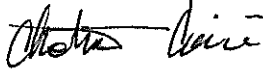




Douglas A. Ducey, Governor
Christina Corieri, Interim Director

REGULATORY BULLETIN 2020-02¹

To: Life and Disability Insurers, Health Care Services Organizations, Hospital, Medical, Dental and Optometric Service Corporations
From: Christina Corieri, Interim Director 
Date: April 3, 2020
Re: **Implementation of Executive Order 2020-07 Proactive Measures to Protect Against COVID-19 and Executive Order 2020-15 Expansion of Telemedicine**

Background

On March 11, 2020, through Executive Order 2020-07, the Governor of the State of Arizona issued a declaration of Public Health Emergency due to the necessity to prepare for, prevent, respond to, and mitigate the spread of COVID-19. The Executive Order directs the Arizona Department of Insurance, in conjunction with the Department of Health Services, to require insurers issuing health insurance plans regulated by the State to do all of the following:

- Cover COVID-19 diagnostic testing from all qualified laboratories without regard to whether the laboratory is in-network.
- Waive all cost-sharing requirements for consumers related to COVID-19 diagnostic testing.
- Cover telemedicine visits at a lower cost-sharing point for consumers than the same in-office service to encourage utilization of telemedicine for the duration of the state's public health emergency.

The Order emphasizes that "it is necessary that all Arizonans who need to be tested for COVID-19 have access to testing that is covered by their healthcare insurance." The Department interprets this to mean that any Arizona resident, whether covered by a policy or a certificate issued in Arizona, is eligible for the reduced cost-share options provided in the Order from all insurers regulated by the State.

On March 25, 2020, the Governor issued Executive Order 2020-12, establishing additional requirements for coverage and administration of telemedicine visits by insurers with health insurance plans regulated by the State. The Department does not regulate self-funded group plans, governmental plans, Medicare, Medicare Advantage plans, or Medicaid plans. The Executive Order requires health plans to:

1. Provide coverage for all healthcare services that are provided through telemedicine if the healthcare service would be covered were it provided through an in-person visit between the enrollee and a healthcare provider.
2. Establish reasonable requirements and parameters for telemedicine services, including documentation and recordkeeping, but such requirements and parameters may not be more

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restrictive or less favorable to providers, insureds, enrollees, or members than are required for healthcare services delivered in person.

3. Reimburse healthcare providers at the same level of payment for a telemedicine visit as applied for an in-person visit.
4. Allow all electronic means of delivering telemedicine, including telephone and video calls.
5. Allow a patient's home to be an approved location to receive telemedicine services.

In addition to the above requirements for insurers, Order 2020-12 provides that telemedicine services may be provided by any Arizona licensed healthcare provider type.

For purposes of these Orders and this guidance, telemedicine and telehealth have the same meaning as the meaning of "telemedicine" as defined in ARS §§ 20-841.09, 20-1057.13, 20-1376.05, and 20-1406.05.

In order to ensure that the Order is dependably executed, the Arizona Department of Insurance issues the following guidance.

Coverage of Out-of-Network Laboratory Services

This provision applies to plans issued or delivered in this state which otherwise provide coverage for diagnostic testing or laboratory services, including short-term limited duration plans and limited benefit plans if such coverage is provided. Out-of-network laboratories include out-of-state laboratories.

Plans of any network type must cover testing at out-of-network laboratories, including plans offered by health care services organizations (HCSOs). An HCSO must deliver services through contracted providers except in cases of network exception or emergency. *See* ARS § 20-2801 et seq., AAC R20-6-1902, and R20-6-1904(B). Executive Order 2020-07 establishes the existence of an emergency in this State. Therefore, HCSOs are expected to provide coverage for diagnostic testing at out-of-network laboratories consistent with the terms of the Order.

The Department acknowledges the challenges inherent in negotiating claims payments with non-contracted laboratories and encourages insurers to take full advantage of Provision 5 of the Executive Order 2020-07 related to price gouging.

Waiver of Cost-Sharing for Diagnostic Testing

This provision applies to plans issued or delivered in this state which otherwise provide coverage for diagnostic testing or laboratory services, including short-term limited duration plans and limited benefit plans if such coverage is provided.

