

GUIDANCE TO STATES

Lifting Restrictions to Extend the Capacity of the Health Care Workforce during the COVID-19 National Emergency

On March 13, 2020, the President declared a National Emergency under the Stafford Act and the National Emergencies Act,¹ and on January 31, 2020 the Secretary of HHS declared a public health emergency under section 319 of the Public Health Service Act. As a result of these declarations, on March 10, 2020, the Secretary of HHS authorized the temporary waiver or modification of certain requirements of the Medicare, Medicaid, and State Children’s Health Insurance (CHIP) programs and of the Health Insurance Portability and Accountability Act Privacy Rule, under section 1135 of the Social Security Act (SSA), for the duration of the public health emergency declared in response to the COVID-19 outbreak.² This includes the authority to waive federal requirements based on state licensure and scope of practice. *See* SSA §1135(b)(1)-(2).³

However, while this allows the Secretary to waive these requirements for the purposes of the Medicare, Medicaid, and CHIP Programs, and reimbursement for services provided to beneficiaries of these programs, health care providers must still comply with various state laws and requirements. Therefore, we are calling on states, territories, and the District of Columbia to take immediate action, under applicable state laws, to waive restrictions on licensure, scope of practice, certification, and recertification/relicensure consistent with the changes announced for federal programs.⁴

These actions should apply to all health care services delivered within the scope of the practitioner’s license, and not just for COVID-19-related services, so that health care workers can be deployed as needed.

¹ Authority: Sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 *et seq.*) and The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121-5207).

² Authority: Consistent with section 1135 of the Social Security Act (SSA), as amended (42 U.S.C. 1320b-5). Note that states may request federal approval of specific waivers under section 1135 for their state Medicaid programs, including those related to streamlining provider enrollment and allowing out-of-state licensed providers to practice in their state. See guidance at: <https://www.medicaid.gov/state-resource-center/disaster-response-toolkit/cms-1135-waivers/index.html>

³ Section 1135(b)(1)-(2): “(1) (A) conditions of participation or other certification requirements for an individual health care provider or types of providers, (B) program participation and similar requirements for an individual health care provider or types of providers, and (C) pre-approval requirements; (2) requirements that physicians and other health care professionals be licensed in the State in which they provide such services, if they have equivalent licensing in another State and are not affirmatively excluded from practice in that State or in any State a part of which is included in the emergency area.”

⁴ Unless otherwise noted, all references in this document to States should be understood as applying to the District of Columbia and the territories (American Samoa, Guam, Puerto Rico, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands).

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While all 50 states, the District of Columbia, and all U.S. territories have now declared states of emergency, not all have taken action to minimize barriers to care during this critical time. State licensure, registration, and certification requirements for non-federal health care professionals are typically governed by the laws of the state in which a patient is located at the time of the service. In order to more efficiently distribute scarce provider services during the time of a widespread emergency, states should take action to waive such requirements to allow health care professionals holding an active license, registration, or certification from a state *other than the state in which the patient is located* to provide healthcare services. States should also allow health care professionals like nurse practitioners (NPs), other registered nurses, and physician assistants (PAs) to practice to the fullest extent of their license and without restrictive supervision requirements, and allow for rapid certification/licensure and recertification/relicensure of retired health professionals during this emergency. States may also want to consider allowing residents to practice with general supervision instead of direct supervision for certain types of care. Finally, states should eliminate restrictions on the settings where caregivers can furnish services, including requirements for nurses that are furnishing care in the home to be under the authority of a home health agency (vs. a hospital or other health care provider).

A complete list of recommended actions is included below. We also thank the National Governors Association for tracking state actions at <https://www.nga.org/coronavirus/#states>.

RECOMMENDED ACTIONS

The Administration specifically recommends that state authorities consider and incorporate appropriate waivers or permissions as part of their emergency declarations, including:

- 1. Provider Licensure Exceptions:** Waive restrictions, on a temporary basis (during the emergency period), on health providers licensed, registered, or certified in good standing with another state. We also encourage states to consider ways to process these waivers on a rapid basis.
 - Consider utilizing flexibilities currently available in your state's emergency declaration laws to allow licensure exceptions during the emergency period and waive any licensing fees.
 - Consider utilizing the Uniform Emergency Volunteer Health Practitioner Act (if your state enacted this model law) or the Emergency Management Assistance Compact and other mutual aid compacts, and stating that all temporary licenses are free of charge and valid through the duration of the emergency declaration period.
 - Encourage your State Boards of Medicine, Nursing, and other healthcare professions to put in place an enforcement moratorium for the length of the public health emergency for such licensure violations, which would allow health care providers to begin treating patients without fear of penalty or revocation. This moratorium should apply to all services for which providers are licensed.

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- 2. Telemedicine Modality and Practice Standard Waivers:** To the extent permissible, waive statutes and regulations mandating telehealth modalities and/or practice standards not necessary for the applicable standard of care to establish a patient-provider relationship, diagnose, and deliver treatment recommendations utilizing telehealth technologies.
- 3. Waivers of Scope of Practice Requirements:** Temporarily suspend any requirements for written agreements to meet supervision or collaboration requirements, in order to avoid significant delays in the provision of services. States should also expand allowable provider activities for certain health care professionals, such as NPs, other registered nurses, PAs, emergency medical technicians (EMTs), and paramedics, and remove all restrictions on where these types of professionals can furnish care. States should also encourage their State Boards of Medicine, Nursing, and other health professions to put in place an enforcement moratorium, for the length of the public health emergency, for scope of practice violations to ensure all practitioners can deliver needed care during the crisis. This moratorium should apply to all services for which providers are licensed.
- 4. Physician Extender Permissions (if unable or unwilling to waive Scope of Practice pursuant to Recommendation No. 3):**
 - Waive geographic restrictions on physicians supervising NPs or PAs (i.e., temporarily waive any requirements that the supervising physician be physically co-located with, or within a certain geographic distance of the NP or PA who he/she is supervising). This would permit supervising physicians from any state to supervise remote telemedicine services via electronic or telephonic means.
 - Temporarily expand the number of health care professionals who a physician may supervise, in order to permit greater use of all health care professionals.
- 5. Rapid Certification/Licensure and Recertification/Relicensure:** Allow for rapid certification/licensure of new health care professionals and recertification/relicensure of certain retired health care professionals (physicians, NPs, other registered nurses, PAs) to allow them to reenter the workforce to provide care during the COVID emergency, and waive any applicable fees.
- 6. Alleviate Medical Malpractice Liability for In-State Health Care Professionals, Including Volunteers, Working across State Lines:** Provide guidance on liability protections available to health care professionals in your state by developing a list of your state's liability protections for in-state and out-of-state professionals, including volunteers, relicensed or recently licensed medical professionals, services provided through telehealth, and services consistent with expanded scopes of practice, 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.

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- 7. Utilize Medical Students when Deemed Appropriate:** 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.
- 8. Signature-less Pharmaceutical Deliveries:** 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.

EXAMPLES

The following are examples of state emergency declarations that include flexibilities such as those described above:

- 1. California:** <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>
- 2. Florida:** https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-52.pdf and <https://s33330.pcdn.co/wp-content/uploads/2020/03/filed-eo-doh-no.-20-002-medical-professionals-03.16.2020.pdf>
- 3. Iowa:** <https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202020.03.17.pdf>

This situation is evolving quickly, and many states continue to update the flexibilities currently being offered. Please see the National Governors Association Website for a complete, updated list of state actions to date: <https://www.nga.org/coronavirus/#states>.