

# DEPARTMENT OF REGULATORY AGENCIES

## Division of Insurance

### 3 CCR 702-4

#### LIFE, ACCIDENT AND HEALTH

#### Emergency Regulation 22-E-02

#### CONCERNING PRIOR AUTHORIZATIONS FOR DURABLE MEDICAL EQUIPMENT AND PRESCRIPTION REFILLS

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#### **Section 1 Authority**

This regulation is being promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109(1), and 10-16-109, C.R.S. Further, this emergency regulation is promulgated pursuant to the Federal Emergency Management Agency (FEMA) disaster numbers FM-5423-CO, Colorado Marshall Fire, and DR-4634-CO, Colorado Wildfires and Straight-line Winds, President Biden's Major Disaster Declaration for Colorado issued on January 1, 2022, and Governor Polis' declared state of emergency due to the Boulder County Grass Fires.

#### **Section 2 Scope and Purpose**

The purpose of this emergency regulation is to require carriers to provide covered persons impacted by the Marshall and Middle Fork fires with access to durable medical equipment (DME) and prescription drugs without a requirement for prior authorization.

On December 30, 2021, the Marshall and Middle Fork Fires - the most devastating fires in Colorado history - damaged or destroyed more than 1,000 residential and commercial structures. This emergency regulation is necessary to provide protections to covered persons impacted by the Marshall and Middle Fork fires and to provide immediate access to durable medical equipment and prescription drugs without a requirement for prior authorization.

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 of those individuals impacted by the fires to ensure access to necessary healthcare services. 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 duration of the disaster emergency.

#### **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 of Durable Medical Equipment and Prescription Drug Refills during the Marshall and Middle Fork Fire Disaster Emergency**

- A. To the extent otherwise covered by the plan, carriers shall waive any prior authorization requirements for covered persons residing in or displaced from the fire-affected areas for the following:
  - 1. Replacement or previously authorized durable medical equipment; and
  - 2. Prescription drug refills.
- B. Carriers shall cover at least one (1) additional early refill of all necessary covered prescriptions to ensure that covered persons residing in or displaced from fire-affected areas have access to necessary medications.
  - 1. Carriers shall not apply a different cost-sharing amount for an early refill of a prescription.
  - 2. The requirements of this Section 5.B do not apply to prescription drugs with a high likelihood of abuse, such as opioids.

#### **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 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 8 Effective Date**

This emergency regulation shall be effective January 11, 2022.

#### **Section 9 History**

This emergency regulation shall be effective January 11, 2022.