

Regulatory UPDATE



Welcome to the March 2022 edition of the Colorado Hospital Association (CHA) Regulatory Update. Monthly updates cover important information on regulatory issues in the health care field, specifically those associated with the federal government, as well as Colorado state agencies involved in health care issues – including the Colorado Department of Human Services (CDHS), Colorado Department of Public Health and Environment (CDPHE), the Department of Regulatory Agencies (DORA), the Department of Health Care Policy and Financing (HCPF), and the Colorado Department of Labor and Employment (CDLE).

As a reminder, March's CHA Regulatory Briefing Call is scheduled from 10-11 a.m. on Mar. 9. To join, please click on this [link](#). This call allows for informal discussion regarding priority regulatory issues. To receive calendar invites for future calls, please contact Whitney Dolbeer, CHA administrative assistant, at Whitney.Dolbeer@cha.com or 720.330.6031.

March's Regulatory Briefing will include a deep-dive presentation from CHA's COVID-19 special adviser, Tracy Anselmo on where things stand with the regulatory landscape, including the path forward with staffing proposals.

March's Regulatory Update includes information on the following issues:

- [National emergency declaration](#)
- [Crisis Standards of Care for staffing and EMS deactivated February 17](#)
- [Colorado Combined Hospital Transfer Center Deactivated March 1](#)
- [Extended Dosing Intervals for COVID-19 Vaccines](#)
- [State Amends and Extends Public Health Order 20-38](#)
- [CDC Adjusts Masking Guidance; Requirements Remain in Place for Hospitals and Other Health Care Settings](#)
- [Gov. Polis Released a Roadmap Outlining a Plan for the State as it Transitions to the Next Phase of the COVID-19 Response](#)

- [Follow Along: 2022 Legislative Session](#)
- [HCPF Requests Mental Health Parity Public Comment](#)
- [HCPF Releases Timeline for Phase III of the Accountable Care Collaborative](#)
- [HCPF Seeking New Voting Member for the PIAC](#)
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- [CMS Seeking Feedback on Access to Coverage and Care in Medicaid, CHIP](#)
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- [CMS Releases RFI on Developing a Comprehensive Access Strategy for Medicaid & CHIP](#)
- [CMS Announces a Redesigned Accountable Care Organization Model](#)
- [Increased Cyber Risk to Hospitals](#)
- [FCC Seeks Comments on Proposed Changes to Rural Health Care Program](#)
- [New Funding Opportunities for Outpatient Residency Programs, SUD Services for Pregnant and Postpartum Patients](#)

COVID-19 Updates

National Emergency Declaration Extension

On Feb. 22, President Biden released a [notice](#) extending the national emergency declaration for the COVID-19 pandemic beyond March 1. The notice has been published in the [Federal Register](#) and does not indicate an end date for the emergency declaration.

Crisis Standards of Care for Staffing and EMS Deactivated Feb. 17

Colorado deactivated the Crisis Standards of Care for health care staffing and emergency medical services Feb. 17, citing modeling and steadily declining cases and hospitalizations.

Colorado Combined Hospital Transfer Center Deactivated March 1

The Combined Hospital Transfer Center (CHTC) deactivated March 1 as triggers indicated declining hospitalizations following the steady rise from the Delta and Omicron waves of the fall and early winter. All health care systems will move back to normal transfer operations and processes, and the CHTC will continue to monitor conditions for rapid reactivation should the need arise. During the Delta/Omicron waves, CHTC moved more than 45,000 patients.

Extended Dosing Intervals for COVID–19 Vaccines

On Feb. 22, the Centers for Disease Control and Prevention (CDC) updated the interim clinical considerations for use of COVID-19 vaccines to include an extended interval between the first and second doses of mRNA (Pfizer and Moderna) COVID-19 vaccines for some individuals. CDPHE issued a [Health Alert Network](#) broadcast with details of the changes. Recommendations for people with moderate to severe immunocompromise have not changed. Full details can be found on the [CDC website](#).

State Amends and Extends Public Health Order 20-38

CDPHE released the [13th Amended Public Health Order 20-38](#), extending the order through March 14. This order contains information on COVID-19 restrictions related to face coverings for unvaccinated and not fully vaccinated individuals in certain settings, including hospitals, and hospital facility reporting requirements.

