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August 24, 2020

David W. Anderson
President and Chief Executive Officer
BlueCross BlueShield of Western New York
257 West Genesee Street
Buffalo, NY 14202-2657

Michael W. Cropp
President and Chief Executive Officer
Independent Health
511 Farber Lakes Drive
Buffalo, New York 14221

Art Wingerter
President
Univera Healthcare
205 Park Club Lane
Buffalo, NY 14221

Dear Mr. Anderson, Dr. Cropp, and Mr. Wingerter:

I write today to express my serious concerns regarding the decisions of BlueCross BlueShield of Western New York, Independent Health, and Univera Healthcare to refrain from covering screening testing for COVID-19.

As you know, this past March Congress passed both the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act. FFCRA required that private insurers “shall provide coverage, and shall not impose any cost sharing (including deductibles, copayments, and coinsurance) requirements or prior authorization or other medical management requirements” for “[i]n vitro diagnostic products...for the detection of SARS-CoV-2 or the diagnosis of the virus that causes COVID-19.”¹ The CARES Act further

¹ Families First Coronavirus Response Act. (March 18, 2020). Online at: <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>.

clarified that such tests and their administration are to be covered by payers without cost-sharing on the part of patients.²

The Trump Administration subsequently tapered the definition of what must be covered with regards to COVID-19 testing in guidance jointly issued by the United States Departments of Labor, Health and Human Services, and Treasury on June 23, 2020.³ This guidance specifically exempted payers from being required to cover COVID-19 testing done for purposes of surveillance or employment. Leaders in Congress have expressed to the administration that this is contrary to Congressional intent and the language contained in statute.⁴ Unfortunately, this has not prevented numerous private insurance companies, including your organizations, from taking advantage of this manufactured loophole to avoid covering COVID-19 testing for individuals who should and must be tested in order to safely go back to work or attend school.

Earlier this year, Univera, BlueCross BlueShield of WNY, and Independent Health were quick at first to announce COVID-19 testing would be covered at no cost to members:

- On March 5, 2020, Univera Healthcare stated in a press release that “[m]embers who are in fully insured commercial plans will have the cost of coronavirus testing by an in-network provider covered with no out-of-pocket expense to them. If an in-network provider is not available, the Health Plan will cover testing at an out-of-network provider with no out-of-pocket expense to the member.”⁵
- On April 2, 2020, BlueCross BlueShield of Western New York announced that the company was “eliminating any and all costs for our members related to COVID-19 testing and treatment. This includes our nearly 500,000 Medicare Advantage, Medicaid, and fully insured Commercial members. No co-pays, no cost-shares, no-coinsurance on the part of our members will be required effective April 1 through May 31, 2020. This

² Coronavirus Aid, Relief, and Economic Security Act. (March 27, 2020). Online at: <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>.

³ <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-43.pdf>

⁴ United States Department of Health and Human Services, United States Department of Labor, United States Department of the Treasury. “FAQs About the Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security Act Implementation Part 43. (June 23, 2020). Online at: https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/HHS.DOL_DOT_2020.7.7.pdf.

⁵ Univera Healthcare. “Univera Healthcare Updates on COVID-19 (Coronavirus) – 3/5/20.” (March 5, 2020). Online at: https://news.univerahealthcare.com/news-room/news-releases/-/asset_publisher/ZG97xn8sZrsr/content/excellus-bcbs-updates-on-covid-19-coronavirus-3-5-20?com_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_ZG97xn8sZrsr_assetEntryId=225509820&com_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_ZG97xn8sZrsr_redirect=https%3A%2F%2Fnews.univerahealthcare.com%2Fnews-room%2Fnews-releases%3Fp_p_id%3Dcom_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_ZG97xn8sZrsr%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26com_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_ZG97xn8sZrsr_cur%3D0%26p_r_p_resetCur%3Dfalse%26com_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_ZG97xn8sZrsr_assetEntryId%3D225509820.

includes any testing, care or treatment provided anywhere in the United States for our members” (emphasis in original).⁶

- In a letter to my office dated April 9, 2020, Independent Health stated that “[a]ll cost-sharing associated with COVID-19 testing has been waived” for members.

