

# DEPARTMENT OF REGULATORY AGENCIES

## Division of Insurance

### 3 CCR 702-4

#### LIFE, ACCIDENT AND HEALTH

##### Emergency Regulation 21-E-15

#### CONCERNING SUSPENSION OF UTILIZATION REVIEW REQUIREMENTS FOR TRANSFERS OR DISCHARGES FROM HOSPITALS EXPERIENCING COVID-19-RELATED CLINICAL STAFFING SHORTAGES

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

This regulation is being promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109(1), 10-3-1104(1)(h), 10-3-1104(1)(i), 10-3-1110(1), 10-16-109, and 10-16-113(10), C.R.S. Further, this emergency regulation is promulgated pursuant to the Governor's Executive Order D 2021 136.

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

The purpose of this regulation is to increase the number of available providers in hospitals that are experiencing clinical staffing shortages due to COVID-19 and other emergency hospitalizations and an associated decrease in intensive care unit capacity. It will increase the availability of providers for patient care by temporarily suspending utilization review requirements and streamlining the approval process for transfers and discharges from hospitals.

The Division of Insurance finds, pursuant to § 24-4-103(6)(a), C.R.S., and in accordance with Executive Order D 2021 136, that immediate adoption of this regulation is imperatively necessary for the preservation of public health, safety, or welfare as ensuring hospitals have adequate resources and availability to treat 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 applies to all individual and group health benefit plans issued or renewed by entities subject to Part 2, Part 3 and Part 4 of Article 16 of Title 10 of the Colorado Revised Statutes. Carriers who are third-party administrators for self-funded plans are strongly encouraged to follow the requirements of this regulation in order to create uniformity regarding utilization reviews for hospital transfers or discharges.

#### **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.        "In-network" shall have the same meaning as found at § 10-16-102(45), C.R.S.
- D.        "Health care services" shall have the same meaning as found at § 10-16-102(33), C.R.S.
- E.        "Medical necessity" shall have the same meaning as found at § 10-16-112.5(7)(c), C.R.S.
- F.        "Prior authorization" shall have the same meaning as found at § 10-16-112.5(7)(d), C.R.S., and includes preauthorization.
- G.        "Provider" shall have the same meaning as found at § 10-16-102(56), C.R.S.
- H.        "Utilization review" shall have the same meaning as found in Colorado Insurance Regulation 4-2-17, Section 4(AF).

#### **Section 5        Rules**

- A.        Carriers shall not require any prior authorization approval for transfers or discharges from a hospital; shall not make any determination that such transfer or discharge is medically unnecessary, inappropriate, ineffective, or inefficient; shall not require utilization review, including but not limited to retrospective review; and shall rely solely on the medical judgment of a provider regarding the transfer or discharge during the duration of this emergency regulation.
- B.        Carriers shall not make any determination that the transfer or discharge from a hospital is medically unnecessary, inappropriate, ineffective, or inefficient and shall rely solely on the medical judgment of a provider during the duration of this emergency regulation.
- C.        For any claims subject to Section 5(A) or (B), carriers shall not require the provider or the covered person to submit documentation relating to the medical necessity, appropriateness, effectiveness, or efficiency to the carrier.
- D.        For any claims subject to Section 5(A) or (B), carriers shall waive, or not enforce, any contractual provision specified in § 10-16-705(14)(a), C.R.S., to the extent it requires a provider to demonstrate medical necessity, appropriateness, effectiveness, or efficiency for in-network, inpatient treatment.
- E.        Nothing in this regulation prevents a carrier from denying coverage because the health care service is an excluded benefit or coverage has lapsed for the covered person.
- F.        For the pendency of this emergency regulation, the Division will not view a carriers' lack of utilization review under the specific circumstances of this emergency regulation as a violation of § 10-3-1104, C.R.S.
- G.        Nothing in this regulation shall be interpreted as eliminating the need to ensure timely transfer of relevant clinical information to another provider or the carrier.
- H.        If a covered person receiving care in a hospital or freestanding emergency department is transferred to another hospital or facility functioning as a hospital to preserve adequate capacity due to the COVID-19 situation, carriers shall continue to follow Division of Insurance Emergency Regulation 21-E-14.

- I. To the extent reasonable and feasible, hospitals and providers are encouraged to ensure covered persons are transferred or discharged to in-network facilities.

#### **Section 6 Severability**

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

#### **Section 7 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 8 Effective Date**

This emergency regulation shall be effective on November 5, 2021.

#### **Section 9 History**

Emergency regulation effective November 5, 2021.