
MEMORANDUM

April 6, 2020

To: Governors' Offices
From: Bill McBride, Executive Director
Re: Gubernatorial Strategies for Health Care Workforce and Facility Capacity

Updated on April 6

COVID-19 is posing a serious threat to the nation's health care workforce. As cases continue to rise, there will be increasing demand and strain on the health care workforce in each state. Some states are already thinking creatively about expanding the available workforce as hospital beds are filled and health care workers are at capacity; other states are now preparing for the surge that will come in the next weeks or months. Furthermore, health care workers are at a higher risk of contracting the virus and requiring quarantine, meaning additional surge capacity may be needed to make up for lost capacity.

In responding to COVID-19, there are several strategies that governors can deploy to maximize the capacity of the health care workforce in hospitals, nursing facilities, and at home to meet increasing demand. It is critical that state policies, health systems, and providers themselves are equipped to take precautionary measures to reduce risk of infection and ensure adequate supports for this finite and overstretched workforce.

Considerations for Governors:

Governors interested in increasing the capacity of their health care workforce may consider:

- ✓ [Expanding access to out-of-state licensed health care providers and telehealth](#)
- ✓ [Ensuring appropriate liability protections for health care workers working across state lines and for volunteers](#)
- ✓ [Maintaining and increasing the number of providers by easing in-state licensure requirements](#)
- ✓ [Expanding the pool of clinical and non-clinical health care workers by authorizing extensions to scope of practice for reimbursable services, reducing supervisory requirements, providing reimbursement to providers serving in new capacities, letting providers practice at the top of their license, and credentialing veterans and foreign trained providers](#)
- ✓ [Expanding medical facility and testing capacity by temporarily loosening licensure and reimbursement requirements for facilities](#)
- ✓ [Ensuring that individuals who provide health care services outside of the hospital including health and personal aide services in the home as well as EMS are deemed essential and supported alongside the rest of the health care workforce](#)
- ✓ [Protecting the safety of health care workers and patients with extra precautions by cancelling non-urgent elective procedures, and prohibiting visitors and nonessential personnel from going to health care facilities, except for maternity and end-of-life care](#)
- ✓ [Recruiting retired or inactive providers and volunteers](#)
- ✓ [Providing child care options for the health care workforce](#)
- ✓ [Mobilizing students in the COVID-19 response by recruiting them as volunteers or by temporarily modifying clinical and licensure requirements](#)

Considerations for Governors

Governors interested in increasing the capacity of their health care workforce may consider:

Expanding access to out-of-state licensed health care providers and telehealth. Each state has unique licensing requirements for health care providers, including state-specific processes, fees, and qualifications to practice. By waiving such requirements and allowing providers to practice across state lines, practitioners can more easily support areas with increased demand for medical care. In addition, through telehealth, providers can render services while maintaining social distancing, support patients in under resourced areas, and maintain continuity of care for existing patients who may temporarily be out of state (see NGA [telehealth memo](#) for additional information).¹

In response to COVID-19, nearly all states have taken at least some action related to licensure, reciprocity, and credentialing of health care providers to leverage more health care workers in responding to increased health care demand within and across states. The Federation of State Medical Boards (FSMB) is maintaining a [table](#) of states that have waived licensing requirements in response to COVID-19.

Ensuring appropriate liability protections for health care workers working across state lines and for volunteers. States should consider providing liability and insurance protections for health professionals regardless of the state in which they are practicing, absent areas such as negligence, willful misconduct, or gross misconduct. Each state has unique statutory authorities invoked through emergency declarations and emergency orders. Some emergency authorities activate liability protections.

The Coronavirus Aid, Relief and Economic Security Act (CARES), [legislation](#) signed by the president on March 27, includes federal liability protections for volunteer health care professionals working within their scope of practice providing medical services related to the COVID-19 emergency response. The protections only apply to services related to COVID-19 with exceptions for certain inappropriate behaviors. The law preempts state authority unless states provide greater protections.

- Governor Carney of [Delaware](#) released an executive order recruiting out-of-state and retired providers, and limiting their liability. The order categorizes these providers as public employees, which protects them from liability as long as they are not found to be grossly negligent.
- The [Louisiana Emergency Powers Act](#) allows the governor to declare a public health emergency, during which time “any health care providers shall not be found civilly liable for causing the death of, or, injury to, any person or damage to any property except in the event of gross negligence or willful misconduct.”
- Governor Cuomo of New York released an [executive order](#) which makes physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered professional nurses and licensed practical nurses immune from liability with the exception of injury or death caused by gross negligence.

