



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

MAR 24 2020

Dear Governor

To carry out a whole-America response to the COVID-19 pandemic, I write to ask for your assistance to extend the capacity of the health care workforce to address the pandemic. Specifically, I ask that you take immediate action to:

- (1) Allow health professionals licensed or certified in other states to practice their professions in your state, either in person or through telemedicine;
- (2) Waive certain statutory and regulatory standards not necessary for the applicable standards of care to establish a patient-provider relationship, diagnose, and deliver treatment recommendations utilizing telehealth technologies;
- (3) Relax scope of practice requirements for health care professionals, including allowing professionals to practice in all settings of care;
- (4) Allow physicians to supervise a greater number of other health professionals and to do so using remote or telephonic means;
- (5) Allow for rapid certification/licensure and recertification/relicensure of certain health care professionals;
- (6) Develop a list of your state liability protections for in-state and out-of-state health professionals, including volunteers, during this national emergency, work with your state insurance commissioner to modify or temporarily rescind any provision in any medical malpractice policy issued in your state that may prevent insurance coverage of a health care professional's work responding to the COVID-19 emergency in another state, and work with insurers to have them waive such limitations in their policies;
- (7) To the extent deemed appropriate by state health authorities, modify laws or regulations to allow medical students to conduct triage, diagnose, and treat patients under the supervision of licensed medical staff; and,
- (8) Modify any laws or regulations that require a signature for deliveries of pharmaceuticals to allow signature-less deliveries, which can help prevent contact between recipients and delivery personnel.

Responsive health professionals will be vital to swiftly containing and eradicating COVID-19 cases in America, as well as treating our citizens during this critical time of need. Doctors and nurses serving on the front lines of this outbreak are at risk of infection and some may be unable to treat patients due to quarantine. They need backup. Your help is needed to ensure health professionals maximize their scopes of practice and are able to travel across state lines or provide telemedicine to communities where they are needed most.

Non-federal health care professionals carry out health care activities under licensing laws specific to the states in which they provide care. During emergencies, many states have statutory and regulatory mechanisms which allow health care professionals licensed in one state to provide aid in another state without being licensed in that state. These may include mutual aid compacts (multi-state emergency management laws that provide for license reciprocity when the Governor has declared an emergency or public health emergency) and emergency powers that Governors may utilize to modify or temporarily suspend state licensing requirements to allow out-of-state professionals to practice in their states. I ask your assistance to immediately activate these and other health care professional licensure exceptions to the fullest extent appropriate, and to waive any state licensure or certification fees, in order to extend the capacity of health care professionals to fully assist in responding to the COVID-19 emergency. I encourage states to work with their state licensing boards to establish enforcement moratoria for scope of practice and licensure issues to ensure that health care professionals can quickly respond to the COVID-19 emergency without fear of penalty or license revocation. States without existing statutory mechanisms may want to consider working with their legislatures to enact such mechanisms.

Many states also have statutory authority during emergencies to allow for rapid certification and recertification of certain health care professionals. I ask that you use these authorities to the fullest extent possible, and to waive any fees to allow for rapid relicensure or recertification of certain retired health care professionals (especially physicians, nurse practitioners, other registered nurses, and physician assistants), to allow them to reenter the workforce quickly to provide care during the COVID-19 emergency.

States may also be able to modify scope of practice requirements through the Governor's emergency powers or in accordance with the state emergency management laws to temporarily suspend certain scope of practice requirements, including any requirements for written supervision or collaboration agreements in order to avoid significant delays in the provision of services. Alternatively, states may be able to waive geographic restrictions on physicians supervising nurse practitioners (NP) or physician assistants (PA) (i.e., temporarily waive any requirements that the supervising physician be physically co-located with or within a certain geographic distance to the NP or PA who he or she is supervising). This could permit supervising physicians from any state to supervise remote telemedicine services by electronic or telephonic means. To maximize the potential for telemedicine services to expand capacity, states may want to consider waiving certain statutory and regulatory standards not necessary for the applicable standards of care to establish a patient-provider relationship, diagnose, prescribe, and deliver treatment recommendations utilizing telehealth technologies. In addition, states may be able to temporarily expand the number of non-physician health care professionals that a physician may supervise to permit greater use of these non-physician health care professionals to respond to the COVID-19 emergency.

