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CHARLES D. BAKER
GOVERNOR

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LIEUTENANT GOVERNOR

REVISED ORDER EXPANDING ACCESS TO INPATIENT SERVICES

COVID-19 Order No. 61

Superseding and Rescinding Order Nos. 4 and 25

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus ("COVID-19");

WHEREAS, on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization;

WHEREAS, since November 2020, the number of presumptive positive and confirmed cases of COVID-19 has increased dramatically in the Commonwealth, which has resulted in a continuing decline in available hospital capacity, including more than a 50 percent reduction since Thanksgiving, which places significant pressure on acute care hospital capacity across the Commonwealth;

WHEREAS, under the Department of Public Health's Resurgence Planning and Response guidance, the statewide hospital system designation is currently at Tier 4, the highest level of concern, and the 7-day average acute care bed availability has declined to less than 15 percent statewide, which will continue to require creative, coordinated measures in response, such as the transfer of patients from emergency departments to alternative hospitals for inpatient admissions and the reopening of alternative medical sites, such as field hospitals, to treat the growing number of patients with COVID-19;

WHEREAS, as a result of these measures, patients who contract COVID-19 may be required to receive treatment from out-of-network providers in order to access medically necessary emergency department and inpatient treatment related to COVID-19, which necessitates flexibility in payment and insurance coverage arrangements;

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WHEREAS, the cost of accessing medically necessary emergency department and inpatient treatment related to COVID-19 should not pose a barrier to patients in Massachusetts seeking such care during this state of emergency;

WHEREAS, effective January 1, 2021, Chapter 260 of the Acts of 2020 requires that the Group Insurance Commission, the Division of Medical Assistance, and carriers regulated by the Division of Insurance: (i) provide coverage without cost-sharing for all emergency, inpatient services and cognitive rehabilitation services related to COVID-19; and (ii) provide coverage for health care services delivered through telehealth and, until 90 days after the State of Emergency, reimburse telehealth services at the same rate as in-person services when they are provided at in-network providers; and

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise any and all authority over persons and property necessary or expedient for meeting a state of emergency, including but not limited to regulation of the business of insurance and protection of the interests of the holders of insurance policies and contracts and of beneficiaries thereunder and of the interest of the public in connection therewith; regulation of the manner and method of purchasing services for the Commonwealth or any of its agencies or political subdivisions; and variance of the terms and conditions of licenses, permits or certificates of registration issued by the Commonwealth or any of its agencies or political subdivisions;

NOW, THEREFORE, I hereby order the following:

During any period in which one or more regions of the Commonwealth is in Tier 2 or higher of the Resurgence Planning and Response Framework, the Group Insurance Commission and all Commercial Health Insurers, Blue Cross and Blue Shield of Massachusetts, Inc., and Health Maintenance Organizations (collectively, "Carriers") regulated by the Division of Insurance ("Division") shall:

(a) Reimburse acute care hospital providers or other providers with which they contract, but that do not participate in an insured's health plan, at the contracted rate for medically necessary emergency or inpatient services provided to the insured for COVID-19 related treatment, including all professional, diagnostic and laboratory services. Such payment shall constitute payment in full and no health care provider as defined in G. L. c. 111, § 1 shall be permitted to balance bill the insured for any amount above the reimbursement paid by the Carrier.

(b) Reimburse acute care hospital providers or other providers with which they do not contract at a rate equal to 135% of the reimbursement rate paid by Medicare in the provider's geographic region for medically necessary emergency or inpatient services provided to an insured for COVID-19 related treatment, including all professional, diagnostic and laboratory services, unless a Carrier is directed otherwise by the Division. Such payment shall constitute payment in full

and no health care provider as defined in G.L. c. 111, § 1 shall be permitted to balance bill the insured for any amount above the reimbursement paid by the Carrier.

The Commissioner of Insurance is directed to issue guidance, subject to my approval, to implement the terms of this Order. Any violation of the terms of the Commissioner's guidance shall be considered a violation of the terms of this Order. The Division and the Department of Public Health shall enforce the terms of this Order and the Commissioner's guidance.

The Order Expanding Access to Telehealth Services and to Protect Health Care Providers (COVID-19 Order No. 4) and the Order Expanding Access to Inpatient Services (COVID-19 Order No. 25) are hereby rescinded.

This Order is effective immediately and shall remain in effect until rescinded or until the state of emergency is terminated, whichever happens first.

Given in Boston at 4:05 AM/PM this 21st day of January, two thousand and twenty-one

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts