DECISION MEMORANDUM
ON
TRICARE IMPLEMENTATION OF THE "FAMILIES FIRST CORONAVIRUS RESPONSE ACT"

ISSUE:

The Families First Coronavirus Response Act, Public Law 116-127, Division F, Section 6006(a), limits TRICARE authority to impose copayment or other cost-sharing for novel coronavirus (COVID-19) testing and related provider visits that result in orders for or administration of Food and Drug Administration (FDA) approved, cleared, or authorized diagnostic products. In order for the Defense Health Agency (DHA) to implement, the Assistant Secretary of Defense for Health Affairs (ASD(HA)) must acknowledge the self-executing authority of the statute and direct the Director, DHA, or designee, to issue guidance implementing the statutory provisions.

DISCUSSION:

The Families First Coronavirus Response Act limits TRICARE authority to impose copayment or other cost-sharing for FDA approved in vitro diagnostic products for the detection of SARS–CoV–2 or the diagnosis of the virus that causes COVID–19 (or the administration of such products) or for services and supplies at provider office visits (in-person or telehealth), urgent care center visits, and emergency room visits that result in an order for or administration of an in vitro diagnostic product, to the extent that such items and services relate to the furnishing or administration of a test or to the evaluation of an individual for the purpose of determining the need for a test. The SARS-CoV-2 is the name of the virus and the test; COVID-19 is the name of the illness associated with the viral infection. In this decision memorandum, the terms are used interchangeably for the test to determine viral infection.

AUTHORITY: Public Law 116-127, Division F, Section 6006(a) and the applicable paragraphs of Section 6001(a)(1) and (2) state the following:

SEC. 6006. APPLICATION WITH RESPECT TO TRICARE, COVERAGE FOR VETERANS, AND COVERAGE FOR FEDERAL CIVILIANS.

(a) TRICARE – The Secretary of Defense may not require any copayment or other cost sharing under chapter 55 of title 10, United States Code, for in vitro diagnostic products described in paragraph (1) of section 6001(a) (or administration of such products) or visits described in paragraph (2) of such section furnished during any portion of the emergency period defined in paragraph (1)(B) of section 1135(g) of the Social Security Act (42 U.S.C. 1320b-5(g)) beginning on or after the date of the enactment of this Act.

SEC. 6001. COVERAGE OF TESTING FOR COVID–19.
(a) IN GENERAL

> (1) In vitro diagnostic products (as defined in section 809.3(a) of title 21, Code of Federal Regulations) for the detection of SARS–CoV–2 or the diagnosis of the virus that causes COVID–19 that are approved, cleared, or authorized under section 510(k), 513, 515 or 564 of the Federal Food, Drug, and Cosmetic Act, and the administration of such in vitro diagnostic products.
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> (2) Items and services furnished to an individual during health care provider office visits (which term in this paragraph includes in-person visits and telehealth visits), urgent care center visits, and emergency room visits that result in an order for or administration of an in vitro diagnostic product described in paragraph (1), but only to the extent such items and services relate to the furnishing or administration of such product or to the evaluation of such individual for purposes of determining the need of such and individual for such product.

The ASD(HA) is authorized, in Department of Defense Directive 5136.01, to develop and maintain regulations as necessary and appropriate, to fulfill the Secretary of Defense's responsibility to administer chapter 55 of title 10, United States Code, including administration of the TRICARE program. Approving this decision memorandum will acknowledge that Public Law 116-127, Division F, Section 6006(a) is self-executing and direct the Director, DHA, to issue conforming guidance for administration of the TRICARE program in compliance with the law.

Failure to approve this decision memorandum will prevent proper implementation of the law limiting TRICARE imposition of cost-sharing for COVID-19 testing and treatment as required by the Families First Coronavirus Response Act.

There will be costs associated with this statute and the loss of cost-sharing, however estimates have not been received and are currently unknown.

Notably, this law does not waive copayments and cost-shares for the treatment for infection. The law as written retains the copayments and cost-shares that exist for the TRICARE program and plans. TRICARE beneficiaries, however, have robust protections against balance billing and low relative out-of-pocket limitations.

Beneficiaries overseas with a cost-share (retirees and their family members, active duty family members (ADFMs) under TRICARE Select, and TRICARE for Life) may be eligible for cost-share waivers, but only if the COVID-19 test associated with the visit meets the requirements of the law; that is, FDA approved, cleared, or authorized. Some tests used and TRICARE covered overseas may not meet this statutory requirement, including the World Health Organization test, which is not currently FDA authorized. Active duty service members and ADFMs under Prime do not have cost-shares and so are not impacted by this law.

Further, due to the complex nature of claims billing, it may not be possible to waive all copayments and cost-shares related to the COVID-19 testing in real time. It may be the case that beneficiaries are required to pay a copayment or cost-share up front, and receive reimbursement later. The TRICARE Health Plan will work closely with DHA communications and the contractors to avoid this situation as much as possible.

IMPLEMENTATION PLAN:

Once this decision memorandum is signed, the TRICARE Health Plan will issue a Contracting Officer Letter to all TRICARE Health Plan Contractors, including the TRICARE for Life Contractor, Designated Providers, and Overseas Contractor, directing them to modify their systems to begin showing $0.00 copayments or cost-shares for FDA approved, cleared, or authorized tests and services and supplies related to tests for COVID-19; however, tests administered for visits not related to the treatment or evaluation of conditions related to COVID-19 would be excluded. This change will be retroactively effective to tests and related provider services furnished on or after March 18, 2020, the date that the Families First Act was enacted. Contractors will also be directed to reprocess claims that had a copayment or cost-share, retroactively for tests or related provider services and supplies furnished on or after the date of enactment.

The TRICARE Health Plan will then draft and issue a formal contract modification (manual change) for this change. If the emergency period defined in the bill lasts (or is anticipated to last) more than 12 months, the agency will consider an Interim Final Rule or full Rulemaking, in accordance with the Administrative Procedures Act.

RECOMMENDATION:

That the ASD(HA) approve this decision memorandum acknowledging the self-executing authority of the Families First Coronavirus Response Act and directing the Director, DHA, or designee, to implement utilizing the proposed implementation plan or alternative methods, as deemed appropriate by the Director, DHA, or designee.

ASD(HA) DECISION:

Approve: //Signed// Date: 4/7/20

Disapprove: _____ Date: _____

Other: _____ Date _____