JARED POLIS
GOVERNOR

136 STATE CAPITOL
DENVER, COLORADO 80203

TEL 303-866-2471
FAX 303-866-2003

D 2020 286

EXECUTIVE ORDER

Amending and Extending Executive Order D 2020 260 Authorizing the Colorado Department of Public Health and Environment to Order Hospitals and Freestanding Emergency Departments to Transfer or Cease the Admission of Patients to Respond to the Current COVID-19 Disaster Emergency in Colorado

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*., including C.R.S. § 24-33.5-704.5(1)(e)(II), I, Jared Polis, Governor of the State of Colorado, hereby issue this Executive Order amending and extending Executive Order D 2020 260 authorizing the Colorado Department of Public Health and Environment (CDPHE) to order hospitals and freestanding emergency departments to transfer or cease the admission of patients to respond to the current disaster emergency due to coronavirus disease 2019 (COVID-19) in Colorado.

I. Background and Purpose

On March 5, 2020, CDPHE public health laboratory confirmed the first presumptive positive COVID-19 test result in Colorado. Since then, the number of confirmed cases has continued to climb, and we have evidence of widespread community spread throughout the State. I verbally declared a disaster emergency on March 10, 2020, and on March 11, 2020, I issued the corresponding Executive Order D 2020 003, as amended and extended by Executive Orders D 2020 018, D 2020 032, D 2020 058, D 2020 076, D 2020 109, D 2020 125, D 2020 152, D 2020 176, D 2020 205, D 2020 234, D 2020 258, D 2020 264, D 2020 268, and D 2020 284. On March 25, 2020, I requested that the President of the United States declare a Major Disaster for the State of Colorado, pursuant to the Stafford Act. The President approved that request on March 28, 2020.

My administration, along with other State, local, and federal authorities, has taken a wide array of actions to mitigate the effects of the pandemic, prevent further spread, and protect against overwhelming our health care resources. While we have seen indications that our efforts to "flatten the curve" are working, transmission of the virus continues to threaten Coloradans' way of life and livelihoods and current data shows a recent increase in COVID-19 infections.

Unfortunately, given the increase in infections, the number of persons seeking medical treatment at hospitals may far exceed the capacity of any given hospital. Hospitals who have reached capacity or are reasonably anticipated to reach capacity during the duration of this Executive Order may need to cease admitting patients or may need to transfer patients to a

separate facility without first obtaining the individual's written or informed consent for such transfer. The transfer of patients from hospitals that have reached capacity to other specified care facilities will help to ensure that Coloradans have adequate care as we combat the current public health emergency due to COVID-19.

C.R.S. § 24-33.5-704.5(1)(e)(II) specifically empowers the Governor, in the event of an emergency epidemic that has been declared a disaster emergency, to act by Executive Order to order hospitals "to transfer or cease admission of patients or perform medical examinations of persons."

The federal Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd, requires hospitals receiving Medicare funds to provide appropriate medical screening to determine whether a patient has an emergency medical condition. EMTALA prohibits a hospital from transferring a patient with an emergency medical condition unless and until that condition has been stabilized. One of the purposes of EMTALA is to prevent hospital emergency departments from "dumping" patients who are unable to pay. EMTALA also states: "The provisions of this section do not preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section." 42 U.S.C. § 1395dd(f). The Secretary of Health and Human Services and the Centers for Medicare and Medicaid Services (CMS) have waived 42 U.S.C. § 1395dd(a) so that hospitals can screen patients at a location offsite from the hospital's campus to prevent the spread of COVID-19. This Executive Order is not intended to conflict with EMTALA, and hospitals must still comply with all non-waived sections of EMTALA.

This Executive Order amends and extends Executive Order D 2020 260 authorizing CDPHE to order hospitals and freestanding emergency departments to transfer or cease the admission of patients to respond to the current disaster emergency due to COVID-19 in Colorado within the requirements of federal law.

II. Amendments

Section II.A of Executive Order D 2020 260 is amended to read as follows:

A. A hospital or freestanding emergency department that has reached capacity, or is reasonably anticipated to reach capacity, to examine and treat patients, shall notify the State ESF 8 Lead, Office of Emergency Preparedness and Response, within CDPHE by contacting the 24/7 Emergency and Incident Reporting Line at 1-877-518-5608. The State ESF 8 Lead will then contact and inform the Health Facilities and Emergency Medical Services Division that the hospital or freestanding emergency department has reached capacity, or is reasonably anticipated to reach capacity, to examine and treat patients. Upon notification to CDPHE and after CDPHE has determined that a hospital or freestanding emergency department is at, or reasonably anticipated to reach, capacity, CDPHE:

Section II.E of Executive Order D 2020 260 is amended to read as follows:

E. 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.

III. Duration

Executive Order D 2020 260, as amended and extended by this Executive Order, shall expire thirty (30) days from December 22, 2020, unless extended further by Executive Order. In all other respects, Executive Order D 2020 260 shall remain in full force and effect as originally promulgated.

GIVEN under my hand and the Executive Seal of the State of Colorado, this twenty-second day of December, 2020.

Jared Polis
Governor