



# COMPLIANCE ALERT



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## Coronavirus Update: States Implement Special Requirements for Insurance Carriers

In response to the continued spread of the novel coronavirus (COVID-19), four states, New York, California, Washington, and Oregon have taken action directing state insurance carriers and other state-coverage providers, like Medicaid, to waive certain costs associated with testing for the COVID-19 virus. This Alert describes the specific actions taken by these states. More state action is likely and even possible between the time this Alert is drafted and distributed. The compliance team will continue to monitor benefit plan developments related to COVID-19 and share information as it becomes available.

### California

On March 5, 2020, the California Departments of Insurance and Managed Health Care both issued bulletins to insurance companies and health care service plans directing commercial plans and Medi-Cal plans to do the following:

- 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 (including emergency department), urgent care visits, and provider office visits where the purpose of the visit is to be screened and/or tested for COVID-19;
- Notify, as expeditiously as possible, the plan's contracted providers that the plan is waiving cost-sharing as described above;
- Ensure the plan's advice line/customer service representatives are adequately informed that the plan is waiving cost-sharing as described above and clearly communicate this to enrollees who contact the plan seeking medically necessary screening and testing for COVID-19, and;
- Prominently display on the plan's public website a statement that the plan is waiving cost-sharing for medically necessary screening and testing for COVID-19.

In addition to the above requirements, the bulletin reminded insurance carriers of existing obligations to provide medically necessary care and certain services without prior authorization, maintain existing networks for increased demand, and avoid unlawful balanced billing.

### New York

On March 2, 2020, New York Governor Andrew Cuomo announced a new directive by the State Department of Financial Services requiring New York health insurance carriers to waive cost sharing associated with testing for COVID-19, including emergency room, urgent care and office visits. New Yorkers receiving Medicaid coverage will not be expected to pay a co-pay for any testing related to COVID-19. In addition, the State outlined a series of other actions that New York health insurance carriers are required or advised to take, including keeping New Yorkers informed regarding available benefits; offering, where possible, telehealth medical advice and treatment; and preparing insurers to cover the costs if a COVID-19 immunization should become available. For additional information, link to the State Department of Financial Services announcement [here](#). Employers with insured plans outside New York may want to address this issue with their own carriers, as other states may follow New York's lead on this issue.

## Washington

On March 5, 2020, Washington Governor Jay Inslee signed an [emergency order](#) in response to the COVID-19 outbreak requiring Washington insurance carriers and short term limited duration insurance to take the following steps:

- Cover, prior to application of any deductible and with no cost-sharing, the health care provider visit and FDA-authorized COVID-19 testing for enrollees who meet the CDC criteria for testing, as determined by the enrollee's health care provider;
- Allow enrollees to obtain a one-time refill of their covered prescription medications prior to the expiration of the waiting period between refills so that enrollees can maintain an adequate supply of necessary medication.
- Suspend any prior authorization requirements that apply to covered diagnostic testing and treatment of COVID-19, and;
- If a carrier has an insufficient number or type of providers in their network to provide testing and treatment of COVID-19, the carrier must ensure that the enrollee obtains the covered service from a provider or facility within reasonable proximity of the enrollee at no greater cost than if the provider were in-network.

## Oregon

The state of Oregon has reached an agreement with insurance carriers where consumers with fully-insured individual and group health plans will not be charged co-payments, co-insurance, or deductibles related to COVID-19 for the following:

- COVID-19 testing at an in-network provider, in-network urgent care center, or emergency room, and;
- COVID-19 immunization when it becomes available.

Information on the Oregon agreement, including which carriers are participating, is available [here](#).

## Impact on HSA Eligibility and Applicability to Self-funded Plans

Note that there has not been any direct guidance addressing whether COVID-19 testing is permitted coverage (e.g., preventive care) for HSA purposes. Although many other infectious disease screenings are considered preventive under [Notice 2004-23](#) and [Notice 2004-50](#), medical coverage beyond the initial screening could be disqualifying coverage if not subject to the deductible of a high deductible health plan.

These provisions do not apply to self-funded plans, but employers and plan sponsors of self-funded plans may want to consider this approach with their third party administrators (TPAs).

For more information on benefit plan implications of Covid-19 see our Alert, [Coronavirus, Your Benefit Plan, and Other Employer Issues](#).

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