¹ While Section 1135 waivers allow the Centers for Medicare & Medicaid Services (CMS) to temporarily waive the requirement that out-of-state providers be licensed in the state where they provide services when they are licensed in another state, this waiver applies to Medicare and Medicaid reimbursement but not to state licensing requirements. Therefore, states must take additional actions to address licensing.



- When states invoke the [Emergency Management Assistance Compact](#) (EMAC) they benefit from a multi-disciplinary mutual aid compact whereby, upon gubernatorial activation, they may receive assistance from other states. Health care providers activated as part of EMAC are considered agents of the state for purposes of tort liability and immunity.
- Eighteen states and the District of Columbia participate in the [Uniform Emergency Volunteer Health Practitioner Act](#) which gives automatic reciprocity to other states' licensees upon declaration of an emergency for volunteers who register before or during an emergency.

The Association for State and Territorial Health Officials (ASTHO) has a [fact sheet](#) addressing immunity issues in emergencies and the Network for Public Health Law (Network) provides a [table](#) of liability protections in non-emergencies and emergency periods. Both documents address the Public Readiness and Emergency Preparedness Act ([PREP Act](#)) which addresses immunity protections during a declared emergency related to administration or use of countermeasures as well as the [Volunteer Protection Act of 1997](#), which provides liability protections to certain licensed or credentialed volunteers. The Network also maintain a frequently asked questions [document](#) regarding crisis standards of care and provider liability, including relevant federal and state statutes and some examples.

Maintaining and increasing the number of providers by easing in-state licensure requirements.

Health care providers generally must meet a number of requirements to maintain their licenses and credentials to serve patients in the state in which they operate. In response to COVID-19, states may consider re-activating providers whose licenses may have lapsed (such as retired physicians or nurses), extending deadlines for those who may not have completed continuing education hours, and expanding credentialing to allow providers to practice in multiple facilities.

A significant number of states have taken actions to reduce administrative barriers to maintain and increase the number of a broad range of health care providers. Examples include:

- Florida's Surgeon General Rivkees issued an [emergency order](#) allowing emergency medical personnel to obtain training via live videoconferencing or simulation with approval of the medical director of the program.
- Illinois's Department of Financial and Professional Regulation issued a [Grant of Variance](#) to relax requirements for continuing education across licensed professions and allow for distance education to fulfill continuing education licensing requirements.
- Massachusetts Governor Baker signed an [executive order](#) requiring emergency credentialing for facilities operated by the Massachusetts Department of Health and the state's medical board passed a [provision](#) to accelerate licensing of medical school graduates should facilities require additional doctors quickly. Also, Massachusetts' Board of Medicine approved a [measure](#) that allows physicians credentialed at one hospital to practice at any hospital in the state without additional credentialing.
- Michigan Governor Whitmer issued an [executive order](#) temporarily allowing individuals to renew licenses regardless of whether they have satisfied continuing education requirements.

Expanding the pool of clinical health care workers by authorizing extensions to scope of practice for reimbursable services, reducing supervisory requirements, letting providers practice at the top of their license, and credentialing veterans and foreign trained providers. Because of the surge in demand, health care institutions need to maximize existing resources. By extending scope of practice and letter providers practice at the top of their license, advance practice registered nurses (APRNs), physician's assistants (PAs), pharmacists, respiratory therapists, and others can extend capacity. In addition, states may consider identifying strategies to credential recently transitioned veterans who hold



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military medical certifications to have the equivalent civilian certifications and recruit foreign trained providers.

Examples of recent state action include:

- California Governor Newsom issued an [executive order](#) to permit the director of Emergency Medical Services to issue expansion of scope of practice for emergency medical services workforce without consulting local committees.
- Governor DeSantis in Florida signed [legislation](#) allowing pharmacists to enter into agreements with physicians to treat chronic diseases such as arthritis, asthma, HIV/AIDs, obesity and others while also freeing up time for physicians to put more focus on infectious disease including COVID-19.
- Massachusetts Governor Baker issued an [executive order](#) expanding scope of practice for medical residents to allow provision of critical services under supervision. In addition, the Commissioner of Public Health issued an [order](#) allowing certain licensed pharmacists to make hand sanitizer to address state shortages.
- Governor Whitmer of Michigan signed an [executive order](#) which addresses a range of scope of practice issues including temporarily suspending several supervision and delegation requirements for individuals providing services in health care facilities. Examples include permitting registered nurses and licensed practical nurses to collect throat or nasopharyngeal swabs in order to test individuals suspected of having a COVID-19 infection and allowing licensed pharmacists to provide care for routine health maintenance, chronic disease states, or similar conditions, as appropriate to the professional's education, training, and experience, without physician supervision and without criminal, civil, or administrative penalty related to a lack of such supervision.
- Governor Murphy of New Jersey released an [executive order](#) which authorizes the Division of Consumer Affairs to grant temporary licenses to physicians with a license in other countries.

