

## COLORADO COVID-19

January 19, 2022

- ❖ On December 28th, the Governor issued [Executive Order 2021-141](#), which expires on January 27th, unless otherwise amended, extended or rescinded; and amends [Executive Order 2021-122](#).
- ❖ On December 28th, the Governor amended Executive Order 2021-135 and replaced it with [Executive Order 2021-140](#) authorizing CDPHE to order hospitals and freestanding emergency departments to transfer or cease the admission of patients to respond to the current rise in cases due to COVID-19 in Colorado within the requirements of federal law. CDPHE is authorized to determine whether a hospital or freestanding emergency department is at, or reasonably anticipated to reach capacity. This Order authorized the CDPHE to do the following:
  1. Direct the hospital or emergency department to cease admitting patients and direct any person seeking treatment to another hospital or facility designated by the CDPHE;
  2. Direct the transfer of patients from the hospital or freestanding emergency department to another hospital, skilled nursing facility, dormitory, alternative care facility or other facility designated by the CDPHE; the CDPHE may direct the transfer without first obtaining the written or informed consent of the patient prior to transfer;
  3. Direct a hospital, skilled nursing facility or other facility to accept patients transferred per this Order.

Hospitals are still required to comply with the non-waived sections of EMTALA, including

1. Providing stabilizing treatment within the hospital's capabilities and capacities *prior* to transfer;
2. Providing a medical screening examination to every person who comes into the emergency department and request an examination or treatment.

This Order expires on January 27th.

- ❖ On November 9<sup>th</sup>, the [Crisis Standard of Care](#) was reactivated for staffing of health care systems. This activation is aimed at expanding the availability of health care workers and resources to combat the COVID-19 pandemic and to serve patients seeking non-COVID-19 related care; and to ensure that guardrails and supports are in place to optimize workplace safety, patient safety, and health outcomes of COVID-19 and non-COVID-19 patients. A link to the full guidance can be found [HERE](#). Any hospital, agency or health care provider wishing to formally enact the Crisis Standards of Care may use the [required form](#) to notify the CDPHE.

Any facilities or agencies that deactivate the Crisis Standard of Care can find the required form [HERE](#).

### **Vaccine Requirements:**

#### **State Public Health Orders**

On December 30th, the Colorado Department of Public Health & Environment ("CDPHE") issued its [11th Amended Public Health Order 20-38](#). Included in the order are vaccination requirements, which states that all State Contractor Workers and State Contractors (see order for full definition) who physically enter a State facility, including individuals who have been infected with and recovered from COVID, shall have received their first dose of the COVID-19 series no later than September 30<sup>th</sup> and shall have received their second dose by October 31<sup>st</sup>.

State Contractors and State Contractor Workers **who are not fully vaccinated**, or whose vaccine status is unknown, or documentation is not provided, shall be considered unvaccinated and are not allowed to physically enter a State Facility (but may provide remote services). Any requirements regarding face coverings in place shall be complied with when entering state facilities.

Public Health Order 20-38, as amended, expires on February 1st.

### **Colorado Board of Health Interim Vaccine Requirements for Health Care Facility & Hospital Personnel**

During a special meeting on August 30<sup>th</sup>, the Colorado State Board of Health (“Board”) approved emergency rules requiring licensed health care facilities<sup>1</sup> to require its employees, including direct contractors and support staff, who interact with individuals seeking medical care to get vaccinated against COVID-19. The rule comes after an August 17<sup>th</sup> letter from Governor Polis urging the Board to engage in expedited rulemaking to require vaccinations for those personnel working directly with vulnerable populations in an effort to keep them safe. At this time, the rules do not apply or extend to individual healthcare providers or staff, primary care offices and urgent care centers.

Employees working in state-run 24/7 facilities, and interacting with vulnerable patients, are also required to be vaccinated, and must verify vaccination status by September 20<sup>th</sup>. If vaccine status cannot be verified, those employees must submit to twice-weekly testing.

The Colorado Departments of Public Health, Corrections, and Human Services has have also announced that its staff members interacting with vulnerable population and those in congregate living settings will also be required to be vaccinated.

### **Colorado’s Liability Immunity Laws**

Colorado’s Volunteer Service Act<sup>2</sup> provides qualified immunity for licensed health care professionals performing services for a nonprofit organization or corporation, governmental entity, or hospital without compensation, other than reimbursement for actual expenses incurred. However, the nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital is not afforded immunity arising out of an act or omission of a volunteer, unless the entity is formed for the sole purpose of facilitating the volunteer provision of health care.<sup>3</sup> The volunteer’s immunity from liability derives from and is limited to that afforded by the federal Volunteer Protection Act.<sup>4</sup> The scope of immunity under the federal law is described here:

[Federal Liability Immunity Overview](#).

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<sup>1</sup> Facilities include, per CRS 25-1.5-103(1)(a)(1), psychiatric hospitals, community clinics, rehabilitation hospitals, convalescent centers, community mental health centers, acute treatment units, facilities for persons with intellectual and developmental disabilities, nursing care facilities, hospice care, assisted living residences, dialysis treatment clinics, ambulatory surgical centers, birthing centers, home care agencies, and other facilities of a like nature, except those wholly owned and operated by any governmental unit or agency.

<sup>2</sup> C.R.S. § 13-21-115.5

<sup>3</sup> C.R.S. § 13-21-115.5(4)(b)(I) and (II)

<sup>4</sup> C.R.S. § 13-21-115.5(4)(a)(i)