

COVID-19 Pandemic State Licensing and Certification Waivers

July 22, 2020

The need to respond to COVID-19 in California and nationally poses substantial and complex legal questions and concerns. Below are state legal resources compiled by CHA that relate to hospital licensing and certification waivers, survey activity, enforcement discretion, and the like. **Hospitals should consult legal counsel with specific questions.**

Note: State waivers apply only to state law and do not change federal law — even if the state and federal requirements are the same. CHA has also compiled a [list of federal waivers](#).

Governor's Executive Orders

Governor Newsom has issued many executive orders related to the pandemic. Those of particular interest to hospitals are noted below. Others can be found at www.gov.ca.gov/newsroom.

Proclamation of State of Emergency – March 4, 2020

- Authorizes the California Department of Public Health (CDPH) to suspend hospital licensing requirements in Chapter 2 of Division 2 of the Health and Safety Code. CDPH exercised this authority in All Facilities Letter (AFL) 20-26, which expired on June 30, 2020. CDPH issued a much more limited waiver pursuant to AFL 20-26.3. (See “All Facilities Letter 20-26.3” below for details.)
- Authorizes the Emergency Medical Services Authority (EMSA) to allow out-of-state medical personnel to practice in California. (See <https://ems.ca.gov/covid19/> for details.)
- Prohibits price gouging. (See “Price Gouging/Hoarding” below for information on where to file a complaint.)
- Authorizes EMSA to let paramedics transport patients to facilities other than acute care hospitals. Check with your local emergency medical services agency to find out if this is happening in your service area.
- Authorizes the Department of Social Services to waive day care licensing requirements. (See “Department of Social Services” below.)
- Requires all individuals to obey emergency officials.

Executive Order – March 12, 2020

- Authorizes EMSA to add to optional scopes of practice for paramedics.

- Authorizes the California Health and Human Services Agency and the Office of Emergency Services to identify and make available — through contracts or power to commandeer — medical and other facilities to respond to the pandemic.
- Suspends certain licensing and certification requirements for laboratory personnel performing COVID-19 testing (see Executive Order for details).
- Requires all residents to obey orders and guidance of state and local health officials.

Executive Order – March 15, 2020

- Directs CDPH and Cal/OSHA staff to focus on providing technical assistance and support to health care facilities; limits agencies' enforcement activity to allegations of the most serious violations impacting health and safety.
- Allows asymptomatic health care workers to continue to work, with precautions to prevent transmission.

Executive Order – March 19, 2020

- Initial stay-at-home order (has been modified several times, and now differs by county). Check your local health department for local orders (a list of public health departments is available [here](#)).
- Asks the health care delivery system to prioritize services to care for the sickest and to prioritize resources, including personal protective equipment. Local health departments may have issued orders requiring temporary cessation of non-essential procedures.

Executive Order – March 21, 2020

Authorizes CDPH to waive licensing and staffing requirements for clinics, adult day health care, hospice, and mobile health care units. CDPH exercised this authority in [AFL 20-30](#), [AFL 20-34](#), and [AFL 20-47](#). AFLs 20-30 and 20-34 have been superseded and replace online by AFLs [20-30.1](#) and [20-34.2](#), respectively. (See “CDPH All Facilities Letters” below for a link to all AFLs.)

Executive Order – March 30, 2020

- Authorizes CDPH to waive licensing and staffing requirements for hospitals and other health facilities. Note that CDPH had already waived most licensing and staffing requirements for hospitals on March 20 in AFL 20-26 (which expired and was superseded by AFL 20-26.3); this Executive Order allowed CDPH to waive some additional requirements for skilled nursing and other nonacute facilities. (See “Hospital Licensing - All Facilities Letter 20-26.3” below for more information about currently waived hospital requirements.)
- Authorizes CDPH to waive licensing and certification requirements and amend scope of practice for certified nursing assistants (CNAs), home health aides, nursing home administrators, and certified hemodialysis technicians. CDPH exercised this authority with respect to CNAs in [AFL 20-35.1](#). (See “CDPH All Facilities Letters” below for a link to all AFLs.)