CDC Adjusts Masking Guidance; Requirements Remain in Place for Hospitals and Other Health Care Settings

The CDC announced a major adjustment of its [federal masking guidance](#), including changes to the metrics that communities are urged to use when determining whether to require face coverings in indoor settings. In addition to case counts, new metrics will factor in hospitalizations and hospital capacity. [Colorado Public Health Order 20-38](#) states that face coverings continue to be required for unvaccinated or not fully vaccinated patients, residents, and visitors, and medical grade face masks are required for unvaccinated or not fully vaccinated staff in settings that serve vulnerable or at-risk populations, including hospitals.

Gov. Polis Releases Roadmap Outlining Plan for the State Transition to Next Phase of the COVID-19 Response

Gov. Polis' newly released [roadmap](#) for Colorado as it transitions out of the pandemic focuses on hospital and public health readiness and surge capacity, investments in the health care workforce, and federal engagement in pandemic and endemic preparedness and response.

Non-COVID-19 State Updates

Follow Along: 2022 Legislative Session

As this year's legislative session progresses, CHA member hospitals and health systems are encouraged to follow along with the key issues. CHA has identified three areas of proactive focus for this year, including supporting the health care workforce, seeking regulatory relief, and investing in what works. CHA continues to coordinate with stakeholders, legislators, and the administration to advocate for policies that will meet hospitals' needs. Follow along with the [bills tracked by CHA](#) throughout the 2022 legislative session. Questions? Please contact Joshua Ewing, CHA vice president of legislative affairs at joshua.ewing@cha.com.

HCPF Requests Mental Health Parity Public Comment

HCPF began work on its annual Mental Health Parity and Addiction Equity Act report to assess the compliance of the Medicaid benefit with mental health parity laws and is gathering stakeholder feedback. Individuals interested in submitting written comments can do so using this [form](#). The form is available until March 29.

More information about parity is on the [HCPF website](#).

HCPF Releases Timeline for Phase III of the Accountable Care Collaborative

HCPF's current contracts with the Regional Accountable Entities will end on June 30, 2025. HCPF announced that their stakeholder engagement process to inform the redesign will begin this summer.

HCPF Seeking New Voting Member for the PIAC

The PIAC Provider and Community Experience (P&CE) subcommittee is currently accepting [applications](#) from stakeholders who would like to be voting members for one of the subcommittees. P&CE is specifically looking for one voting member who can represent hospitals. CHA encourages any interested members to apply. Contact Megan Axelrod, CHA manager of regulatory policy, at megan.axelrod@cha.com with any questions.

DOI Moves Forward with Public Option Implementation

On Feb. 28, the Division of Insurance (DOI) adopted [Emergency Regulation 22-E-05 - Concerning the Methodology for Calculating Premium Rate Reductions for Colorado Option Standardized Health Benefit Plans](#) to establish rules for the premium reduction methodologies. This rule will be on the DOI's agenda for its March 21 public rule-making hearing.

Additionally, the Governor's Office is seeking applicants for the Colorado Option Advisory Board per HB 21-1232. The Advisory Board will consist of up to 11 members with varied experience in health care and will meet at least every three months. In addition to consulting with DOI on implementation, the Advisory Board may:

- Consider recommendations to streamline how carriers make determinations on whether a health care service, treatment plan, prescription drug or durable medical equipment is medically necessary for a patient;
- Recommend ways to keep health care services in the communities where patients live; and
- Consider whether Alternative Payment Models may be appropriate for particular services, taking into account the impacts of such models on health outcomes for people of color.

[Click here to apply](#) and select "Colorado Option Advisory Board" from the drop-down menu.

Out-Of-Network Alignment Status

CHA submitted initial feedback on Majority Leader Daneya Esgar's (D-Pueblo) draft legislation recommending a number of [changes](#) to align the federal [H.R. 3630 – No Surprises Act](#) and Colorado [House Bill \(HB\) 19-1174 – Out of Network Health Care Services](#). CHA's top priorities that were developed with member feedback include aligning state/ federal law and ensuring that HB 19-1174 works as intended.

