In the Matter of
Health Insurer Coverage of Health Care Services
Related to the Coronavirus

Docket: INS No. 20-016-AP

ORDER

A. Factual Background

The novel coronavirus (COVID-19) has been identified as the source of an outbreak of respiratory illness, which began in China, and continues to expand worldwide. The federal government, specifically, the Centers for Disease Control ("CDC"), as well as State and local health departments, are monitoring this public health issue, including the New Hampshire Department of Health and Human Services ("DHHS"). As of March 9, 2020, dozens of New Hampshire residents have been tested for COVID-19 resulting in four (4) confirmed cases of COVID-19. Like other infectious diseases, early diagnosis and treatment is essential to containing the spread of COVID-19 and reducing the severity of symptoms of those infected with the virus. Likewise, early diagnostic treatment measures are necessary to limit the need for extensive healthcare treatment of numerous New Hampshire insureds. Without preventive measures, COVID-19 could cause health insurance claims to escalate to a level not anticipated when health insurance rates were established, which would create financial stress for health insurers and market instability in New Hampshire.

Recently, some health insurers have publicized statements regarding coverage of testing and treatment for COVID-19 and waiving certain cost sharing requirements in order to promote early access. These efforts are laudable and helpful. However, because they are voluntary efforts, they are not consistent among all New Hampshire health insurers and will not serve the goals of early detection, treatment, and prevention as effectively as uniform guidance for all regulated health insurers.

B. Legal Analysis and Conclusions of Law

Pursuant to RSA 400-A:3, the Insurance Commissioner has powers specifically granted to him as well as powers reasonably implied in order to perform the duties imposed by the New Hampshire Insurance Code, Title XXXVII. A number of provisions of Title XXXVII address the Commissioner's responsibility to promote insurance market stability, as well as the financial stability of New Hampshire insurers. For example, to protect insureds, creditors, and the general public, RSA 402-C:1 (IV) provides that, "early detection of any potentially dangerous condition"

to insurers and prompt application of corrective measures are essential to the regulation of licensed insurers by the New Hampshire Insurance Department ("the Department").

Because of the possibility that COVID-19 could result in a public health epidemic within our state that, in turn, could put undue strain on health insurance markets in handling claims and satisfying financial obligations to insureds, prompt application of a number of simple corrective measures is required. For these reasons, the Department is taking action as detailed below to ensure that all members of New Hampshire health insurance plans have access to preventive, diagnostic and treatment services to prevent and mitigate the spread of COVID-19, as well as the negative effects that such spread could have on health insurance markets within the state.

C. Plan of Action

Considering the foregoing, until further notice, the Department directs all health carriers, as defined in RSA 420-J:3 (XXIII), as follows:

1. Keeping Consumers Informed

Health carriers should ensure that they are prepared to address COVID-19 cases in New Hampshire by providing members with information and timely access to all medically necessary covered health care services. Access to accurate information and avoiding misinformation is critical. Health carriers should devote resources to informing members of available benefits, quickly responding to member inquiries, and make revisions needed to streamline responses and benefits for members. Members should make all necessary and useful information available on their websites and take steps to ensure that nurse help lines or other similar programs are staffed appropriately. In order to assist the Department in its own consumer services and education function, any member facing communications that health carriers develop should be provided to the Department at the following email address: covid19@ins.nh.gov.

2. Testing for COVID-19 and Treatment for Initial Diagnosis

It is important to remove barriers to testing for COVID-19. Health carriers must provide coverage, prior to application of any deductible and without cost-sharing, of the initial health care provider visit for U.S. Food and Drug Administration (FDA)-authorized COVID-19 testing for insureds who meet the CDC criteria for testing, as determined by the insured's health care provider. This includes in-network provider office visits, urgent care visits, or emergency services to test for COVID-19. If in-network providers are unavailable to conduct testing for COVID-19, insurers must cover out-of-network testing. Any prior authorization requirements that typically apply to covered diagnostic tests are suspended with regard to testing of COVID-

19.

3. Site of Service

When COVID-19 testing kits become more readily available, it is possible that testing will occur, not in doctors' offices, urgent care centers or emergency rooms, but at labs or specialized testing sites set up for that specific purpose or pursuant to other public health disease management protocols. Health carriers shall provide coverage for such testing services regardless of any site of service or network participation requirements, provided that such sites have all necessary approvals by public health authorities at the federal, state, and local levels and the services provided are in accordance with CDC and FDA standards.

4. Telemedicine

Given that COVID-19 is a communicable disease, some insureds may utilize telemedicine in seeking an initial diagnosis instead of in-person heath care services. Pursuant to RSA 415-J, health carriers may not deny coverage simply because it was provided through telemedicine. Health carriers are directed to ensure that their telehealth programs are robust and will be able to meet any increased demand.

5. Network Adequacy and Access to Out-of-Network Services

Health carriers are directed to verify that their provider networks are adequate to handle a potential increase in the need for health care services in the event more COVID-19 cases are diagnosed in New Hampshire. Carriers are also reminded that Ins 2701.04 (d) provides that if a carrier does not have sufficient health care providers in its network to meet access standards and has not been granted an exception by the Department, the carrier must provide access to an out-of-network provider at the in-network cost-sharing.

6. Utilization Review

Timely decision making is essential to responding appropriately to COVID-19, and it is particularly important with respect to utilization review. Health carriers shall take steps to minimize the extent to which prior authorization requirements might act as a barrier to accessing necessary treatment for COVID-19, and carriers shall be prepared to expedite utilization review and appeal processes for services related to COVID-19 when medically appropriate.

7. Prescription Refills

Health carriers shall take steps to ensure that members have continuous access to prescription medications, as follows: Carriers shall permit insureds to obtain a one-time refill of their covered prescription medications prior to the expiration of the waiting period between refills so that insureds can maintain an adequate supply of necessary medication. For maintenance medications, carriers shall permit insureds to obtain a 90-day supply. With regard to refills of certain drug classes, such as opioids, benzodiazepines, and stimulants, insurers may limit early refills as necessary to take into consideration patient safety risks associated with early refills of these types of drugs.

D. Duration and Effect of Order

This Order shall remain in effect until such time as it is terminated by further order of the Commissioner. This Order is issued pursuant to the Commissioner's authority under Title XXXVII to take action to promote insurance market stability and the financial security of insurers. This Order is not intended to and shall it confer any rights upon any other person or entity, and the matters treated herein shall remain within the sole and exclusive jurisdiction of the Department.

SO ORDERED.

Dated: 3/10, 2020

Christopher R. Nicolopoulos, Insurance Commissioner