- Suspends certain certification and permitting requirements of the Radiologic Technology Act – see Executive Order for details. (See also “Radiologic Health Branch” below for additional waivers.)
- Authorizes CDPH to waive hospital licensing requirements pertaining to the credentialing and privileging of physicians. These had already been waived in AFL-20-26, which expired on June 30, 2020, and was later superseded by AFL 20-26.3. (See “Hospital Licensing - All Facilities Letter 20-26.3” below for more information about currently waived hospital requirements.)
- Authorizes the California Department of Consumer Affairs (DCA) to waive professional licensure requirements and amend scope of practice for health care professionals. DCA has exercised this discretion; see “Department of Consumer Affairs” below for details.
- Authorizes EMSA to suspend licensing, certification, and training requirements for emergency medical technicians and paramedics, including allowing them to practice in any setting – including hospitals. EMSA has provided [details here](#) and [here](#).

Executive Order – April 3, 2020

- Suspends the requirement to obtain oral or written consent from a patient for telehealth services. However, to be reimbursed by Medicare, beneficiary consent must be obtained and documented at least annually [84 Fed. Reg. 62699 (Nov. 15, 2019)]. CMS suggests (but doesn’t require) that consent be obtained from the beneficiary, and cost-sharing amounts be reviewed with the beneficiary, prior to each service.
- Allows health care providers to use video chats and other applications to provide health services consistent with federal HIPAA guidelines and waivers. (See CHA’s [list of federal waivers](#).)
- Suspends state penalties for privacy breaches related to telehealth services, as well as penalties for late notifications.
- Lengthens the time frame for notifying CDPH and patient of breaches related to telehealth from 15 to 60 days. See [CHA’s FAQ](#) on breach reporting for more information.

Executive Order – April 16, 2020

- Allows disclosure of COVID-19 test results electronically to patients before the test is reviewed by the ordering professional, under certain circumstances.
- Extends ambulance and commercial driver’s licenses.
- Authorizes the California Department of Justice to continue processing background checks in alternative manners.

Executive Order – May 6, 2020

Creates a rebuttable presumption for workers’ compensation purposes that an employee who contracts COVID-19 did so on the job, if the employee tests positive within 14 days of being at work. See the order for details on coordinating workers’ compensation benefits with paid sick leave and disability benefits. This order is effective retroactively to March 19 and ended on July

6, 2020; however, three bills are pending in the Legislature on this subject. See [CHA's FAQ](#) for more information.

California Department of Public Health (CDPH) -- All Facilities Letters

CDPH has issued many All Facilities Letters (AFLs) related to COVID-19. Those of continuing interest to hospitals at this point in the pandemic are noted below. See the CDPH website for other AFLs, including letters for skilled-nursing facilities, hospices, and other provider types.

- **Hospital Licensing:** [AFL 20-26.3](#)
AFL 20-26 waived hospital licensing and staffing requirements in Chapter 2 of Division 2 of the Health and Safety Code and accompanying regulations (Title 22), with a few exceptions. This waiver terminated on July 1 and was replaced by AFL 20-26.3, which is a narrower waiver. CHA has posted a copy of this waiver and important [details here](#). A hospital experiencing a COVID-19-related patient surge or staffing shortage may request a waiver of nurse-staffing ratios or any other hospital licensing requirement from CDPH by submitting [CDPH form 5000A](#) and providing supporting documentation to the CDPH Center for Health Care Quality duty officer at CHCQDutyOfficer@cdph.ca.gov and to the hospital's [CDPH district office](#).
- **Coronavirus Health Care System Mitigation Playbook:** [AFL 20-23](#)
- **Guidance on Handling Deceased COVID Patients:** [AFL 20-24](#)
- **Guidance for Handling Used N95 Respirators for Decontamination/Reuse:** [AFL 20-36.3](#)
- **Hospital Daily COVID-19 Reporting Requirements:** [AFL 20-31.2](#)
- **Hotel Rooms for Exposed/Positive Health Care Workers:** [AFL 20-45](#)
This AFL notifies facilities how to certify their employees to participate in the free/subsidized hotel room program. On June 17, several important changes to the program were implemented to address fraudulent use of the program. For details about the revised process, see CHA's [FAQ about the program](#).
- **Personal Protective Equipment Guidance:** AFLs [20-36.3](#) and [20-39](#)
- **Polymerise Chain Reaction (PCR) and Serology Testing for COVID-19:** [AFL 20-44.1](#)
Guidance on the availability and prioritization of PCR and serology testing. Prioritization guidance is supposed to be updated weekly and posted at <https://testing.covid19.ca.gov>. However, the most recent [prioritization guidance](#), dated July 14, 2020, has not been posted there yet.
- **Ban on Billing for Assets/Pharmaceuticals from Strategic National Stockpile:** [AFL 20-41](#)

