

AN ACT concerning regulation.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Illinois Insurance Code is amended by adding Section 356z.43 as follows:

(215 ILCS 5/356z.43 new)

Sec. 356z.43. Coverage for COVID-19 diagnostic testing for nursing home employees.

(a) As used in this Section:

"COVID-19" means the disease caused by SARS-CoV-2 or any further mutation.

"Department" means the Department of Public Health.

"Diagnostic testing" means testing administered for the purposes of diagnosing COVID-19 or a related virus and the administration of such tests if the test is:

(1) approved, cleared, or authorized under Section 510(k), 513, 515, or 564 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k), 360c, 360e, and 360bbb-3);

(2) the subject of a request or intended request for emergency use authorization under Section 564 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb-3) until the emergency use authorization request has been denied or the developer of the test does not submit a

request within a reasonable timeframe;

(3) developed and authorized by a state that has notified the Secretary of the United States Department of Health and Human Services of its intention to review a test intended to diagnose COVID-19; or

(4) determined by the Secretary of the United States Department of Health and Human Services or the Director of the Centers for Disease Control and Prevention as appropriate for the diagnosis of COVID-19.

"Enrollee" means a long-term care facility employee who is covered by a health plan.

"Health plan" means (i) individual health insurance coverage, as defined in Section 5 of the Illinois Health Insurance Portability and Accountability Act, and (ii) group health insurance coverage, as defined in Section 5 of the Illinois Health Insurance Portability and Accountability Act for employees of a licensed long-term care facility.

"Long-term care facility" means a long-term care facility as defined in Section 1-113 of the Nursing Home Care Act, an assisted living establishment as defined in Section 10 of the Assisted Living and Shared Housing Act, a MC/DD facility as defined in Section 1-113 of the MC/DD Act, an ID/DD facility as defined in Section 1-113 of the ID/DD Community Care Act, a facility as defined in Section 1-102 of the Specialized Mental Health Rehabilitation Act of 2013, or a supportive living facility as defined in Section 5.01a of the Illinois Public

Aid Code.

"Testing provider" means a provider that is authorized by the Department of Public Health to perform diagnostic testing for licensed long-term care facilities.

(b) A health plan amended, delivered, issued, or renewed on or after the effective date of this amendatory Act of the 102nd General Assembly shall provide coverage of diagnostic testing for enrollees that is performed by a testing provider in accordance with federal COVID-19 testing requirements as set forth in subsection (h) of 42 CFR 483.80; emergency rules adopted by the Department in 77 Ill. Adm. Code 295.4045, 300.696, 330.340, 350.760, and 390.340; and applicable federal and Department guidance.

(c) Testing performed in accordance with subsection (b) shall be considered medically necessary for the purposes of this Section.

(d) A health plan may inquire as to whether an enrollee is an employee of the long-term care facility but shall not require further evidence or verification of the enrollee's employment status.

(e) The coverage requirements set forth in this Section shall only apply when the testing requirements set forth in subsection (b) are in effect.

(f) Any failure to provide coverage pursuant to this Section shall be deemed a failure to substantially comply with this Code.

(g) This Section is repealed on January 1, 2022.

Section 10. The Health Maintenance Organization Act is amended by changing Section 5-3 as follows:

(215 ILCS 125/5-3) (from Ch. 111 1/2, par. 1411.2)

Sec. 5-3. Insurance Code provisions.

(a) Health Maintenance Organizations shall be subject to the provisions of Sections 133, 134, 136, 137, 139, 140, 141.1, 141.2, 141.3, 143, 143c, 147, 148, 149, 151, 152, 153, 154, 154.5, 154.6, 154.7, 154.8, 155.04, 155.22a, 355.2, 355.3, 355b, 356g.5-1, 356m, 356v, 356w, 356x, 356y, 356z.2, 356z.4, 356z.4a, 356z.5, 356z.6, 356z.8, 356z.9, 356z.10, 356z.11, 356z.12, 356z.13, 356z.14, 356z.15, 356z.17, 356z.18, 356z.19, 356z.21, 356z.22, 356z.25, 356z.26, 356z.29, 356z.30, 356z.30a, 356z.32, 356z.33, 356z.35, 356z.36, 356z.41, 356z.43, 364, 364.01, 367.2, 367.2-5, 367i, 368a, 368b, 368c, 368d, 368e, 370c, 370c.1, 401, 401.1, 402, 403, 403A, 408, 408.2, 409, 412, 444, and 444.1, paragraph (c) of subsection (2) of Section 367, and Articles IIA, VIII 1/2, XII, XII 1/2, XIII, XIII 1/2, XXV, XXVI, and XXXIIB of the Illinois Insurance Code.

(b) For purposes of the Illinois Insurance Code, except for Sections 444 and 444.1 and Articles XIII and XIII 1/2, Health Maintenance Organizations in the following categories are deemed to be "domestic companies":

(1) a corporation authorized under the Dental Service Plan Act or the Voluntary Health Services Plans Act;

(2) a corporation organized under the laws of this State; or

(3) a corporation organized under the laws of another state, 30% or more of the enrollees of which are residents of this State, except a corporation subject to substantially the same requirements in its state of organization as is a "domestic company" under Article VIII 1/2 of the Illinois Insurance Code.