Insurers are required to waive cost-sharing "related to" COVID-19 diagnostic testing. Cost-sharing includes copayments, coinsurance, and deductibles.²³ Cost-sharing "related to" COVID-19 diagnostic testing includes cost-sharing for an office visit, urgent care visit, or emergency room visit if, during the visit, the member is tested for COVID-19. In addition, in the event a member is referred by a treating physician for COVID-19 testing but the member is not able to receive COVID-19 testing, the cost-share for a visit to an urgent care, an emergency room or laboratory must be waived. An insurer may require documentation indicating the member's treating physician referred them for testing. In the event a

² Please note that the Internal Revenue Services, via Notice 2020-15, has clarified that an otherwise qualifying high deductible health plan (HDHP) may provide medical care services associated with testing for and treatment of COVID-19 without a deductible, without losing its status as a qualifying HDHP.

³ Please note that the Centers for Medicare and Medicaid Services (CMS) will not take enforcement action against any health insurance issuer that amends its catastrophic plans to provide pre-deductible coverage for telehealth services, even if the specific telehealth services covered by the amendment are not related to COVID-19. *See* March 24, 2020 FAQs on Availability and Usage of Telehealth Services through Private Health Insurance Coverage in Response to Coronavirus Disease 2019 (COVID-19).

member self-directs to an urgent care, emergency room or laboratory, if they do not receive a COVID-19 test, the cost-share for the visit and any alternative, non-COVID-19 tests need not be waived. Insurers are urged to promptly provide instructions to providers/facilities regarding the appropriate billing codes to use when submitting claims for COVID-19 testing and treatment.

The Order seeks to ensure that Arizonans have access to testing that is covered by their healthcare insurance and that they are not subject to price gouging. However, this does not alter the model of healthcare insurance delivery applicable to any particular policy type. Individuals with PPO coverage may utilize out-of-network laboratories as part of their regular coverage, and their plan cost-share must be waived. However, the out-of-network laboratory may balance bill the individual if the amount paid by the insurer is less than the total amount billed by the laboratory. However, while HCSO's may encourage the use of in-network laboratories, because the testing is considered an emergency, members should not be balance billed for services received at out-of-network laboratories.

Coverage of Telemedicine Visits

Insurer plans issued in this state must provide coverage for telemedicine services consistent with the terms of Executive Order 2020-07 and Executive Order 2020-15. This includes short-term limited duration plans and limited benefit plans. Telemedicine coverage must be provided for all health care services that would be covered if provided through an in-person visit. The Orders do not expand the covered services offered by any health insurance plan, but they do require that, if a health care service would be covered if provided in-person, it must be covered if provided via telemedicine. This is true for all healthcare services covered by a health insurance plan, whether or not such a visit is related to COVID-19.

All telemedicine visits for the duration of the public health emergency, whether or not such a visit is related to COVID-19, must be offered at a lower cost-sharing point than the same in-office service.⁴ This includes services rendered by individual providers, such as PCPs and specialists, not just those rendered by telemedicine vendors. Insurers are urged to help promote their members' continuing relationship with their PCPs and treating physicians by reminding members that their PCPs and other treating physicians may be able to provide services via telemedicine. Members may wish to contact PCPs and other treating physicians rather than, or prior to, a telemedicine vendor. HCSO plans may limit the provision of lower cost-share telemedicine services to those offered through in-network providers and telemedicine vendors (unless none are accessible, in which case they must provide a network exception). PPO plans must continue to cover both in- and out-of-network physician services, including via telemedicine, however PPO plans may limit telemedicine vendor services to in-network vendors. PPO plans should consider urging members to utilize in-network providers to ensure they receive services at a lower cost-share and are not balance billed by the out-of-network providers.

Insurers may establish reasonable standards for claims coverage and documentation of services rendered via telemedicine and billing for such services, however, those standards may not be more restrictive or less favorable than standards for an in-person visit. It is conceivable that standards may differ between providers, so long as the standards do not impose unnecessary impediments to members receiving services via telemedicine. Insurers must immediately deliver updated billing instructions to providers to facilitate the prompt submission of claims for electronically delivered health care. The instructions must include updates and clarifications to billing codes, claims documentation

⁴ Please note that CMS has indicated that it will not take enforcement action against health insurance issuers in the individual and small group market that provide greater coverage for telehealth services or reduce or eliminate cost-sharing requirements for telehealth services, even if the specific telehealth services covered by the change are not related to COVID19. See [March 24, 2020 FAQs on Availability and Usage of Telehealth Services through Private Health Insurance Coverage in Response to Coronavirus Disease 2019 \(COVID-19\)](#).

