

State of Vermont
Department of Financial Regulation
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Memorandum

To: Senator Lyons, Senate Committee on Health Care
Representative Lippert, House Committee on Health Care
From: Michael Pieciak, Commissioner
Jill Rickard, Director of Policy
Date: September 9, 2020
Re: Request for expansion of DFR emergency COVID-19 rulemaking authority

Dear Senator Lyons, Representative Lippert, and Committee Members:

As you know, Vermont continues to lead the nation in timely access to affordable COVID-19 testing and treatment. This access, together with other actions by Governor Scott, the Legislature, and Vermonters, has enabled the State to maintain nation-leading low levels of new cases and fatalities; it has saved lives.

To ensure Vermont continues to achieve these goals, the Department of Financial Regulation requests expansion and clarification of our authority to adopt emergency rules with respect to health insurance coverage for, and the waiver or limitation of cost-sharing requirements related to, COVID-19 diagnosis and treatment.

Proposed revisions to Act No. 10 (2020) are attached hereto and explanations of our requests regarding diagnosis and treatment are set forth below. In each case, we hope to eliminate confusion for consumers, providers, and insurers and any financial barriers to COVID-19 diagnosis and/or treatment for individuals with commercial insurance.

Diagnosis:

The symptoms of influenza and COVID-19 are virtually indistinguishable. As flu season approaches, it is likely that providers will administer a diagnostic test for influenza and/or other respiratory illnesses concurrently with a COVID-19 test for patients



presenting COVID-19 symptoms. Under our current emergency rulemaking authority, the Department has directed insurers to cover COVID-19 testing at zero cost share; however, an individual would be subject to cost sharing for a concurrent flu test and/or diagnostic office visit. We also anticipate that a joint influenza/COVID-19 test will be available this fall. The Department therefore requests this amendment to our emergency rulemaking authority such that we have express, clear authority to direct insurers to cover (1) flu and other respiratory tests performed in connection with COVID-19 tests and (2) combined flu/COVID tests, in each case, at zero cost share.

Treatment:

The Department is aware of reports that individuals subject to the federal COVID-19 uninsured program have been billed for the full cost of COVID-19 treatment when COVID-19 is not the primary diagnosis.¹ Many individuals hospitalized with COVID-19 may have comorbidities (serious medical conditions) that are exacerbated by COVID-19 and be listed by a provider as the primary diagnosis. Although the Department has not received reports of this occurring within the insured population in Vermont, we would like to have the express authority to clarify our rules to address this if necessary.

The proposed legislative changes would give the Department the authority to adopt or amend emergency rules. As we did last spring before adopting our existing emergency rules, we would plan to fully engage stakeholders prior to moving forward. Thank you for your consideration of the Department's request; we look forward to discussing with you on Friday.

¹ <https://www.nytimes.com/2020/08/29/health/Covid-obamacare-uninsured.html>

