### EMERGENCY ACTIONS BY THE GOVERNOR IN RESPONSE TO COVID-19 THAT AFFECT MEDICINE

**May 20, 2020**

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<tr>
<th>Issue Date</th>
<th>Effective Date</th>
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<tbody>
<tr>
<td>March 13</td>
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<td>June 12</td>
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<td>Renewed 4/13 and 5/12</td>
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**ACTION:** Governor declares a state of disaster.

The disaster proclamations continue until the governor: (1) finds that (A) the threat of danger has passed; or that (B) the disaster has been dealt with to the extent that emergency conditions no longer exist; and (2) terminates the state of disaster by executive order. A state of disaster cannot continue for more than 30 days unless renewed by the governor. The legislature by law may terminate a state of disaster at any time; however, there is no pending state legislature at this time.

<table>
<thead>
<tr>
<th>March 19</th>
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<th>Renewed 4/17 and 5/15</th>
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**ACTION:** Texas Department of State Health Services (DSHS) commissioner declares a public health disaster.

<table>
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<tr>
<th>May 7</th>
<th>Retroactive April 2</th>
<th>In effect until further action by governor</th>
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**ACTION:** Governor modifies all COVID-19 orders to remove penalty of jail confinement for a violation (**EO GA-22**).

### EXPANDING HOSPITAL CAPACITY

**ACTION:** Every hospital licensed under Chapter 241 of the Texas Health and Safety Code shall reserve 15% of capacity for treatment of COVID-19 patients.

All licensed health care professionals shall be limited in their practice by, and must comply with, any emergency rules promulgated by their respective licensing agencies dictating minimum standards for safe practice during the COVID-19 disaster. Governor’s Executive Order GA-19.

**NOTE:** REPLACES governor’s Executive Order GA-15, Executive Order GA-09 is also no longer in effect.

The Texas Medical Board (TMB) adopted an emergency rule that amends 22 TAC Chapter 190.8 Violation Guidelines, and adds to the definition of “Unprofessional and Dishonorable Conduct” under emergency rule 22 TAC § 190.8(2)(U), as follows:

The rule adds the following required minimum standards for safe practice related to COVID-19, and certain posting notice of those minimum standards:

(U) Notice and Compliance Requirements Concerning COVID-19 Minimum Standards of Safe Practice

(i) All physicians providing patient care or engaging in an in-person patient encounter, must implement the following minimum COVID-19 standards of safe practice.

   (I) a mask must be worn by both the patient and physician or the physician’s delegate when in proximity of the patient (meaning less than a 6-foot distance between the patient and the physician or the physician’s delegate);

   (II) follow policies the physician, medical and healthcare practice, or facility has in place regarding COVID-19 screening and testing and/or screening patients;

   (III) that, before any encounter, patients must be screened for potential symptoms of COVID-19 or verified previously screened within last 20 days; and

   (IV) that prior to care involving a medical procedure or surgery on the mucous membranes, including the respiratory tract, with a high risk of aerosol transmission, the minimum safety equipment used by a physician or physician’s delegate should include N95 masks, or an equivalent protection from aerosolized particles, and face shields.

(ii) All physicians providing patient care or engaging in an in-person patient encounter in medical and healthcare practices, offices, and facilities, other than hospitals as defined under Chapter 241 of the Texas Health & Safety Code, shall post a COVID-19 Minimum Standards of Safe Practice Notice (COVID-19 Notice), delineating the minimum standards of safe practice described in this subsection, in each public area and treatment room or area of the office, practice, or facility.
TMB has also stated: “There are no restrictions on access to medical care in Texas. There are minimum safety measures required due to COVID-19. All licensees, certificate holders, and permit holders subject to regulation by TMB or its advisory boards and committees must follow the minimum safety requirements set out in the emergency rule.” (TMB FAQ. See FAQ No. 17)

The minimum safe practice standards apply to all licensees, certificate holders, and permit holders subject to regulation by TMB or its advisory boards and committees, including physicians and their delegates, regardless of practice setting, including hospitals. If a patient does not have his or her own mask for the exam, the physician’s practice must provide a mask or covering unless an exception applies. The type of mask is not specified. Violation of any executive order issued during the disaster is punishable by a fine up to $1,000.

NOTE: TMB withdrew previous emergency rules 22 TAC 187.57(c) and 178.4(d) relating to Executive Order GA-09 as well as a former emergency rule amending 22 TAC 190.8(2)(U) relating to Executive Order GA-15.

For more information on the TMB emergency rule 190.8(2)(U), see:
• TMA white paper on TMB emergency rule
• TMA FAQ on TMB emergency rule
• Texas Medical Board FAQ
• Texas Hospital Association FAQ

See also:
• The Governor’s Report to Open Texas
• Lieutenant governor’s report: Texans Back to Work Task Force (go to page 51)

Executive Order GA-19 retains previous suspensions of certain regulations for hospitals, including minimum space and fixture requirements for emergency department treatment areas, holding or observation areas, intermediate care suites, patient rooms, and airborne infection isolation suites, to allow more flexibility including increased occupancy of hospital rooms and areas.

