

BEFORE JAMES A. DODRILL, INSURANCE COMMISSIONER  
OF THE STATE OF WEST VIRGINIA

*In the Matter of:*

**COVID-19 STATE OF EMERGENCY;  
COVERAGE FOR CERTAIN COVID-19 DIAGNOSTIC  
TESTING OF LICENSED CHILD CARE PROVIDERS**

Emergency Proceeding: 20-EO-08

EMERGENCY ORDER

**JAMES A. DODRILL**, Insurance Commissioner of the State of West Virginia (Insurance Commissioner), by virtue of the authority vested in him pursuant to West Virginia law and the Proclamation of the Governor of West Virginia issued March 16, 2020, does, as if set forth in their entirety herein, adopt the findings and declarations of Emergency Order 20-EO-07 entered May 11, 2020. The Insurance Commissioner does additionally **FIND** and **DECLARE** as follows:

1. In addition to other pertinent findings, in *Executive Order* 35-20, the Governor of West Virginia found that child care centers must be closely monitored to ensure the safety of the children in such facilities, as well as the staff and employees, and the Governor mandated the testing of all persons who work in child care centers licensed by the DHHR's Bureau for Children and Families pursuant to 78 CSR 1 to ensure a safe environment for the children in the care of such facilities, as well as the staff and employees.

2. On May 11, 2020, the Insurance Commissioner entered Emergency Order 20-EO-07 requiring that health insurers offering group health plans and/or individual health insurance coverage in this state must, effective March 18, 2020, provide benefits for diagnostic testing for the detection of COVID-19, and services related thereto, to the persons identified in *Executive*

*Order 27-20* and *Executive Order 35-20* because testing of these individuals has been deemed a necessary public health and medical action by the Commissioner of BPH and State Health Officer, Dr. Catherine Slemp, MD, MPH, and mandated by the Governor of West Virginia.

3. On May 10, 2020, Dr. Catherine Slemp, MD, MPH, issued a Memorandum regarding the implementation of *Executive Order 35-20* as to COVID-19 testing for licensed child care providers. That Memorandum stated that Dr. Slemp, in consultation with other medical leadership associated with the COVID-19 response, deems that COVID-19 testing of all persons who work in child care centers licensed by the DHHR's Bureau for Children and Families pursuant to 78 CSR 1 provides a public health and medical purpose. The Insurance Commissioner received Dr. Slemp's May 10, 2020, Memorandum on May 13, 2020. The May 10, 2020, Memorandum from Dr. Slemp was in follow-up to an April 29, 2020 Memorandum from Dr. Slemp regarding testing for all child care staff, and the DHHR's Provider Guidance on COVID-19 Testing and Expanding/Reopening Child Care Services.

4. The Insurance Commissioner, under the provisions of Chapter 33 of the *West Virginia Code* has broad authority to regulate the insurance industry in West Virginia, specifically including but not limited to, insurance companies, insurance brokers, agents (producers) and/or insurance agencies.

Inasmuch as a Public Health Emergency, National Emergency, Insurance Emergency and a State of Emergency have been declared and continue to exist in the State of West Virginia; inasmuch as it is essential for the citizens of West Virginia, specifically those who work in child care centers, to be able to have access to, and insurance coverage for, diagnostic testing and services for COVID-19 without any cost-sharing requirements, prior authorization or other medical management requirements; and, inasmuch as the Commissioner of the BPH and State Health

Officer, Dr. Catherine Slemm, MD, MPH, has found that COVID-19 testing of all persons who work in child care centers licensed by the DHHR's Bureau for Children and Families pursuant to 78 CSR 1 provides a public health and medical purpose, it is hereby **ORDERED** as follows:

1. Health insurers offering group health plans and/or individual health insurance coverage in this state shall, effective March 18, 2020, provide benefits for diagnostic testing for the detection of COVID-19, and services related thereto, to the persons identified in *Executive Order 27-20* and *Executive Order 35-20* because testing of these individuals has been deemed a necessary public health and medical action, and further, said testing, as to all persons who work in child care centers licensed by the DHHR's Bureau for Children and Families pursuant to 78 CSR 1, provides a public health and medical purpose, by the Commissioner of BPH and State Health Officer, Dr. Catherine Slemm, MD, MPH and mandated by the Governor of West Virginia.

2. This coverage shall be provided without imposing any cost-sharing requirements including deductibles, copayments, and coinsurance, or prior authorization or other medical management requirements.

3. Recognizing and acknowledging that many health insurers offering group health plans and/or individual health insurance coverage in this state currently have provisions in their policies and/or health plans that specifically exclude coverage for screening, examinations or testing that is solely required by a governmental agency or by an employer for work-related reasons, nevertheless, given the current Public Health Emergency, National Emergency, Insurance Emergency and State of Emergency, the mandates of *Executive Order 27-20* and *Executive Order 35-20*, the May 7, 2020 and May 10, 2020 Memoranda from Dr. Catherine Slemm, MD, MPH, the Insurance Commissioner's *Emergency Order 20-07*, and the provisions of the FFCRA and CARES

Act which require coverage for services related to diagnostic testing for the detection of COVID-19 without imposition of any cost-sharing requirements, prior authorization or other medical management, and which do not prevent a state from imposing additional standards or requirements on health insurers so long as the standards or requirements do not prevent the application of a federal requirement, coverage for diagnostic testing must and shall be afforded as provided hereinabove.

4. The Insurance Commissioner will take a non-enforcement position in regard to midyear plan changes, so long as those changes are made to provide increased coverage for services related to the diagnosis and treatment of COVID-19 during the declared public health emergency, national emergency, insurance emergency and State of Emergency, as noted herein. However, the Insurance Commissioner may take enforcement action against any health insurer that attempts to limit or eliminate other benefits, or to increase cost-sharing, to offset the costs of increasing the generosity of benefits related to the diagnosis and/or treatment of COVID-19.

5. This *Emergency Order* shall remain in force and effect until further notice. The Insurance Commissioner will continue to review and assess circumstances as they arise or change, and will amend, revise or rescind this *Emergency Order*, in full or in part, as necessary or appropriate.

**ENTERED** this 13<sup>th</sup> day of May, 2020.



---

James A. Dodrill  
Insurance Commissioner