CHA Advocates for Changes to HB 21-1198 Implementation Plan

This month, CHA submitted extensive feedback on HCPF's 1198 implementation and current plan for patient rights. On March 1, HCPF released the draft rules concerning the implementation of Hospital Discounted Care, as created by HB 21-1198, and the associated updates to the Colorado Indigent Care Program (CICP) on their website [Hospital Discounted Care webpage](#). The rules are in redline so that stakeholders can easily see the changes to the CICP rules along with the new Hospital Discounted Care rules. These draft rules will be presented to the [Medical Services Board](#) for emergency adoption on March 11, ahead of the April 1 deadline set by the law, and for final adoption on April 8.

Comments about the rules can be sent to hcpf_HospDiscountCare@state.co.us prior to the MSB meeting or for the Public Rule Review Meeting on March 21.

[Frequently Asked Questions](#) have been added to the Hospital Discounted Care webpage. If you haven't already, please sign up for the [Hospital Discounted Care newsletter](#) to receive information about the implementation of this law and be notified of important upcoming dates, including training and office hours.

Non-COVID-19 Federal Updates

President Biden Delivers State of Union Address

On March 1, President Biden delivered his State of the Union address. His address covered a number of health care topics, including COVID-19 and behavioral health.

Living with COVID-19: President Biden emphasized that COVID-19 will no longer control Americans' lives. He said there are four common sense steps as the US moves forward safely: (1) stay protected with vaccines and treatment; (2) prepare for new variants; (3) end the shutdown of schools and businesses; and (4) continue vaccinating the world.

President Biden said America will stay protected with vaccines and treatment by having vaccines and anti-viral treatments available. He noted Pfizer is working to get the US 1 million anti-viral pills this month and more than double that next month. President Biden also mentioned the launch of the "Test to Treat" initiative so people can get tested at a pharmacy, and if they're positive, receive antiviral pills on the spot at no cost. President Biden noted the hundreds of millions of tests the US has available for free. He then announced that Americans can now order new free COVID-19 tests on [covidtests.gov](https://www.covidtests.gov) starting next week.

President Biden said the US must prepare for new variants and, if necessary, will deploy new vaccines within 100 days instead of months or years. President Biden said, if Congress provides the necessary funds, the US will have new stockpiles of tests, masks, and pills ready if needed. He will request supplemental funds soon.

President Biden said the US can end the shutdown of schools and businesses. He highlighted that with 75 percent of adult Americans fully vaccinated and hospitalizations down by 77 percent, most Americans can remove their masks, return to work, stay in the classroom, and move forward safely. He said he will send Congress a request soon for more funds to provide free vaccines, treatments, tests, and masks to Americans.

President Biden said the US will continue vaccinating the world. He said the US has sent 475 million vaccine doses to 112 countries, which is more than any other nation.

Cut the Price of Prescription Drugs: President Biden noted his plan to cut the price of prescription drugs. He suggested to cap the price of insulin at \$35/month. He also proposed to let Medicare negotiate lower prices for prescription drugs, like the VA already does.

Close the Coverage Gap: President Biden noted the ARP helps millions of families on Affordable Care Act (ACA) plans save \$2,400 a year on their health care premiums. President Biden noted the US needs to close the coverage gap and make these savings permanent.

Improve Quality of Nursing Homes: President Biden said that the quality of nursing homes has gone down as costs have gone up. He said Medicare is going to set higher standards for nursing homes to ensure Americans get the care they deserve and expect. Additional information on forthcoming CMS action was provided in a fact sheet.

FACT SHEET: Protecting Seniors and People with Disabilities by Improving Safety and Quality of Care in the Nation's Nursing Homes

- CMS launching four new initiatives:
 - Establishing a minimum nursing home staffing requirement;
 - Reducing resident room crowding;
 - Strengthening the skilled nursing facility (SNF) value-based purchasing (VBP) program; and
 - Reinforcing safeguards against unnecessary medication and treatment.
- Requests \$500 million from Congress for CMS to conduct health and safety inspections at nursing homes.
- Overhaul CMS's Special Focus Facility (SFF) program.
- Expand financial penalties and other enforcement sanctions.
- Requests new authority for CMS to require minimum corporate competency to participate in Medicare and Medicaid.
- Transparency improvements.
- Workforce support (ensuring training is affordable, improving payment structure)
- Ensuring pandemic and emergency preparedness in nursing homes.

