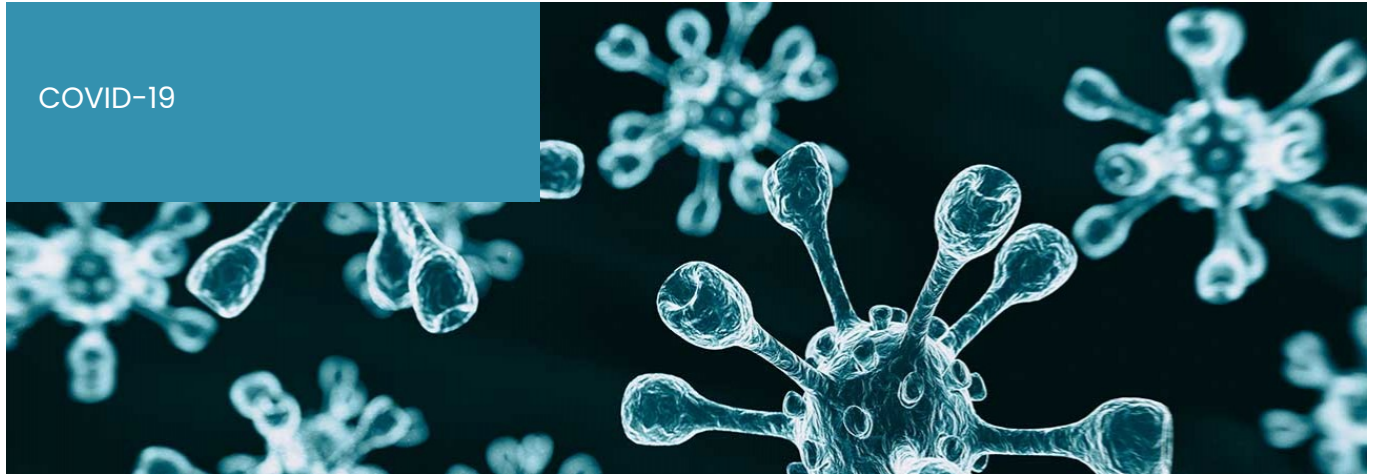


COVID-19



CORONAVIRUS: KANSAS GOVERNOR ISSUES EXECUTIVE ORDER SUSPENDING SUPERVISION REQUIREMENTS FOR PHYSICIAN ASSISTANTS AND NURSE PRACTITIONERS

April 28, 2020

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Foulston has produced a series of issue alerts as we continue to monitor the evolving COVID-19 situation and provide additional guidance. Please find all updates and our latest resources available [here](#).

On Wednesday, April 22, 2020, Kansas Governor Laura Kelly issued an Executive Order designed to loosen certain restrictions on healthcare professionals. Healthcare professionals and licensed healthcare facilities should carefully evaluate the provisions in Executive Order 20-26 before implementation. Although the provisions will give providers and facilities more latitude in their ongoing efforts to respond to the COVID-19 pandemic, there may be some unintended consequences if they do not plan accordingly.

DESIGNATED HEALTHCARE FACILITIES

This Order covers virtually all types of provider entities. “Designated healthcare facilities” include:

- State-owned surgical centers;
- State-operated hospitals and veterans’ facilities;
- Adult care homes;
- Other locations designated by the governor or the Kansas Department of Health and Environment to exclusively treat COVID-19 patients; and
- Entities listed in K.S.A. 40-3401(f) of the Kansas Health Care Provider Insurance Act, which include medical care facilities licensed by the state of Kansas (e.g., **hospitals, ambulatory surgical centers**, and recuperation centers); **nursing facilities, assisted living facilities**, residential healthcare facilities, mental health centers, and mental health clinics licensed by the state of Kansas; professional corporations, partnerships, limited liability companies, and not-for-profit corporations created or organized for the purpose of rendering professional services by defined healthcare providers (e.g., **physician practices**).

SUSPENSION OF SUPERVISION REQUIREMENTS

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Governor Kelly suspended all provisions in the Kansas statutes relating to the supervision, delegation, and related issues to the extent necessary to allow healthcare professionals to provide medical services necessary to support a designated healthcare facility's COVID-19 response. The Order specifically permits the following:

- Physician assistants may provide medical services without a written practice agreement with a physician;
- Advanced practice registered nurses may provide care without a written collaborative agreement and protocols, including nurse anesthetists providing medical services without physician supervision;
- Registered nurses and licensed practical nurses may collect throat or nasopharyngeal swab specimens for COVID-19 testing without supervision;
- Licensed practical nurses may provide medical services without registered nurse supervision;
- Licensed pharmacists may provide care for routine health maintenance, chronic disease states, or similar conditions without physician supervision; and
- Registered nurses or licensed practical nurses holding licenses which are exempt, inactive, or have lapsed within the past five years may provide services without penalty related to only having an exempt, inactive, or lapsed license.

