

State insurance directives don't apply to self-insured ERISA plans, but employers should update their health plans to meet the federal cost-sharing ban for COVID-19 testing and communicate that policy as soon as possible to employees. Employers with insured plans should confirm what other COVID-19 services the plan's carrier will offer without cost sharing. The benefits of providing cost-free COVID-19 treatment and other services, like telemedicine, may outweigh the expense to employer-provided plans.

COVID cost-sharing waivers and HDHPs. State directives to cover the costs of COVID-19 screening or treatment without imposing any deductible had raised concerns about how compliance would affect individuals' eligibility to make tax-deductible HSA contributions. The Internal Revenue Code allows tax deductions for HSA contributions if made by an individual who meets two conditions:

- Has HDHP coverage that imposes a minimum deductible before paying a portion of benefits, except for preventive care
- Does not have other disqualifying health coverage

IRS [Notice 2004-23](#) provides a safe harbor for HDHPs to cover screening to diagnose certain infectious diseases on a pre deductible basis, but coronavirus isn't on that list. Now, [Notice 2020-15](#) has expanded this cost-sharing relief to include COVID-19 screening, testing and treatment.

Telemedicine questions. First-dollar telemedicine can present similar issues but may qualify as an excepted benefit in certain cases. Industry stakeholders are seeking further clarification on telemedicine.

State-by-state action. The following discussion provides brief summaries and links to state COVID-19 guidance for insurance carriers. Not all states have issued guidance, but more may do so in the near future. This article concludes with some considerations for employers.

Alaska

The state has issued two insurance bulletins related to COVID-19. [Bulletin 20-04](#) outlines requirements for cost sharing and coverage related to respiratory illnesses, including COVID-19. Insurers must waive cost sharing for respiratory illness diagnostic testing and are encouraged to "liberalize" telehealth services. [Bulletin 20-03](#) calls on insurers to allow early refills or replacements of lost or damaged medications whenever the potential for quarantine is high. Regulators also expect insurers will allow covered patients to obtain emergency supplies or refills without imposing additional authorization requirements and to purchase necessary prescriptions from a local retail pharmacy without penalty, even if mail-order purchasing is normally preferred.

California

Health insurers and HMOs in the state must waive deductibles and other cost sharing for all medically necessary COVID-19 screening and testing, including hospital, emergency department, urgent care and provider office visits. Bulletins issued by the California departments of [Insurance](#) and [Managed Health Care](#) direct regulated plans to notify contracted providers, nurse lines and customer service representatives about the cost-sharing waiver “as expeditiously as possible.” Carriers must prominently display cost-sharing waiver information on their websites.

The bulletins also encourage insurers and HMOs to work with their contracted providers to limit patients’ exposure to others by using telehealth services to deliver care when medically appropriate. If a prescription drug shortage occurs, insurers should waive prior-authorization and/or step-therapy requirements if a prescribing provider recommends a different drug.

Colorado

A Colorado Division of Insurance (DOI) bulletin ([No. B-4.104](#)) directs state-regulated health insurance plans to provide telehealth services for COVID-19 without cost sharing, including any copays, deductibles and coinsurance that would normally apply. The DOI has issued a [draft emergency regulation](#) that will formalize this specific directive.

In addition, insurers must cover a one-time early prescription refill so patients can obtain necessary medications, while limiting close contact with others. Insurers must also waive cost sharing for visits to undergo COVID-19 testing at an emergency room or at an in-network provider or urgent care center. Out-of-network services must be available to patients on a cost-free basis if an in-network healthcare provider cannot do the testing.

Connecticut

A March 9 Connecticut insurance bulletin ([No. IC-39](#)) “encourages” health insurers and healthcare centers to waive cost sharing related to COVID-19 laboratory tests and related in-network provider office, urgent care or emergency room visits. Additional cost-sharing waivers should apply to COVID-19 medical advice and treatment provided via telehealth services.

The bulletin also addresses providing information about covered benefits to individuals; ensuring the adequacy of provider networks; extending coverage for out-of-network services; authorizing extended prescription drug supplies; extending claim-filing deadlines; and easing utilization-review restrictions.

