



**Insurance Consumer Protection Issues Resulting From,
Or Heightened By COVID-19**

Presentation to NAIC Consumer Liaison Committee

June 19, 2020

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The Center for Economic Justice

CEJ is a non-profit consumer advocacy organization dedicated to representing the interests of low-income and minority consumers as a class on economic justice issues. Most of our work is before administrative agencies on insurance, financial services and utility issues.

On the Web: www.cej-online.org

Why CEJ Works on Insurance Issues

Insurance Products Are Financial Security Tools Essential for Individual and Community Economic Development.

CEJ works to ensure ***fair access*** and ***fair treatment*** for insurance consumers, particularly for low- and moderate-income consumers.

Insurance is the Primary Institution to Promote Loss Prevention and Mitigation, Resiliency and Sustainability:

CEJ works to ensure insurance institutions maximize their role in efforts to reduce loss of life and property from catastrophic events and to ***promote resiliency and sustainability*** of individuals, businesses and communities in the face of catastrophic events.

Outline

1. Pro-Consumer Responses to COVID-19 by Insurance Regulators
2. Issue 1: Radical and Sudden Changes in Risk Exposure Make Current Rates Excessive
3. Issue 2: Rapid Transition to Digital Sales and Claims Settlement Practices
4. Issue 3: Consumers More Susceptible to Misleading Marketing in Volatile Markets
5. Issue 4: Massive Job Loss / Economic Dislocation Impact 1: Credit-Related Insurance
6. Issue 5: Massive Job Loss / Economic Dislocation Impact 2: Credit-Based Insurance Scores
7. Regulatory Modernization and Action Needed

Non-Health Consumer Protection Actions Taken by Insurance Regulators in Response to COVID-19

- Grace Periods for Premium Payments / Policy Cancellation for Non-Pay
- Extended Deadlines for Claims Filing
- Order Premium Refunds for Lines of Business for Which Sudden and Massive Reduction in Risk Exposure Made Current Rates Excessive (CA, NJ, MI)
- Prohibit Adverse Action / Premium Increase for Events / Factors Which Became Unfairly Discriminatory (Expired Driver's License – OH, Credit Scores – PA)

Thank you for these important actions.

Issue 1: Radical and Sudden Changes in Risk Exposure Make Current Rates Excessive

For many lines of insurance, COVID-19 and government restrictions to contain infections led to radical and sudden declines in exposures and claims.

Examples include personal auto insurance and commercial insurance for businesses forced to close.

For personal auto, vehicle miles traveled declined by 50% to 90% from late March through April depending on location. Personal auto claims directly related to number of vehicles on the road – empty roads means far fewer claims.

Rates that met statutory standards – not excessive – became excessive virtually overnight by mid-March.

Starting on March 18, 2020 Consumer Federation of America and CEJ wrote to regulators on many occasions urging action.^{1 2 3 4 5}

Rates became excessive – and immediate premium relief warranted – because the assumptions underlying the rates – that historical experience was largely predictive of future experience – was ruptured.

Premium relief for **current policyholders** was required their current premiums no longer reflected expected losses.

Personal auto is different from other lines of business in terms of risk exposure – when one person reduces their driving by 95%, their personal risk exposure declines. But that personal reduction in miles driven also means the entire pool of drivers' risk exposures has declines. Empty roads mean lower risk exposure – even for those drivers who continue to drive the miles they did prior to the pandemic.

¹ March 18, 2020: <https://consumerfed.org/wp-content/uploads/2020/03/COVID-19-Auto-Premium-Relief-Letter.pdf>

² March 30, 2020: <https://consumerfed.org/wp-content/uploads/2020/03/COVID-19-Auto-Premium-Relief-Letter-3-30-20.pdf>

³ April 23, 2020: https://consumerfed.org/press_release/auto-insurance-premium-relief-update-more-insurers-to-return-premium-as-refunds-and-credits-top-7-billion-through-may/

⁴ May 7, 2020: <https://consumerfed.org/wp-content/uploads/2020/05/Auto-Insurance-Refunds-COVID-19-Update-Report-5-7-20.pdf>

⁵ May 26, 2020: https://consumerfed.org/press_release/allstate-and-usaa-show-how-insurers-should-provide-ongoing-covid-19-premium-relief/

While insurers deserve praise for voluntary actions to provide premium relief, not all premium relief was or is equal. As pointed out in the CFA/CEJ report cards, some insurers provided substantial premium relief – 25% -- for part of March, April and May, while others provided 15% for April and May, but not March. Others provided no immediate relief – but promised relief upon policy renewal. And others – non-standard insurers – provided no relief.

While a number of regulators encouraged insurers to provide relief, only three states have ordered relief to date. Further, regulators have not provided any guidance on the amount or method of relief. For example, a promise of relief upon policy renewal does not provide relief for the current policy premium and does not get relief to consumers when they need it most.

And structural bias and inherent racism appear to have prevented some consumers from getting any premium relief. The non-standard insurer Dairyland Insurance [recently explained](#) it is not offering premium relief because, “these folks are primarily concerned with keeping their insurance intact and remaining legally compliant.”

Regulatory Modernization Theme 1: Data Collection

In addition to regulatory guidance to insurers to provide premium relief to policyholders in affected lines of insurance – guidance on the amount and methods – CFA and CEJ called on regulators to collect data on personal auto claims activity to provide an empirical basis for the both the regulatory and insurer actions.

The pandemic has revealed the inadequacy of routine insurance regulatory data collection for market monitoring and market analysis. As of today, the most recent personal auto insurance independent data available to regulators is 2017 data – as published in the 2020 Auto Insurance Database. The absence of timely market regulation data contrasts sharply with detailed and frequently-reported financial data.

The absence of a robust market regulation data collection system has resulted in the de facto deregulation of personal auto insurance in almost every state.

Issue 2: Rapid Transition to Digital Sales and Claims Settlement Practices – Algorithmic Bias and Dark Patterns

The pandemic has speeded up the transition to digital interactions between consumers and insurers and consumers and producers. Examples include digital / accelerated underwriting of life insurance, digital claims settlement for auto and homeowners insurance claims and digital application forms.

This rapid transition in insurance has generally not had consumer protection safeguards in place in two key areas: Algorithmic Bias and Dark Patterns.

Algorithmic Bias

The benefits of digitalization and artificial intelligence in insurance have been well recognized – new opportunities for loss mitigation partnerships between policyholders and insurers, faster and less-intrusive applications, more granular recognition of risk exposures and more. Similarly, the dangers of greater reliance on third-party supplied personal consumer data and complex algorithms have been recognized – increasing potential for proxy discrimination, less transparency and accountability and more.

Regulatory Modernization Theme 2: Addressing Proxy Discrimination and Algorithmic Bias

“In the coming days, I encourage each of us to step outside of our comfort zones, seek to understand, engage in productive conversations and hold ourselves accountable for being part of the solution. We must forever stamp out racism and discrimination.” Those are the words of Kirt Walker, Chief Executive Officer of Nationwide.

Floyd’s death in Minneapolis is the latest example of “a broken society, fueled by a variety of factors but all connected by inherent bias and systemic racism. Society must take action on multiple levels and in new ways. It also requires people of privilege—white people—to stand up for and stand with our communities like we never have before,” Those are the words of Jack Salzwedel, the CEO of American Family

While many insurance regulators believe they have authority – and take action to address – proxy discrimination against protected classes – NAIC model laws and state statutes do not explicitly recognize disparate impact as unfair discrimination against protected classes. Further, there are no requirements for regulators and insurers to identify and minimize such proxy discrimination within the overall cost—based pricing framework.