These commitments have subsequently been narrowed and walked back, with it now being reported that all three companies will not cover COVID-19 testing that is not deemed medically necessary by a health care professional, including those that are required by employers or schools in order for individuals to return to their workplaces and classrooms.⁷

Continued access to affordable COVID-19 testing is the cornerstone of any attempt to safely reopen our economy and our schools. The testing positivity rate in Western New York has been at 2 percent – double the state average – in part because the region already lags well behind the rest of the state in testing. On any given day, about 16/100 of one percent of the population of Erie County is administered a COVID-19 test; the state-wide per capita rate is double that, with 32/100 of one percent of the state population receiving a test daily. Although new cases of COVID-19 in Western New York remain low compared to most of the rest of the country, in Erie County alone several dozen new cases of COVID-19 are confirmed every day, and more than 600 Erie County residents have died from this disease.⁸ This pandemic has not ended in Western New York; it continues to impact the daily lives of your members and my constituents. It continues to cause permanent harm in our communities, particularly communities of color.

Testing cannot be limited just to those that show symptoms. The Centers for Disease Control and Prevention estimate that 40 percent of people with COVID-19 are asymptomatic.⁹ These individuals are still able to spread the virus, and the only way to identify them is with testing as part of screening and surveillance efforts. Nor can testing be limited to only those who can afford it. In the absence of insurance coverage for testing, COVID-19 tests can cost anywhere from \$100 to upwards of thousands of dollars.^{10,11} And for too many Americans, even a \$100 out-of-pocket expense is unaffordable. These types of barriers will discourage individuals from getting tested at a time when we need more testing, not less.

⁶ BlueCross BlueShield of Western New York. “Region’s leading health plan Waives All Member Out-of-Pocket Costs for Coronavirus Testing and Treatment.” (April 2, 2020). Online at: <https://www.bcbswny.com/content/wny/about/news/coronavirus/statement-from-our-president.html>.

⁷ Caitlin Dewey, *The Buffalo News*. “WNY insurers will not cover Covid-19 tests for returns to work, school.” (August 24, 2020). Online at: https://buffalonews.com/news/local/wny-insurers-will-not-cover-covid-19-tests-for-returns-to-work-school/article_c9d8f05e-e3de-11ea-9fe9-8767a9c9f685.html.

⁸ New York State Department of Health COVID-19 Tracker. Online at: <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-DailyTracker?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n>.

⁹ Centers for Disease Control and Prevention. “Pandemic Planning Scenarios.” (July 10, 2020). Online at: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html>.

¹⁰ Sarah Kliff, *The New York Times*. “Most Coronavirus Tests Cost About \$100. Why Did One Cost \$2,315?” (June 16, 2020). Online at: <https://www.nytimes.com/2020/06/16/upshot/coronavirus-test-cost-varies-widely.html>.

¹¹ Susannah Luthi, *Politico*. “The \$7,000 Covid Test: Why states are stepping in to shield consumers.” (June 8, 2020). Online at: <https://www.politico.com/news/2020/06/08/coronavirus-test-costs-304058>.

At the beginning of this pandemic, BlueCross BlueShield of Western New York assured their members that “[i]n these unprecedented times, BlueCross BlueShield remains committed to supporting the health of our members, those providing this essential care, and our community. As part of that commitment, we’re taking this significant action so that our members have access to diagnosis and treatment as needed. We are here for our members.”¹² Independent Health said that “[w]hen our community faces a challenge, we come together like no other and at Independent Health helping our members through difficult times has always been part of the RedShirt Treatment. What’s happening now with the COVID-19 pandemic is no exception.”¹³ Univera Healthcare declared that “[t]he health and well-being of our members are at the heart of everything we’re doing” to respond to COVID-19.¹⁴ Your members have continued to pay premiums while, in many cases, delaying or foregoing regular doctor visits, elective procedures, and other care. But now, when they need and expect the insurance they pay for to take care of them during a pandemic, members may find themselves unable to get the testing they need, or be on the hook for surprise expensive medical bills, due to arbitrary administrative decisions to refuse to cover COVID-19 testing under certain circumstances.