(c) In considering the merger, consolidation, or other acquisition of control of a Health Maintenance Organization pursuant to Article VIII 1/2 of the Illinois Insurance Code,

(1) the Director shall give primary consideration to the continuation of benefits to enrollees and the financial conditions of the acquired Health Maintenance Organization after the merger, consolidation, or other acquisition of control takes effect;

(2) (i) the criteria specified in subsection (1) (b) of Section 131.8 of the Illinois Insurance Code shall not apply and (ii) the Director, in making his determination with respect to the merger, consolidation, or other acquisition of control, need not take into account the effect on competition of the merger, consolidation, or other acquisition of control;

(3) the Director shall have the power to require the

following information:

(A) certification by an independent actuary of the adequacy of the reserves of the Health Maintenance Organization sought to be acquired;

(B) pro forma financial statements reflecting the combined balance sheets of the acquiring company and the Health Maintenance Organization sought to be acquired as of the end of the preceding year and as of a date 90 days prior to the acquisition, as well as pro forma financial statements reflecting projected combined operation for a period of 2 years;

(C) a pro forma business plan detailing an acquiring party's plans with respect to the operation of the Health Maintenance Organization sought to be acquired for a period of not less than 3 years; and

(D) such other information as the Director shall require.

(d) The provisions of Article VIII 1/2 of the Illinois Insurance Code and this Section 5-3 shall apply to the sale by any health maintenance organization of greater than 10% of its enrollee population (including without limitation the health maintenance organization's right, title, and interest in and to its health care certificates).

(e) In considering any management contract or service agreement subject to Section 141.1 of the Illinois Insurance Code, the Director (i) shall, in addition to the criteria

specified in Section 141.2 of the Illinois Insurance Code, take into account the effect of the management contract or service agreement on the continuation of benefits to enrollees and the financial condition of the health maintenance organization to be managed or serviced, and (ii) need not take into account the effect of the management contract or service agreement on competition.

(f) Except for small employer groups as defined in the Small Employer Rating, Renewability and Portability Health Insurance Act and except for medicare supplement policies as defined in Section 363 of the Illinois Insurance Code, a Health Maintenance Organization may by contract agree with a group or other enrollment unit to effect refunds or charge additional premiums under the following terms and conditions:

(i) the amount of, and other terms and conditions with respect to, the refund or additional premium are set forth in the group or enrollment unit contract agreed in advance of the period for which a refund is to be paid or additional premium is to be charged (which period shall not be less than one year); and

(ii) the amount of the refund or additional premium shall not exceed 20% of the Health Maintenance Organization's profitable or unprofitable experience with respect to the group or other enrollment unit for the period (and, for purposes of a refund or additional premium, the profitable or unprofitable experience shall

be calculated taking into account a pro rata share of the Health Maintenance Organization's administrative and marketing expenses, but shall not include any refund to be made or additional premium to be paid pursuant to this subsection (f)). The Health Maintenance Organization and the group or enrollment unit may agree that the profitable or unprofitable experience may be calculated taking into account the refund period and the immediately preceding 2 plan years.

The Health Maintenance Organization shall include a statement in the evidence of coverage issued to each enrollee describing the possibility of a refund or additional premium, and upon request of any group or enrollment unit, provide to the group or enrollment unit a description of the method used to calculate (1) the Health Maintenance Organization's profitable experience with respect to the group or enrollment unit and the resulting refund to the group or enrollment unit or (2) the Health Maintenance Organization's unprofitable experience with respect to the group or enrollment unit and the resulting additional premium to be paid by the group or enrollment unit.

In no event shall the Illinois Health Maintenance Organization Guaranty Association be liable to pay any contractual obligation of an insolvent organization to pay any refund authorized under this Section.

(g) Rulemaking authority to implement Public Act 95-1045,

if any, is conditioned on the rules being adopted in accordance with all provisions of the Illinois Administrative Procedure Act and all rules and procedures of the Joint Committee on Administrative Rules; any purported rule not so adopted, for whatever reason, is unauthorized.

(Source: P.A. 100-24, eff. 7-18-17; 100-138, eff. 8-18-17; 100-863, eff. 8-14-18; 100-1026, eff. 8-22-18; 100-1057, eff. 1-1-19; 100-1102, eff. 1-1-19; 101-13, eff. 6-12-19; 101-81, eff. 7-12-19; 101-281, eff. 1-1-20; 101-371, eff. 1-1-20; 101-393, eff. 1-1-20; 101-452, eff. 1-1-20; 101-461, eff. 1-1-20; 101-625, eff. 1-1-21.)

(215 ILCS 195/Act rep.)

Section 15. The COVID-19 Medically Necessary Diagnostic Testing Act is repealed.

Section 99. Effective date. This Act takes effect upon becoming law.