Incredibly, insurance trade associations, like APCIA, still argues that an algorithm cannot discriminate against a protected class as long as the protected class characteristic is not used in the algorithm. How does this claim square with, say, the criminal history scoring algorithms from various vendors? Criminal history data based on historic policing bias and discrimination against minority communities will reflect and perpetuate that discrimination in these algorithms.

Barocas and Selbst: *Big Data's Disparate Impact*⁶

Advocates of algorithmic techniques like data mining argue that they eliminate human biases from the decision-making process. But an algorithm is only as good as the data it works with. Data mining can inherit the prejudices of prior decision-makers or reflect the widespread biases that persist in society at large. Often, the “patterns” it discovers are simply preexisting societal patterns of inequality and exclusion. Unthinking reliance on data mining can deny members of vulnerable groups full participation in society.

With today's multi-variate statistical methods of developing pricing, claim settlement and anti-fraud algorithms, it is not only possible to identify and minimize proxy discrimination, but such practice improves cost-based pricing by removing the correlations between protected class characteristics and other explanatory variables – leaving a more accurate and unique contribution of those explanatory variables to the relationship to expected claims.

⁶https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2477899

The time to explicitly recognize disparate impact against protected classes as unfair discrimination in insurance is long past due. Regulatory modernization requires this recognition plus guidance for regulators and insurers for how to identify and minimize such disparate impact and safe harbors for insurers who follow best practices.

1. If discriminating intentionally on the basis of prohibited classes is prohibited – e.g., insurers are prohibited from using race, religion or national origin as underwriting, tier placement or rating factors – why would practices that have the same effect be permitted?
2. In an era of big data analytics, the potential for proxy discrimination has grown dramatically.
3. Disparate Impact is Particularly Suited to Insurance: Disparate Impact Analysis is Consistent with State Regulatory Requirements Regarding Unfair Discrimination and with Actuarial Justification Used by Insurers.

Dark Patterns⁷

Dark Patterns is the term used to describe digital designs created to make users do things they might not want to do that benefit the business, but not necessarily the user. “Dark patterns rob customers of their agency.”⁸

This may take the form of providing misleading nudges to take action or difficulty finding the preferred option.

Regulatory Modernization Theme 2A: Guidelines and Best Practices for Digital Interfaces to Prevent Dark Patterns.

Regulatory best practices and consumer protections for paper-based applications, information and disclosures are not sufficient or necessarily suited to digital interactions. Action is needed by regulators to develop the skills to recognize dark patterns in insurance and to stop unfair and deceptive digital interactions.

⁷ <https://www.darkpatterns.org/>

⁸ <https://medium.com/adventures-in-ux-design/dark-patterns-and-the-ethics-of-design-31853436176b>

Issue 3: Consumers More Susceptible to Misleading Marketing in Volatile Markets

The pandemic has also brought great volatility to financial markets with rapid swings in the prices of financial instruments, including stocks, bonds and more. For most consumers, their retirement assets are in defined contribution plans – like IRAs and 401Ks – and those assets are invested the financial instruments experiencing great volatility.

The switch from defined benefit retirement plans – pensions – to defined contribution retirement plans has not only relocated the risk of investments from the employer to the employee, but also required employees to experts in investments. At best, this is a great challenge to consumers, but as financial products become more and more complex, this challenge bleeds into great consumer vulnerability to misleading promises about the performance and costs of financial products.

Life insurers long ago moved their focus from death benefit products to investment type products. In recent years, there's been tremendous growth in products that promise consumers the returns of risky investments without the risk of principal loss – indexed annuities and indexed life insurance.

Insurers sell these products with illustrations. The NAIC has model laws regarding illustrations which declare the purpose of the illustrations to show applicants and policyholders how the product operates. In reality, the illustration is used by insurers to show the greatest account value accumulation – gaining a competitive advantage over rivals by showing a higher accumulation.

Misleading illustrations have been a long-standing problem in the life insurance and annuity markets. Five years ago, the NAIC directed the Life Actuarial Task Force to develop a new actuarial guideline to rein in unrealistic illustrations. Insurers promptly gamed that guideline to produce even more unrealistic accumulation values.

The actuaries have come back twice to close these gaps and are now completing new revisions to the actuarial guideline.

The new proposed guideline takes an already-complex approach to illustrations and makes it even more complex. It continues to permit illustration of risky investments without risk and the ability to borrow money from the policy and never have to pay it back because of the policy will accumulate such great returns.

Regulatory Modernization Theme 3: Re-engineering Life Insurance and Annuity Disclosures, Generally, and Illustrations, in Particular.

A glance at the proposed revisions, provided in separate handout, reveals the absurdity of the current illustrations regime. There are serious problems with the way the NAIC develops consumer disclosures and the indexed universal life actuarial guideline 49 is graphic evidence.

Why are actuaries given the charge to develop consumer disclosures, particularly one as central to sales as illustrations?

Why did the actuaries hand the development of the revisions to AG49 to the ACLI and ask the ACLI to coordinate an industry proposal in potential violation of anti-trust laws?

Why did the actuaries reject a proposal from a group of over a dozen independent experts that would both simplify AG49 and address broader problems with the guideline and illustrations?

Why are insurers permitted to illustrate the benefits of risky investments without showing the related costs?

The NAIC's ongoing failure to insist on the use of consistent and best practices in the development of consumer information and disclosures has led to, and will continue to lead to, retirement insecurity.

A significant re-engineering of the illustration regime for annuities and life insurance is critically needed and the design of such illustrations must be consumer-driven utilizing best practices in consumer information, education and disclosure, including consumer testing.

Issue 4: Massive Job Loss / Economic Dislocation Impact 1: Credit-Related Insurance

Credit-related insurance refers to insurance sold in connection with a loan. Consumer credit insurance is generally a voluntary purchase by the borrower to protect the lender's interest if the borrower dies (credit life), becomes disabled (credit disability) or become involuntarily unemployed (credit IUI).

The other major type of credit-related insurance is lender-placed or force-placed insurance. When a borrower takes out a mortgage or car loan, the lender requires the borrower to maintain insurance to protect the property or vehicle serving as collateral for the loan. In the event, the borrower fails to maintain the required insurance the lender (or the servicer of the loan) may force-place insurance on the property or vehicle and assess a charge to the borrower.

Both types of products – consumer credit insurance and force-placed insurance have a long history of very low value to borrowers as evidence by very low loss ratios – from single digits to the 40s for different types of consumer credit insurance in most states to the 20s to 40s for force-placed insurance.

Credit-related insurance prices are inflated – and abusive sales encouraged – because of the financial interests of lenders and servicers in the sale or placement of the insurance beyond the protection of the loan.

During the Great Recession from 2008 to 2013, the amount force-placed home insurance grew from under a \$1 billion in gross written premium annually to \$6 billion. And massive portions of that premium was kicked back to lenders through a variety of mechanisms, including “commissions” to service-affiliated agents, “expense reimbursements” from insurers to servicers, captive reinsurance arrangements that provided profit without risk to servicers and free and below-cost services by the insurer to the servicer that had and have nothing to do with the provision of insurance.

