

State Commercial Insurance Market Strategies to Respond to COVID-19

Updated March 24, 2020

The actions below are intended to give a broad representative example of state actions on COVID-19 (COVID) to date. Not all actions of all states are necessarily included. Please contact Manatt with additions or edits.

This edition primarily tracks the first wave of state actions. Many states are beginning to take second and third order actions, often in response to specific market problems and often relying on emergency authority granted by governors and public health departments to waive rules, issue emergency regulations and take other actions to protect public health.

Future actions that states have begun to address or will soon be addressing include:

- **Premium Payment Grace Periods.** *Qualified Health Plans (QHPs) with Advance Premium Tax Credits (APTCs) have a federal 90-day grace period for payment of premiums. Should states extend a grace period to other QHPs? What about group coverage?*
- **Cost-Sharing Waiver for Treatment, Not Just Testing.** *Many states, along with Congress, waive cost sharing for COVID testing. Increasingly, COVID treatment will become an issue.*
- **Coverage of alternative treatment settings.** *COVID treatments will necessitate the use of alternative treatment settings. To what extent will network coverage rules be adapted to cover alternative facilities and costs associated with moving patients from one setting to another to increase capacity to treat COVID cases?*
- **Surprise Out-of-Network Billing.** *If networks are overwhelmed, surprise bills from out-of-network doctors may become an increasing challenge, especially for states without existing consumer protections.*
- **Claim Payment Time Frame Extensions.** *Will consumers and providers, as well as insurers, need more time to submit and adjudicate claims?*
- **Premium Rate Increases.** *COVID may cause increased claim costs not anticipated. To what extent will COVID cost increases be offset by the suspension of nonurgent services and the possibility that COVID treatment costs will be borne disproportionately by seniors enrolled in Medicare rather than commercial insurance?*
- **Risk Adjustment.** *Will federal risk adjustment adequately account for regional differences in COVID cases?*
- **Reserves.** *Will COVID costs impact solvency for some insurers? What flexibility do states have?*

- **Non-ACA-Compliant Products.** *The lower coverage offered by some non-ACA-compliant plans (e.g., short-term plans) may result in huge consumer debt. The congressional bill to waive cost sharing for COVID testing does not apply to these plans, as they are not sufficient to be insurance.*

Specific methods of state actions taken in the “State Action Examples” below include those:

- **Required or Directed** by Emergency Order/Regulation
- **Requested, Instructed or Advised** by Guidance
- **Voluntary Agreement** by Insurers

| <u>Insurer Activity</u> | <u>State Action Examples</u> | <u>Comments</u> |
|---|---|---|
| Cost Sharing | | |
| <ul style="list-style-type: none"> • Cover COVID testing without cost sharing | <ul style="list-style-type: none"> • Alaska (requires) • Arizona (requires) • California (requires) • Colorado (requires) • Connecticut (requests) • District of Columbia (voluntary insurer agreement) • Georgia (requests) • Idaho (voluntary insurer agreement) • Illinois (voluntary insurer agreement) • Indiana (voluntary insurer agreement) • Iowa (voluntary insurer agreement) • Kansas (voluntary insurer agreement) • Kentucky (requires) • Maine (requires) • Maryland (requires) • Massachusetts (requests) • Michigan (voluntary insurer agreement) • Mississippi (voluntary insurer agreement) • Montana (voluntary insurer agreement) | <p><i>*Note: See Drug section below for copayments related to vaccines.</i></p> <p><i>* Congress passed legislation requiring all insurers as well as self-insured ERISA plans, to cover COVID testing without cost sharing.</i></p> <p><i>* Future state actions may need to address coverage of specific services related to COVID testing (e.g., screening that does not result in a COVID test) and out-of-network testing if and when widespread testing—even for those without symptoms—becomes a public health priority.</i></p> |

| <u>Insurer Activity</u> | <u>State Action Examples</u> | <u>Comments</u> |
|---|---|---|
| | <ul style="list-style-type: none"> • Nebraska (voluntary insurer agreement) • Nevada (requires) • New Hampshire (requires) • New Jersey (requests) • New Mexico (requires) • New York (requires) • Oregon (voluntary insurer agreement) • Pennsylvania (voluntary insurer agreement) • Rhode Island (requires) • Tennessee (requested) • Vermont (requests) • Washington (requires) • West Virginia (requests) | |
| <ul style="list-style-type: none"> • Cover COVID <i>care</i> without cost sharing | <ul style="list-style-type: none"> • Colorado (testing and telehealth) • Massachusetts (testing and care) (requires) • New Mexico (testing and care) (requires) | |
| Telehealth Coverage | | |
| <ul style="list-style-type: none"> • Cover telehealth generally in preparation for COVID | <ul style="list-style-type: none"> • Alaska • Arizona • California • Colorado • District of Columbia • Georgia • Maine • Massachusetts • New Hampshire • New Jersey • New York • Oregon • Rhode Island • West Virginia | <p><i>*Telehealth is expanding rapidly in Medicare and Medicaid, and many of the specific expansions could be extended to commercial insurance as well.</i></p> <p><i>*In addition to the general coverage of telehealth, states may be considering:</i></p> <ul style="list-style-type: none"> ○ <i>Expanding eligible technology/services types (like telephone)</i> ○ <i>Expanding list of eligible provider types</i> |