**ACTION:** Waiver allows Health and Safety Code Chapter 241 hospitals to increase patient bed capacity to address potential surge capacity needs without having to apply for approval or pay usual fees by using unlicensed beds and by using beds licensed for a certain type of care for a different type of care. Instead, hospitals must notify the Texas Health and Human Services Commission (HHSC) within three business days of increasing bed capacity.

Note: The waiver does not apply to patient beds in the inpatient psychiatric units of a general or special hospital. A hospital must request HHSC approval to convert psychiatric unit beds to address surge capacity related to the COVID-19 disaster declaration.

**ACTION:** Governor initiates a hospital survey on capacity needs, including hospital beds, staffing, and equipment needs.

**ACTION:** Executive order requires hospitals, excluding psychiatric, to submit daily reports on hospital bed capacity to local health departments and DSHS for further reporting to the Centers for Disease Control and Prevention (CDC) in response to a request from Vice President Pence. The order applies to every public and private entity using Food and Drug Administration-approved COVID-19 tests. (EO GA-10)

**ACTION:** Waiver allows hospitals to become operational that either have pending licenses or were closed in the past three years, using existing licenses. Hospitals also may operate additional facilities more than 30 miles from the main licensed hospital. The waiver simplifies license renewal for general, specific, and psychiatric hospitals, free-standing emergency medical facilities, and end-stage renal facilities by waiving requirement for a fire marshal’s report.

**ACTION:** Governor announces a joint effort between the Texas Military Department and the U.S. Army Corps of Engineers to identify and equip additional locations to serve as health care facilities in the event hospital capacity is exhausted, including Kay Bailey Hutchison Convention Center in Dallas.

**ACTION:** Governor announces 140% expansion in hospital bed availability since March 18.
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<td>March 17</td>
<td>July 15 unless extended</td>
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<td>March 19</td>
<td>June 6 Extended 4/9 and 5/8</td>
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**ACTION:** Waiver suspends certain regulations and directs the Texas Department of Insurance (TDI) to issue an emergency rule that telemedicine services, including use of the telephone only, provided by in-network health professionals are to be paid at least the same as in-person visits for insurance purposes for state-regulated health plans. The waiver reaffirms patients covered by Medicaid and CHIP will not be charged copays for a COVID-19 test or telemedicine consults.

**NOTE:** Medicaid payment for telemedicine, including audio-only visits, is extended to May 31, including certain behavioral services provided by phone.

**ACTION:** TMB waiver allows physicians to refill prescriptions, including controlled substances, by phone for an established chronic pain patient. (Requested by TMB and approved by the governor)

**National level:** The U.S. Drug Enforcement Administration determined health care professionals can prescribe certain controlled substances, including opioids, using telemedicine during the pandemic.

**OTHER ACTION:** Governor and TDI ask health insurers and HMOs to waive costs associated with testing and telemedicine visits for the diagnosis of COVID-19 in accordance with CDC guidelines, including:

- Waiver of patient costs such as copayment, coinsurance, and deductibles for testing;
- Waiver of consumer cost-sharing and assistance with expanded use of telemedicine;
- Coverage by plans of necessary medical equipment, supplies, and services;
- Waiver of penalties, restrictions, and claims denials for necessary out-of-network services;
- Waiver of requirements for preauthorizations, referrals, notification of hospital admission, or medical necessity reviews;
- Allowing extra time for claims to be filed; and
- Authorizing payment for 90-day supply of prescription drugs, regardless of when the prescription was filled.

Employees Retirement System of Texas, Teacher Retirement System of Texas, and Texas A&M University and The University of Texas systems were asked to adopt the same provisions for those insured under their plans.

**ACTION:** Waiver allows a pharmacist to conduct telephone consultations and removes regulatory barriers to allow pharmacists to operate at “full strength.”

**ACTION:** Governor announces Centers for Medicare and Medicaid Services approval of Section 1135 Medicaid Waiver submitted by Texas.

**ACTION:** Governor suspends certain statutory procedures in order to ensure public safety employees who contract COVID-19 on the job will be reimbursed reasonable medical expenses related to their treatment.

**ACTION:** Governor declares health care as an “essential service,” effective April 2, in keeping with the U.S. Department of Homeland Security’s advisory list of Essential Critical Infrastructure Workforce.

**ACTION:** Waiver suspends requirement for written prescription delegation agreements, allowing physicians to have oral agreements with advanced practice registered nurses (APRNs) and physician assistants (PAs).

**ACTION:** Waiver allows currently licensed end-stage renal disease (ESRD) facilities to operate off-site outpatient facilities, without obtaining new licenses, at these locations: ESRD sites no longer licensed that closed within past three years; a mobile, transportable, or relocatable medical unit; physician’s office; or ambulatory surgical center or freestanding emergency department no longer licensed that closed within past three years. The waiver allows COVID-19 patients to be treated at separate facilities from dialysis centers.