requirements, prior authorization requirements, claim submission time frames and claim appeal requirements.⁵

Insurers must pay the same reimbursement rate for a covered service delivered via telemedicine as they would have paid for such service delivered via an in-person visit. However, insurers may reject claims for telemedicine services which would not otherwise be approvable for an in-person visit, for example, a simple notification call with the delivery of test results. Clinically appropriate, medically necessary telemedicine services delivered by in-network providers shall be reimbursed at rates not lower than services delivered through traditional (in-person) methods. Insurers can, and should, continue to uniformly employ claims investigation procedures to ensure that fraudulent claims are identified and services being provided are medically necessary.

To ensure that Arizonans with limited access to Internet services can connect with medical providers, insurers must permit the delivery of telemedicine services via all electronic means, including telephone and video calls, and must permit the member's home to be an approved location for receipt of service. The Department acknowledges that the ability to deliver certain covered services and adequately assess certain medical conditions may be limited when care is delivered strictly via a telephone call. For example, inspection of a skin abnormality may not be possible absent video transmission. Insurers may establish guidelines for the delivery of medically necessary services via different telemedicine modalities. This may include a determination that certain services or therapies cannot be effectively delivered absent certain audio/video or interactive means or inputs. Furthermore, insurers will need to evaluate, and likely expand, their existing "telephone only" billing codes to account for an expanded range of clinically appropriate services delivered by telephone calls. Insurers must communicate applicable guidelines to providers as soon as possible. To the extent that providers have rendered services after the issuance of the Executive Orders but before an insurer issues guidelines, the Department encourages insurers to extend the deadlines for claim submission.

Telemedicine services may be provided by any Arizona licensed healthcare provider type. Any Arizona licensed healthcare provider, regardless of provider type, may render telemedicine services pursuant to Executive Order 2020-12. However, insurers may apply the same restrictions on covered services delivered via telemedicine that apply to covered services delivered via in-person visits. If an insurer would refuse to pay for a particular covered service via an in-person visit unless it was rendered by a particular provider type, the insurer may apply the same restriction to covered services delivered via telemedicine.

HCSOs are reminded that they must have an effective process for:

- Assisting an enrollee in obtaining timely covered services when the enrollee or enrollee's referring provider cannot find a contracted provider who is timely accessible or available.
- Handling referrals, prior authorizations, pre-certifications, and network exceptions necessary for timely routine care.
- Handling requests for prior authorization or pre-certification 24 hours a day, seven days a week.

The Department expects that these and other required processes may become strained in the weeks ahead. If they have not already done so, HCSOs and other insurers are urged to evaluate the capacity of their systems and staff.

Communication to Members

⁵ Please note that CMS has created and released new HCPCS codes for COVID-19 diagnostic testing for Original Medicare patients. Insurers are encouraged to adopt and utilize codes, if possible, to promote uniformity across multiple business lines. See [March 5, 2020 Medicare COVID-19 Fact Sheet](#).

Insurers are expected to communicate the availability of services under the terms of the Orders to their members. For purposes of large group plans, such communication may be made to the group's benefits administrator, and information may be made available via the insurer's website or user portal.

For individual and small group plans, communication should be made in writing directly to the members. Information may be made available via the insurer's website or user portal, however, individual policy holders and small group certificate holders should receive at least one direct communication via email or hard copy mail. Insurers are encouraged to add a message to their customer service telephone line informing members of the availability of reduced cost-share services under the terms of Executive Order 2020-07.

Provider Grievances and Appeals

We recognize that health insurers will need to make significant operational and systems changes on a rapid basis to implement the provisions in these Executive Orders. Please monitor your member and provider grievances and appeals, and your customer call center contacts, for indications that your staff need additional training, systems need additional enhancements, or providers need additional instructions. The Department will be monitoring consumer complaints, health care appeals and provider grievances for such indications as well.

Termination of the Public Health Emergency

Pursuant to ARS § 26-303(F), a state of emergency may terminate by proclamation of the governor or by concurrent resolution of the legislature declaring it at an end. Insurers must comply with all parts of the Orders until the state of emergency has been terminated.

Please direct questions regarding this Regulatory Bulletin to Erin H. Klug, Assistant Director, Product Filing & Compliance Division, eklug@azinsurance.gov.