

March 16, 2020

Via email

Re: State Flexibility Requests due to COVID-19

To Whom it May Concern:

Pursuant to his powers as Governor of the State of Texas, Gov. Greg Abbott has issued a proclamation certifying that COVID-19 poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. THA requests the following state flexibilities available to all health care providers in the State, as applicable, to assist Texas hospitals and health care providers in their response to COVID-19.

Texas Health and Human Services Commission:

1. Suspend all hospital licensing rules related to bed capacity, so that hospitals may accept patients in greater numbers than dictated by their licensed bed capacity. This should not require action from the Governor.
2. Suspend all hospital rules and statutes restricting rehabilitation hospitals from providing medical care to patients.
3. Suspend all hospital transfer regulations and requirements, except for the requirements to have Memoranda of Transfer and that transfers be doctor-to-doctor. Allow hospitals to rapidly discharge, transfer, or receive patients, provided that reasonable measures are in place to protect the health and safety of the patients. See Tex. Health & Safety Code § 241.027 and 25 Tex. Admin. Code §§ 133.44 and 133.61. This requires the Governor's permission.
4. Suspend 25 Tex. Admin. Code § 133.41(j), which requires verbal orders to be dated, timed and authenticated within 96 hours by the prescriber or another practitioner who is responsible for the care of the patient. A related federal condition of participation requires verbal orders to comply with state law. See 42 C.F.R. § 482.24.
5. Temporarily suspend the discharge planning requirements and designated caregiver requirements under 25 Tex. Admin. Code § 133.50 to facilitate expedited discharge.
6. Temporarily suspend routine inspections and on-site investigations of hospitals, except for surveys related to COVID-19 and initial surveys necessary for facilities to open or add space. See Tex. Health & Safety Code § 241.051.
7. Waive 30-day spell-of-illness limitation in STAR PLUS Program and Medicaid Fee-For-Service, so that patients who require long periods of hospitalization due to COVID-19

8. Temporarily suspend provisions requiring medical care to be provided in a specific location. This requires a waiver by the Governor of Health and Safety Code § 241.023 and 25 Tex. Admin. Code §§ 133.41(e) and 133.163(f).
9. Temporarily waive the portion of 25 Tex. Admin. Code § 133.21(a)(4) requiring hospitals to comply with §133.41(e) that states “licensed hospital locations, including multiple-location sites, shall have an emergency suite that complies with §133.161(a)(1)(A),”
10. Temporarily suspend 25 Tex. Admin. Code § 133.41(o) to allow flexible nurse staffing in temporary patient care units.
11. Temporarily suspend 25 Tex. Admin. Code § 133.41(l) as applied to acute care hospitals outside of a licensed psychiatric unit to facilitate and expedite the delivery of medical care.
12. Under the COVID-19 national emergency conditions, we are requesting an immediate extension for all Texas Hospitals of Level One appeal filing deadlines, to be changed from 30 days to at least a 60-day filing deadline. We also request that any extension be maintained, and extended if necessary, until the pandemic viral infection has been adequately contained. At this time, an initial appeal of adverse findings by the Medicaid RAC (HMS) allows the provider only 30 days to submit the appeal and HMS has already used 7 of the days in transit from their office to ours. The planned online portals are not yet up and running to all who need access, our appeals are received and transmitted physically, and so a work force will be required to be physically present in the office to manage these. It is in the best interests of the public health to make this group as minimal as absolutely necessary during this time.

Texas State Board of Pharmacy:

13. Texas State Board of Pharmacy: Permit Class C pharmacies to utilize remote dispensing technology to serve patients being discharged from a facility to provide prescription medications necessary for these patients without going to a commercial (Class A) pharmacy. Expand Texas State Board of Pharmacy Pilot program to permit remote dispensing services.

Texas Medical Board:

14. Provide written guidance that documented oral consent from a patient during a telehealth/telemedicine visit is sufficient for any COVID-19 testing.

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Thank you for your consideration. We expect to identify additional issues as we hear from our more than 465 member hospitals serving patients on the front lines. THA is here to be your partner to assist Texans during this disaster period. Should you have any questions, please do not hesitate to contact me at cduncan@tha.org or 512/465-1539.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Cameron Duncan". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Cameron Duncan
Associate General Counsel
Texas Hospital Association