**ACTION:** Waiver suspends certain laws concerning in-person appearances before a notary public to execute documents such as a medical power of attorney or directive to a physician, allowing use of two-way video and audio conference technology.
**EXPANDING HEALTH PROFESSIONS WORKFORCE CAPACITY**

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**ACTION:** Waiver allows TMB to temporarily reactivate medical licenses for physicians in Texas who converted to official retired status in past four years.

**ACTION:** Waiver fast-tracks temporary licensure of physicians licensed in other states through a Texas limited emergency license or hospital-to-hospital credentialing. The license is active during the governor’s emergency declaration.

**ACTION:** TMB temporarily will take into account, for all license and permit holders it regulates, extenuating circumstances surrounding completion of license/permit renewal requirements, such as renewal deadlines and completion of CME or CE hours. (Requested by TMB and approved by the governor.) TMB is automatically extending license and permit expiration dates through Aug. 31, 2020, for certain licenses and permits.

National level: Federation of State Medical Boards offers federal agencies and hospitals free access to its Physician Data Center, the nation’s largest depository of licensing and disciplinary information for U.S. physicians, to allow verification of physician licensing status.

**ACTION:** Waiver suspends limitations for residents and fellows with Texas Physician-in-Training permits to allow them to practice outside of their residency/fellowship programs, under proper supervision. It enables those in training to focus on patient care activities (rather than training) to fill gaps. An example provided in the governor’s press release is the reassignment of a resident in general surgery to the emergency department in response to a surge in caseloads.

**OTHER HEALTH PROFESSIONS**

**ACTION:** Waiver fast-tracks temporary licensure of physician assistants (PAs) and nurses licensed in other states.

**ACTION:** Waiver enables PAs, respiratory care practitioners, perfusionists, and medical physicists who meet all eligibility requirements except passage of the required exam to be eligible for a limited emergency license. The waiver requires a sponsoring physician and also allows name-based background checks for these licenses while fingerprint checks are not available.

**Emergency Medical Services (EMS)**

**ACTION:** Waiver suspends certain certification and licensing requirements for EMS providers and first responders. Local medical directors for licensed EMS providers can permit individuals who are qualified but not formally certified to provide critical emergency response services for patients treated and transported by the EMS provider. Certain skills testing requirements are suspended for EMS personnel in Texas and advanced emergency medical technicians located out of state seeking reciprocity in Texas to allow those who are qualified but unable to take the test to provide essential EMS services. The waiver suspends requirements for first responder organizations for renewal applications and licensure.

**Pharmacists/Pharmacy Technicians/Pharmacy Interns/Pharmacy Technician Trainees**

**ACTION:** Waiver suspends certain licensing requirements for pharmacists, pharmacy technicians, and pharmacy technician trainees, by extending license expiration dates and waiving CE requirements.

**ACTION:** Waiver suspends certain regulatory requirements to increase job capacities of pharmacy technicians and pharmacy interns. Pharmacy techs can accept prescription drug orders over the phone and can transfer or receive a transfer of an original prescription. Pharmacy interns can assist pharmacists without the designation of preceptor.

**Nurses (Also, see references to nurses under Other Health Professions.)**

**ACTION:** Waiver allows any out-of-state nurse with a license in good standing in another state to practice in Texas for purposes of rendering aid in disaster relief effort operation settings.

**ACTION:** Waiver provides a temporary extension of practice permits for graduate registered nurses and licensed vocational nurses who have not yet taken the licensing exam. Also, students in their final year of nursing school can meet clinical objectives by exceeding a 50% limit on simulated experiences. Nurses with inactive or retired licenses may reactive their license.

**ACTION:** Waiver provides a six-month grace period for expired nursing licenses, with no additional fees or penalties.
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<td>ACTION: Waiver expedites reactivation of inactive APRN licenses. Those with a license that became inactive in the past two to four years are not required to pay the reactivation fee, meet CE hour requirements, or complete current practice requirements. For those with a license that became inactive more than four years ago, the reactivation fee and CE hours are waived, but the current practice requirement must be met.</td>
<td>March 28</td>
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<td>ACTION: Waiver suspends the national certification testing requirement for APRNs, 22 TAC § 221.4(a)(3), who graduated on or after Dec. 1 who are seeking initial licensure in Texas. The APRN must have met all other state licensing requirements (contained in 22 TAC §§ 221.3 and 221.4), have a valid RN degree, and work under direct physician supervision, and is NOT eligible for prescriptive authority. More information can be found on the Texas Board of Nursing website.</td>
<td>April 22</td>
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SOURCES: Office of the Texas Governor, Texas Medical Board, Texas Hospital Association, Texas Board of Nursing, National Board of Medical Examiners, Texas Health and Human Services Commission

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