

COVID-19: TESTING AND TREATMENT TO UNINSURED PATIENTS - REIMBURSEMENT AVAILABLE UNDER NEW HHS PAYMENT PROGRAM

Date: 29 April 2020

U.S. Health Care Alert

By: Richard P. Church, Darlene S. Davis, Gabriel T. Scott

On April 27, 2020, the Department of Health and Human Services ("HHS") launched the COVID-19 Uninsured Program Portal, allowing health care providers who have conducted COVID-19 testing or provided treatment for Uninsured Individuals (as defined below) to receive payment for those services. Through funding allocated under both the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, HHS is making available funds to support health care-related expenses attributable to the testing and treatment of Uninsured Individuals with COVID-19. This funding is a portion of the \$100 billion of funding that is being distributed under the CARES Act to support health care-related expenses or lost revenue attributable to the COVID-19 pandemic. See our previous client alert on the initial funding program [here](#).

Under the COVID-19 Claims Reimbursement to Health Care Providers and Facilities for Testing and Treatment of the Uninsured program (the "Uninsured Program"), HHS will provide claims-based reimbursement to health care providers generally at Medicare rates for testing Uninsured Individuals for COVID-19 and treating Uninsured Individuals with a COVID-19 diagnosis.

Starting May 6, 2020, providers who have conducted COVID-19 testing or provided treatment for Uninsured Individuals on or after February 4, 2020, can submit claims electronically for professional and facility services. HHS has indicated that reimbursement for such services will be on first come, first served basis. Steps will involve: enrolling as a provider participant, checking patient eligibility, submitting patient information, submitting claims electronically, and receiving payment via direct deposit.

HHS has contracted with UnitedHealth Group to be the administrator of the Uninsured Program, and some steps in the claims process involve existing UnitedHealth Group tools. Specifically, the Uninsured Program requires providers to have a direct deposit / ACH account with Optum Pay, either as a new account or an established one. The process will not involve credentialing or contracting with UnitedHealth Group, and the information providers submit will be used only to administer the Uninsured Program.

PROVIDER ENROLLMENT

In order to submit claims to the Uninsured Program, providers will need to complete the following steps:

1. Access the Program Portal and register for an Optum ID or enter an existing Optum ID.

2. Validate the Taxpayer Identification Number (TIN) for the facility in which care was provided (processing time is approximately 1-2 business days).
3. Set up direct deposit / ACH via Optum Pay, unless provider has already established Optum Pay account (processing time is approximately 7-10 business days).
4. Add Provider Roster after TIN validation is complete (processing time is approximately 1-3 business days).
5. Complete patient attestation and upload patient roster (beginning May 6th).
6. Submit Claims for Reimbursement (beginning May 6th).

Providers will also need to agree to both the testing terms and conditions (collectively, the “Terms & Conditions”) and treatment terms and conditions, both of which are attached to this email message.

These Terms & Conditions are substantially similar to the initial \$30 billion general distribution terms and conditions, with the following notable exceptions:

- Each claim must be in full compliance with the Terms & Conditions, and submission of such claims confirms the provider's ongoing compliance with the Terms & Conditions.
- The provider certifies that it, or its agents, provided the items and services on the Provider's claim form to the Uninsured Individuals identified on the claim form; that the dates of service occurred on February 4, 2020, or later; and that all items and services for which payment is sought were medically necessary for care or treatment of COVID-19 and/or its complications.
- The provider certifies that it will not engage in “balance billing” or charge any type of cost sharing for any items or services provided to Uninsured Individuals receiving testing or treatment for which the provider receives a payment from the Uninsured Program, which shall be consider payment in full for such testing, care, or treatment.
- If the provider, prior to signing the Terms & Conditions, charged any Uninsured Individuals a fee for COVID-19-related testing or treatment for which the provider subsequently received a payment from the Uninsured Program, the provider will communicate to the Uninsured Individuals that they do not owe the provider any money for that testing or treatment.
- If an Uninsured Individual paid the provider for any portion of such testing or treatment, the provider will timely return the payment to the Uninsured Individual.
- The provider consents to HHS publicly disclosing the payment that provider may receive from the Uninsured Program.

The portal is open for registration and can be accessed through this link.