Expanding medical facility and testing capacity by temporarily loosening licensure and reimbursement requirements for facilities (including restrictions on the types of services, limits on numbers of beds per facility, and limits on length of stay) and temporarily eliminating requirements that would otherwise prohibit the establishment of alternative locations for testing and treatment (such as Certificate of Need laws). As emergency rooms and hospitals reach capacity to serve patients, states have opportunities to expand the types of facilities that can serve patients. For instance, states are establishing field hospitals and other sites of care for a broader range of urgent elective procedures or as testing, triage and treatment for COVID-19. States also may consider expediting credentialing requirements for health care facilities and leniency with reporting and other requirements. Examples of state action include:

- Florida Emergency Management Director Moskowitz [announced](#) that Florida is setting up three field hospitals in the state. In addition, Director Moskowitz is also [working](#) with the federal government to determine if there is capacity to add U.S. Navy Mercy-Class ships at Florida ports.
- Louisiana Governor Edwards [requested](#) support from the Veterans Administration for permission to send patients to a VA hospital due to potential capacity concerns at the state's medical facilities.
- An Ohio hospital is setting up a [mobile testing](#) and monitoring unit outside of the hospital to reduce spread and preserve room inside of the hospital for those who need long term treatment.
- South Carolina Governor McMaster issued an [executive order](#) suspending enforcement of certificate of need regulations to expedite treatment.



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- Officials in King County, Washington indicated on their [website](#) that they are working on approvals to build infrastructure on a soccer field as the location of an assessment and recovery center for people exposed to or recovering from COVID-10, which is anticipated to have 200 beds. The county is already using at least one motel as a quarantine center.

In implementing Section 1135 waiver authorities, CMS issued [guidance](#) dated March 13 that addresses the waiver of the limit of 25 acute-care inpatient beds and length of stay limitations for Medicare reimbursement. On March 22, CMS [announced](#) it is granting exceptions from reporting requirements and extensions for clinicians and providers participating in Medicare quality reporting programs with respect to upcoming measure reporting and data submission for those programs. States may request similar and additional flexibilities regarding facility and reporting requirements under Section 1135 waivers from CMS.

Ensuring that individuals who provide health care services outside of the hospital including health and personal aide services in the home as well as EMS are deemed essential and supported alongside the rest of the health care workforce. In addition to health care providers located in hospitals and other professional care settings, individuals who provide care in a person’s home (personal aides, home health workers, hospice providers, and visiting nurses) or in the field represent a critical component of the health care workforce, often providing life sustaining services to individuals with disabilities and older adults. Inclusion of this group as essential would extend to providing access to testing services for COVID-19 as well as ensuring these individuals have access to PPE when needed. The Department of Homeland Security’s Cybersecurity and Infrastructure Agency (CISA) issued [guidance](#) regarding the essential critical infrastructure workforce and many essential orders incorporate the guidance by reference or cite to it. The guidance, however, references home health workers in facilities and does not specifically address personal care workers or others working in a home setting. Some states have taken specific action to define these workers as essential. For example:

- California Governor Newsom issued an [executive order](#) directing residents to stay in their homes with exemptions for individuals needed to maintain continuity of operations of the federal critical infrastructure sectors, with a [list](#) of essential personnel that includes “workers who provide support to vulnerable populations to ensure their health and well-being including family care providers.”
- New York Governor Cuomo issued an [executive order](#) with [guidance](#) on essential workers, which includes “the care, protection, custody and oversight of individuals both in the community and in state-licensed residential facilities; those operating community shelters and other critical human services agencies providing direct care or support.”
- Oklahoma Governor Kevin Stitt issued an [executive order](#) that directs all licensed health workers providing services both in and out of hospitals to be deemed essential. Governor Stitt also declared a public health emergency, which allows EMS workers to enter homes, and also notifies them if a patient is infected with COVID so they can be sure to be prepared with PPE.

