



## D 2022 044

### EXECUTIVE ORDER

#### Colorado COVID-19 and Other Respiratory Illnesses Disaster Recovery Order Amendment

**Amending and Extending Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040, and D 2022 043**

Pursuant to the authority vested in the Governor of the State of Colorado and, in particular, pursuant to Article IV, Section 2 of the Colorado Constitution and the relevant portions of the Colorado Disaster Emergency Act, C.R.S. § 24-33.5-701 *et seq.*, I, Jared Polis, Governor of the State of Colorado, issue this coronavirus disease 2019 (COVID-19) Executive Order amending and extending Executive Order D 2021 122, as amended and extended by D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040, and D 2022 043, which refocuses the State's efforts on recovery and incorporates Respiratory Syncytial Virus (RSV), influenza, and other respiratory illnesses in Colorado into the disaster declaration.

#### **I. Background and Purpose**

The Governor is responsible for meeting the dangers to the State and people presented by disasters. C.R.S. § 24-33.5-704(1). The Colorado Disaster Emergency Act (Act) defines a disaster as "the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural cause or cause of human origin, including but not limited to . . . epidemic." C.R.S. § 24-33.5-703(3). The threat posed by COVID-19, RSV, influenza, and other respiratory illnesses constitute a disaster for purposes of the Act. The Governor has authority to take any action "in prevention of, preparation for, response to, and recovery from disasters." C.R.S. § 24-33.5-702(1)(d). For purposes of the Act, recovery is "the short, intermediate, and long-term actions taken to restore community functions, services, vital resources, facilities, programs, continuity of local government services and functions, and infrastructure to the affected area." C.R.S. § 24-33.5-703(7.3).

Colorado has seen a sharp increase in pediatric RSV infections and hospitalizations, in addition to patients with influenza and COVID-19, over the last two months. RSV is a common respiratory virus that spreads by inhaling or having contact with virus-containing droplets produced by a person with RSV infection when talking, coughing, and sneezing. While most

people who get RSV will only have cold symptoms, it can be serious in infants, young children, and older adults. For children, RSV can cause more severe infections such as bronchiolitis, an inflammation of the small airways in the lung, and pneumonia, an infection of the lungs, especially in children one year old and younger.

Children are especially susceptible to RSV and hospitals are struggling to have enough pediatric inpatient beds for children across the Colorado healthcare system. From October 1, 2022 through November 11, 2022, there have been 554 RSV-associated hospitalizations and 144 outbreaks in child care and school settings statewide. Among these outbreaks, more than half have had at least one person involved in the outbreak seek care at a hospital. Hospital reports indicate that the increase in RSV cases is putting a strain on the pediatric health care system as 95% of current RSV hospitalizations are among children. Based on previous patterns, high levels of RSV transmission are expected to continue for at least several weeks.

The Centers for Disease Control and Prevention (CDC) has warned that this influenza season could be more severe than we have seen in years. In Colorado, 42 people were hospitalized with influenza during the week ending November 5, 2022, for a total of 92 people hospitalized since October 2, 2022. As of November 10, 2022, available pediatric intensive care unit capacity was at 0%. If cases continue to increase, we may continue to see bed shortages across all hospital beds in Colorado as our state experiences a rise in COVID, influenza, and RSV hospitalizations simultaneously. Colorado hospitals and health systems have activated Tier 3 of the Combined Hospital Transfer Center to manage patient transfers at a statewide level because of hospital capacity concerns.

This Executive Order amends and extends Executive Orders D 2021 122, D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040, and D 2022 D 043, to include RSV and other respiratory illnesses into the disaster declaration.

## **II. Amendments**

Executive Order D 2021 122, as amended and extended by D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D 2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040, and D 2022 043, is amended as follows:

1. Subsection II.iv.A. is amended to include the following:

On November 11, 2022, I expanded the disaster emergency to include RSV, influenza, and other respiratory illnesses due to the serious increases in infection and hospitalization throughout the State.

2. Add a new subsection II.v. as follows:

- A. Due to staffing shortages facing hospitals related to COVID-19, RSV, influenza, and other respiratory illness hospitalizations and an associated decrease in capacity, including pediatric intensive care unit capacity, and to allow clinical staff to focus on patient care by reducing staff time associated with completing utilization reviews, I direct the Colorado Division of Insurance, pursuant to authority in C.R.S. §§ 10-1-108(7) and -109, to promulgate emergency regulations to reduce the administrative burdens associated with discharging, transferring, and caring for patients by temporarily suspending those utilization review requirements necessary to protect insured patients, including any or all prior authorization and preauthorization requirements.
- B. A person receiving care in a hospital or freestanding emergency department who is transferred to another hospital or facility pursuant to this Executive Order is deemed to have an emergency medical condition, and all services for the transfer and treatment at the receiving facility are considered to be emergency services for purposes of C.R.S. § 10-16-704(5.5), including the in network cost sharing benefits and consumer protections against balance billing and the prohibition against prior authorization.
- C. I direct the Department of Public Health and the Environment (CDPHE) and the Colorado Division of Insurance to work with carriers, hospitals, freestanding emergency departments, other facilities, and any entity that has transferred or received patients pursuant to this Executive Order to develop methods of identifying patients transferred or received pursuant to this Executive Order to ensure that those patients are protected by the consumer protections set forth in this Executive Order. If necessary, CDPHE may direct carriers, hospitals, freestanding emergency departments, facilities, transporting entities, and any other entity that has transferred or received patients pursuant to this Executive Order to take certain actions to ensure that CDPHE is able to identify those patients.
- D. Employers and third party administrators of self-funded health insurance programs that are governed under the Federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, are strongly encouraged to take all necessary steps to protect consumers enrolled in their plans from being balance billed by any hospital, facility, or transferring entity.
- E. Hospitals and freestanding emergency departments shall not consider a patient's insurance status or ability to pay when making transfer decisions pursuant to this Executive Order.

### **III. Duration**

Executive Order D 2021 122, as amended and extended by Executive Orders D 2021 124, D 2021 125, D 2021 129, D 2021 132, D 2021 136, D 2021 139, D 2021 141, D 2022 003, D

2022 010, D 2022 013, D 2022 017, D 2022 020, D 2022 028, D 2022 035, D 2022 037, D 2022 038, D 2022 040, D 2022 043, and this Executive Order, shall expire thirty (30) days from November 11, 2022, unless extended further by Executive Order, except that the funds described in subsection II.iv.C. of Executive Order D 2021 122, as amended and extended, shall remain available for the described purposes and the described time period stated in subsection II.iv.C. In all other respects, Executive Order D 2021 122, as amended and extended, shall remain in full force and effect as originally promulgated.



GIVEN under my hand and  
the Executive Seal of the  
State of Colorado, this  
eleventh day of November  
2022.

A handwritten signature in blue ink that reads "Jared Polis". The signature is written in a cursive, flowing style.

Jared Polis  
Governor