

## COVID-19 Pandemic State Licensing and Certification Waivers *April 1, 2020*

There are substantial and complex legal questions and concerns posed by the need to respond to COVID-19 in California and nationally. Below are state legal resources related to licensing and certification waivers, survey activity, enforcement discretion, and the like compiled by the California Hospital Association. **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.***

### **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/](http://www.gov.ca.gov/newsroom/).

#### **[Executive Order – March 30, 2020](#)**

- Authorizes the California Department of Public Health (CDPH) to waive licensing and staffing requirements for hospitals and other health facilities. Note that the requirements for hospitals had already been waived pursuant to All Facilities Letter 20-26; this order granted CDPH the authority to waive some additional requirements for skilled nursing and other nonacute facilities. The waiver of requirements in Chapter 2 of Division 2 of the Health and Safety Code is retroactive to March 20, and the waiver of requirements in Chapter 2.4 (which relate to nonacute facilities) took effect March 30. (See “Hospital Licensing - All Facilities Letter (AFL) 20-26” below for more information about the waived hospital requirements.)
- Authorizes CDPH to waive licensing and certification requirements and amend scope of practice for certified nursing assistants, home health aides, nursing home administrators, and certified hemodialysis technicians.
- 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 pursuant to All Facilities Letter 20-26. (See “Hospital Licensing - All Facilities Letter (AFL) 20-26” below for more information.)

- Authorizes the California Department of Consumer Affairs to waive professional licensure requirements and amend scope of practice for health care professionals. CHA immediately submitted waiver requests on behalf of all CHA member hospitals to allow registered nurses, temporary licensees, interim permittees, advance practice nurses, physician assistants, and respiratory care practitioners to continue to practice even if their license or permit has expired. In addition, CHA has requested waivers of requirements for standardized procedures, patient-specific protocols, ratio of physicians to other practitioners, written practice agreements, and physician supervision level (general vs. direct).

#### [Executive Order – March 21, 2020](#)

Gives CDPH the authority to waive licensing and staffing requirements for clinics, adult day health care, hospice, and mobile health care units.

#### [Executive Order – March 19, 2020](#)

Stay-at-home order. Also, check your local health department for local orders, which may be stricter.

#### [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
- Authorizes asymptomatic health care workers to continue to work, with precautions to prevent transmission

#### [Executive Order – March 12, 2020](#)

- Allows the Emergency Medical Services Authority (EMSA) to add to optional scopes of practice for paramedics
- Allows 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-10 testing
- Requires all residents to obey orders and guidance of state and local health officials

#### [Proclamation of State of Emergency – March 4, 2020](#)

- Gives CDPH the authority to suspend all hospital licensing requirements in Chapter 2 of Division 2 of the Health and Safety Code. CDPH exercised this authority in All Facilities Letter 20-26 (*details below under "All Facilities Letter 20-26"*)
- Gives EMSA the ability to quickly authorize out-of-state medical personnel to practice in California. See <https://emsa.ca.gov/covid19/> for details.
- Prohibits price gouging

- Allows EMSA to let paramedics transport patients to facilities other than acute care hospitals
- Gives the Department of Social Services the ability to waive day care licensing requirements (*see “Department of Social Services” below.*)
- Requires all individuals to obey emergency officials

## **California Department of Public Health**

### Hospital Licensing: [All Facilities Letter \(AFL\) 20-26](#)

- Waives all hospital licensing requirements in Chapter 2 of Division 2 of the Health and Safety Code and accompanying regulations (Title 22), with a few exceptions. CHA has posted a copy of this waiver and important details [here](#).