- **Requesting Staffing from the State:** [AFL 20-46.1](#)
- **Visitor Restrictions:** [AFL 20-38.3](#)
See also “Centers for Medicare & Medicaid Services (CMS) Survey Activity” below for a link to a CMS document on visitor restrictions.

CDPH – Additional Guidance

Coronavirus Personal Protective Equipment Waste

- Can be disposed of as medical waste or solid waste

Crisis Care Guidelines

- [Guidelines](#) to follow when resources are too scarce to meet patient needs
- [Guidelines](#) for allocating scarce medications (i.e., remdesivir). See also FDA [patient fact sheet](#) for remdesivir. Also note that some California counties have adopted a framework for ethical allocation of remdesivir – check with your county.

Face Covering Order

- [State Health Officer Order](#)
- [CHA FAQs](#) for hospitals

Guidelines for Resuming Deferred Services

- [Guidelines](#) for resuming services that had been suspended during the initial phase of the pandemic

Infection Control Survey Tools: CDPH surveyors are using the [COVID-19 Outbreak Facility Healthcare Assessment Tool](#) during their infection control surveys of hospitals and skilled-nursing facilities (SNFs), along with the [CMS entrance checklist](#) and the hospital-specific information on Focused Survey for Acute and Continuing Care Providers on pages 19-28 of [CMS’ Survey and Certification Memo to State Survey Agencies QSO 20-20](#).

Laboratories: Governor’s Executive Order of March 12, 2020

- Suspends certain licensing and certification requirements for laboratory personnel performing COVID-19 testing

Radiologic Health Branch - Waivers include:

- Continuing education exemption for renewal of radiologic technology certificates and permits with an expiration date up to and including July 15, 2020. This exemption applies to Certified Radiologic Technologists; Limited Permit X-ray Technicians; Physician Assistants (PAs) holding a PA Fluoroscopy Permit; and Certified Supervisors and Operators.
- Annual medical physicist CT, fluoroscopy, and mammography equipment surveys: may be extended to a 16-month window from the date of the last survey. For a longer extension

or if you have a new unit, contact Lisa Russell (Lisa.Russell@cdph.ca.gov).

- Annual medical physicist X-Ray therapy equipment calibration/surveys: contact Lisa Russell (Lisa.Russell@cdph.ca.gov) if you need an extension.

(See also third bullet point under “Executive Order – March 30, 2020” above.)

Department of Consumer Affairs

Continuing Education and Examination Requirements

- Examination and continuing education requirements are waived for certain health care professionals whose license expires between March 31 and August 31, 2020. Licensees must satisfy any waived renewal requirements by January 1, 2021.
- Applies to physicians, nurses, pharmacists, mental health professionals, physician assistants, respiratory therapists, clinical lab scientists/bioanalysts, optometrists, dieticians, physical therapists, occupational therapists, speech-language pathologists, perfusionists, and other professionals licensed under Division 2 of the Business and Professions Code.
- Does not apply to certified nursing assistants, paramedics, or emergency medical technicians — they are licensed/certified by other state agencies.
- Licensees must still submit their required renewal form on time and satisfy waived exam or continuing education requirements by October 1, unless an additional extension is issued.

