

**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 AND LONG-TERM CARE )  
 FACILITIES )

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Docket No. [2021-0089](#)**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, Sections 59A-15-14 through 59A-15-19 NMSA 1978.

Pursuant to Executive Order 2020-004 issued by Governor Michelle Lujan Grisham (“Governor”) on March 11, 2020 (renewed through December 17, 2021), pursuant to the emergency powers conferred under Section 59A-2-8(11) NMSA 1978, and on his own motion, the Superintendent **HEREBY FINDS, CONCLUDES AND ORDERS:**

**FINDINGS AND CONCLUSIONS:** The Superintendent takes administrative notice of the following:

1. On March 11, 2020, the Governor proclaimed a public health emergency relating to the occurrence and spread of COVID-19 in New Mexico. Subsequent orders of the Governor extended the emergency declaration through December 17, 2021.
2. On October 18, 2021, the Governor issued Executive Order 2021-059 (“EO 2021-059”), recognizing that health care providers, including Acute Care Facilities (“ACFs”), may need to implement crisis care standards to address the treatment needs of patients because of increased care demands resulting from COVID-19 infections. On that same date, and pursuant to EO 2021-059, the New Mexico Department of Health adopted a Public Health Emergency Order regarding crisis care standards.
3. Increased demand for in-patient care resulting from COVID-19 infections has caused ACFs in New Mexico to expand their inpatient and intensive care units far beyond normal capacity to care for patients infected with COVID-19 and normal patient loads. At least six New Mexico ACFs have declared that they are operating under crisis standards of care due to unprecedented

patient loads and needs.

4. After a patient who receives treatment in an ACF stabilizes, a skilled nursing or long-term care 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 or long-term care facility frees capacity in the ACF.

5. 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 or long-term care 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 or long-term care facility.

6. 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.

7. Eliminating prior authorization requirements for the discharge and transfer of inpatients at ACFs to appropriate lower levels of care at skilled nursing or long-term care 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.

8. Pursuant to Section 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.

9. 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 or long-term care facility. A person subject to this Order may require notification of discharge and transfer to be provided within three calendar days of a patient's admission to a skilled nursing or long-term care facility, and may engage in care management functions, including utilization review, upon receiving such notice. 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 or long-term care facility prior to receiving notice of the transfer, or during the first three 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.

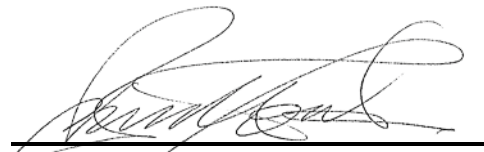
**D.** Failure to comply with this Order may result in a fine or other penalty including suspension or revocation of the insurer's Certificate of Authority pursuant to Section 59A-5-26(A)(1) NMSA 1978.

**E.** This Order is effective immediately.

**F.** Copies of this Order shall be served by 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.

**ISSUED this 6<sup>th</sup> day of December, 2021.**

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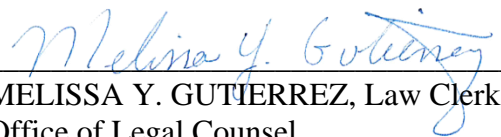
**HON. RUSSELL TOAL**  
**SUPERINTENDENT OF INSURANCE**

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing *Notice and Emergency Order* was emailed to the following individuals, as indicated below, this 6<sup>th</sup> day of December, 2021.

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