

# DEPARTMENT OF REGULATORY AGENCIES

## Division of Insurance

### 3 CCR 702-4

#### LIFE, ACCIDENT AND HEALTH

##### Emergency Regulation 21-E-04

##### CONCERNING COVERAGE AND COST SHARING REQUIREMENTS FOR COMMERCIAL INSURANCE MARKET COVERAGE OF COVID-19 CLAIMS

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##### **Section 1 Authority**

This emergency regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109(1), 10-16-103.4, 10-16-109, and 10-16-141(1), C.R.S.

##### **Section 2 Scope and Purpose**

On March 11, 2020, Governor Polis issued Executive Order D 2020 003 declaring a disaster emergency due to the presence of COVID-19 in Colorado. That Executive Order has been extended, most recently on March 16, 2021 by Executive Order D 2021 068, which is subject to further extension by Executive Order. In order to protect the general public and to direct health insurers toward a policy that advances the welfare of the public through overall efficiency, affordability, improved health care quality, and appropriate access, pursuant to § 10-1-108(7), C.R.S., the purpose of this regulation is to establish coverage and cost-sharing requirements for commercial insurance carriers related to claims arising from the testing and treatment of COVID-19 and to ensure covered persons have access to prescription drugs during the COVID-19 emergency.

The Division of Insurance finds, pursuant to § 24-4-103(6)(a), C.R.S., that immediate adoption of this regulation is imperatively necessary for the preservation of public health, safety, or welfare as establishing coverage and cost sharing requirements for the testing and treatment of COVID-19 is imperative to preserve the health of the citizens of Colorado. Therefore, compliance with the requirements of § 24-4-103, C.R.S., would be contrary to the public interest. This emergency regulation replaces Colorado Emergency Regulation 20-E-13, which became effective November 18, 2020, in its entirety.

##### **Section 3 Applicability**

This regulation applies to all carriers offering individual, small group and large group health benefit plans, student health plans, and managed care plans, including health-savings-account (HSA)-qualified health benefit plans, and grandfathered health benefit plans that are subject to the insurance laws of Colorado.

Carriers who are third-party administrators for self-funded plans are strongly encouraged to follow the requirements of this regulation in order to create uniform billing structures during the COVID19 emergency.

#### **Section 4      Definitions**

- A.      "Carrier" shall have the same meaning as found at § 10-16-102(8), C.R.S.
- B.      "Commissioner" means, for the purposes of this regulation, the Commissioner of Insurance or his or her designee.
- C.      "Cost share" shall, for the purposes of this regulation, include co-payments, deductibles, and coinsurance.
- D.      "Covered person" shall have the same meaning as found at § 10-16-102(15), C.R.S.
- E.      "Grandfathered health benefit plan" shall have the same meaning as found at § 10-16-102(31), C.R.S.
- F.      "Health benefit plan" shall have the same meaning as found at § 10-16-102(32), C.R.S.
- G.      "Managed care plan" shall have the same meaning as found at § 10-16-102(43), C.R.S.

#### **Section 5      Coverage and Cost Sharing Requirements for COVID-19 Claims**

- A.      During any period when a disaster state of emergency has been declared, in the state of Colorado or nationally, due to the presence of COVID-19, carriers shall provide coverage for in-network telehealth services for COVID-19-related testing and treatment with no cost share for the covered person.
- B.      During the declared disaster state of emergency, in the state of Colorado or nationally, due to the presence of COVID-19, when a covered person seeks and receives a COVID-19 diagnostic test from a licensed or authorized health care provider, or when a licensed or authorized health care provider refers a covered person for a COVID-19 diagnostic test:
  - 1.      Carriers shall assume that the receipt of the test reflects an individualized clinical assessment and the test should be covered without cost sharing, prior authorization, or other medical management requirements. Carriers shall not require the presence of symptoms or a recent known or suspected exposure, or otherwise impose medical screening criteria on coverage of tests.
  - 2.      Carriers shall ensure that coverage is provided for COVID-19 diagnostic testing, including in home tests, with no cost share for the covered person and are prohibited from requiring providers to collect cost shares.
  - 3.      Carriers shall not limit the number of covered diagnostic tests as long as the diagnostic tests are deemed medically appropriate for the covered person by a health care provider.
  - 4.      Carriers shall cover any test that meets the criteria for use in detecting or diagnosis of COVID-19, as provided in the Families First Coronavirus Response Act, Pub. L. 116-127, and as amended in the Coronavirus Aid, Relief, and Economic Security Act, or CARES Act, Pub. L. 116-136, which includes serological testing, and any non-COVID-19 tests a provider determines medically appropriate to determine the need for COVID-19 diagnostic testing of the covered person, even if the visit does not result in an order for or administration of a COVID-19 test.

