

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-4

LIFE, ACCIDENT AND HEALTH

Emergency Regulation 22-E-04

CONCERNING COVERAGE AND REIMBURSEMENT FOR COVID-19 VACCINES DURING THE COVID-19 RECOVERY

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Section 1 Authority

This emergency regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109(1), 10-16-109, and 10-16-708, C.R.S. Further, this emergency regulation is promulgated pursuant to the Governor's Executive Order D 2021 122, rescinding Executive Order D 2020 003, as amended and extended, and directing the ongoing facilitation of the administration of the lifesaving COVID-19 vaccine.

COVID-19 vaccines and associated administration costs are intended to be available free of cost to all consumers. In interim final rules effective November 2, 2020, the Department of Health and Human Services (HHS) requires carriers to reimburse providers with whom they do not have a negotiated rate at an amount that is reasonable for qualifying coronavirus preventive services. 45 CFR § 147.130. Qualifying coronavirus preventive services include an immunization and its administration.

Section 2 Scope and Purpose

The purpose of this emergency regulation is to require carriers to provide access to COVID-19 vaccines without cost-sharing during the state's COVID-19 recovery. This emergency regulation also sets COVID-19 vaccine administration reimbursement requirements.

The Division of Insurance finds, pursuant to § 24-4-103(6)(a), C.R.S., that immediate adoption of this regulation is imperatively necessary for the preservation of public health, safety, or welfare as allowing individuals safe access to COVID-19 vaccines and ensuring facilities have adequate resources and availability to treat COVID-19 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 shall apply to all carriers offering individual, small group, large group plans, student health plans, and managed care plans subject to the insurance laws of Colorado. Carriers who are third-party administrators for self-funded plans are strongly encouraged to follow the requirements of this regulation in order to create uniform billing structures during the COVID-19 recovery.

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.

Section 5 Coverage and Reimbursement for COVID-19 Vaccines

Carriers shall immediately cover all FDA authorized or approved vaccines for COVID-19 throughout the duration of the COVID-19 recovery, including all associated costs of administration, at no cost-sharing. The requirement to cover the vaccine applies upon FDA authorization or approval and is not contingent on the issuance of a recommendation by the Center for Disease Control's Advisory Committee on Immunization Practices.

Pursuant to Executive Order D 2021 122, and any further extensions of that Order, and based upon COVID-19 vaccine administration payment rates established by Medicare and Medicaid, a reasonable rate for COVID-19 vaccine administration is \$41.18. Carriers shall reimburse out-of-network providers administering COVID-19 vaccines at no less than this rate for these services.

Section 6 Severability

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

Section 7 Incorporation by Reference

45 CFR § 147.130 published by the Government Printing Office shall mean 45 CFR § 147.130 as published on the effective date of this regulation and does not include later amendments to or editions of 45 CFR § 147.130. A copy of 45 CFR § 147.130 may be examined during regular business hours at the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, Colorado, 80202. A certified copy of 45 CFR § 147.130 may be requested from the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202. A charge for certification or copies may apply. A copy may also be obtained online at www.ecfr.gov.

Section 8 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 9 Effective Date

This emergency regulation shall be effective January 19, 2022.

Section 10 History

This emergency regulation replaces emergency regulation 21-E-11, which became effective July 22, 2021, in its entirety.

This emergency regulation replaces emergency regulation 21-E-13, which became effective September 21, 2021

This emergency regulation shall be effective January 19, 2022.