Protect Rights of Women: President Biden stated that the rights of women must be protected. He noted the constitutional right affirmed in Roe v. Wade is under attack and the US must preserve a women's right to choose. He did not use the word "abortion."

Advance Maternal Health: President Biden highlighted the importance of advancing maternal health care in America.

Beat the Opioid Epidemic: President Biden stated his intent to take measures to beat the opioid epidemic. He called for increased funding for prevention, treatment, harm reduction, and recovery;

the removal of outdated rules that stop doctors from prescribing treatments; and stopping the flow of illicit drugs by working with state and local law enforcement to go after traffickers. President Biden said he believes in recovery and celebrates the 23 million Americans in recovery.

[FACT SHEET: Addressing Addiction and the Overdose Epidemic](#)

- FY 2022 budget request includes a historic \$41 billion for drug policy efforts to support interventions
 - \$10.7 billion in discretionary funding for HHS to fund research, prevention, harm reduction, treatment, and recovery support services, with a focus on meeting the needs of populations at greatest risk for overdose and substance use disorder.
 - FY 2022 budget proposes a total of \$23.5 billion for public health approaches to reduce drug use and its consequences.
- Call for universal access to Medication for opioid use disorder (MOUD) by 2025
- Harm reduction services – which include naloxone, fentanyl test strips, and syringe service programs – are a federal drug policy priority
- Address the core causes and sources of transnational and domestic criminal activities

Take on Mental Health: President Biden said the US needs to take on mental health, especially among children, whose lives and education have been “turned upside down.” He noted the ARP gave schools money to hire teachers and help students make up for lost learning.

President Biden also noted that children were struggling before the pandemic as a result of bullying, violence, trauma, and the harms of social media. President Biden said Americans must hold social media platforms accountable. He said it is time to strengthen privacy protections, ban targeted advertising to children, and demand tech companies to stop collecting personal data of children.

President Biden said all Americans must have access to the mental health services they need, more people they can turn to for help, and full parity between physical and mental health care.

[FACT SHEET: President Biden to Announce Strategy to Address our National Mental Health Crisis, As Part of Unity Agenda in his First State of the Union](#)

- FY 2023 Budget will seek \$700 million investment in workforce programs (National Health Service Corps, Behavioral Health Workforce Education and Training Program, and the Minority Fellowship Program).
- \$225 million HHS paraprofessional training program expected to be announced in Fall of 2022;
- National certification program for peer specialists.

- Highlight \$103 million in ARP funds to address frontline health workforce burnout and sign Dr. Lorna Breen Health Care Provider Protection Act, which invests \$135 million over three years in workforce training and an awareness campaign.
- Launch “988” crisis response line this summer.
- FY 2023 proposal to make CCBHC model permanent with state grants to help expand the model.
- New practice model research investment (\$5 million).
- FY 2023 proposal to expand and strengthen parity.
- FY 2023 proposal to double funding for primary and behavioral health integration programs, and HHS to test payment models on primary care integration.
- VA to fully implement Primary Care Mental Health Integration and Behavioral Health Interdisciplinary Program.
- Ensure coverage of tele-behavioral health across health plans, and support the appropriate delivery of telemedicine across state lines.
- Double the number of school-based mental health professionals.
- FY 2023 proposal for \$50 million to pilot a program that embeds and co-locates mental health and substance use providers into community-based settings.
- Administration to build online treatment locator tools.
- Focus on strengthening online protections for children and youth.

End Cancer As We Know It: President Biden discussed his plan to “end cancer as we know it.” He said the goal is to cut the cancer death rate by at least 50 percent over the next 25 years and turn more cancers into treatable diseases. President Biden also called on Congress to fund the Advanced Research Projects Agency for Health (ARPA-H). He noted ARPA’s purpose is to drive breakthroughs in cancer, Alzheimer’s, diabetes, and more.

Advance Equity and Opportunity for Black People and Communities Across the Country: Perhaps surprisingly, the President did not speak directly to equity or race in his address. Nonetheless, the White House released a fact sheet on these issues in conjunction with the State of the Union.