Many, but not all of these abusive practices were eliminated, through litigation settlements and actions by federal and state regulatory agencies.

After a series of hearings in 2012 and 2013, the NAIC charged the Property Casualty Committee with reviewing and revising the NAIC lender-placed insurance model to address these abuses. The C Committee has had a charge to review and revise the NAIC Lender-Placed Insurance Model since 2013. A Lender-Placed Model Working Group was created.

After deciding to leave the current model, which focuses on lender-placed auto, alone – and thereby continuing to permit the kickbacks and inflated charges to borrowers – the working group decided to develop a separate model for lender-placed residential property insurance. The working group has not met or taken any action in the past two years and the model has not been completed.

Regulatory Modernization Theme 4: Complete the LPI Home Model Law and Carefully Monitor All Credit-Related Insurance Markets

In times of economic distress, claims for consumer credit insurance increase – particularly credit IUI – and the force-placement of lender-placed insurance increases.

The failure of the NAIC to adopt the needed consumer protections in the LPI home model law delayed relief to consumers over the past five years, but the economic recovery and low mortgage delinquency and foreclosure rates prevented the type of catastrophic harm visited on consumers from 2008 to 2013.

But, as unemployment has skyrocketed and the limited federal and state COVID-19 relief – through cash payments, unemployment insurance and mortgage forbearance – comes to an end, mortgage delinquencies will increase and with that will come rapid increases in the rate of LPI placement. Yet, the needed insurance consumer protection infrastructure is not in place to protect vulnerable consumers from inflated LPI premiums.

Rapid completion and state implementation of LPI Home Model Law and increased scrutiny of credit-related insurance market outcomes for consumers is urgently needed.

Issue 5: Massive Job Loss / Economic Dislocation Impact 2: Credit-Based Insurance Scores

The pandemic has ruptured the actuarial basis for certain risk classifications.

The Ohio Department of Insurance recognized this for expired drivers' licenses due to the Governor's declaration of emergency and related restrictions on commercial activities:

The Superintendent recognizes that, as a result of these restrictions and orders, some insured Ohioans will be unable to timely renew their driver licenses. This Bulletin notifies insurers that they must not cancel, non-renew, or refuse to issue a policy of automobile insurance, or deny a claim, solely because the driver license of a named insured or other covered family member has expired since the Governor's declaration of emergency.⁹

⁹ <https://iop-odi-content.s3.amazonaws.com/static/Legal/Bulletins/Documents/2020-06.pdf>

The Pennsylvania Department of Insurance recognized this rupture between historical and current experience for credit-based insurance scores:

On March 26, 2020, the United States Department of Labor released its seasonally adjusted initial jobless claims indicating jobless claims rose to 3,283,000. The Department understands that worker displacement during the COVID-19 disruption may negatively impact insureds' credit scores. Insurers should review the application of credit score in the rates charged to consumers and provide flexibility, where appropriate, to policyholders who may experience a negative credit event during this time. A declining credit score may not be used to increase a premium at renewal.¹⁰

¹⁰ <https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol50/50-17/583.html&search=1&searchunitkeywords=>

Regulatory Modernization Theme 5: Declare a Moratorium or Prohibit Adverse Actions on the Basis of Risk Classifications Whose Historical Justification Has Been Ruptured by the Pandemic and Related Restrictions

The continued use of credit scoring by insurers will penalize consumers who are the victims of COVID-19 and the massive economic and medical costs of the virus and government response. From an actuarial standpoint, the basis for an immediate moratorium – or at least a prohibition against adverse actions on the basis of consumer credit information – is that insurance credit scoring has become a clearly unfairly discriminatory underwriting, tier placement, and rating factor.

Whatever basis insurers may have used to justify their credit-based insurance scores in times past cannot hold when declining credit scores is symptomatic of policyholders' diminished exposure (not working and not driving, for example), exactly the opposite of what credit-based insurance models predict will happen.

Regulators should identify those risk classifications whose reliability has been undermined by COVID-19 and related government restrictions and economic conditions and prohibit adverse actions or other consumer harm from the use of such classifications unless and until the reliability of these classifications can be established.

Summary: Insurance Consumer Protection Issues Resulting From, or Heightened By COVID-19

- Immediate and On-going Premium Relief for Consumers in Lines of Business for Which Risk Exposure Has Radically Decreased.
- More Timely and Granular Data Collection for Timely Market Monitoring and Regulatory Responses.
- Accountable Algorithms and Explicit Recognition of Disparate Impact as Unfair Discrimination in Insurance against Protected Classes with the Cost-Based Pricing Framework.
- Re-engineer Investment-Type Life Insurance and Annuity Disclosures and Illustrations Using a Consumer-Driven, Best-Practices Approach.

- Develop Expertise and Regulatory Guidance to Recognize and Prohibit Dark Patterns.
- Complete and Implement in the States the Lender-Placed Home Insurance Model Act and More Carefully Monitor Credit-Related Insurance Markets
- Identify Risk Classifications Rendered Unreliable by the Pandemic and prohibit adverse actions until the reliability can be established.

Questions?

Life Insurance Applications– Covid-19 Questions

June 19, 2020

Brendan Bridgeland

Center for Insurance Research

Covid-19 Application Questions

In the past 30 days, have you been diagnosed, treated, tested positive for, or been given medical advice by a member of the medical profession for COVID-19 (the SARS Co-V-2 virus)?

YES NO

[[{Have either of your natural parents,}[or] [has any sibling] been diagnosed by a medical professional with, or died from}, [COVID-19,] [cancer,] [diabetes,][heart] [or] [kidney] [disease] before the age of (65)?]..... Yes. No.

Within the last [6 months], have you had a blood test administered by a licensed member of the medical profession showing that you have antibodies for COVID-19?.....

In the last 30 days, have you been diagnosed by, sought treatment from, given medical advice by, or examined by a member of the medical profession for any of the following symptoms:

Runny/watery discharge from the nose Yes No

Covid-19 Application Questions

Application Questions are not uniform and many are vague or unlikely to solicit useful information.

- Some inquire about antibody tests – despite these tests being unreliable.
 - Questions about Covid-19 diagnosis in extended family members, regardless of whether they reside in the same household (or country).
 - Coverage may be denied based on the answers to (extremely vague) questions leading to unfair and arbitrary underwriting. Consumers may be restricted to Temporary Life Insurance Agreements instead of full coverage.
 - Permitting vague and irrelevant questions may invite post-claims underwriting – which is particularly problematic when the applicant is deceased and surviving partners or children are under duress.
 - Regulators should be evaluating Covid-19 related insurance questions and making them more uniform.
-

IMPORTANCE OF HIGH-QUALITY, AFFORDABLE COVERAGE DURING THE CRISIS: COVID-19 TESTING

Presented By: Amy Killelea, NASTAD

COVID-19 Testing: A Rapidly Evolving Landscape

	COVID-19 Tests	Setting	Purpose/limitations
Diagnostic tests	Polymerase chain reaction (PCR) test	Nasal or throat swab via healthcare provider and sent to lab	Detect active infection; most accurate test
	PCR rapid test	Nasal or throat swab processed via portable machine	Detect active infection; may not be as accurate as standard PCR test
	PCR home test	Nasal or saliva swab via at home-testing kit and sent to lab	Detect active infection; accuracy may be impacted by challenges of self-swabbing
	Antigen test	Nasal or throat swab via healthcare provider processed via test strip	Detect active infection; best used for screening followed by confirmatory testing as false negatives are common
Serologic tests	Antibody test	Blood draw via healthcare provider and sent to lab	Detect antibodies developed after exposure to COVID-19; accuracy is currently limited

