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EXECUTIVE ORDER

Ordering the Suspension of Certain Statutes and Directing the Department of Health Care Policy and Financing to Provide Additional Funds to Nursing Homes and Other Congregate Care Facilities Due to the Presence of COVID-19

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, hereby issue this Executive Order suspending certain statutes and directing the Colorado Department of Health Care Policy and Financing (HCPF) to provide additional funds to nursing homes, select community-based providers, and other congregate care facilities that care for Coloradans who are aging and/or have disabilities due to the presence of coronavirus disease 2019 (COVID-19) in Colorado.

I. Background and Purpose

On March 5, 2020, the Colorado Department of Public Health and Environment's (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 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 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 284, D 2020 290, D 2020 296 and D 2021 009. 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 undertaken a broad array of actions to respond to and mitigate the effects of the pandemic, prevent further spread, preserve our health care resources, and provide needed flexibility to address the collateral consequences of the pandemic. Approximately forty percent of the deaths from COVID-19 in Colorado have occurred in nursing homes and other congregate care facilities that serve older Coloradans and people living with disabilities. On April 30, 2020, I issued Executive Order D 2020 054 ordering the suspension of certain statutes and directed HCPF to provide additional funds to Nursing Homes and other congregate care facilities. Executive Order D 2020 054, as extended by Executive Order D 2020 086, expired on June 27, 2020.

This Executive Order directs HCPF to provide an increase analogous to approximately eight (8) percent of the per diem Medicaid Member rate to Nursing Facilities and Intermediate Care Facilities. Additionally, this Executive Order directs HCPF to increase certain Home and Community-Based Service rates by either eight (8) and ten (10) percent. This Executive Order ensures that Coloradans have access to a safe environment and adequate health care facilities and facilities serving Coloradans who are aging and/or have disabilities have the resources necessary to protect their residents from contracting COVID-19.

II. Directives

A. I temporarily suspend the requirements of C.R.S. § 25.5-6-202(5) that establish the mechanism for determining the amount of supplemental payments for Medicaid-certified nursing facilities.

B. I temporarily suspend the requirements of C.R.S. §§ 25.5-6-204(1)(a), (1)(b), and (2)(a) that establish the rate for reimbursement under the Medicaid program for intermediate care facilities to increase reimbursement rates for certified intermediate care facilities.

C. I direct HCPF to promulgate and issue temporary emergency rules through the Medical Services Board, subject to federal upper payment limits, to provide supplemental payments by an amount totaling an increase of approximately eight (8) percent of the per-diem rate from HCPF to Medicaid-certified nursing facilities, as defined in C.R.S. § 25.5-6-202, and intermediate nursing facilities as defined in C.R.S. § 25.5-6-204, to protect such facilities' residents from COVID-19. HCPF shall make these increased payments through March 31, 2021. HCPF must direct the funds to be used by the facilities to provide services that protect health and result in better care, higher quality of life for their residents, and support for Direct Care Workers during the COVID-19 emergency.

D. I direct the Executive Director of HCPF to temporarily increase reimbursement rates through March 31, 2021 by eight (8) percent for the following select Home and Community-Based Services programs: Group Residential Services and Supports (Developmental Disabilities waiver), Brain Injury Supportive Living Program (Brain Injury [BI] waiver), and Alternative Care Facilities (Elderly, Blind, and Disabled [EBD] waiver and Community Mental Health Supports [CMHS] waiver). HCPF must direct the funds to be used by the providers to render services that protect health and result in better care, higher quality of life for their members, and support for Direct Care Workers during the COVID-19 emergency.

E. I direct the Executive Director of HCPF to temporarily increase reimbursement rates programs through March 31, 2021 by ten (10) percent for the following Home and Community-Based Services programs: Adult Day Services (EBD, BI, CMHS, and Spinal Cord Injury [SCI] waivers), Day Habilitation (DD and

Supported Living Services [SLS] waivers), Non-Medical Transportation (EBD, BI, CMHS, SCI, DD, and SLS waivers), and Supported Employment (DD and SLS waivers). HCPF must direct the funds to be used by the providers to render services that protect health and result in better care, higher quality of life for their members, and support for Direct Care Workers during the COVID-19 emergency.

III. Duration

This Executive Order shall expire thirty (30) days from January 8, 2021, unless extended further by Executive Order.

GIVEN under my hand and the Executive Seal of the State of Colorado, this eighth day of January, 2021.

Jared Polis
Governor