FACT SHEET: The Biden-Harris Administration Advances Equity and Opportunity for Black People and Communities Across the Country

- Includes the following health care items:
 - Lowering health care costs through enhanced premium tax credits;
 - A plan to improve Black maternal health (references FY 2022 budget proposal);
 - Building the pipeline of Black health care providers (\$1.5 billion workforce investment supporting the National Health Service Corps, Nurse Corps, and SUD Treatment and Recovery programs);
 - Ensuring equitable pandemic response (highlighting increase in vaccination rates for Black and Latino Americans, and Executive Order on the same topic);

- Support for community violence interventions

Biden Administration Announces Steps to Conform to No Surprises Act Court Ruling

The Departments of Health and Human Services, Labor and the Treasury will revise their guidance on the arbitration process for determining payment for out-of-network services under the No Surprises Act to conform to a federal court ruling last week that struck down parts of the process, and train certified independent dispute resolution entities and disputing parties on the revised guidance, the agencies [announced](#) Feb. 28. They also plan to open the portal for submitting payment disputes to IDR entities, and permit parties to reopen the negotiation period for disputes if expired.

The [court decision](#) left in effect other parts of the arbitration process and interim final rule, which took effect Jan. 1. The AHA and American Medical Association have filed a [separate lawsuit](#) challenging the independent dispute resolution process, which they say unfairly benefits commercial health insurance companies.

CMS Seeking Feedback on Access to Coverage and Care in Medicaid, CHIP

The Centers for Medicare and Medicaid Services (CMS) is seeking feedback on topics related to health care access, such as enrolling in and maintaining coverage, accessing health care services and supports, and ensuring adequate provider payment rates to encourage provider availability and quality. This [Request for Information](#) (RFI) seeks feedback from stakeholders on a broad set of topics from ensuring adequate payment rates to encouraging provider availability and quality, to culturally and linguistically competent care and reducing gaps in health care coverage. Interested parties may access the RFI questions and provide comment on [Medicaid.gov](#). The RFI is open for a 60-day public comment period beginning Feb. 17.

CMS Delays Hospital Star Ratings Update Until July

Last week, the Centers for Medicare and Medicaid Services (CMS) announced it will delay updating the Overall Hospital Quality Star Ratings on the Care Compare website from April until July so it can correct a calculation error in the calendar year 2021 results for the OP-10 outpatient imaging efficiency measure. CMS said no additional data or other actions from hospitals are required to recalculate the OP-10 measure, and that it does not expect the recalculation to impact calendar year 2022 payment determinations. Hospitals will be able to preview the updated overall star ratings and OP-10 measure results this spring in their facility specific reports, the agency said.

“To minimize stakeholder confusion, CMS is also delaying the public reporting of CY 2022 OP-10 measure results,” the agency said. “These measure results are for CY 2023 payment determination, and were initially scheduled for preview release in Spring 2022. CMS intends for the calculation error to be corrected in this and in future reporting of results for the OP-10 measure.”

CMS Releases RFI on Developing a Comprehensive Access Strategy for Medicaid and CHIP

The Centers for Medicare and Medicaid Services (CMS) is seeking feedback on topics related to health care access, such as enrolling in and maintaining coverage, accessing health care services and supports, and ensuring adequate provider payment rates to encourage provider availability and quality. This [Request for Information](#) (RFI) seeks feedback from stakeholders on a broad set of topics from ensuring adequate payment rates to encouraging provider availability and quality, to culturally and linguistically competent care and reducing gaps in health care coverage. Interested parties may access the RFI questions and provide comment on [Medicaid.gov](https://www.medicaid.gov). The RFI is open for a 60-day public comment period beginning Feb. 17.

CMS Announces a Redesigned Accountable Care Organization Model

On February 24, 2022, the Centers for Medicare & Medicaid Services (CMS) announced a redesigned Accountable Care Organization (ACO) model. The ACO Realizing Equity, Access, and Community Health (REACH) Model, a redesign of the Global and Professional Direct Contracting (GPDC) Model, addresses stakeholder feedback, participant experience, and Administration priorities, including CMS’ commitment to advancing health equity. The first performance year of the redesigned ACO REACH Model will start on January 1, 2023, and the model performance period will run through 2026. CMS is releasing a Request for Applications for provider-led organizations interested in joining the ACO REACH Model. More information on this announcement can be found [here](#).