Protecting the safety of health care workers and patients with extra precautions by cancelling non-urgent elective procedures, prohibiting visitors and nonessential personnel from going to health care facilities, except for maternity and end-of-life care. In responding to COVID-19, several governors issued orders requiring the cancellation of all elective and non-essential medical, surgical and dental procedures to maintain the availability of hospital beds, personnel and personal protective equipment (PPE) for those who need it the most. In addition, many individuals typically visit family members and loved ones in health care settings. While important for morale and emotional support, such visits can increase the risk of disease transmission between patients and visitors. Further, health care



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providers are at increased risk of infections based on their high rate of interaction and physical proximity with patients, especially in light of the shortage of PPE. States can identify strategies such as leveraging emergency medical services (EMS) and mobile integrated health so that patients with non-emergent diagnoses and symptoms are treated at home.

- Alabama Governor Ivey issued a [statewide health order](#) requiring that all Hospitals and Nursing Home/Long Term Care Facilities (including Assisted Living and Specialty Care Assisted Living Facilities) prohibit visitation by all visitors and nonessential health care personnel, except for certain situations such as maternity and end-of-life.
- Many states, including [Arizona](#), [Colorado](#), [Iowa](#), [Massachusetts](#), [Michigan](#), [Minnesota](#), [Ohio](#), [Oregon](#), and [Washington](#) have taken actions to restrict elective and non-essential medical, surgical and dental procedures.
- California Governor Newsom of California issued an [executive order](#) directing state health and social service agencies to redirect funding and staff to residential and non-residential facilities licensed by the state, focusing on providing technical assistance and supporting compliance with core health and safety requirements for caregivers and recipients of care.
- Indiana Governor Holcomb [ordered](#) hospitals, clinics, and mental health facilities to screen staff and visitors for temperature and potential symptoms of the virus.
- Massachusetts' Department of Public Health (MDPH) issued an [emergency waiver](#), stating that if an EMS worker determines that someone is positive for COVID-19, the EMS worker has the option not to transport certain patients to the hospital if their symptoms can be managed at home or outside of an emergency setting. In addition, (MDPH) is streamlining the application process, expediting application reviews, and waiving fees for [MIH](#) programs on a temporary basis.
- Local health officials in [New York](#) are activating and dispatching strike teams to homes testing individuals deemed high risk because they have been in close contact with someone who tested positive for COVID-19.
- Texas Governor Abbott issued an [executive order](#) banning visitation of nursing homes or retirement or long-term care facilities unless to provide critical assistance.

Recruiting retired or inactive providers and volunteers By recruiting retired or inactive providers to provide health care services, states can expand the health workforce. States should consider how to optimize expertise of high-risk volunteers and retirees to minimize risk to their health. Also, by training and leveraging non-licensed professionals such as community health workers, administrative staff, and volunteers to help enforce guidelines in the emergency room, ensuring caregivers focus on their safety, perform data entry, manage checklists for protective equipment, and even do screenings, clinicians with more highly specialized skills can practice at the top of their license.

- Iowa Governor Reynolds issued a state of [public health disaster emergency](#) suspending regulatory provisions to allow inactive or lapsed providers to practice medicine, nursing, respiratory care, and physician assistant services.
- New York's Department of Health created an [online Health Professional Survey](#) to recruit qualified health professionals, including retirees, to supplement hospital capacity on a temporary basis. In addition, the New York Education Department Office of the Professions [posted on their website](#) that they will grant an adjustment to all licensees to complete up to 100% of the continuing education as self-study, as long as it is taken from a Department-approved provider and is in an acceptable subject area for the specific profession.
- The Idaho Medical Board announced a [temporary suspension](#) of rules which allow retired and inactive physicians and physicians assistants who have actively practiced within the last five



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years and have held a license in good standings from ID or another state at time of retirement or inactivity.

- Virginia’s Medical Reserve Corps is [recruiting](#) medical and non-medical volunteers to help with outreach, screening, transportation, and administrative duties
In Washington, The University of Washington School of Medicine [recruited](#) volunteers for opportunities requiring no prior experience from throughout the university to serve as screeners, “doctors” or PPE partners who support clinical staff exiting a room by reading off checklists while clinicians remove PPE, housekeeping assistants, patient transporters, and data entry support.

The Federation of State Medical Boards is maintaining a [table](#) of states expediting licenses for retired physicians.