5. Carriers shall cover cost sharing for an in-network provider office visit, an in-network urgent care center visit, an emergency room visit, and non-traditional care settings, including a state- or locality-administered site, a drive-through site, and/or a site that does not require appointments, where licensed health care providers are administering the testing.
  6. Carriers shall ensure testing, diagnosis, and screening for COVID-19 is available without unreasonable delay.
    - a. Carriers must cover testing for COVID-19 if performed by an out-of-network provider, pursuant to § 10-16-704(2)(a), C.R.S., if an in-network provider is unable to conduct the testing.
    - b. Carriers shall utilize both in-network and in-state out-of-network laboratories to process COVID-19 tests with no cost share to the covered person.
  7. Any COVID-19 diagnostic test is considered to be an emergency medical service to treat COVID-19 as an emergency medical condition during any period when a disaster state of emergency has been declared, either in the state of Colorado or nationally, due to the presence of COVID-19.
- C. Carriers shall provide timely information to their enrollees about the Colorado Exposure Notification application and encourage use of the application to inform users of potential exposure to COVID-19. Carriers may use any method they deem cost effective to provide this information. A sample notice is included as Attachment A to this regulation.

#### **Section 6 Access to Prescription Drugs During the COVID-19 Emergency**

- A. During any period when a disaster state of emergency has been declared, either in the state of Colorado or nationally, due to the presence of COVID-19, carriers shall allow covered persons to obtain refills of up to 90 days of prescription drugs before the scheduled refill date so that covered persons are ensured an adequate supply of medications.
- B. Carriers shall not apply a different cost-sharing amount for an early refill of a prescription.

#### **Section 7 Severability**

If any provision of this regulation or the application of it to any person or circumstances is for any reason held to be invalid, the remainder of this regulation shall not be affected.

#### **Section 8 Enforcement**

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

#### **Section 9 Effective Date**

This emergency regulation shall be effective March 19, 2021.

#### **Section 10 History**

Emergency regulation 20-E-13 replaced emergency regulation 20-E-09, which became effective July 18, 2020.

This emergency regulation replaces emergency regulation 20-E-13, which became effective November 18, 2020.

This emergency regulation shall be effective March 19, 2021.

Attachment A

Sample Notice

Colorado Exposure Notification Application

On October 25th, in partnership with Google and Apple, the state of Colorado launched its COVID-19 statewide exposure notification system. The service can quickly notify users if they've been exposed to COVID-19 so they can reduce the risk to loved ones, seek medical advice, and slow the spread of the virus.

By opting in, your Android or iPhone device will share anonymous tokens with other CO Exposure Notifications users using your phone's Bluetooth. If another user you've been near tests positive for COVID-19 within a 14-day period, the service will notify you. If you test positive, you can easily and anonymously notify others to stop the spread of COVID-19. This is a voluntary service and you can turn it off at any time.

The service was created with your privacy in mind. Everything is anonymous. The service does not use your GPS to track your location and no personally identifiable information is collected, stored, or transmitted.

We encourage you to strongly consider activating CO Exposure Notifications. Knowing about an exposure allows you to reduce the risk to your family, friends, neighbors, coworkers and community.

For more information about the technology, including FAQs and instructions for downloading the application, please visit [addyourphone.com](https://addyourphone.com), and for additional resources on COVID-19, see [covid19.colorado.gov](https://covid19.colorado.gov).