Increased Cyber Risk to Hospitals

This week, President Biden announced that Russia’s invasion of Ukraine has begun, with Russian military assets crossing into Ukraine’s eastern provinces under the guise of a “peacekeeping” mission. The U.S. government and NATO allies immediately responded to Russia’s actions with a series of economic and military sanctions. There is a concern that Russia may retaliate against the U.S. and allied nations with disruptive cyberattacks in furtherance of its military and political objectives.

The American Hospital Association (AHA) is closely monitoring the potential for increased cyber risks to the U.S. health system stemming from the ongoing military operations in the Russia/Ukraine

region. In light of previous attacks and potential threats, the Cybersecurity and Infrastructure Security Agency (CISA) last week issued a related-and-rare cyber "[Shields Up](#)" warning to the U.S. private sector, including health care, based upon the increased cyberthreat posed by the Russian government.

AHA has a number of cyber security resources for members available on its [website](#).

FCC Seeks Comments on Proposed Changes to Rural Health Care Program

The Federal Communications Commission (FCC) adopted a [notice](#) proposing changes to the Rural Health Care Program, which provides funding to help rural health care providers expand telehealth services. Among other changes, the agency seeks comments for 60 days on proposed reforms intended to improve the accuracy of urban and rural rates, funding cap rules and invoicing for the program.

New Funding Opportunities for Outpatient Residency Programs, SUD Services for Pregnant and Postpartum Patients

Community-based ambulatory patient care centers that sponsor an accredited primary care residency program can apply through March 31 for [grants](#) from the Teaching Health Center Graduate Medical Education Program to expand their residency positions, particularly in rural and underserved areas, the Health Resources and Services Administration (HRSA) announced late last week. HRSA expects to award approximately \$19.2 million in grants.

In addition, nonprofit organizations can apply through April 4 for up to \$525,000 each in fiscal year 2022 funding to provide residential and outpatient substance use disorder treatment and recovery support services to pregnant and postpartum women, particularly in low-income areas, the Substance Abuse and Mental Health Services Administration [announced](#). CHA is in the process of developing a comprehensive perinatal initiative that will begin this spring. To sign up for updates on CHA's perinatal health initiative, please fill out [this form](#).

Calendar of Key Upcoming Dates

Mar. 10: JBC Figure Setting for HCPF (Behavioral Health, BH Community Programs, Indigent Care, and Other Medical Services)

Mar. 11: SPARC Meeting

Mar. 11: Medical Services Board Meeting

Mar. 15: JBC Staff Comeback Figure Setting

Mar. 16: CHA Behavioral Health Council

Mar. 16: HCPF Accountable Care Collaborative Program Improvement Advisory Committee
Mar. 17: March Revenue Forecast
Mar. 17: SPARC Meeting
Mar. 18: CHA Board of Trustees Meeting
Mar. 18: Long Bill introduced in the House
Mar. 21: HCPF HB21-1198 Public Rule Review Meeting
Mar. 22: DOI Permanent Rulemaking Hearing - [Register here](#)
Mar. 24: HCPF Health Cabinet Policy Summit (Day 1) – [Register here](#)
Mar. 25: Mental Health Advisory Board for Service Standards and Regulations
Mar. 25: SPARC Meeting
Mar. 29: HCPF Pre-Admission Screening and Resident Review Training - [Register here](#)
Mar. 31: HCPF Health Cabinet Policy Summit (Day 2) – [Register here](#)
Mar. 31: DOI Virtual Rulemaking Hearing
Apr. 1: SPARC Meeting
Apr. 6: CHA/HCPF/Hospital Leadership Quarterly Meeting
Apr. 8: Medical Services Board- HB21-1198 final rulemaking

***Member hospitals can access additional information about upcoming rulemaking hearings on the Secretary of State's [website](#).**

If you are not currently receiving the CHA Monthly Regulatory Update email and would like to be added to the list or for more information, contact Whitney Dolbeer, CHA administrative assistant, at whitney.dolbeer@cha.com.



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