

Health Care in Motion

Timely, Substantive Updates on Policy Shifts · Actionable Advocacy to Protect Health Care

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Contagion Come to Life – Health Law & Policy Updates on America’s COVID-19 Response

Since our [March 12 Health Care in Motion](#), much has changed in America’s response to the coronavirus outbreak, but the core threat remains. At the top of the list of updates is the [March 13 declaration](#) of a national emergency under the [Stafford Act](#). As *Health Care in Motion* pointed out, this act not only allows significant federal funding to reach states, but it also opens the door to state requests to turn their Medicaid programs into key tools in the fight against COVID-19. This week’s update edition will describe major state and federal policy changes that have occurred in recent days in response to the outbreak, with a return to the traditional focus of *Health Care in Motion*: advocating for law and policy changes that will advance access to health care for low-income and chronically ill individuals. While last week’s broader scope was critical at the start of our widespread social disruption, other sources are doing great work [monitoring governmental informational brokering](#), lamenting [significant holes](#) in our public health infrastructure, explaining [governmental authority](#) to [contain the spread](#) of the infection, and working to mitigate harm associated with [those measures](#). As this season of our discontent wears on, we will continue to use *Health Care in Motion* to update readers on major health law and policy developments, while keying in on concrete steps that advocates can take to strengthen the safety net for their constituencies.

Today’s health care access updates fall into three categories: enrollment in coverage, availability of health care (both in terms of providers and resources), and the cost and content of health insurance plans. We also want to share some of the work being done by our colleagues in the Food Law & Policy Clinic at the Center for Health Law & Policy Innovation around critical government policy interventions related to food in the new normal of COVID-19.

Enrollment in Health Coverage

Medicaid remains the beating heart of the nation’s health care safety net. Working within the federal-state structure of the program, significant steps have been taken this week to leverage the power of Medicaid to provide coverage to those in need of health care. First, on March 18, the President signed the “[Families First Coronavirus Response Act](#),” which passed the Senate earlier the same day and passed the House four days before that. The new law, [among other things](#), pushes significant federal funds to states by instituting a 6.2% increase across the board in the federal share of Medicaid funding during the duration of the emergency. This additional funding will allow states to take aggressive action to use their Medicaid programs to their fullest possible extent. These increased funds will be offered in concert with statutory conditions to continue Medicaid enrollment for all current enrollees for the duration of the emergency. More generally, the Act prohibits participating states from enacting new eligibility rules more restrictive than those now in place, and prohibits them from disenrolling anybody that is currently eligible for the duration of the emergency, even if they would otherwise be ineligible. Each of these measures promotes increased Medicaid enrollment.

Relatedly, Medicaid waivers are built into the federal law that created the program precisely for the purposes of flexibility in the face of changing circumstances and special conditions in a particular state. States have already begun to take steps to use the [broad powers available](#) under a Medicaid waiver program to bring more people under the umbrella of Medicaid coverage. For example, Washington submitted an [application](#) seeking to, in part, expand the use of "presumptive eligibility" to grant enrollment in its Medicaid program expeditiously. [Iowa](#) is taking similar steps. Given [the power of Medicaid](#), such measures to increase enrollment represent an important first step that should be replicated by other states.

States are also seeking to increase enrollment in individual Marketplace insurance plans in the face of our current crisis. At least [ten states](#) have declared that uninsured individuals are eligible for Special Enrollment Periods to gain coverage during the declared emergency.

Health Care Availability – Providers and Supplies

Increasing the availability of health care providers and supplies is an area where the federal government has taken aggressive steps forward in the last week. More immediately, CMS took steps forward on March 13 to increase the availability of health care by granting a series of "[blanket waivers](#)" of the federal requirements. These new measures consist of a [host of different mandates](#) related to provider and facility certification. Among the most important rule changes are those related to tele-health.

Across the country, government officials are tapping tele-health to strengthen containment efforts and workforce capacity. The Medicare program has lifted its complex [restrictions](#) on use, regulators charged with oversight of HIPAA (federal patient privacy laws) [have relaxed certain technology requirements](#), and there is a widespread push for insurers to accept tele-health visits. In Massachusetts, for example, Governor Baker issued an [order](#) requiring all insurers regulated by Division of Insurance to allow in-network providers to deliver clinically appropriate, medically necessary covered services to members via tele-health.

Other important steps have been taken to increase the availability of providers. CMS has taken steps to [allow the practice of medicine across state lines of licensure](#), allowing professionals to surge to areas most in need. More needs to be done to make [the Administration's promises](#) real – specifically around the question of [provider networks and the surprise bills that go with them](#). At a time when chaos has overtaken many aspects of daily life, a patient seeking COVID-19-related health care is unlikely to stop to check whether the provider is in-network.

There remain some glaring deficiencies in the availability of medical supplies related to the outbreak. While many promises have been made that testing will be rapidly expanded, the [pace of coronavirus testing in the United States](#) remains behind other countries. But test kits are not the only medical supply that is lacking. Health care providers have [made known](#) that personal protective equipment that is vital to their own well-being is in short supply. In addition, ventilators are a key link in the treatment of severe cases of COVID-19. In an effort to avoid the nightmare scenario of ventilator rationing, the U.S. is [investigating the possibility of retooled automobile factories](#) as a new source of the machines. To prepare for this possibility, President Trump invoked a Korean War-era law that gives the federal government authority to direct private industry [to "meet the needs of the national defense."](#)

Coverage and Cost

Once enrolled in coverage, the nature of what is covered and at what cost becomes critically important. Where American society has experienced widespread disruption to promote containment, we must do all we can to both encourage the testing and treatment for COVID-19, as well as ensure that the ongoing health needs of the chronic health community are accounted for in the face of a health care system stressed to its breaking point.