License Reactivation or Restoration

- Continuing education requirements and all fees are waived, including renewal, delinquency, penalty, late or any other fees for health care professionals licensed in the past five years who want to reactive or restore a retired, inactive, or canceled license. (For a list of covered health professionals, see the second bullet point under “Continuing Education and Examination Requirements” above.)
- Waiver does not apply to licenses that were surrendered or cancelled for disciplinary reasons.
- A reactivated or restored license is valid for six months or when the state of emergency ends, whichever is sooner.
- The licensee must still comply with any other reactivation or restoration requirements, including submitting required forms or notices to their licensing agency.

Ratios and Practice Agreements

- Eliminates the cap on the number of physician assistants, nurse practitioners, and certified nurse midwives that a physician may supervise (expires August 12, 2020).
- Waives the requirement for a physician assistant to have a practice agreement with a specific physician under certain circumstances. Physician supervision is still required, but that supervision can be provided by any physician; no written practice agreement is required (expires August 12, 2020).

Mental Health Therapists

- Waives in-person supervision for non-exempt associate marriage and family therapists, associate clinical social workers, and associate professional clinical counselors and allows telehealth supervision and treatment to be used by graduate students for clinical hours (expires September 3, 2020).
- Also waives in-person supervision requirement for **psychology trainees** (expires September 3, 2020).

Physical Therapy

- Waives requirement for in-person evaluation by a physician for continued physical therapy treatment (expires September 3, 2020).

Post-Graduate Training Licenses

- Delays the due date for 60 days until August 31, 2020.

Speech-Language Pathologists and Audiology Assistants

- Waives in-person supervision requirements for speech-language pathology/audiology assistants and required professional experience for temporary licensees, conditioned upon the use of appropriate electronic supervision (expires September 3, 2020).

Board of Pharmacy

The Board **has issued waivers** related to:

- Inventory reconciliation reports (expired June 22, 2020)
- Sterile compounding license renewal
- Receiving drugs/devices from an unlicensed pharmacy, wholesaler, or third-party logistics provider located out of state (expires the sooner of July 24, 2020 or when emergency declaration ends)
- Pharmacists supervising an additional pharmacy intern or technician (expired June 24, 2020)
- General rather than direct supervision of intern (expired July 19, 2020)
- Remote processing by pharmacists, interns, technicians (expires the sooner of September 22, 2020 or when emergency declaration ends)
- Signature for receipt of delivery of drugs (expires the sooner of September 22, 2020 or when emergency declaration ends)
- Prescribers dispensing short-acting, beta-agonist inhalation product to emergency room patients (expires the sooner of September 22, 2020 or when emergency declaration ends)
- Consulting pharmacist quarterly visits to clinic (expires the sooner of September 22, 2020 or when emergency declaration ends)
- USP 797 personal protective equipment (PPE) requirements (expires September 22, 2020)
- Use of alcohol sanitizer before donning sterile gloves (expires July 24, 2020)

- Pharmacist duty to provide in-person oral consultation (expires September 29, 2020)
- Use of PPE in certain compounding aseptic isolators or compounding aseptic containment isolators (expires August 30, 2020)
- Extension of intern pharmacist license with an expiration date on or before July 1, 2020, for an additional six months
- Use of sterile disinfectant agents – This waiver allows the use of a non-sterile alcohol-based disinfectant after cleaning on work table surfaces, carts, and counters if certain requirements are met (expired July 1, 2020)
- Restoring a pharmacist license that was retired or cancelled within the past five years (unless the license was subject to disciplinary conditions or proceedings); the pharmacist must complete the “Application to Restore Your License” form located on the board’s website (expires October 1, 2020)
- Pharmacists initiating and administering immunizations despite holding a Basic Life Support certificate that expired on or after March 15, 2020 (expires August 5, 2020)
- Prelicensure inspection of proposed automated drug delivery system locations – see Board of Pharmacy website for details (expires October 9, 2020)
- Extension of reassessment/revalidation/re-evaluation requirements for sterile compounding staff competencies (expires August 12, 2020)
- Pharmacists ordering and collecting specimens for COVID-19 testing: see [waiver](#) and [guidance](#). This waiver expires on September 9, 2020, but the federal government has issued a similar waiver, which [preempts](#) state licensing laws (see *CHA’s list of federal waivers*.