| <u>Insurer Activity</u> | <u>State Action Examples</u> | <u>Comments</u> |
|---|---|--|
| <ul style="list-style-type: none"> • Pay telehealth in parity with in-person services (payment parity in addition to coverage parity) | <ul style="list-style-type: none"> • California • Maine • Georgia | |
| <ul style="list-style-type: none"> • Establish patient home as eligible originating site | <ul style="list-style-type: none"> • California • New York | |
| Preauthorization and Utilization Review | | |
| <ul style="list-style-type: none"> • Suspend preauthorization for COVID treatment or testing | <ul style="list-style-type: none"> • California (testing only) *and waive preauth and step therapy for drugs in event of shortage • Georgia (requests) • Kentucky (testing only) • Massachusetts (testing and treatment) • New Hampshire (testing only) • Pennsylvania (testing only) • Rhode Island (testing only) • Washington (testing and treatment) • West Virginia (testing) | <p><i>* Congress passed legislation requiring all insurers as well as self-insured ERISA plans, to cover COVID testing without preauthorization.</i></p> |
| <ul style="list-style-type: none"> • Expedite utilization review for COVID testing and treatment | <ul style="list-style-type: none"> • Maine (requires) • New Hampshire (requires) • New York (requested) | |
| <ul style="list-style-type: none"> • Comply with utilization review requirements | <ul style="list-style-type: none"> • New Jersey | |
| <ul style="list-style-type: none"> • Extend notice and claim filing deadlines | <ul style="list-style-type: none"> • Connecticut • New York | |
| Network Adequacy | | |
| <ul style="list-style-type: none"> • Allow out-of-network coverage at in-network cost sharing if in-network provider shortage is caused by COVID | <ul style="list-style-type: none"> • California • Connecticut • Georgia • New York • Rhode Island | |

| Insurer Activity | State Action Examples | Comments |
|---|---|--|
| | <ul style="list-style-type: none"> • Tennessee • Washington • West Virginia | |
| <ul style="list-style-type: none"> • Ensure network adequacy for COVID | <ul style="list-style-type: none"> • California • Connecticut • Kentucky • Georgia • Maine • Massachusetts • New Jersey • New York • Rhode Island • Washington | |
| <ul style="list-style-type: none"> • Expedited external appeal for plan denials of out-of-network coverage | <ul style="list-style-type: none"> • New York | |
| Prescription Drug Access | | |
| <ul style="list-style-type: none"> • Cover new COVID vaccine, once available | <ul style="list-style-type: none"> • Georgia • Kentucky • Maine • Maryland • Massachusetts • Nevada • New Jersey • New Mexico • New York • Oregon • Rhode Island • Tennessee • West Virginia | <p><i>* Some states address coverage at no cost sharing.</i></p> <p><i>* Emerging issue could be coverage of anti-viral drugs if some are found to be efficacious for COVID.</i></p> |

| <u>Insurer Activity</u> | <u>State Action Examples</u> | <u>Comments</u> |
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| <ul style="list-style-type: none"> Off-formulary prescriptions covered if necessary | <ul style="list-style-type: none"> Maine Nevada New York Oregon Rhode Island West Virginia | <p><i>*Anticipates that supply chain problems will create drug shortages.</i></p> |
| <ul style="list-style-type: none"> Allow early refills of prescription drugs | <ul style="list-style-type: none"> Alaska Colorado Delaware District of Columbia Florida Kentucky Maine Maryland New Hampshire Oregon Rhode Island Washington West Virginia | |
| <ul style="list-style-type: none"> Cover extended supply of prescription drugs | <ul style="list-style-type: none"> Connecticut (90 days) New Hampshire (90 days) Oregon (90 days) | |
| <ul style="list-style-type: none"> Cover drugs to treat COVID at preferred level of cost sharing | <ul style="list-style-type: none"> New Jersey | |
| Surprise Medical Bills Protection | | |
| <ul style="list-style-type: none"> Consumers not held liable for surprise medical bills from out-of-network providers for COVID testing or treatment | <ul style="list-style-type: none"> California Idaho New York | |

| <u>Insurer Activity</u> | <u>State Action Examples</u> | <u>Comments</u> |
|---|--|-----------------|
| Communication | | |
| <ul style="list-style-type: none"> Conduct communication outreach to consumers and providers | <ul style="list-style-type: none"> California (notice on no cost sharing for testing) Nevada (notice on benefits, screening, treatment, prevention) New Jersey (notice on no cost sharing for testing and access) | |

