

Publications

Health Care Alert: Texas Announces Series of Additional Health Care Measures in Response to COVID-19 including Mandatory Reporting by Physicians

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Health Care

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On March 19, 2020, the Texas Department of State Health Services declared a public health disaster due to COVID-19. Within just a few days after the declaration, Governor Greg Abbott has announced the implementation of several measures to address the growing pandemic.

On March 20, 2020, Governor Abbott announced that he is temporarily suspending certain regulations to ensure that Texans will have continued access to their pharmacists as the state responds to COVID-19. The Governor's actions will allow pharmacists to conduct telephonic consultations.

On March 21, 2020, the Governor waived several regulations regarding the practice of nursing. Specifically, to address the need for a larger health care workforce during the pandemic, Texas will:

- Allow temporary permit extensions to practice for graduate nurses and graduate vocational nurses who have yet to take the licensing exam.
- Allow students in their final year of nursing school to meet their clinical objectives by exceeding the 50% limit on simulated experiences.
- Allow nurses with inactive licenses or retired nurses to reactivate their licenses.

On March 22, 2020, Governor Abbott signed an Executive Order to expand hospital bed capacity. Under this order, the Governor directed all licensed health care professionals and facilities to postpone all surgeries and procedures that are not immediately, medically necessary to correct a serious medical condition or to preserve the life of a patient who without immediate performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's physician. This does not apply to any procedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete the hospital

capacity or the personal protective equipment needed to cope with the COVID-19 disaster. The Governor also suspended certain regulations as requested by the Texas Health and Human Services Commission (HHSC) to allow for increased occupancy of hospital rooms — which is intended to address the concern there will not be enough hospital space to treat COVID-19 patients as the number of cases increases. The Governor's Executive Order took effect immediately, and remains in effect and in full force until April 21, 2020.

In addition to the Governor's actions, on March 24, 2020, the Texas Medical Board (TMB) released emergency rules to effectuate Governor Abbott's Executive Order. TMB's Executive Committee adopted to amend the following under 22 TAC Chapters 187, Procedural Rules, Subchapter F, Temporary Suspension and Restriction Proceedings and 178, Complaints. The definition of "continuing threat to public welfare" under 22 TAC §187.57(c) is amended to include actions specifically prohibited by Governor Abbott's Executive Order as it relates to surgeries and procedures that are "not immediately medically necessary to correct a serious medical condition of, or to preserve the life of, a patient who without immediate performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's physician." Under 22 TAC §178.4, any peer review committee, TMB licensee, entity, or other specified individuals, such as medical students, must now immediately report to TMB any physician scheduling to perform, preparing to perform, performing, or who has performed a non-urgent elective surgery or procedure. This duty to report is mandatory whether any type of proceeding, inquiry, investigation, or action of any kind is being considered, has been initiated, or is on-going at a hospital, ambulatory surgical center, or any other facility or medical setting. The TMB defines non-urgent elective surgery as those cases where there is no anticipated short-term or long-term negative impact because of delaying a procedure or surgery. Examples are screening for a chronic condition or most cosmetic procedures.

As currently written, a provider who was not involved in the underlying care and treatment decisions for a patient could be placed in a position whereby he or she could feel obligated to evaluate or criticize the treating provider's decision in hindsight or without a complete history. For example, many anesthesiologists meet the patient the day of a surgical procedure and were not involved any treatment decisions prior to the surgical procedure but could feel pressured to report the treating surgeon if he or she has any doubt. Today, Vorys requested additional clarification from the TMB on the language of the emergency rule and the TMB has indicated that such clarification shall be released as early as this afternoon.

Vorys is continuing to monitor the COVID-19 outbreak and related guidance to clients in the health care industry. We also strongly urge providers to continually monitor developments that pertain to your specific organization. If you have questions about COVID-19 or its impact on your organization, please contact Jonathan Ishee, Jolie Havens, Nita Garg, or your regular Vorys attorney.

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Vorys COVID-19 Task Force

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue

receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.