

**BEFORE THE NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE**

**IN THE MATTER OF REMOVAL OF PRIOR )  
AUTHORIZATION BARRIERS TO PATIENT )  
TRANSFERS FROM ACUTE CARE FACILITIES )  
TO SKILLED NURSING, HOME HEALTH, AND )  
LONG-TERM CARE FACILITIES )  
\_\_\_\_\_ )**

**DOCKET NO. [2022-0092](#)**

**NOTICE AND EMERGENCY ORDER**

**NOTICE IS HEREBY GIVEN** to every person subject to the jurisdiction of the Superintendent of Insurance (“Superintendent”) pursuant to the Health Care Benefits Jurisdiction Act, NMSA 1978, §§ 59A-15-14 through 59A-15-19.

Pursuant to the December 5, 2022 Public Health Emergency Order declared by the New Mexico Department of Health (“DOH”), the emergency powers conferred under NMSA 1978, § 59A-2-8(11), and on his own motion, the Superintendent **HEREBY FINDS, CONCLUDES AND ORDERS:**

**FINDINGS**

The Superintendent takes administrative notice of the following:

1. On December 5, 2022, the DOH proclaimed a public health emergency relating to the occurrence and spread of respiratory viruses, including respiratory syncytial virus, commonly known as RSV.<sup>1</sup>
2. As of November 26, 2022, New Mexico’s Influenza-Like Illness (“ILI”) report indicates that ILI activity constitutes 14.3% of patient visits, which is the highest activity in the past three seasons, and above the national baseline of 2.5%.

<sup>1</sup> <https://cv.nmhealth.org/2022/12/05/department-of-health-issues-public-health-emergency-order-to-help-hospitals-address-rise-in-respiratory-viruses/>

3. As of December 2, 2022, the Centers for Disease Control and Prevention (or “CDC”) classified New Mexico’s ILI Activity level as “very high.”

4. Increased demand for in-patient care resulting from RSV, in addition to ILI and COVID-19, has caused acute care facilities (“ACFs”) in New Mexico to expand their inpatient and intensive care units far beyond normal capacity to care for patients infected with RSV, ILI, and COVID-19.

5. After a patient who receives treatment in an ACF stabilizes, a skilled nursing, long-term care, or home health facility may be able to provide that patient with any necessary ongoing in-patient care. When medically appropriate, transferring a patient from an ACF to a skilled nursing, long-term care, or home health facility frees capacity in the ACF.

6. Health insurance plans subject to the jurisdiction of the Superintendent typically require prior authorization for a patient to be transferred to, or treated in, a skilled nursing, long-term care, or home health facility. Failure to obtain the required prior authorization from a patient’s health plan may result in non-payment of charges for care provided by the skilled nursing, long-term care, or home health facility.

7. Regulations promulgated by the Superintendent mandate that a health plan process prior authorization requests within specified time frames. The regulatory prior authorization time allowances, and routine prior authorization processing practices, are delaying patient transfers from ACFs, contributing to ACF capacity constraints, and contributing to ACFs’ need to implement crisis care standards.

8. Eliminating prior authorization requirements for the discharge and transfer of inpatients at ACFs to appropriate lower levels of care at skilled nursing, long-term care, or home health facilities will eliminate transfer delays inherent in the prior authorization process and free-

up essential ACF capacity to deliver care that is unavailable in other settings.

9. Pursuant to NMSA 1978, §59A-2-8(11), the Superintendent has authority to order the suspension of compliance with a rule or contract “if strict compliance would prevent, hinder or delay necessary action in response to” a declared emergency.

10. Because health plan prior authorization requirements are governed by contract and rule, the Superintendent has authority to order the suspension of compliance with prior authorization rules and contract terms to remove barriers to care and enable ACFs to respond more effectively to the declared public health emergency.

**IT IS THEREFORE ORDERED:**

A. Every person subject to this Order shall immediately suspend any prior authorization requirement relating to the discharge and transfer of any patient from an ACF to a skilled nursing, long-term care, or home health facility.

a. A person subject to this Order may require notification of discharge and transfer to be provided within three (3) calendar days of a patient’s admission to a skilled nursing, long-term care, or home health facility, and may engage in care management functions, including utilization review, upon receiving such notice.

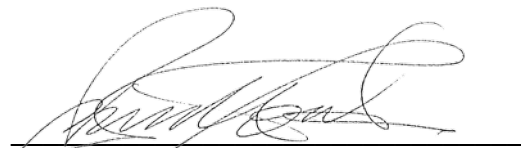
b. A person subject to this Order shall not deny payment for any care delivered to a patient transferred from an ACF to a skilled nursing, long-term care, or home health facility prior to receiving notice of the transfer, or during the first three (3) calendar days of admission, whichever first occurs.

B. This suspension Order shall continue until the declared end of the public health emergency,

or until the Superintendent enters a termination order in this docket, whichever first occurs.

- C. This Order applies to health plan operations throughout New Mexico.
- D. Failure to comply with this Order may result in a fine or other penalty including suspension or revocation of the insurer's Certificate of Authority pursuant to NMSA 1978, § 59A-5-26(A)(1).
- E. This Order is effective immediately.
- F. Copies of this Order shall be served by the Office of Superintendent of Insurance ("OSI") staff through the SBS LVC platform upon every insurer currently authorized to sell a health product in New Mexico, shall be posted on the OSI website and shall be distributed through the OSI government relations newsletter.
- G. This docket shall remain open until further written order of the Superintendent.

**DONE AND ORDERED this 8th day of December, 2022.**


  
**RUSSELL TOAL, Superintendent**

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on this 8th day of December, 2022, I filed the foregoing *Notice and Emergency Order* through the OSI's e-filing system, which caused the individuals indicated below to be served by electronic means.

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By:   
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Freya Joshi, OSI Law Clerk