Board of Registered Nursing

- [Announced](#) that during a pandemic, nursing services may be provided by unlicensed persons, including student nurses
- Developed a [chart showing the types of services](#) a student nurse can provide depending on the coursework completed by the student nurse
- Modified [certain requirements](#) for clinical training sites and for nursing students related to the number of hours needed of direct patient care experience, as opposed to indirect patient care experience (simulation, lab activities) ([expires August 1, 2020](#))
- Modified [certain nursing preceptorship requirements](#) and restrictions on nursing student clinical training ([expires August 1, 2020](#))

Department of Managed Health Care

- Issued [All Plan Letter 20-020](#) directing health plans to work with network providers to expedite claims processing, consider advance payments, and reduce administrative burdens on providers.

- Issued [All Plan Letter 20-017](#) extending to December 31 the phase-in period of a regulation that would have required hospitals to obtain a health plan license for some arrangements involving risk sharing.
- Issued All Plan Letters [20-009](#) and [20-013](#) mandating that plans reimburse providers for telehealth services.
- Issued [All Plan Letter 20-06](#) requiring payment for COVID-19 testing and screening, and waiving cost-sharing. An [FAQ](#) clarifies that all health plans and other payers – commercial, Medi-Cal, Medicare, and ERISA -- must cover COVID-19 tests without prior authorization, at no cost to the enrollee. Plans may not deny coverage based on lack of medical necessity. DMHC issued [emergency regulations](#) on July 17 to permanently adopt the requirement; however the emergency regulations apply only to commercial plans.

Department of Social Services

- Allows [temporary employer-sponsored childcare](#) without a license, provided certain conditions are met.

Emergency Medical Services Authority (EMSA)

- [Issued information](#) about allowing out-of-state health care practitioners to practice in California; alternate destination (ambulances in some local emergency medical services agency areas may take patients to facilities other than hospitals); and paramedic scope of practice.
- Suspended certain licensing, certification, and training requirements for emergency medical technicians and paramedics, and is also allowing them to practice in any setting, including hospitals. EMSA has provided [details here](#) and [here](#).

Judicial Council of California

- Issued an [advisory](#) advocating the use of technology to hold certification review hearings, judicial review, and capacity hearings for antipsychotic medications for involuntarily detained individuals who may have a mental health disorder or chronic alcoholism.

Office of Statewide Health Planning and Development (OSHPD)

- Issued a temporary suspension of late reporting penalties for many reports, including patient data and financial and utilization information. This waiver ended May 1.
- 2020 seismic safety milestone deadline extensions: OSHPD will grant extensions, upon request, to the construction milestones individual hospitals established as part of their 2020 seismic safety extensions. This is not automatic – the hospitals must request a delay and work with OSHPD to develop new milestones.

Other

Statistics

- **U.S. count:** The current count of COVID-19 cases in the United States is available on the [CDC's website](#).
- **California count:** The current count of COVID-19 cases in California is available on [CDPH's website](#).
- **Local count:** Check with your local public health department. A list of public health departments is available [here](#).

Free Crisis Counseling

- Available to all U.S. residents through the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration's Disaster Distress Helpline. Call (800) 985-5990 or text TalkWithUs to 66746.
- An [online counseling registry](#) of more than 1,500 volunteer licensed mental health professionals available to support front-line health professionals fighting the COVID-19 crisis.

Notifying First Responders of COVID-19 Exposure

State and federal law require hospitals to report to first responders' employers (not to the first responders themselves) if a first responder has been exposed to COVID-19. See CHA's [explanation](#) of the reporting requirements and procedures hospitals must follow.