States should also eliminate restrictions on the settings of care where certain types of health care professionals can see patients. Due to recommendations to socially distance, the setting of care will move from clinics to the home or other alternative locations. States should eliminate any restrictions on the types of nurse practitioners, other registered nurses, physicians, and other caregivers that may furnish care in the home or other setting, including restrictions for these providers to be aligned with a home health agency. Finally, states should consider expanding allowable activities for certain health care professionals (such as EMTs and paramedics) to allow those professionals to provide additional health care services during this emergency.

For health care professionals to feel comfortable serving in expanded capacities on the frontlines of the COVID-19 emergency, it is imperative that they feel shielded from medical tort liability. To prevent medical tort liability from deterring volunteer physicians, Congress passed two volunteer liability reform laws: the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936 (HIPAA), and the Volunteer Protection Act of 1997, Pub. L. No. 105-19, 111 Stat. 218 (VPA). HIPAA protects physicians who volunteer in free clinics, provided the clinic sponsors the physician by submitting an application to the government. Under the VPA, volunteer health care professionals of a nonprofit organization or governmental entity are not liable for economic damages caused by providing medical care within the scope of their volunteer responsibilities (although this exemption does not extend to non-economic damages). The VPA only protects volunteer health professionals practicing with a license in that state, unless state authorities allow for licensure exceptions. The VPA preempts state laws that are inconsistent with the VPA, unless those state laws provide additional liability protection for volunteers.

In addition, the Public Readiness and Emergency Preparedness (PREP) Act provides broad immunity to health care professionals who administer or use countermeasures covered by declarations issued by the Secretary. Under my COVID-19 - Medical Countermeasures PREP Act declaration (effective February 4, 2020), this protection can apply to health care professionals using countermeasures such as diagnostic or other devices (e.g., COVID-19 testing and respiratory therapy), antiviral medications, other drug therapies, biologics, or vaccines used to treat, diagnose, cure, prevent, or mitigate COVID-19, or the transmission of SARS-CoV-2 or a virus mutating therefrom, as well as devices used to administer such products.

All 50 states and the District of Columbia have enacted laws protecting health professionals under specified circumstances. States should issue guidance summarizing the statutory scope of protections offered under their laws and the process necessary to attach those protections to a health professional's service. Given variation in the scope of these state laws, it is particularly important for states to issue guidance publicly, outlining the available liability protections during the COVID-19 emergency. Further, as noted above, I ask you to analyze whether your state insurance commissioner can modify or temporarily rescind any provision in any medical malpractice policy issued in your state that may prevent coverage of a health care professional's work responding to the COVID-19 emergency in another state and work with insurers to have them waive such limitations in their policies.

I do not want state variations in liability protections to confuse or deter health professionals in this COVID-19 emergency. I ask that your office quickly develop a list of the relevant state liability protections and waivers for health professionals during a national or state emergency and provide public guidance for any steps that out-of-state professionals need to take to provide medical care in your state. I also ask that you take quick action to expand the flexibilities offered in this time of emergency by waiving restrictions such as state licensure, scope of practice, certification, and recertification requirements. In that regard, I thank the National Governors Association for their useful site tracking state declarations and other COVID-19 responses at <https://www.nga.org/coronavirus/#states>.

We are all in this together. The U.S. government and the Department of Health and Human Services are committed to working with you and your state to contain and eradicate COVID-19.

Sincerely,

A handwritten signature in blue ink, consisting of stylized initials and a long horizontal stroke extending to the right.

Alex M. Azar II

Enclosure