COVID-19 Testing Guidelines Are Also Evolving

CDC COVID-19 Testing Guidelines

High Priority	Priority
<ul style="list-style-type: none">• Hospitalized patients with symptoms• Healthcare facility workers, workers in congregate living settings, and first responders with symptoms• Residents in long-term care facilities or other congregate living settings, including prisons and shelters, with symptoms	<ul style="list-style-type: none">• Persons with symptoms of potential COVID-19 infection• Persons without symptoms who are prioritized by health departments or clinicians, for any reason (e.g., public health monitoring, sentinel surveillance)

CDC, COVID-19 Testing Criteria (May 5, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-criteria.html>

- As testing becomes more widely available, what are the criteria for asymptomatic testing?
- What recommendations should employers follow to safely reopen workplaces (e.g., frequency of serial testing)?
- What constitutes “medically necessary” testing?

There Is No Such Thing As “Surveillance Testing”

PCR Tests

- **Diagnostic/treatment:** Identify active infection to determine treatment protocol
- **Surveillance/public health:** All test results – regardless of payer – reported to state/local health departments used to allocate resources and implement public health interventions

Antigen Tests

- **Diagnostic/treatment:** Identify patients with probable infection to target follow up testing and link to care/treatment; particularly effective in emergency departments and CHCs
- **Surveillance/public health:** Screen large number of people; must be paired with confirmatory testing

Serologic/Antibody Tests

- **Diagnostic/treatment:** As science evolves, diagnostic algorithm could enable identification of recency of infection (similar to HIV recency assays); as accuracy improves, may eventually be used to determine immunity
- **Surveillance/public health:** Analysis of population level antibody test results can be used to estimate total number of people who have been infected with COVID-19 in U.S.

Who Pays?

Insurance Coverage Mandates

- Including FFCRA and CARES Act requirements for Medicaid, Medicare, and private insurance to cover diagnostic COVID-19 testing, including serologic tests, without cost sharing

Governmental Public Health Funding

- Including most recent ~\$10B in Epidemiology and Laboratory Capacity (ELC) funding to health departments to ramp up testing, contact tracing, and surveillance

Uninsured Provider Compensation

- Including ~\$3B across several stimulus packages to reimburse providers for COVID-19 testing for uninsured individuals

HIV & Hepatitis Testing: Case Study

- *Routine* HIV and hepatitis C testing must be covered without cost sharing (USPSTF Grade A and B respectively)
 - Coverage is not based on risk; based on age cohorts
- Antibody testing is generally covered; helps to guide treatment decisions
- Health department HIV and hepatitis programs are encouraged to bill third parties for testing
 - Built off of VCFA immunization “Billables Project”
 - Focused on billing in clinical settings
 - Allows health departments to target resources, focusing on population testing in community-based settings

Considerations for Regulators

- Issue guidance for issuers to apply transparent “medically necessary” criteria to testing coverage
- Protect consumers from surprise out-of-network lab bills by prohibiting balance billing
- Work with public health programs in your state to ensure coordinated response across agencies

Questions



IMPACT OF COVID-19 ON VULNERABLE POPULATIONS AND SPECIFIC ISSUES FOR OLDER ADULTS

Presented By: Ashley Blackburn, Anna Schwamlein Howard and
Bonnie Burns

Disproportionate Impact

Racial toll of virus grows even starker as more data emerges

AP

*Black Americans Face Alarming Rates of
Coronavirus Infection in Some States*

The New York Times

Covid-19's 'catastrophic' impact on Latino communities
is driven by 'savage disparities,' leaders and lawmakers
say

CNN health

COVID-19 Presents Significant Risks for
American Indian and Alaska Native People

KFF

Filling the need for trusted information on national health issues

COVID-19 highlights racial disparities in our health care system

**USA
TODAY**

Disproportionate Impact

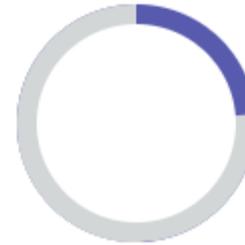
We've lost at least 23,251 Black lives to COVID-19 to date.

Black people account for:

13%
of the US
population



vs.



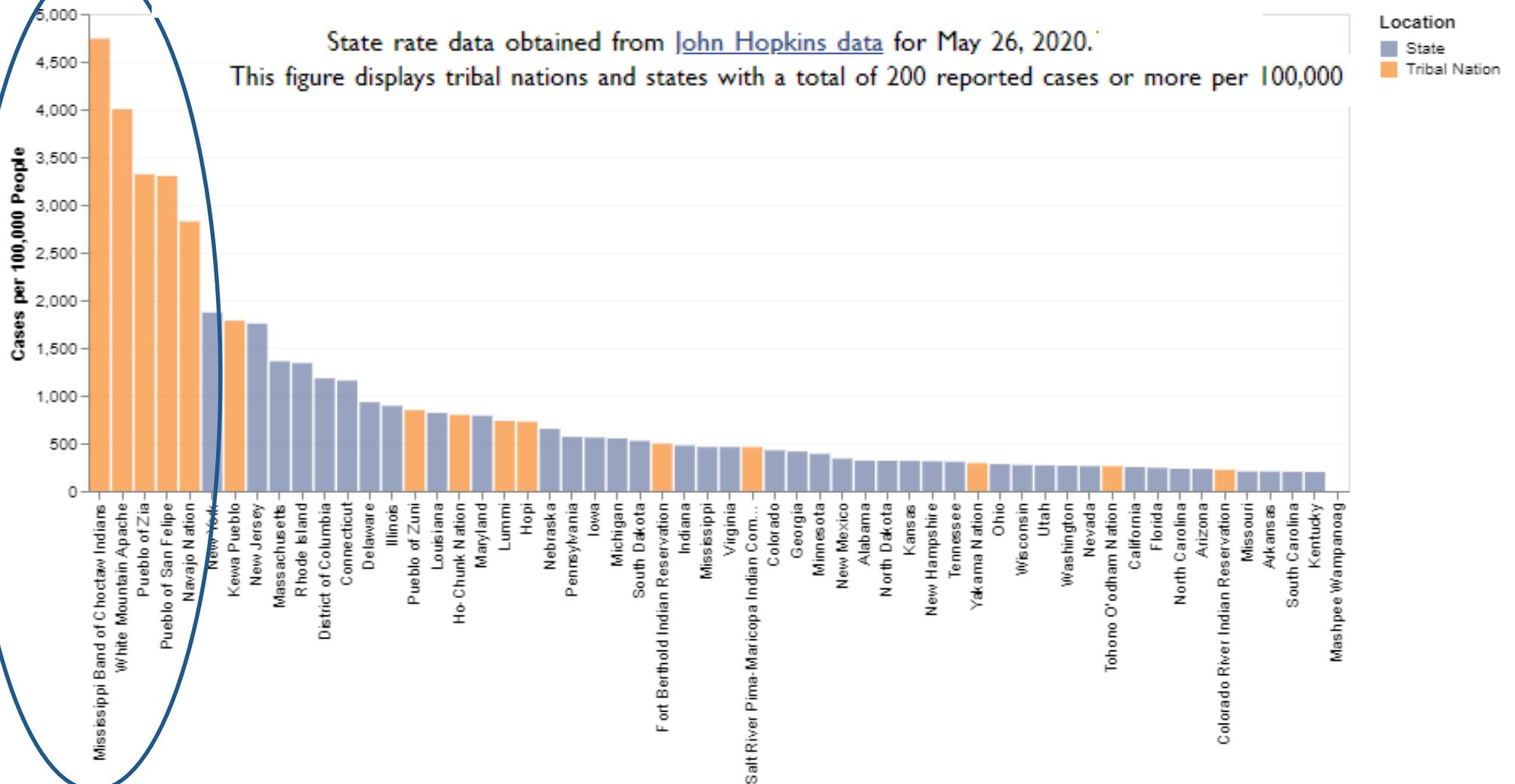
24%
of deaths
where race is known

This means Black people are dying at a rate **nearly 2 times higher** than their population share.