Emergency Orders (EO) *This section links to the initial orders by the Governors in all 50 states, which trigger the authority of states' agencies, including insurance departments, to take various actions not otherwise authorized, such as waiving rules, adopting emergency rules and taking other actions to protect public health. In many states, Governors and public health departments have issued numerous additional emergency orders that further enable insurance departments to take emergency action. These emergency powers will become increasingly important in "hot zones" where federal action will also play a role in enabling emergency action at the state and local levels. For example, President Trump has designated New York and Washington as eligible for "major disaster" relief, a classification which has only been used previously for natural disasters and expands the range of emergency actions that can be taken.*

| State | Emergency Order |
|-------|---|
| AL | Governor Ivey declared a public health emergency on 3/13 |
| AK | Governor Dunleavy declared a public health emergency |
| AZ | Governor Ducey declared a state of emergency |
| AR | Governor Hutchinson declared a state of emergency |
| CA | Governor Newsom declared a state of emergency |
| CO | Governor Polis declared a state of emergency on 3/10 |
| CT | Governor Lamont declared a public health emergency on 3/10 and a civil preparedness emergency |
| DE | Governor Carney declared a state of emergency |
| DC | Mayor Bowser declared both a state of emergency and public health emergency on 3/11 |

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| FL | Governor DeSantis declared a public health emergency and an emergency declaration |
| GA | Governor Kemp declared a public health emergency |
| HI | Governor Ige declared a state of emergency |
| ID | Governor Little declared a state of emergency |
| IL | Governor Pritzker declared a state of emergency on 3/9 |
| IN | Governor Holcomb declared a public health emergency |
| IA | Governor Reynolds declared a state of emergency |
| KS | Governor Kelly declared a state of emergency |
| KY | Governor Beshear declared a state of emergency |
| LA | Governor Edwards declared a state of emergency |
| ME | Governor Mills declared a state of emergency on 3/15 |
| MD | Governor Hogan declared a state of emergency |
| MA | Governor Baker declared a state of emergency |
| MI | Governor Whitmer declared a state of emergency |
| MN | Governor Walz declared a peacetime emergency |
| MS | Governor Reeves declared a state of emergency |
| MO | Governor Parson declared a state of emergency |
| MT | Governor Bullock declared a state of emergency |
| NE | Governor Ricketts declared a state of emergency |
| NV | Governor Sisolak declared a state of emergency |
| NH | Governor Sununu declared a state of emergency |
| NJ | Governor Murphy declared a state of emergency |
| NM | Governor Grisham issued a state of public health emergency |
| NY | Governor Cuomo declared a state of emergency |
| NC | Governor Cooper declared a state of emergency |
| ND | Governor Burgum declared a state of emergency |
| OH | Governor DeWine declared a state of emergency |
| OK | Governor Stitt declared a state of emergency |
| OR | Governor Brown declared a state of emergency |
| PA | Governor Wolf declared a state of emergency |
| RI | Governor Raimondo declared a state of emergency |
| SC | Governor McMaster declared a state of emergency |
| SD | Governor Noem declared a state of emergency |

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| TN | Governor Lee declared a state of emergency |
| TX | Governor Abbott declared a state of emergency |
| UT | Governor Herbert declared a state of emergency |
| VT | Governor Scott declared a state of emergency |
| VA | Governor Northam declared a state of emergency |
| WA | Governor Inslee declared a state of emergency |
| WV | Governor Justice declared a preparedness proclamation |
| WI | Governor Evers declared a public health emergency |
| WY | Governor Gordon declared a state of emergency and a public health emergency |

State-Based Marketplaces (SBMs) Twelve (12) of the 13 SBMs have opened special enrollment periods (SEPs), ten of which were specifically for COVID-related reasons. Two states already had SEPs open for broader purposes (California and Washington, DC). All SEPs are generally open to the uninsured regardless of COVID status and generally do not allow those currently covered to change plans unless they have recently become unemployed or have some other qualifying event as defined by the IRS. A number of FFM states and 25 members of Congress have called for a national SEP; AHIP and the BCBSA joined the call for a national SEP on March 20 and also proposed some additional protections for insurers.

| State | Action Taken | Dates |
|----------------|--|-----------------------------------|
| California | *SEP is not COVID-19 specific. Covered California announced SEP | Through April 30, 2020 |
| Colorado | Connect for Health Colorado announced SEP | March 20–April 3, 2020 |
| Connecticut | Access Health CT announced SEP | March 19–April 2, 2020 |
| Washington, DC | *SEP is not COVID-19 specific. DC Health Link announced SEP | Must be claimed by April 15, 2020 |
| Idaho | No SEP for COVID | |
| Maryland | Maryland Health Connection announced SEP | Through April 15, 2020 |
| Massachusetts | Massachusetts Health Connector announced SEP | Through April 25, 2020 |
| Minnesota | MNsure announced SEP | March 23–April 21, 2020 |
| Nevada | Nevada Health Link announced SEP | March 17–April 15, 2020 |
| New York | New York State of Health announced SEP | Through April 15, 2020 |

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| Rhode Island | Health Source RI announced SEP | Through April 19, 2020 |
| Vermont | Vermont Health Connect announced SEP | One month |
| Washington | Washington Healthplanfinder announced SEP | Through April 8, 2020 |

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