Delaware

Delaware regulators have issued a bulletin ([No. 115](#)) directing state health insurers and HMOs to cover COVID-19 testing as an EHB and ensure network adequacy, including telemedicine programs. In-network cost sharing must apply to out-of-network services if in-network providers with sufficient training are unavailable.

The guidance also addresses expedited prescription drug formularies, advance prescription refills and patients' ability to use retail pharmacies. Utilization review must be timely, and any immunizations developed must be covered. Plans must also comply with the state's ban on "surprise" medical billing.

Florida

A Florida Office of Insurance Regulation memorandum ([OIR-20-01M](#)) doesn't prohibit cost sharing but directs state health insurers to "consider all practicable options" to reduce cost-sharing barriers to COVID-19 testing and treatment during the public health emergency. The memorandum responds to Gov. Ron DeSantis' executive order ([No. 20-51](#)) calling for a coordinated response from state agencies. Florida's "surprise" medical bill law (Fla. Stat. § [627.64194](#)) requires insurers to cover out-of-network emergency services for an emergency medical condition at in-network levels.

Georgia

Georgia insurance regulators have issued a directive ([20-EX-3](#)) asking health insurers licensed in the state to waive cost sharing for COVID-19 testing, ensure their telehealth programs can meet the increased demand of the disease and review network adequacy. If a plan doesn't have enough appropriately trained in-network providers, insurers should allow covered individuals to use out-of-network providers at in-network costs. Health insurers also should ease impediments to care, such as preauthorization, utilization review and prescription drug limits.

Idaho

Idaho insurance regulators haven't prohibited cost sharing for COVID-19 testing but have [announced](#) that insurers in the state will voluntarily waive these payments. Blue Cross, Regence, SelectHealth, PacificSource and Mountain Health Co-op have agreed to remove cost-sharing barriers to testing. State regulators have also called on out-of-network healthcare providers to refrain from balance billing patients during this outbreak.

Illinois

The Illinois Insurance Department has posted [FAQs](#) about COVID-19 insurance coverage, indicating that the federal Centers for Disease Control and Prevention ([CDC](#)) and the Illinois Public Health Department

are currently covering COVID-19 testing costs. However, hospitals might still charge specimen-collection fees, which could be billed to the patient or the patient's health insurance provider. The state has also posted [Company Bulletin 2020-2](#), noting that Illinois law ([210 Ill. Comp. Stat. 88/1](#)) prohibits state health insurers from charging higher out-of-pocket expenses to a covered plan member who sees an out-of-network provider at an in-network facility when no in-network providers are available or receives emergency services for an emergency medical condition.

Maryland

Maryland has declared a state of emergency, and insurance guidance ([Bulletin 20-05](#)) requires health insurers in the state to waive restrictions on prescription refills and authorize payment to pharmacies for at least a 30-day supply of any prescription medication, regardless of the most recent fill date. Normal copayments and deductibles may apply to the prescription medication refills.

Carriers should plan to grant out-of-network referrals if a plan lacks enough appropriately trained in-network providers and "are encouraged" to enter into provider agreements to prevent balance billing patients. Gov. Larry Hogan has also announced a [special enrollment period](#) from March 16 through April 15 for state residents to obtain coverage on the Maryland public exchange.

Emergency regulations outlined in another bulletin ([20-06](#)) require health carriers to waive cost sharing for any vaccination that becomes available and for any visits or fees to test for COVID-19, regardless of the setting. Plans also will have to pay claims for COVID-19 treatment that had been denied as experimental, limit prior-authorization requirements for COVID-19 testing and evaluate the use of out-of-network providers solely on the basis of medically necessity.

Massachusetts

Massachusetts health insurers are expected to "take all necessary steps" to enable covered individuals to obtain medically necessary and appropriate testing and treatment that will help fight the spread of COVID-19, according to recent [guidance](#) ([Bulletin 2020-02](#)). In part, carriers are expected to waive cost sharing for any medically necessary in-network services for COVID-19 testing, counseling, treatment or eventual vaccine, as well as for out-of-network services for urgent or emergency care or when in-network care isn't available. The bulletin also instructs insurers to promote telehealth options, relax prior approval requirements and establish a dedicated help line to respond to inquiries about the coronavirus.