*As of June 9, 2020

Disproportionate Impact

Case Rate by Select Tribal Nations and States



A Framework for Solutions

Data Collection

- Disaggregated by race, ethnicity, gender identity, sexual orientation, age, socioeconomic status, disability status and county

Coverage & Affordability

- Coverage expansion for uninsured
- Coverage for treatment without cost-sharing

Access & Quality

- Equal access to testing/treatment
- Public health information in primary language
- Expanded access to telehealth services

SDOH

- Address food and housing security
- Reduce incarceration

What can Regulators do?

- Coordinate with state commissions or workgroups charged with centering equity in COVID-19 response efforts.
 - State examples: Michigan, New jersey and Washington
- Evaluate your community connections
 - Feedback loops to understand problems
- Data collection and transparency
 - Can the data you collect inform a more equitable response in your state?

Resources

- The COVID Tracking Project, Racial Data Dashboard: <https://covidtracking.com/race>
- State Health & Value Strategies, Equitable Recovery Strategies: <https://www.shvs.org/equitable-recovery-strategies/>
- State Health & Value Strategies, Five Key Questions State Health Officials Can Ask Right Now to Advance Health Equity During COVID-19 Response Efforts: <https://www.shvs.org/five-key-questions-state-health-officials-can-ask-right-now-to-advance-health-equity-during-covid-19-response-efforts/>
- Community Catalyst, Racial Equity in State and Local COVID-19 Responses Checklist: <https://communitycatalyst.app.box.com/file/670454370154>
- The New England Journal of Medicine, Racial Health Disparities and Covid-19 — Caution and Context: <https://www.nejm.org/doi/full/10.1056/NEJMp2012910>
- The New York Times, The Top Coronavirus Hotspots Are All Indian Lands: <https://www.nytimes.com/2020/05/30/opinion/sunday/coronavirus-native-americans.html?smid=tw-nytopinion&smtyp=cur>

Cancer Screenings

- Due to COVID-19 most cancer screenings have been delayed
- Delayed screenings = undiagnosed cancer cases
- Colorectal cancer is the second leading cause of death for men and women combined
- Between mid-March and mid-April, the number of colonoscopies fell by nearly 90%
- USPSTF recommendations for colorectal cancer include colonoscopy and at-home non-invasive screening tests (hs-gFOBT/FIT/Cologuard)
- Patients who receive a positive result from a non-invasive test should receive a follow-up colonoscopy to complete the colon cancer screening colonoscopy.

Cancer Screening Recommendation

Problem: Patients can face cost-sharing associated with follow-up colonoscopy that could prohibit them from completing the screening process.

Solution: DOIs should make clear (through regulations or bulletins) that cost-sharing should be waived for follow-up colonoscopies.

BITTEN BY COBRA:



MEDICARE AND COBRA'S PHANTOM BENEFITS

Presented By: Bonnie Burns, California Health Advocates

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<http://www.cahealthadvocates.org>

Working Elders and Employer Health Benefits

- Increased number of employed elders
 - Highest number of working elders in 55 years (2019 data)
 - Until COVID-19, after ???
 - Similar to post 2008 ?
 - First to lose their job, last hired
 - » Age 50 +
 - Pre-COVID-19 employment projections
 - 1/3 of ages 65 -70 employed by 2024

Working While Eligible For Medicare

- No federal notice of Medicare eligibility
 - Widespread ignorance leading to failure to enroll
- Disconnect between Social Security & Medicare
 - Medicare eligibility: Automatic at age 65
 - No federal notice
 - No auto enrollment
 - SSA full retirement: age 67+/- (depends on date of birth)
 - Disabled: Auto enrolled after 24 months of SSDI

Ignoring Medicare While Working

- Don't know eligibility has begun at age 65
 - Waiting for Social Security retirement benefits
- Already has health coverage through employer
 1. Waiting till employment ends
 2. Duplicates employer costs and/or benefits
 3. Requires additional premium payment
 4. Completely unaware of Medicare eligibility rules

Employer Health Benefits and Medicare

- Medicare Secondary Payer (MSP) rules apply to EGHP
 - Employer health benefits are primary
 - At age 65+ if 20 or more employees
 - If disabled and 100 or more employees
 - ESRD = 1st 30 months, regardless of size
 - Medicare is secondary **only** while someone is actively employed (IRS rules)
 - Smaller employers (less than 20 or 100 employees)
 - MSP rules don't apply
 - Medicare is primary, employer health plan is secondary

Medicare and COBRA

- Medicare Part B requires premium payment
 - More than \$100 monthly (based on income)
 - Generally no premium for Part A
 - Medicare is secondary coverage to EGHP (20+/100+) while working
 - Except during EGHP deductible period, or EGHP non-covered benefits
- Medicare Secondary Payer rules **don't** apply to COBRA*
 - MSP only applies to actively employed individual
 - **Medicare is always primary to COBRA benefits!**
 - Even if not enrolled for benefits (i.e., **phantom benefits**)
 - Mistakenly paid primary benefits are recoverable by COBRA carrier

*Except during 30 month coordination period for people with ESRD when COBRA is primary

NAIC Coordination of Benefits Model Act

- Unfairly penalizes Medicare beneficiaries, and ONLY those beneficiaries
 - Allows and facilitates phantom benefits
 - California Health Advocates suggested changes to COB Model Act:
 - Section 5 D. A COB provision may not be used that permits a plan to reduce its benefits on the basis that:
 - (1) Another plan exists and the covered person did not enroll in that plan;
 - (2) A person is or could have been covered under another plan, ~~except with respect to Part B of Medicare; or~~ (*delete as suggested language*)
 - (3) A person has elected an option under another plan providing a lower level of benefits than another option that could have been elected; **or**
 - (4) A person is eligible but not enrolled for benefits in Part B of Medicare. (*add as suggested language*)**

Attachments: Relevant Documents

- CHA Memo to SITF
 - Suggested change to NAIC COB Model Act
- Congressional letter (1/1/20) to HHS and DOL
 - Three Committees
 - House Ways and Means
 - House Committee on Energy and Commerce
 - House Committee on Education and Labor
 - Encouraged both agencies to update COBRA information for Medicare beneficiaries
- DOL recently updated Model Notices with Medicare paragraph
 - Updated COBRA Model Notices
 - Updated COBRA Notice Instructions
 - Updated FAQ

What Can Regulators Do?

