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

MAR 2 4 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,

Alex M. Azar II

Enclosure

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.

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[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).

GUIDANCE TO STATES

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.

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.

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.