Supplier Vetting - Project N95: The National COVID-19 Medical Equipment Clearinghouse

Centers for Medicare & Medicaid Services (CMS) Survey Activity

On March 23, CMS [announced general regulatory enforcement discretion](#) for at least three weeks – later extended indefinitely. The enforcement discretion applies to hospitals, long-term care facilities, home health agencies, hospices, and laboratories. No surveys will be conducted except:

- In response to complaints and facility-reported incidents that CMS believes may constitute an immediate jeopardy. A streamlined infection control review tool will be used during these surveys, regardless of the allegation. Hospitals are, therefore, able to prioritize infection control and responding to the COVID-19 pandemic over less important regulatory requirements.
- Targeted infection control surveys of acute and long-term care providers. The streamlined infection control review tool included with the CMS announcement will be used. The California Department of Public Health (CDPH), as the CMS contractor, may use this [entrance checklist](#) as it conducts infection control surveys of both skilled-nursing facilities (SNFs) and hospitals. While the checklist is labeled for SNFs and references "residents," it is being used for both SNFs and hospitals. CHA has received clarification that CDPH surveyors may use the hospital-specific information on "Focused Survey for Acute and Continuing Care Providers" on pages 19-28 of [CMS' Survey and](#)

[Certification Memo to State Survey Agencies QSO 20-20.](#)

- Initial certification surveys.

The CMS announcement also includes voluntary guidance on visitor restrictions for hospitals.
In addition, CMS has issued [many waivers](#); also CHA's [list of federal waivers](#).)

On June 1, 2020, CMS issued [a memo](#) allowing states, at their discretion, to also perform the following hospital surveys:

- Complaint investigations that are triaged as Non-Immediate Jeopardy-High
- Revisit surveys of any facility with removed Immediate Jeopardy (but still out of compliance).

The Joint Commission

- All regular, on-site surveys of hospitals and other health care organizations were suspended from March 16 until June 3. Limited surveys resumed in June; see The Joint Commission (TJC) [announcement](#). If an organization goes beyond its accreditation due date, accreditation status is extended, and Medicare payment status is not affected. See [TJC's customer letter](#) from April 1. Listen to CHA's June 30 [webinar](#) with TJC describing its survey process during the pandemic.
- Data submission for accreditation (ORYX) and certification (with standardized measures) [will be optional](#) for Q4 of 2019 and Q1 and Q2 of 2020.

DNV GL Healthcare

On June 1, DNV GL Healthcare [resumed](#) remote annual accreditation surveys and certain follow-up surveys resulting from annual surveys. However, DNV GL is not yet restarting reaccreditation surveys for organizations with deemed status. This will not affect Medicare participation, and DNV GL will issue accreditation extensions if the hospital's current accreditation expires.

Price Gouging/Hoarding

Price gouging is illegal, and the California Attorney General is conducting surveillance on potential price gouging in the health care marketplace. If you have information or leads to share, use the Attorney General's complaint intake portal at <https://oag.ca.gov/contact/consumer-complaint-against-business-or-company>.

In addition, the U.S. Department of Justice and the U.S. Department of Health and Human Services are aggressively pursuing cases to prevent the hoarding or price gouging of medical supplies and drugs essential to combat COVID-19, as well as other fraud related to the pandemic. If you have been the target or victim of price gouging, or are aware of the hoarding of essential medical supplies or drugs necessary to fight the virus, please report it to the National Center for Disaster Fraud Hotline at (866) 720-5721 or via email at disaster@leo.gov. For more information, visit www.justice.gov/coronavirus.

Additional CHA Resources

CHA maintains a coronavirus resource web page featuring content and FAQs specific to human resources, wage and hour laws, employee health and safety, clinical concerns, Medi-Cal waivers, and more – go to <https://www.calhospital.org/coronavirus>. CHA has also created a newsletter for hospitals, called Coronavirus Response, that notifies hospitals of important developments, including newly issued waivers, flexes, enforcement discretion, and a wide range of other topics. To be added to the distribution list, contact Christina Devi at cdevi@calhospital.org.

Questions about waivers? Email Lois Richardson at lrichardson@calhospital.org.