- Remove unfair Medicare penalty from NAIC COB Model
 - Delete phantom benefit language!
 - Doesn't allow same application to any other existing health benefits!
- Encourage CMS to revise Medicare materials
 - Needs clear explanation of Medicare and COBRA decisions
- Encourage COBRA carriers to use updated COBRA notices
- Coordinate anti-fraud efforts with state SHIPs and Senior Medicare Patrols (SMP)

Questions



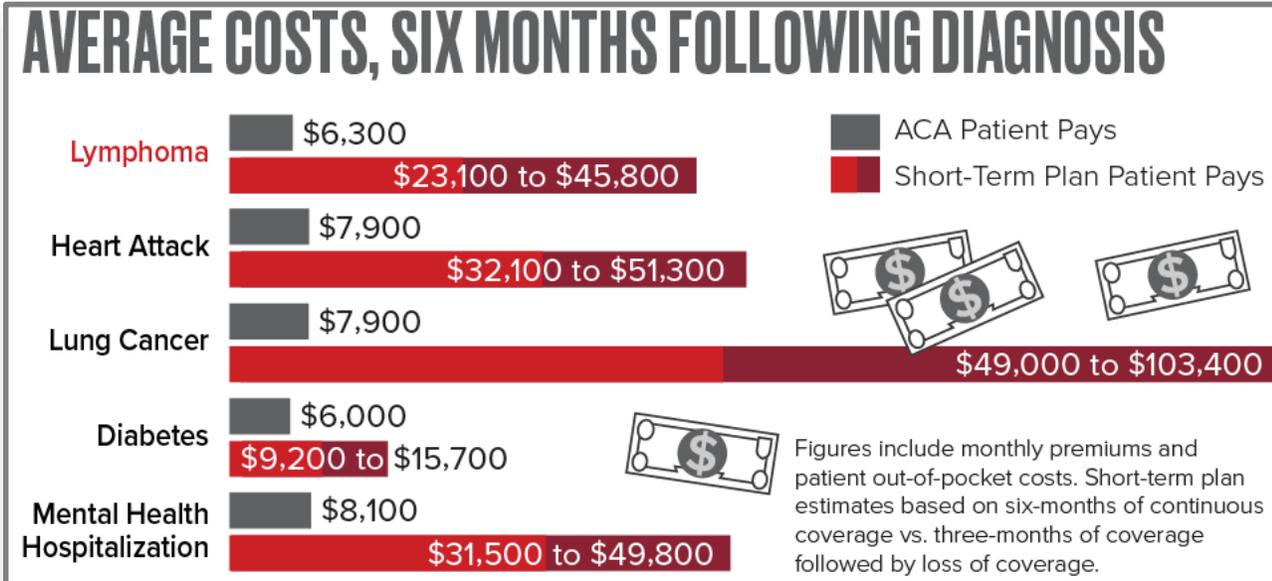
ADDITIONAL AREAS FOR STATE LEADERSHIP AND CONSUMER PROTECTION

Presented By:

Lucy Culp, The Leukemia & Lymphoma Society

Katie Keith, Out2Enroll

Importance of Comprehensive Coverage Amid the COVID-19 Pandemic



Milliman Research Report Commissioned by The Leukemia & Lymphoma Society. *The Impact of short-term limited-duration policy expansion on patients and the ACA individual market.*
<https://www.lls.org/sites/default/files/National/USA/Pdf/STLD-Impact-Report-Final-Public.pdf>

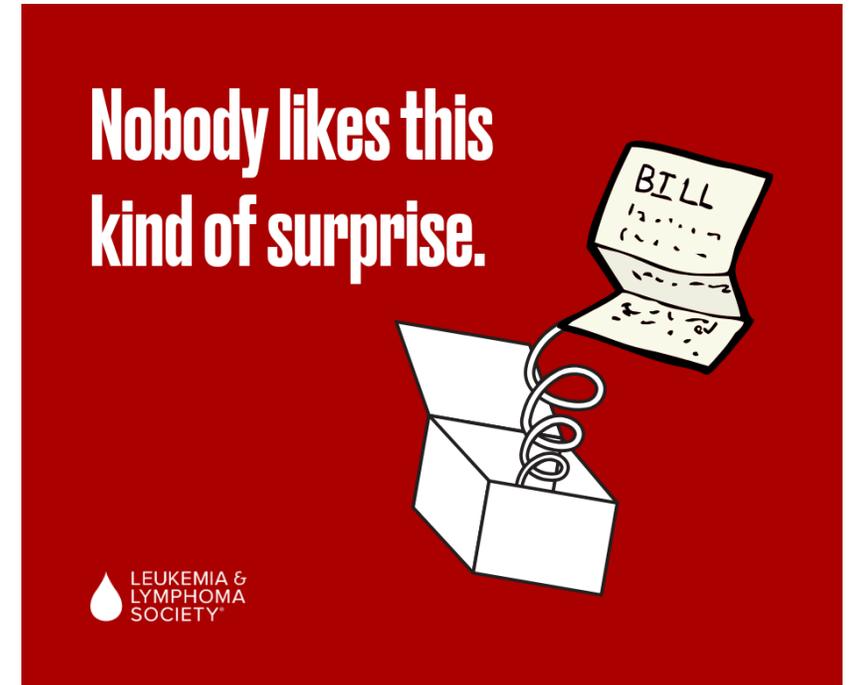
Total Estimated Out-of-Pocket Costs for Patients with COVID-19 Enrolled in the Most Popular Short-Term Plans

State	Patient Costs for Moderate Case (\$30,000)	Patient Costs for Severe Case (\$100,000)
Georgia	\$14,600	\$28,600
Louisiana	\$17,750	\$35,000
Ohio	\$17,750	\$35,000

Commonwealth Fund. *In the Age of COVID-19, Short-Term Plans Fall Short for Consumers.*
<https://www.commonwealthfund.org/blog/2020/age-covid-19-short-term-plans-fall-short-consumers>

Ensuring Consumers Can Afford Coverage and Care

- Ban Surprise Medical Bills
 - Temporary, COVID-related fixes
 - Permanent solutions
- Improve Premium Affordability
 - Reinsurance, additional subsidies and premium supports
 - Congressional action



Providing Flexibility to Meet Consumers' Needs

- Special Enrollment Periods
- Premium Grace Periods
- Expanded Access to Telehealth
- Waiving Prior Authorization Requirements
- Ensuring Access to Medications

Looking to 2021

- 2021 Rate Review Process
 - Record-high MLR rebates in past two years
 - Concerned about impact of COVID-19 on rates
 - Rates should be informed by real-world experience
- Need for Consumer Education and Support
 - Insurance departments/state officials are a trusted source of information
 - Outreach and education is even more critical in light of fraudulent activity
- Future Opportunities to Present

Questions



STOP THE SPREAD

COVID-19 Scams and Fraud



**Coalition Against
Insurance Fraud**

Presented By: Matthew J. Smith, Esq.