PATIENT ELIGIBILITY

The purpose of the Uninsured Program is to provide payment to provider who furnish covered testing and treatments to individuals who do not have any health care coverage at the time the services were provided

("Uninsured Individuals"). Uninsured Individuals are defined as individuals who, as of the date of service for which provider seeks payment, are not enrolled in—

- A Federal health care program, including an individual who is eligible for medical assistance only because of subsection(a)(10)(A)(ii)(XXIII) of Section 1902 of the Social Security Act (individuals in families whose income is less than 250 percent of the income official poverty line); or
- A group health plan or health insurance coverage offered by a health insurance issuer in the group or individual market, or a health plan offered under chapter 89 of title 5, United States Code.

COVERED SERVICES

The following services furnished to Uninsured Individuals for testing for COVID-19 and treatment of patients with a primary COVID-19 diagnosis are eligible for reimbursement under the Uninsured Program:

- Specimen collection, diagnostic and antibody testing;
- Testing-related visits including in the following settings: office, urgent care or emergency room, or telehealth;
- Treatment: office visit (including telehealth), emergency room, inpatient, outpatient/observation, skilled nursing facility, long-term acute care, acute inpatient rehab, home health, durable medical equipment (e.g., oxygen, ventilator), emergency ground ambulance transportation, non-emergent patient transfers via ground ambulance, and U.S. Food and Drug Administration (FDA) approved drugs as they become available for COVID-19 treatment and administered as part of an inpatient stay; and
- When an FDA-approved vaccine becomes available, it will also be covered.
- Note: in regard to testing, HHS has not specified that payment for testing is only permitted where a positive test result is obtained; thus, we believe the Uninsured Program permits claims for testing services regardless of the test result.

EXCLUDED SERVICES

The following services are not eligible for reimbursement under the Uninsured Program:

- Services not covered by traditional Medicare;
- Any treatment without a COVID-19 primary diagnosis, except for pregnancy when the COVID-19 code may be listed as secondary;
- Hospice services; and
- Outpatient prescription drugs.

REQUIRED PROVIDER CLAIMS PROCESSES

In order to bill claims under the Uninsured Program, providers must, in relevant part, do the following:

- Verify patient eligibility:

- Collect patient's social security number (SSN) and state of residence, or state identification / driver's license
 - If a SSN and state of residence, or state identification / driver's license is not submitted, providers will need to attest that they attempted to capture this information before submitting a claim and the patient did not have this information at the time of service. Claims submitted without a SSN and state of residence, or state identification / driver's license may take longer to verify for patient eligibility.
- Complete attestation:
 - Acknowledging that the provider checked for health care coverage eligibility and confirmed that the patient is uninsured (i.e., verify that the patient does not have individual, employer-sponsored, Medicare or Medicaid coverage, and no other payer will reimburse the provider for COVID-19 testing and/or treatment for that patient)

REIMBURSEMENT RATES

Claims submitted under the Uninsured Program will be paid at reimbursement rates based on the applicable current year Medicare fee schedule except as noted here. For purposes of the Uninsured Program, HHS has stated that facility reimbursement based on the Inpatient Prospective Payment System will not include the 20 percent increase to the diagnosis-related group weight for COVID-19 diagnoses U07.1 and B97.29 authorized by Section 3710 of the CARES Act.

CONCLUSION

The Uninsured Program offers providers a pathway to receive reimbursement for COVID-19 testing and treatment services furnished to Uninsured Individuals. Given that the approval process can take several days, providers may be well-served to complete registration now so as to submit claims when funding is still available. K&L Gates will continue to monitor any changes or developments to the Program and will provide updates accordingly.

K&L Gates LLP has created a HUB webpage to address the legal implications of the COVID-19 outbreak on businesses generally and health care providers, in particular. K&L Gates' health care and FDA practice can provide guidance to providers and suppliers on this funding, compliance with the Terms & Conditions, and other available funding programs available as a result of the COVID-19 pandemic. Contact the authors of this article or your K&L Gates attorney for assistance with the Uninsured Program or to receive updates on Medicare reimbursement during the COVID-19 emergency.

KEY CONTACTS



RICHARD P. CHURCH
PARTNER
RESEARCH TRIANGLE PARK, CHICAGO
+1.919.466.1187
RICHARD.CHURCH@KLGATES.COM



DARLENE S. DAVIS
PARTNER
RESEARCH TRIANGLE PARK
+1.919.466.1119
DARLENE.DAVIS@KLGATES.COM



GABRIEL T. SCOTT
ASSOCIATE
RESEARCH TRIANGLE PARK
+1.919.466.1263
GABRIEL.SCOTT@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.