Missouri

Missouri [Insurance Bulletin 20-03](#) asks health insurers to waive any cost sharing for COVID-19 diagnostic tests, review network adequacy and ensure their telehealth programs can meet increased demand. State law (Mo. Rev. Stat. § [376.1900](#)) requires telehealth coverage for otherwise covered services. The bulletin

also addresses utilization review for COVID-19 treatment, access to prescription drugs, cost-sharing waivers for any vaccines developed, and access to and sharing of information.

Nevada

Nevada regulators have [announced an emergency regulation](#) that requires insurers in the state to waive cost sharing for COVID-19 testing; provide coverage for off-formulary prescriptions if pharmacy supplies are disrupted; and inform covered individuals and providers about insurance benefits, medical service options and preventive measures.

New Jersey

New Jersey [Bulletin 20-30](#) advises health insurers in the state to waive cost sharing, including deductibles, for all medically necessary COVID-19 screening and testing, including related visits to hospitals, emergency departments, urgent care facilities and provider offices. Carriers are also advised to ensure their telehealth programs can meet increased demand; review network adequacy; and ease impediments to care, such as preauthorization, utilization review and prescription drug limits. New Jersey prohibits health insurers from charging higher out-of-pocket expenses to a covered plan member who sees an out-of-network provider at an in-network facility when in-network providers are not available or receives emergency services for an emergency medical condition.

New Mexico

Under New Mexico [Bulletin 2020-004](#), health insurers should prepare for COVID-19 by providing members and network providers with information in line with guidance issued by the [New Mexico Department of Health](#) and the [CDC](#). Besides encouraging network providers to use telehealth services to minimize exposure to provider staff and patients, health insurers should ensure that utilization review, prior authorization, care and case management, and emergency care policies and procedures follow CDC guidelines and don't present barriers —such as cost sharing — to testing or treatment. Insurers must allow covered individuals to obtain a one-time early refill of covered prescriptions, taking into consideration risks associated with certain drug classes.

New York

In [Circular Letter 2020 No. 3](#), New York regulators advise health insurers in the state to waive any cost sharing for COVID-19 lab tests, emergency room visits, and in-network provider office and urgent care center visits for testing. First-dollar coverage should also apply to out-of-network providers when in-network providers are unable to conduct COVID-19 testing. Consistent with Gov. Andrew Cuomo's recent [announcement](#), the [Department of Financial Services](#) has adopted an [emergency regulation](#) prohibiting this cost sharing.

New York laws ([Ins. § 3217-h](#) and [Pub. Health § 4406-g](#)) require coverage for telehealth services otherwise covered by a plan. Given that COVID-19 is a communicable disease, the circular letter calls on health carriers to ensure their telehealth programs with participating providers “are robust and will be able to meet any increased demand.” The guidance also addresses COVID-19 matters related to network adequacy, utilization review, prescription drugs, immunizations (once available), inpatient and emergency care, ambulance services, “surprise” medical bills, and communication with insured individuals. During the COVID-19 state of emergency, a second piece of guidance ([Circular Letter 2020-6](#)) and [emergency regulations](#) bar insurers in New York from requiring copayments, coinsurance or annual deductibles for an in-network service delivered via telehealth if the policy would cover that service when delivered in person.

Under another [regulatory notice](#), individuals who enroll in qualified health plans through the [NY State of Health Marketplace](#) or directly through insurers between March 16 and April 15 will have coverage effective starting April 1.

Tennessee

Tennessee has asked health carriers in the state to facilitate preventive measures — including covering the cost of coronavirus testing — to fight the spread of COVID-19, the state insurance commissioner has [announced](#). In addition, the Department of Commerce has requested health insurers in the state to provide timely, accurate information; quickly respond to consumer inquiries; utilize telehealth services where available; and not use preauthorization requirements to limit coverage of testing and treatment. Related guidance ([Bulletin 20-02](#)) also addresses telehealth delivery network adequacy, access to out-of-network services, utilization review, immunizations (when available), access to prescription drugs, insurer preparedness, and information access and sharing.

