

Congress of the United States
Washington, DC 20515

March 5, 2020

Alex Azar
Secretary
Department of Health and Human Services
200 Independence Avenue SW
Washington, D.C., 20201

Eugene Scalia
Secretary
Department of Labor
200 Constitution Ave NW
Washington, D.C. 20210

Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Ave NW
Washington, D.C. 20224

Dear Secretary Azar, Secretary Scalia, and Commissioner Rettig,

We write to you today as our country faces an emerging public health crisis to raise concerns regarding the affordability and accessibility of diagnostic testing and services for all Americans, regardless of their health insurance. As we write this letter, there are more than 160 cases of the coronavirus disease 2019 (COVID-19) in the United States, and public health officials have repeatedly warned us that we should expect this number to continue to rise. As the threat of COVID-19 places the health and safety of Americans at risk, it is critical that we use the full breadth of regulatory tools available to ensure diagnostic tests and services are affordable to everyone.

The positive relationship between health insurance and health care utilization is well documented.^{1,2,3} Affordability is a clear determinant of whether and when patients choose to access necessary medical care. Uninsured and underinsured individuals, including those with high out-of-pocket costs, are more likely than those with more generous insurance to forgo necessary care.⁴ A recent Gallup poll found that 20% of Americans put off treatment for a serious condition because of the cost, and 33% of Americans put off treatment for any condition.⁵

While Medicare Part B typically covers clinical diagnostic laboratory tests, we are concerned that because the test for COVID-19 is not eligible for reimbursement until April 1, 2020 for any testing performed on

¹ <https://www.kff.org/report-section/the-uninsured-and-the-aca-a-primer-key-facts-about-health-insurance-and-the-uninsured-amidst-changes-to-the-affordable-care-act-how-does-lack-of-insurance-affect-access-to-care/>

² <https://annals.org/aim/fullarticle/2635326/relationship-health-insurance-mortality-lack-insurance-deadly>

³ <http://www.nationalacademies.org/hmd/-/media/Files/Report%20Files/2009/Americas-Uninsured-Crisis-Consequences-for-Health-and-Health-Care/Americas%20Uninsured%20Crisis%202009%20Report%20Brief.pdf>

⁴ <https://www.kff.org/report-section/the-uninsured-and-the-aca-a-primer-key-facts-about-health-insurance-and-the-uninsured-amidst-changes-to-the-affordable-care-act-how-does-lack-of-insurance-affect-access-to-care/>

⁵ <https://www.vox.com/2020/3/3/21162840/coronavirus-treatment-test-cost-usa-new-york>

or after February 4, 2020,⁶ Medicare beneficiaries may face out-of-pocket costs or rejected claims for COVID-19 testing.

Medicaid and CHIP, which provide coverage for children, pregnant women, seniors in nursing homes, and medically vulnerable Americans, require coverage of laboratory services. However, several states require copayments and have limitations for certain beneficiaries depending on the test.⁷ It is critical that any cost barriers or limits to COVID-19 diagnostics testing be removed, so those who may be infected do not forego testing because of cost concerns.

While community health centers, public and community hospitals, and local health departments comprise a crucial health care safety net, Administrator Verma's statement at a recent briefing to Members of Congress that the "uninsured can go to Community Health Centers" is unfortunately an insufficient response.⁸ Therefore, we urge you to use the flexibilities authorized under Sections 1135 and 1115 of the Social Security Act⁹ to allow States to enroll uninsured adults and children in Medicaid and CHIP, respectively, during this national public health emergency.^{10,11}

The Director of the Centers for Disease Control and Prevention has the authority to authorize payment for the care and treatment of patients subject to "medical examination, quarantine, isolation, and conditional release."¹² This statute fails to address payments that a patient may face if they were to go to their primary care provider, urgent care, or a health clinic if they have symptoms of COVID-19. The statute also fails to clarify whether or not diagnostic testing should be exempt from cost sharing requirements. If CDC does not have the statutory authority, but another agency or office does, a crisis like COVID-19 would warrant the office employing these abilities.

Admirably, states are taking steps to require health insurance companies to waive cost sharing for in-network COVID-19 testing.^{13,14} However, 22% of independent laboratory tests are out-of-network, so limiting cost sharing waivers to in-network providers may prove insufficient.¹⁵ Additionally, states lack the authority to regulate most employer-sponsored health plans, which insure 153 million Americans.¹⁶

Finally, we have concerns for individuals currently enrolled in short-term, limited-duration health plans, who may require COVID-19 testing. Some of these plans may require significant cost-sharing for laboratory testing, and some may not cover laboratory testing at all. There are already reports of individuals with a short-term health plan receiving bills for thousands of dollars following testing and treatment for COVID-19.¹⁷

⁶ <https://www.cms.gov/newsroom/press-releases/public-health-news-alert-cms-develops-new-code-coronavirus-lab-test>

⁷ <https://www.kff.org/medicaid/state-indicator/laboratory-and-x-ray-services-outside-hospital-or-clinic/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

⁸ Unclassified Member Briefing with Administration Officials, March 5, 2020

⁹ <https://www.macpac.gov/wp-content/uploads/2018/03/Medicoids-Role-in-Disasters-and-Public-Health-Emergencies.pdf>

¹⁰ <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/what-is-erisa>

¹¹ <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>

¹² 82 CFR 6975

¹³ <https://www.nytimes.com/2020/03/03/health/coronavirus-tests-uninsured.html>

¹⁴ <https://www.nytimes.com/2020/03/03/health/coronavirus-tests-uninsured.html>

¹⁵ <https://healthcostinstitute.org/out-of-network-billing/oon-physician-bills-at-in-network-hospitals>

¹⁶ <https://www.kff.org/report-section/ehbs-2019-summary-of-findings/>

¹⁷ <https://www.miamiherald.com/news/health-care/article240476806.html>

To help assure us that the Departments are using every available tool to ensure COVID-19 testing is affordable to all Americans, we ask that you respond to the following questions by March 11, 2020:

1. In the same briefing to Members of Congress mentioned above, Administrator Verma said that insurance companies “usually” cover diagnostic testing, and that the Centers for Medicare and Medicaid Services would “try and work with insurance companies.”¹⁸ What steps are HHS and DOL taking to work with insurance companies, and what authority does the agency have, if any, to mandate that diagnostic tests are covered by private plans?
 - a. If the Departments do not have the authority to require that health plans cover the full cost of diagnostic testing for private plans, what steps will you take to ensure that these tests are affordable and accessible?
2. How will CMS handle rejected claims submitted prior to April 1, 2020 for COVID-19 diagnostic testing?
3. Is CMS considering issuing an Interim Final Rule requiring states to waive copayments and potential limitations for COVID-19 diagnostic testing for Medicaid and CHIP beneficiaries?
4. What steps are HHS, Labor, and Treasury taking to require coverage of COVID-19 diagnostic testing for individuals covered by short-term, limited duration health plans?

Since the majority of patients who contract COVID-19 will have mild symptoms, we cannot expect patients to put their financial security at risk to get tested for COVID-19. Reducing costs to make this test more accessible will encourage individuals to go to the doctor to get this test, giving patients and providers the information needed to prevent community spread and protecting our most vulnerable populations. We look forward to your response and appreciate your attention to this issue.

Best,

 ROSA DeLAURO Member of Congress	 KATIE PORTER Member of Congress	 LAUREN UNDERWOOD Member of Congress
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¹⁸ Unclassified Member Briefing with Administration Officials, March 5, 2020