Your organizations can afford to provide this coverage. While the costs incurred by your plans as a result of this testing are not insignificant, they likely have been and will be more than offset as “hospitals and outpatient offices are cancelling elective procedures and individuals are delaying or forgoing other care due to lessened access from social distancing measures and concerns over contracting the virus.”¹⁵ While the financial results for each of your organizations for the current year are not yet available publicly, the fact that each of your organizations has been approved for rate *decreases* for 2021 marketplace plans,¹⁶ presumably partly in order to continue to meet the mandate that 82 percent of plan revenue be used for actual health care costs, suggests that testing costs do not constitute an unbearable financial burden. While skimping on COVID-19 testing

¹² BlueCross BlueShield of Western New York. “Region’s leading health plan Waives All Member Out-of-Pocket Costs for Coronavirus Testing and Treatment.” (April 2, 2020). Online at:

<https://www.bcbswny.com/content/wny/about/news/coronavirus/statement-from-our-president.html>

¹³ Independent Health. “Independent Health to Continue Covering All Costs for COVID-19 Treatment.” (May 29, 2020). Online at:

<https://www.independenthealth.com/AboutIndependentHealth/Newsroom/PressReleases/2020PressReleases/IndependentHealthtoContinueCoveringAllCostsforCOVID-19treatment>.

¹⁴ Univera Healthcare. “Univera Healthcare working on behalf of members, employers and providers to respond to COVID-19 pandemic.” (March 25, 2020). Online at: https://news.univerahealthcare.com/news-room/news-releases/-/asset_publisher/ZG97xn8sZrsr/content/univera-healthcare-updates-on-covid-19-coronavirus-3-19-20?_com_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_ZG97xn8sZrsr_assetEntryId=23634485&_com_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_ZG97xn8sZrsr_redirect=https%3A%2F%2Fnews.univerahealthcare.com%2Fnews-room%2Fnews-releases%3Fp_p_id%3Dcom_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_ZG97xn8sZrsr%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26_com_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_ZG97xn8sZrsr_cur%3D0%26p_r_p_resetCur%3Dfalse%26_com_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_ZG97xn8sZrsr_assetEntryId%3D23634485

[8.](https://news.univerahealthcare.com/news-room/news-releases/-/asset_publisher/ZG97xn8sZrsr/content/univera-healthcare-updates-on-covid-19-coronavirus-3-19-20?_com_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_ZG97xn8sZrsr_assetEntryId=23634485&_com_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_ZG97xn8sZrsr_redirect=https%3A%2F%2Fnews.univerahealthcare.com%2Fnews-room%2Fnews-releases%3Fp_p_id%3Dcom_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_ZG97xn8sZrsr%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26_com_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_ZG97xn8sZrsr_cur%3D0%26p_r_p_resetCur%3Dfalse%26_com_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_ZG97xn8sZrsr_assetEntryId%3D23634485)

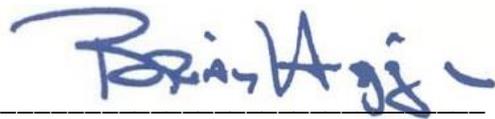
¹⁵ Rachel Fehr and Cynthia Cox, *Kaiser Family Foundation*. “Data Note: 2020 Medical Loss Ratio Rebates.” (April 17, 2020). Online at: <https://www.kff.org/private-insurance/issue-brief/data-note-2020-medical-loss-ratio-rebates/>.

¹⁶ Louise Norris, *healthinsurance.org*. “New York health insurance marketplace: history and news of the state’s exchange.” (August 18, 2020). Online at: <https://www.healthinsurance.org/new-york-state-health-insurance-exchange/>.

coverage will offer you short-term financial benefits, your policy will have the net result of making Western New York a sicker place in the long run. This will result in higher costs for all payers, including for your companies and the federal government, well into the future.

This is nothing short of an abdication of responsibility to your members and our communities. I urge you in the strongest possible terms to reconsider these coverage policies and include screening tests for COVID-19 as a covered benefit without cost-sharing in line with the Congressional intent of both the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act. Thank you for your attention to this critical public health issue.

Sincerely,

A handwritten signature in blue ink that reads "Brian Higgins" with a stylized flourish at the end. The signature is positioned above a horizontal dashed line.

Brian Higgins
Member of Congress