The Impact of COVID-19 on Insurance Fraud

- **Historical comparisons:**
 - Great Recession
 - Natural Disasters



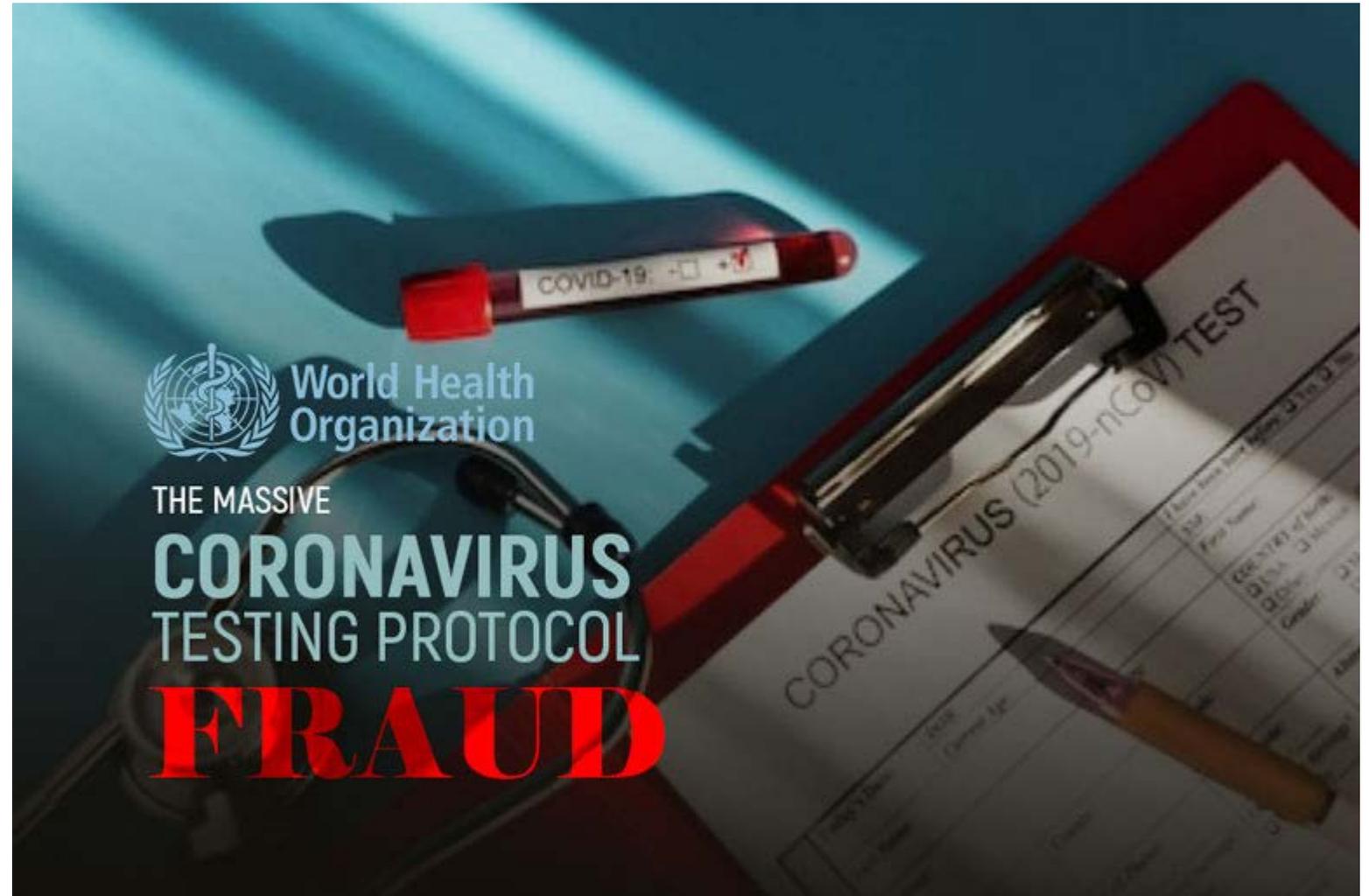
Potentially the largest fraud spike ever...

- ❖ Internet searches on arson
- ❖ Email scams (WHO)
- ❖ Auto theft/disappearances



The Scams – Health & Life

- Fake plans & endorsements
- Vaccine scams
- Tele-med phishing
- Cargo theft
- Life insurance “incentives”



The Scams – Auto

- Rate rebate refusals
- Towing & storage
- Staged accidents
- “Jump-ins”
- Vehicle arsons
- Caregiver auto break-ins



The Scams – Workers Compensation

- Redefining the workplace
- Providing owed coverage
- Claim investigations
 - No witnesses
- Tele-medicine verifications



The Scams – Property & Commercial

- Business interruption
- Inventory losses
- Arsons
- Thefts & mysterious disappearances
- Investigation limits



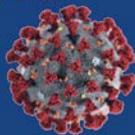
The Litigation Explosion

- Coverage issues:
 - Business income
 - Virus/pandemic exclusions
- COVID-19 suits:
 - Liability limits
- Public Perception:
 - Fraud impact

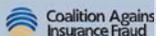


Don't Let COVID-19 Infect You With Insurance Fraud

TOP 5 COVID-19 SCAMS



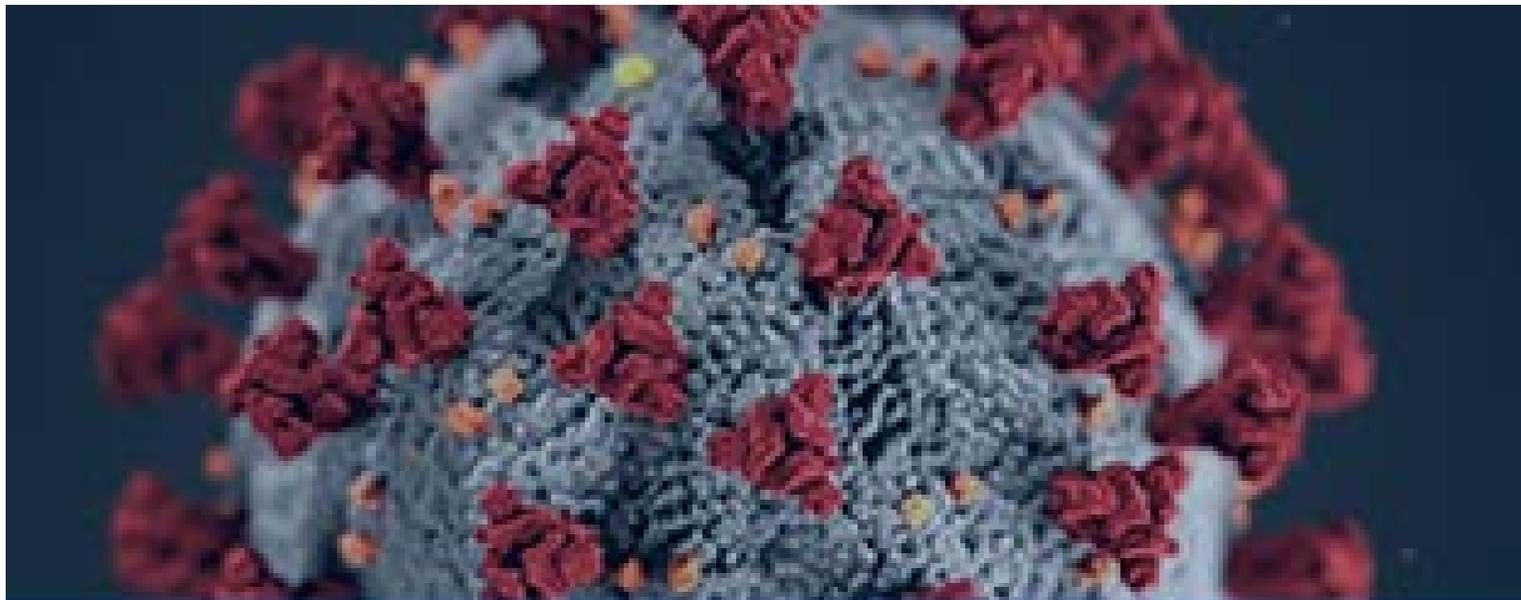
- 1 Fake "corona" insurance**
Watch for fake health insurance agents selling low-priced insurance to cover coronavirus "treatment." Scammers may try to sell low-cost "corona insurance" or health policies that claim to have a coverage provision. Simply hang up on robocalls.
- 2 Cancelled health insurance**
Beware of bogus calls warning you that your health insurance was "cancelled." You may be given a tollfree line to call, or urged to click a link that installs malware. Most of these are attempts to steal your personal information.
- 3 Corona medicines, tests**
Scammers are peddling fake vaccines, drugs, "all-natural" or "organic" medicines — all "insured and paid for" by your health policy. But the novel coronavirus is exactly that — new — and there is no known cure yet.
- 4 Senior scams**
Beware of free virus "tests" at senior centers, health fairs or in your home. Scammers might ask for your Medicare number, SSN and other information to steal your medical identity. Talk to your doctor if you need a test. Call your insurer directly to answer your coverage questions.
- 5 Bogus travel insurance**
Be wary of pitches for travel insurance that claim to cover coronavirus related trip cancellations. Some cover viral outbreaks and doesn't cover