### Laboratories: [Governor’s Executive Order of March 12, 2020](#)

- Suspends certain licensing and certification requirements for laboratory personnel performing COVID-10 testing

### Primary Care Clinics and Mobile Health Clinics

- CDPH [has waived](#) certain requirements related to licensure, administration, space conversion and services

### 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 (PA) 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](mailto:Lisa.Russell@cdph.ca.gov)).
- Annual medical physicist X-Ray therapy equipment calibration/surveys: contact Lisa Russell ([Lisa.Russell@cdph.ca.gov](mailto:Lisa.Russell@cdph.ca.gov)) if you need an extension.  
(*See also third bullet point under “Executive Order – March 30, 2020” above.*)

### Skilled-Nursing Facilities

- [Extension to April 15, 2020](#), of the application deadline for requesting a Patient Needs Waiver or Workforce Shortage Waiver

(*See also first and second bullet points under “Executive Order – March 30, 2020” above.*)

### Board of Pharmacy

The Board [has issued waivers](#) related to:

- Inventory reconciliation reports
- Temporary use of mobile pharmacy or clinic
- Sterile compounding license renewal
- Receiving drugs/devices from an unlicensed pharmacy, wholesaler, or third-party logistics provider located out-of-state
- Pharmacists supervising an additional pharmacy intern or technician
- Remote processing by pharmacists, interns, technicians
- Signature for receipt of delivery of drugs
- Allows prescriber to dispense short-acting or long-acting bronchodilator to an emergency room patient
- Consulting pharmacist quarterly visits to clinic
- USP 797 personal protective equipment (PPE) requirements
- Use of alcohol sanitizer before donning sterile gloves

#### Department of Social Services

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

#### Emergency Medical Services Authority (EMSA)

EMSA has [issued information](#) related to:

- Allowing out-of-state health care practitioners to practice in California
- Alternate destination (ambulances may take patients to facilities other than hospitals)
- Paramedic scope of practice

#### Office of Statewide Health Planning and Development

- [Temporary suspension of late reporting penalties](#) for multiple reports, including patient data and financial and utilization information
- 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 CDC's website at [www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html](http://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html).
- **California count:** The current count of COVID-19 cases in California is available on CDPH's website at [www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx](http://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx).

- **Local count:** Check with your local public health department. A list of public health departments is available at [www.cdph.ca.gov/Pages/LocalHealthServicesAndOffices.aspx#](http://www.cdph.ca.gov/Pages/LocalHealthServicesAndOffices.aspx#).

### CMS Survey Activity

- CMS [announced general enforcement discretion](#) until at least April 13. This applies to hospitals, long-term care facilities, home health agencies, hospices, and laboratories.
- No surveys will be conducted except: (1) In response to complaints and facility-reported incidents that the Centers for Medicare & Medicaid Services (CMS) believes may constitute an immediate jeopardy; a streamlined infection control review tool will be used during these surveys, regardless of the allegation; (2) Targeted infection control surveys of providers identified through collaboration with CDC and the HHS Assistant Secretary for Preparedness and Response (ASPR) – the streamlined infection control review tool will be used; and (3) initial certification surveys.
- The infection control tool is included with the CMS announcement and may be used for self-assessment.
- The CMS announcement also includes voluntary guidance on visitor restrictions for hospitals.
- CMS has issued many waivers, available at [www.cms.gov/about-cms/emergency-preparedness-response-operations/current-emergencies/coronavirus-waivers](http://www.cms.gov/about-cms/emergency-preparedness-response-operations/current-emergencies/coronavirus-waivers).

### The Joint Commission

- All regular, on-site surveys of hospitals and other health care organizations are suspended, effective March 16, until further notice.
- If an organization goes beyond its accreditation due date, accreditation status is extended, and Medicare payment status is not affected.
- See: [www.jointcommission.org/resources/news-and-multimedia/news/2020/03/the-joint-commission-suspends-all-regular-surveys-amid--covid-19-pandemic/](http://www.jointcommission.org/resources/news-and-multimedia/news/2020/03/the-joint-commission-suspends-all-regular-surveys-amid--covid-19-pandemic/).

### Price Gouging

Price gouging is illegal, and the California Attorney General is conducting surveillance on potential price gouging in the marketplace for medical supplies and other goods and services being sold to hospitals, health care providers, and others. If you have information or leads that you would like to share regarding this issue, please contact the California Department of Justice [oag.ca.gov/report](http://oag.ca.gov/report).

### **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 [www.calhospital.org/coronavirus](http://www.calhospital.org/coronavirus). CHA has also created a daily 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](mailto:cdevi@calhospital.org).