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Additional COVID-19-Related Guidance for Texas Hospitals

The past couple of days, the Texas Health and Human Services Commission (HHSC) and the Texas Medical Board (TMB) have announced initiatives applicable to Texas hospitals designed to combat the COVID-19 crisis.

Surge capacity concerns

First, HHSC approved the suspension of certain licensure requirements until the suspension is terminated by the Governor or the disaster declaration is lifted or expires. For hospitals licensed under Health and Safety Code Chapter 241, facilities experiencing surge capacity can temporarily increase their bed capacity without fee or application. HHSC does request that facilities notify the Health Facility Licensing Unit regarding the increase in bed capacity within three days of making any changes. To address surge capacity, facilities may use unlicensed beds in patient treatment areas without incurring fees for temporary patient beds associated with the COVID-19 disaster. Hospitals must revert to their current licensed bed capacity in the future.

HHSC clarified that this waiver does not apply to patient beds in inpatient psychiatric units of a general or special hospital. Hospitals must request waivers to convert psychiatric beds to address surge capacity. This is important to note because while the Centers for Medicare and Medicaid Services (CMS) has already issued a blanket waiver allowing acute-care patients to be treated in distinct part psychiatric units, HHSC is requesting that hospitals request waivers to convert those beds.

Please review the HHSC's Health Facility Licensing Guidance Letter entitled "Temporary Suspension of State Licensure Requirements on Exceeding Bed Capacity During the Novel Coronavirus (COVID-19) Outbreak" for more

information.

Waivers of spatial requirements

On March 23, 2020, HHSC released waivers of spatial requirements in hospitals. HHSC temporarily waived spatial requirements for room configurations, outlets for medical gases, and nurses' call systems in the emergency suite, intermediate care suite, and the nursing unit. Consequently, hospitals can increase bed count in many parts of its facilities.

Surgery & medical procedure prohibitions

Also, on March 24, 2020, TMB adopted emergency rules, effective through April 21, 2020, to enforce Governor Greg Abbott's Executive Order GA-09, prohibiting surgeries and medical 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." The Texas Medical Board echoes Governor Abbott's statewide prohibitions to ensure maximum hospital capacity and personal protective equipment to fight the COVID-19 public health emergency.

The adopted emergency rules give the Board authority to act quickly if there are violations of the Executive Order. The Board amended the rule relating to peer review and hospital reporting to require immediate reporting rather than after the peer review process. The Board also amended the definition of "Continuing Threat to the Public Welfare." The amended rules are linked below.

- 22 TAC §187.57(c), "Continuing Threat to the Public Welfare"
- 22 TAC §178.4(d), Complaint Initiation – Peer Review Reporting

Emergency off-site locations for hospital services

Additionally, HHSC issued emergency rules providing for off-site locations at which hospitals can provide inpatient care. These locations include:

1. An inpatient hospice unit licensed under Health and Safety Code Chapter 142 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;
2. A hospital no longer licensed under Health and Safety Code Chapter 241 that closed within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection.

3. A hospital exempt from licensure under Health and Safety Code Chapter 241;
4. A mobile, transportable, or relocatable unit, as defined in 25 TAC § 133.166, that otherwise complies with that section;
5. A nursing facility or other institution licensed under Health and Safety Code Chapter 242 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;
6. An ambulatory surgical center licensed under Health and Safety Code Chapter 243 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;
7. An assisted living facility licensed under Health and Safety Code Chapter 247 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;
8. A freestanding emergency medical care facility licensed under Health and Safety Code Chapter 254 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection;
9. A mental hospital licensed under Health and Safety Code Chapter 577 either currently or within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection; or
10. An outpatient facility operated by the hospital, either currently or within the past 36 months.

HHSC retains the right to approve or disapprove a request to use one of these sites. Hospitals should e-mail HHSC with the following information if they plan to provide inpatient care at one of these off-site locations:

Hospital Name

Hospital License Number

Off-site Facility Name

Off-site Facility Address

Off-site Facility Status (open or closed)

Original Off-site Facility Designation (nursing facility, ambulatory surgical center, etc.)

Description of Plan for Offsite Facility

Contact us

Husch Blackwell continues to monitor the evolving COVID-19 public health emergency and its implications for healthcare providers. Should you have any questions, please do not hesitate to contact Eric Weatherford, Joe Geraci or your Husch Blackwell attorney.

COVID-19 resources

Husch Blackwell has launched a COVID-19 response team providing insight to businesses as they address challenges related to the coronavirus outbreak. The page contains programming and content to assist clients and other interested parties across multiple areas of operations, including labor and employment, retailing, and supply chain management, among others. Additionally, you can subscribe to our Healthcare Law Insights blog for the latest news on COVID-19 and other timely topics.

John Gramlich, law clerk, was a contributing author of this content.