

# DEPARTMENT OF REGULATORY AGENCIES

## Division of Insurance

### 3 CCR 702-4

#### LIFE, ACCIDENT AND HEALTH

#### Emergency Regulation 21-E-03

#### CONCERNING COVERAGE AND REIMBURSEMENT FOR COVID-19 TREATMENT AND VACCINES DURING THE COVID-19 DISASTER EMERGENCY

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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, 10-16-109, 10-16-708, C.R.S., the Governor's Executive Order D 2020 003 declaring the presence of COVID-19 in Colorado a disaster emergency and extensions of that declaration, most recently with Executive Order D 2021 045 on February 15, 2021, and the Governor's Executive Order D 2021 016, Directing the Colorado Division of Insurance to Promulgate a Rule Regarding Rates for COVID-19 Vaccine Administration on January 15, 2021, most recently extended with Executive Order D 2021 042 on February 13, 2021.

COVID-19 vaccines and associated administration costs are intended to be available free of cost to all consumers. In interim final rules effective November, 2, 2020, the Department of Health and Human Services (HHS) requires carriers to reimburse providers with whom they do not have a negotiated rate an amount that is reasonable for qualifying coronavirus preventive services. 45 CFR § 147.130. Qualifying coronavirus preventive services include an immunization and its administration.

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

In light of the COVID-19 public health emergency crisis, the purpose of this emergency regulation is to require carriers to provide covered persons with treatment related to COVID-19 and access to COVID-19 vaccines without cost-sharing. This emergency regulation also ensures that out-of-network providers rendering emergency services for emergency medical conditions, including but not limited to COVID-19, are appropriately compensated pursuant to § 10-16-704(5.5), C.R.S., without delay. This regulation shall remain in effect for 120 days or during any period in which a disaster declaration is in effect in the state of Colorado due to the presence of COVID-19, whichever is shorter.

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 allowing individuals safe access to healthcare services, including COVID-19 vaccines, and ensuring facilities have adequate resources and availability to treat COVID-19 patients 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.

### **Section 3      Applicability**

This regulation shall apply to all carriers offering individual, small group, large group plans, student health plans, and managed care plans 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 duration of the COVID-19 emergency.

### **Section 4      Definitions**

- A.      “Carrier” shall have the same meaning as found at § 10-16-102(8), C.R.S.
- B.      “Covered person” shall have the same meaning as found at § 10-16-102(15), C.R.S.
- C.      “Out-of-network provider” shall mean a provider, as defined at § 10-16-102(56), C.R.S., that is not a participating provider, as defined at § 10-16-102(46), C.R.S., in a covered person’s network.

### **Section 5      Coverage and Reimbursement for COVID-19 Treatment during the COVID-19 Disaster Emergency**

- A.      Coverage for the Treatment of COVID-19
  - 1.      COVID-19 shall be considered an emergency medical condition during the pendency of the emergency as declared by the Governor in Executive Order D 2020 003 and extended in Executive Order D 2021 045, if any of the following three things occur:
    - a.      A provider documents the patient as having COVID-19’
    - b.      Documentation of a COVID-19 positive test; or
    - c.      Presumptive positive COVID-19 test result.
  - 2.      For the purposes of treating the COVID-19 virus during the emergency declared by the Governor, all treatment provided at an out-of-network facility for COVID-19 shall be considered:
    - a.      Emergency services that are ancillary to the emergency department of a hospital; and
    - b.      Necessary to treat the COVID-19 emergency medical condition in order to stabilize the patient and to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or if necessitated by circumstances, in accordance with waivers or flexibilities issued by the federal government.
  - 3.      Treatment of COVID-19 is subject to the provider reimbursement requirements, in-network benefits, direct payment rules and consumer protections against balance billing contained in § 10-16-704(5.5), C.R.S., and related Colorado Insurance regulations.

4. Carriers shall reimburse out-of-network providers for emergency services rendered to covered persons for treatment of COVID-19 pursuant to § 10-16-704(5.5), C.R.S., but such covered persons shall only be responsible for cost-sharing for emergency services rendered during the COVID-19 emergency pursuant to § 10-16-704(5.5)(a)(V), C.R.S.
  5. Carriers shall suspend prior authorization requirements as set forth in § 10-16-704(5.5)(a)(I), C.R.S., for emergency services rendered to covered persons with emergency medical conditions during the COVID-19 disaster emergency.
- B. If a covered person is determined to not have COVID-19:
1. Emergency medical conditions shall continue to be covered to the extent required by § 10-16-704(5.5), C.R.S.; and
  2. If there is no participating provider available that can accept the covered person for on-going, medically necessary treatment, the requirements of § 10-16-704(2), C.R.S., shall apply.
- C. The requirements of Section 5 apply to all COVID-19 services occurring during the course of a disaster emergency, including claims submitted after the end of the disaster emergency for services that occurred during an emergency.

#### **Section 6 Out-of-network Provider Arbitration for COVID-19 Treatment during the COVID-19 Disaster Emergency**

For the duration of the COVID-19 disaster emergency and the run-out of COVID-19-related claims, out-of-network providers are allowed to bundle COVID-19-related claims for the purposes of the arbitration program found at § 10-16-704(15), C.R.S.

#### **Section 7 Coverage and Reimbursement for COVID-19 Vaccines**

Carriers shall immediately cover all FDA authorized or approved vaccines for COVID-19 throughout the duration of the public health emergency, including all associated costs of administration, at no cost-sharing. The requirement to cover the vaccine applies upon FDA authorization or approval and is not contingent on the issuance of a recommendation by the Center for Disease Control's Advisory Committee on Immunization Practices.

Pursuant to Executive Order D 2021 016, which was extended by Executive Order D 2021 042, and based upon COVID-19 vaccine administration payment rates established by Medicare and Medicaid, a reasonable rate for COVID-19 vaccine administration is \$19.27 for the initial dose of the COVID-19 vaccine and \$28.39 for the second dose. Carriers shall reimburse out of network providers administering COVID-19 vaccine at no less than this rate for these services.

During the public health emergency, COVID-19 vaccine and administration is subject to the direct payment rules and consumer protections against balance billing contained in § 10-16-704(5.5), C.R.S., and related Colorado Insurance regulations.

#### **Section 8 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 9 Incorporation by Reference**

45 CFR § 147.130 published by the Government Printing Office shall mean 45 CFR § 147.130 as published on the effective date of this regulation and does not include later amendments to or editions of 45 CFR § 147.130. A copy of 45 CFR § 147.130 may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of 45 CFR § 147.130 may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at [www.ecfr.gov](http://www.ecfr.gov).

#### **Section 10            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 11            Effective Date**

This emergency regulation shall be effective February 24, 2021.

#### **Section 12            History**

Replaces emergency regulation 20-E-17, which became effective December 23, 2020. Emergency regulation effective February 24, 2021.