Vermont

Vermont [Insurance Bulletin No. 209](#) directs all health insurers and HMOs in the state to cover COVID-19 testing as a preventive service without cost sharing. The bulletin also encourages health insurers to consider all “feasible and prudent options to reduce any barriers” imposed by cost sharing for COVID-19 treatment and testing-related services.

Washington

Washington Insurance Commissioner Mike Kreidler has [announced](#) an emergency order ([20-01](#)) to require health insurers in the state to waive copays and deductibles for any covered individual needing COVID-19 testing. Insurers also must suspend any prior-authorization requirement for COVID-19 treatment or testing and allow a one-time early refill for prescription drugs. Out-of-network providers must be covered at no cost to the patient if an insurer does not have enough in-network medical providers to meet the demand for testing and treatment.

West Virginia

The state insurance commissioner is asking insurers offering health benefit plans that cover West Virginia residents to mitigate the potential impact of COVID-19. [Insurance Bulletin No. 2020-01](#) asks insurers to waive cost sharing for COVID-19 diagnostic tests, including those done at an in-network provider office, urgent care center or emergency room. The guidance also requests that insurers review the adequacy of their telehealth programs, verify their provider networks can handle a potential increase in need, make expedited formulary exceptions when appropriate, ease utilization review and preauthorization requirements, and facilitate information access and sharing.

Wisconsin

Regulatory [guidance](#) from Wisconsin's Office of the Insurance Commissioner (OIC) asks health plans and pharmacy benefit managers (PBMs) to identify and remove barriers to COVID-19 testing and treatment. The OIC requests that insurers offering health coverage to Wisconsin residents waive any cost sharing for COVID-19 diagnostic tests, including those done at an in-network provider office, urgent care center or emergency room. The guidance also outlines recommendations for prior-authorization requests; access to prescription drugs; network adequacy, including telehealth networks, and access to out-of-network services; potential immunization coverage; and information sharing.

Employer considerations

Employers with insured or self-insured plans must update their plans for the new federal mandate to provide COVID-19 testing and related services without applying any cost-sharing, prior-authorization and other medical-management requirements. How much commercial and other labs will charge for COVID-19 tests isn't clear yet, but the health benefits of testing probably outweigh that cost.

Employers with insured plans should review any recent guidance in their state and work with their carriers to ensure covered employees receive accurate information on COVID-19 coverage. Employers with insured plans in states that don't require a cost-sharing waiver for COVID-19 services beyond testing should confirm what each carrier's plan will cover without cost sharing.

Self-insured employers should work with their third-party administrators to determine the best approach to COVID-19 coverage beyond testing. To remove barriers to treatment, self-insured employers should evaluate with their stop-loss carriers the benefit of voluntarily providing no-cost COVID services and adopting other measures undertaken by state regulators, including:

- Expanding options for telemedicine
- Allowing covered patients to obtain emergency supplies or refills without imposing additional authorization requirements

- Permitting access to necessary prescriptions from a local retail pharmacy without penalty, even if normally obtained by mail order
- Waiving preauthorization requirements for COVID-19 treatment
- Preparing to offer COVID-19 immunizations free of cost sharing, when available