Providing child care options for the health care workforce. Many health care workers have children at home who require ongoing care, especially given the current school and child care facility closures. Strategies may entail establishing child care options for essential workers and/or relaxing certification or other requirements on childcare providers to allow for the development of these options. Examples of state action include:

- Colorado Governor Polis [established](#) the Colorado Emergency Childcare Collaborative, which will create a system of emergency childcare for essential workers, including health care and public safety workers. Colorado also [established](#) an emergency childcare program, where essential workers can receive free child care through a 100% tuition credit.
- Delaware Governor Carney issued an [executive order](#) to allow flexibility to provide child care options for Delaware families and health care workers.
- Maryland Governor Hogan signed an [emergency order](#) to relax child care regulations to expand access for critical personnel during the state of emergency. The order ensures that child care services are available for providers of health care, emergency medical services and law enforcement personnel.

Mobilizing students in the COVID-19 response by recruiting them as volunteers or by temporarily modifying clinical and licensure requirements. As universities and other training institution campuses are closing, students in health professional fields can be deployed to aid in response. If there is sufficient PPE, these future health care professionals can serve as critical to the workforce, especially as strain on the existing workforce builds due to long hours and the high risk of providers getting sick. Further, these opportunities can be used to help students meet clinical hour requirements to maintain the health workforce pipeline. Health professional boards have opportunities to work with higher education institutions and accreditation bodies to modify requirements to help students complete their training and begin practicing in their field.

- Governor Hogan of [Maryland](#) and the Maryland Department of Health are working with state Universities to recruit medical, nursing, and medical technician students for the [Maryland Responds Medical Corps](#).
- The Mississippi Board of Nursing is issuing temporary [emergency permits](#) to graduates of approved schools of nursing before they pass the NCLEX exam and are officially licensed.
- The New Jersey Health Commissioner is working with the [New Jersey State Nurses Association](#) to recruit nurses by allowing nursing students in their final semester who cannot return to school to earn credits by helping with COVID-19 response.



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- Governor Cuomo of New York released an [executive order](#) which authorizes any health care facility to allow students to volunteer at the facility for educational credit, if a student has secured a placement as if under a clinical affiliation agreement.
- Oregon’s Board of Nursing has temporarily authorized [nursing students](#) and [nursing assistant students](#) to complete certain required student training hours through different vehicles such as online courses, simulations, remote access, webinars, and self-study.

Federal Resources

HHS Secretary Azar released a [Letter](#) to Governors on March 24 regarding the health care workforce (with enclosed [Guidance to States](#)) including eight recommended strategies for states.

CMS released [recommendations](#) dated March 18 to delay non-essential procedures in an effort to preserve PPE, beds, and ventilators for facilities as well as to free up health care workers to treat patients with COVID-19.

States also may consider using new Department of Labor [National Health Emergency Dislocated Worker Grants](#) to quickly train non-health care workers who are unable to work in their previous capacity to fill new roles. In addition, for states receiving grants, consider asking funders for permission to have grant-funded individuals perform non-grant related work (both clinical and well as non-clinical employees).

Other Resources

Several national associations are tracking state actions related to scope of practice. The following organizations are maintaining tables of state actions for health professionals regarding licensure and scope of practice issues.

- The National Association of State Boards of Nursing is maintaining a [table](#) including states that participate in the nurse licensure compact, provider emergency licensing waivers, and state authorities.
- The National Association of State Boards of Pharmacy is maintaining a [table](#) of state actions affecting pharmacists.
- The American Association of Nurse Practitioners (AANP) is maintaining an [interactive map](#) of temporary suspensions and waivers of practice agreement requirements.
- The American Association of Physician’s Assistants plans to post an interactive map later this week

The American Medical Association posted a [summary](#) of liability protections for health care professionals during COVID-19.

The George Washington University Fitzhugh Mullan Institute for Health Workforce Equity is hosting a [webinar series](#) related to emergency health workforce policies to address COVID-19

The Health Workforce Technical Assistance Center at SUNY posted a [research brief](#) entitled: Policies to Encourage Rapid Expansion and Making Better Use of New York’s Health Workforce

The University of Washington Center for Health Workforce Studies released a [Rapid Response Brief](#) entitled: The Respiratory Therapist Workforce in the U.S.: Supply Distribution, Education Pathways, and State Responses to Emergency Surges in Demand.



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For questions or concerns related to the contents of this memo, please contact NGA staff:

- *Lauren Block* (lblock@nga.org; 202.641.4226)
- *Hemi Tewarson* (htewarson@nga.org; 301.237.6812)
- *Kelsey Ruane* (kruane@nga.org; 443-253-0341)



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