DEFEND AGAINST COVID-19 MEDICAL ID CYBER FRAUD



Fighting Back



COVID-19 WORKERS COMP FRAUD 5 things to consider

- 1 Remote**
Global work from home orders are redefining what a work injury may mean. What may be new?
Fraud Investigations | Claims | Treatment Options
- 2 Quarantine Injury Claims**
How much from business closure?
Be careful with "quarantine" claims.
Are all workers eligible for these claims?
Is all or part of the injury considered an "occupational"?
- 3 Telemedicine**
How do I find a qualified telemedicine provider?
The COVID-19 pandemic has accelerated the use of telemedicine.
Are all health plans covering telemedicine?
Can I call or use telemedicine?
- 4 Be Honest**
COVID-19 is pushing us to work better together.
Report your injury promptly and accurately.
Employers and insurers need to share information with employees so workers understand and know how to report claims.
- 5 Stop the Fraud**
If you are thinking of continuing based on a work back, don't. You will risk your health and pay.
Fraud is illegal. Contact your state attorney general and provide information to your state's insurance board.
Report all suspected insurance fraud to your state department of insurance or at: <https://www.insurancefraud.org/COVID-19.htm>.

Wash away germs... Not your Medical ID

[HTTP://WWW.INSURANCEFRAUD.ORG/COVID-19-HTML](http://www.insurancefraud.org/COVID-19-htm)

THE SCAMS
Hackers "ghost" and spoof you with alarming emails and links. Their digital scams want to trick you into revealing sensitive data.



WHAT FRAUDSTERS WANT?

Your Medical ID, Social Security number and more. Why? To fraudulently bill for medical treatments, drugs and benefits.

WHAT TO DO

Don't open unknown email links or attachments.

Don't give information to unknown callers, especially robocalls.

Verify requests before releasing personal information.

If you suspect fraud report it! Notify your state department of insurance and your insurer.



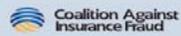
What You Can Do

Advice to Employees

- If you have concerns about potential remote work injury, contact your employer or insurer.
- Do NOT respond to requests for any and all information and never click links for insurance updates.
- Seek assistance if needed. Talk to your doctor, employer, or state department of insurance. Report all suspected insurance fraud to your state department of insurance and your insurer.

Employers and Insurers

- Tell employees how to report claims in a COVID-19 environment.
- Communicate and educate employees to best protect themselves.
- Keep your IT system updated with the latest anti-virus software.
- Watch for phishing.
- Report all suspected insurance fraud claims, while ensuring all claims are fully reviewed through the rules.



COVID-19 Fraud

What State DOIs Can Do...



Fighting Back – Educating Consumers

- Website data
- Webinars/Podcasts
- Media relations
- Interviews
- Infographics



Fighting Back – Resources to Help



Fighting Back – Resources to Help



<https://www.insurancefraud.org/Covid-19.htm>

Fighting Back – Resources to Help



<https://www.nicb.org/how-we-help/government-affairs/covid-19-nicb-resource-center>

Fighting Back – Resources to Help

<https://www.smpresource.org/Content/Medicare-Fraud/Fraud-Schemes/COVID-19-Fraud.aspx>



Fighting Back – Resources to Help



The logo for 'Explore Data with the FTC' features a grid of blue squares and circles on the left. To the right, the text 'Explore Data' is written in a large, bold, blue font, with 'with the FTC' in a smaller, grey font below it.

**Track Coronavirus (COVID-19)
consumer complaints**

Source: Federal Trade Commission | FTC.gov

<https://www.ftc.gov/coronavirus>

Fighting Back – Monitoring Insurers

- Unfair claim practices
- “Right sized” for what?
- Compliance & training
- Safety issues
- Dramatic rise of AI & technology



Fighting Back – State Efforts

- **Emergency Orders**
 - Washington – lab tests
 - Maryland
- **Task Forces:**
 - Delaware
 - Connecticut
- **Updates to:**
 - Laws
 - Regulations
- **Expedited prosecutions**
 - Compare to 9/11
- **Partner with federal actions:**
 - SCAM Act



Questions?



THANK
YOU  **U TO THE**
HELPERS.

matthew@insurancefraud.org
(202) 393-7332



What we know...

- Businesses need insurance benefits for losses due to compliance w/public safety orders
- Some policies exclude coverage for virus/pandemic-related losses, some do not
- Rumors are rampant (insolvency, no coverage)
- Hard data on claims is pending: NAIC and state data calls
- Reinsurance is intended for catastrophic losses
- 30 day max benefits for Civil Authority losses is common
- Paid-for insurance benefits plus PPP funds are needed to restore economic health, jobs and consumer confidence in the value of insurance

To assist policyholders:

- UP established a COVID-19 Loss Recovery Initiative
- National advisory team
- Library
- Amicus briefs
- Promoting fair and efficient resolution of claim disputes
- www.werbig.org

www.uphelp.org/covid

Empowering the Insured

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Resources

[Disaster Recovery Help](#)

[Claim Guidance Library](#)

[Buying Tips](#)

[State by State](#)

[Amicus Library](#)

[Deals and Discounts](#)

What people say about UP

In my personal

COVID Loss Recovery Initiative



When events cause people and businesses to suffer serious and costly losses and insurance benefits become critically important to recovery, United Policyholders provides guidance, advocacy support and information to facilitate fair claim payouts. Our goal is to help every person and entity that has invested in buying insurance get the full value of that investment and recover all benefits owed after adversity has struck.

To track the battle for coverage for losses due to COVID, uphelp.org/covid

- [LOSS RECOVERY AND INSURANCE GUIDANCE](#) 
- [GOVERNMENT ORDERS/NOTICES](#) 
- [LAWSUITS](#) 
- [LEGISLATION](#) 
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- [SCIENTIFIC RESEARCH](#) 
- [OTHER](#) 