

Increased Flexibility for Out-of-State Physicians to Assist with COVID-19 Response

Insights

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As healthcare providers continue to navigate this modern public health crisis, one of the concerns being raised is the need to ensure sufficient healthcare professionals are available to assist in preparing for, treating, and mitigating the effects of the coronavirus (COVID-19). One of the ways this is being addressed is through federal and state action to provide more flexibility for physicians and other healthcare professionals that are not licensed in a state to provide services to patients in that state.

As stated in our prior [alert](#) addressing Section 1135 waivers issued following the March 13 national emergency declaration, the Centers for Medicare and Medicaid Services (CMS) has temporarily relaxed certain Medicare, Medicaid, and CHIP regulations, including requirements that out-of-state providers be licensed in the state where they are providing services when they hold an equivalent license in another state.

However, importantly, while this addresses whether the services will be reimbursed by Medicare, Medicaid, or CHIP, it does not preempt state law. State licensure laws still apply, and states have been taking a range of actions to provide more flexibility with respect to their local licensing laws in recent days to meet patient care needs. Among other things, such activity should help provide more services via telehealth across state lines, as telehealth is being strongly encouraged for circumstances where it is possible to provide services remotely.

As with many other actions being taken to help address COVID-19, the situation is rapidly developing with respect to relaxation of licensure requirements. The following is a snapshot of recent developments in a few states (current as of the date of this publication, but subject to change), as an example of how states are addressing:

- California: On March 4, the California governor issued a [Proclamation of a State of Emergency](#), which authorized any out-of-state personnel, including, but not limited to, medical personnel, entering California to assist in preparation for, responding to, mitigating the effects of, and recovering from COVID-19 shall be permitted to provide services in the state, as long as the medical facility that intends to utilize the services has received approval from the Emergency Medical Services Authority (EMSA) under the procedures outlined by the EMSA (or a staffing agency providing services to the medical facility receives approval).
- Massachusetts: On March 17, the Massachusetts governor issued an [order](#) requiring, among other things, that out-of-state physicians be

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granted emergency licenses to practice in Massachusetts for the duration of the emergency order (in-person or across state lines via telehealth). All that is required to obtain the emergency license is to submit to the Board of Registration in Medicine a state license verification form demonstrating good standing in the physician's other state(s). This is one of three orders the Governor has issued to expand access to care, with others involving mandatory telehealth reimbursement by insurers, the ability for out-of-state nurses, social workers, psychologists, or physicians to treat existing patients enrolled in Massachusetts colleges via telehealth without a Massachusetts license, extension of registration requirements, and waiver of continuing education requirements.

- New York: Under the supplemental [New York Executive Order](#) issued on March 18, health care providers (physicians, registered nurses, licensed practical nurses, nurse practitioners, physician assistants) not licensed in New York shall be allowed to practice in New York without a license as long as their out-of-state licensure is in good standing.
- Washington: Under the [Uniform Emergency Volunteer Health Practitioners Act](#), given the state governor's emergency proclamation on February 29, if a provider is registered with Washington program, the out-of-state practitioner will be permitted to practice during the emergency, once activated and assigned by the Department of Health.
- Texas: On March 14, the Texas governor directed the Texas Medical Board and Texas Board of Nursing to fast-track temporary licensing of physicians and certain other healthcare professionals to assist in response to COVID-19. There are [emergency licensing provisions](#) for hospital-to-hospital credentialing and for the issuance of a Limited Emergency License. A Texas sponsoring physician is needed for issuance of the Limited Emergency License.

In addition, a number of states are taking action to encourage retired physicians to return to active status and otherwise provide additional flexibility regarding extension of license terms and continuing medical education requirements.

Organizations may also consider whether there are other existing provisions under state law which provide additional flexibility. For example, California has provisions that permit medical professionals that are licensed in other states to obtain a waiver to practice in California under certain circumstances. In addition to Business and Professions Code section 900, which permits licensure waivers during states of emergencies and which was relied on to provide the flexibility in California listed above, Business and Professions Code section 922 permits a physician with an expired California license to reactivate their license if it has been expired for less than five years by completing the related application and providing a complete set of fingerprints without paying any licensing, delinquency, or penalty fees. Finally, Business and Professions Code section 2060 allows providers licensed in other states to act as consultants with licensed California providers through the California Medical Association, California Podiatric Medical Association, an approved medical school or college, or other county medical societies.

Our firm's Coronavirus Task Force is monitoring developments closely. Please refer to our [COVID-19 resource page](#) for federal and state resources on COVID-19.

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