Related resources

Non-Mercer resources

- [HR 6201](#), the Families First Coronavirus Response Act (Congress, March 18, 2020)
- [Notice 2020-15](#) (IRS, March 11, 2020)
- [Notice 2004-23](#) (IRS, April 12, 2004)
- Alaska [Bulletin 20-04](#) (Insurance Division, March 6, 2020)
- Alaska [Bulletin 20-03](#) (Insurance Division, March 6, 2020)
- California [COVID-19 Bulletin](#) (Insurance Department, March 5, 2020)
- California [COVID-19 Bulletin](#) (Department of Managed Health Care, March 5, 2020)
- Colorado [Draft Emergency Regulation 20-E-01](#), (Division of Insurance, March 11, 2020)
- Colorado [Bulletin No. B-4.104](#) (Department of Regulatory Agencies, March 9, 2020)
- Connecticut [Bulletin No. IC-39](#) (Insurance Department, March 9, 2020)
- Delaware [Insurers Bulletin No. 115](#) (Insurance Department, March 9, 2020)
- Florida [Informational Memorandum OIR-20-01M](#) (Office of Insurance Regulation, March 6, 2020)
- Florida [Executive Order No. 20-51](#) (Governor's Office, March 1, 2020)
- Georgia [Directive 20-EX-3](#) (Office of Insurance and Safety Fire Commissioner, March 9, 2020)
- Idaho [COVID-19 news release](#) (Insurance Department, March 9, 2020)
- Illinois [COVID-19 FAQs](#) (Insurance Department, March 2, 2020)

- Illinois [Company Bulletin 2020-2](#) (Insurance Department, March 2, 2020)
- Maryland [press release on coronavirus special enrollment](#) (Health Benefit Exchange, March 13, 2020)
- Maryland [Bulletin 20-06](#) (Insurance Administration, March 10, 2020)
- Maryland [Bulletin 20-05](#) (Insurance Administration, March 6, 2020)
- Massachusetts [COVID-19 guidance](#) (Insurance Division, March 6, 2020)
- Missouri [Insurance Bulletin 20-03](#) (Department of Commerce and Insurance, March 3, 2020)
- Nevada [press release on COVID-19 and health insurance](#) (Insurance Division, March 6, 2020)
- Nevada [press release on COVID-19 emergency regulation](#) (Insurance Division, March 5, 2020)
- Nevada [COVID-19 emergency regulation](#) (Insurance Commissioner, March 5, 2020)
- New Jersey [Bulletin 20-03](#) (Department of Banking and Insurance, March 10, 2020)
- New Mexico [Bulletin 2020-004](#) (Office of Superintendent of Insurance, March 6, 2020)
- New York [press release](#) (Department of Financial Services, March 16, 2020)
- New York [Circular Letter 2020-6](#) (Department of Financial Services, March 15, 2020)
- New York [Circular Letter 2020-03](#) (Department of Financial Services, March 3, 2020)
- New York [COVID-19 announcement](#) (Office of the Governor, March 2, 2020)
- Tennessee [COVID-19 announcement](#) (Department of Commerce and Insurance, March 9, 2020)
- Tennessee [Bulletin 20-02](#) (Department of Commerce and Insurance, March 9, 2020)
- Vermont [Insurance Bulletin 209](#) (Department of Financial Regulation, March 6, 2020)
- Washington [COVID-19 press release](#) (Office of the Insurance Commissioner, March 5, 2020)
- Washington [Emergency Order No. 20-01](#) (Office of Insurance Commissioner, March 5, 2020)
- West Virginia [Insurance Bulletin No. 2020-01](#) (Office of the Insurance Commissioner, March 9, 2020)
- Wisconsin [COVID-19 bulletin](#) (Office of the Insurance Commissioner, March 6, 2020)

Mercer Law & Policy resources

- [Virus aid legislation includes cost-sharing curbs, new leave rights](#) (March 18, 2020)
- [Roundup: Coronavirus \(COVID-19\) updated resources for employers](#) (March 17, 2020)

Other Mercer resources

- [Coronavirus resource page](#) (updated regularly)
- [Key considerations for designing a COVID-19 emergency leave policy](#) (March 17, 2020)
- [Could free COVID-19 services sabotage your HSA? IRS just weighed in](#) (March 12, 2020)
- [Congressional COVID-19 bill includes employer provisions](#) (March 12, 2020)
- [Call me, ping me if you want to reach me: The importance of telehealth in fighting COVID-19](#) (March 12, 2020)
- [COVID-19 and mental health: Normalizing anxiety can improve resiliency](#) (March 12, 2020)
- [Ten considerations to support your workforce](#) (March 5, 2020)
- [COVID-19 and paid leave: Three scenarios to plan for](#) (March 5, 2020)
- [Will the coronavirus outbreak push telehealth to the tipping point?](#) (Feb. 27, 2020)

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