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Health Plans are on the Hook for COVID Testing, Per the DMHC

By: [Anna G. Thomas](#)

On June 7, 2021, the Department of Managed Health Care (“DMHC”) issued an [All Plan Letter \(APL-21-016\)](#) to the health care service plans it regulates, announcing that health care service plans must continue to cover certain COVID-19 testing for their enrollees beyond the now-expired DMHC’s emergency regulation¹ (“Emergency Regulation”).

The DMHC relies on the Families First Coronavirus Response Act (FFCRA)² and Coronavirus Aid, Relief and Economic Security Act (CARES Act)³ as the legal authority for this continued requirement.

Health care service plans must cover COVID-19 diagnostic testing when the purpose of the testing is for individualized diagnostic or treatment of COVID-19. That includes COVID-19 diagnostic testing even if an enrollee is asymptomatic and has not been exposed to COVID-19. Moreover, coverage of COVID-19 diagnostic testing is required regardless of whether enrollees access such tests through in-network or out-of-network providers. Health care service plans must provide coverage without any prior authorization and may not limit coverage through utilization management processes or criteria. The only testing coverage health care service plans are not required to provide is COVID-19 testing for public health surveillance or employment purposes.

Providing continued coverage means that health care service plans must bear the financial burden of COVID-19, absent the provider’s written agreement otherwise. The DMHC explicitly determined in the Emergency Regulation that delegating financial risk for COVID-19 diagnostic testing, including related items or services, constitutes a material change to the parties’ contract. As such, under Health and Safety Code section 1375.7, health care service plans must provide at least 45 business days’ notice of their intent to change a material term unless such notice is waived by mutual written agreement. If the health care service plan and the provider cannot agree to the change, the provider has the right to terminate the contract prior to implementing the change.

Notwithstanding the expiration of the DMHC’s Emergency Regulation, health care service plans must continue to cover COVID-19 diagnostic testing and bear the financial burden unless negotiated and agreed upon in advance with contracted providers.

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¹ 28 CCR 1300.67.01

² Public Law 116-127 - March 18, 2020

³ Public Law 116-136 - March 27, 2020

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