Coronavirus Testing Coverage and Cost

The federal government has taken important first steps to ensure that coronavirus testing is covered without cost to all. The [March 18 law](#) signed by President Trump [allows states to enroll uninsured individuals](#) in Medicaid for this limited purpose, even if they might otherwise be ineligible. More to the point, the law provides \$1 billion in targeted funding to promote free testing for uninsured patients. With this support finally in place, it is reasonable to expect that [testing will rapidly expand](#).

COVID-19 Treatment Coverage and Cost

Testing is an enormously important first step, but we cannot stop there. How COVID-19 is covered – the extent of services that are paid for, including provider, facility, pharmaceutical and ancillary costs and what cost sharing is imposed on patients – matters, because it will determine who seeks out treatment. While [not all people with coronavirus infections will require hospitalization](#), those who do stand to incur a charge of \$20,000, [according to some estimates](#). The March 18 law includes treatment coverage requirements for both Medicaid and private insurers. But there are caveats. First, despite President Trump’s blanket promises to waive cost-sharing associated with coronavirus, private insurers have [corrected the record](#) to state that they generally do not intend to waive co-pays or co-insurance associated with COVID-19 treatment. In light of previous efforts of this Administration to promote “short-term, limited duration” plans and other forms of so-called junk insurance, [not all plans will be subject to new rules](#) around [private insurance](#) coverage. Suffice it to say that [the particulars of what private health insurance plans cover](#) with respect to COVID-19 treatment and associated care will [vary](#).

Ongoing Health Care Needs of the Chronically Ill

Medicaid waivers also may be directed to issues of coverage and cost – both for COVID-19-related care and otherwise. For example, [Florida’s Section 1135 approval](#) Medicaid waiver includes the ability to waive prior authorization requirements for services and prescriptions, in both fee-for-service and [managed care](#). [Arizona](#) and [Iowa](#) have submitted waiver requests seeking to ease up on premiums some Medicaid enrollees must pay, in order to support ongoing enrollment.

Not all states have recognized the value in keeping as many individuals as possible enrolled in Medicaid during the crisis. [Utah and Oklahoma](#) are moving ahead with plans to impose work requirements on their Medicaid enrollees, despite [clear evidence](#) of the detrimental effect on enrollment.

Regulation of the content and cost-sharing of private insurance is a different matter. States maintain some degree of regulatory authority over private insurance plans, although a significant portion of the market is enrolled in employer-sponsored health insurance that [federal law](#) protects from state regulation. For private insurance that can be reached by state regulation, Colorado’s March 9 [insurance bulletin](#) provides a good blueprint. The new regulations will require early prescription refills at normal cost-sharing, to help individuals prepare for an extended period in quarantine, for example. The Colorado bulletin also promotes telehealth and takes steps to avoid harm associated with provider networks, all steps that other states should follow.

As always, access to prescription drugs remains a key need for chronic illness communities. It remains significant that the [Emergency Prescription Drug Program](#) – used to provide access for uninsured individuals in emergency conditions – remains inactive. With respect to other insurance programs, [advocates have called on government officials](#) to remove or amend quantity limits and early refill requirements. Secretary Azar should heed the call and encourage his state counterparts to do the same.

Food Law and Policy

The Center for Health Law & Policy Innovation recognizes that the COVID-19 crisis is putting pressure on a variety of safety net and resource systems beyond health care. Policymakers’ growing recognition of the role that [social determinants of health](#) play will be particularly crucial in the coming weeks, as baseline fragility in food insecurity,

housing, transportation, and similar areas is aggregated due to COVID-19. In particular, *Health Care in Motion* wishes to highlight some of the resources developed in the past week by the Food Law & Policy Clinic.

As the COVID-19 crisis wears on, there are a [range of food system concerns](#) that warrant further attention and advocacy, including hourly worker layoffs, SNAP access and expansion, food donation/emergency food programs, and school meals.

One issue in particular is that many universities, venues, and other large institutions are being left with excess food as they close or significantly reduce operations. Donating this food to emergency food assistance institutions can go a long way toward supporting their increased needs at this time. Already, companies such as Disney Resort in California and Houston Rodeo operator RCS Carnival Group, and universities such as Harvard, Tufts, and Boston College have begun donating their surplus food to local food banks following recent closures. More institutions can and should help provide food for those in need by [donating their excess food](#).

Further, as social distancing measures close schools and public gatherings nationwide, farmers markets closures reveal a difficult reality for a particularly vulnerable segment of the food system: local and regional farmers and ranchers. Farmers selling into direct-to-consumer markets and institutional purchases, such as farmers markets and farm-to-school programs, stand to lose much or all of their revenue due to the COVID-19 crisis, and tons of produce may go to waste, all while economic downturn and job losses lead to stretched food banks and increased food insecurity. To help policymakers consider measures to respond to the crisis, FLPC and the National Sustainable Agriculture Coalition released an [issue brief](#) highlighting several legislative and administrative actions that Congress and USDA can take. These changes can unlock already-appropriated funding to ensure that the local and regional food system is supported amidst the public health response.

Finally, FLPC is working on an issue brief about opportunities to support home food and grocery delivery for vulnerable households. The brief, soon to be posted on [the blog](#), will look at food assistance program modifications as well as food bank and emergency food needs.

Going Forward

Law and policy developments have advanced to [warp speed](#) since the onset of the coronavirus outbreak. As advocates begin to overcome the initial shock of efforts to contain the virus, we will all shift our focus to what measures the state and federal government can still take to ensure access to health care. Our next *Health Care in Motion* will draw these disparate threads together into specific requests for federal and state officials to make sure that the needs of the chronic illness community are not forgotten in the chaos of coronavirus.

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