The services outlined above may be performed at a designated healthcare facility where the professional is employed or contracted to work. All such services performed without supervision should be consistent with the professional's education, training, and experience, and in consultation with the facility's medical leadership. We recommend maintaining appropriate documentation of the professional's education, training, and experience. If the designated healthcare facility usually credentials physician assistants or nurse practitioners, this process should continue to be followed. Credentialing and privilege delineation may need to be updated to reflect the professional's authority to practice without supervision during the COVID-19 pandemic.

ADDITIONAL SUPPORT

The Order also permits designated healthcare facilities to define certain classes of individuals to provide services to support the facility's response to the COVID-19 pandemic. Designated healthcare facilities may:

- Allow students enrolled in programs (i.e., resulting in the student becoming licensed, registered, or certified upon completion of the program) to volunteer or work within the facility in roles necessary to support the facility's response to the COVID-19 pandemic;
- Allow licensed, registered, or certified healthcare professionals and emergency medical personnel serving in the military in any duty status to volunteer or work within the facility in roles necessary to support the facility's response to the COVID-19 pandemic; and
- Allow medical students, physical therapists, and emergency medical personnel to volunteer or work in the facility as "respiratory therapist extenders" under the supervision of physicians, respiratory therapists, or advanced practice registered nurses. The extenders may assist in the operation of ventilators or related devices. These extenders may also provide other services necessary to support the facility's response to the COVID-19 pandemic.

Again, the services outlined above should be consistent with the individual's education, training, and experience, and in consultation with the facility's medical leadership. We encourage facilities to maintain appropriate documentation supporting the individual's education, training, and experience. Additionally, facilities should consider what supervision, if any, would be appropriate for individual's providing the services outlined above.

BILLING AND REIMBURSEMENT CONSIDERATIONS

Although the Governor's suspension of supervision requirements will enable designated healthcare facilities flexibility in their response to COVID-19, providers must consider potential billing and reimbursement ramifications

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that may result. Government and commercial payors may require supervision as a condition of payment. Payors may not reimburse providers for services performed by students. Providers should consult their payor contracts to verify supervision requirements and the impact, if any, on their ability to bill for services provided by unsupervised physician assistants, nurse practitioners, and students.

LICENSURE

The Order also removes certain restrictions on the licensure of healthcare professionals to allow more leniency regarding the licensing of out-of-state healthcare providers and for those healthcare professionals with licenses that have lapsed within the last five years.

Healthcare professionals licensed and in good standing in any state or territory in the United States may now practice in Kansas for the duration of the Order. Licenses which have been suspended, revoked, or have a pending disciplinary action are not considered in good standing, and any license subject to a limitation in another state will be subject to the same limitation in Kansas.

Additionally, provisions requiring examinations, fingerprinting, continuing education, or payment of a fee within five years of a lapsed license are suspended and altered during the Order.

We advise facilities to maintain documentation related to their use of out-of-state healthcare providers. Facilities should collect information regarding the out-of-state professional's education, training, and experience. Facilities must verify the professional is in good standing in the state where he/she is licensed and maintain documentation to support the verification was completed. These professionals should go through the same credentialing and privileging process as any other healthcare professional. The use of out-of-state professionals may necessitate amendments to certain facility policies and organizational documents (e.g., Medical Staff Bylaws).

For more information regarding the provisions summarized in this Alert and other opportunities provided by this Order, providers should review Executive Order 20-26 here.

The COVID-19 pandemic has placed an unprecedented strain on the healthcare system, but the provisions in this Executive Order will allow providers more resources and flexibility in combating the situation and providing patient care. Foulston Siefkin is proud to support you in your efforts to respond to and conquer this challenging situation.

FOR MORE INFORMATION

If you have questions or want more information regarding Gov. Kelly's executive order, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity to work with you to meet your specific business needs. Foulston's healthcare lawyers maintain a high level of expertise regarding federal and state regulations affecting the healthcare industry. At the same time, our healthcare practice group's relationship with Foulston's other practice groups, including the taxation, general business, labor and employment, and commercial litigation groups, enhances our ability to consider all of the legal ramifications of any situation or strategy. For more information, contact **Brooke Bennett Aziere** at 316.291.9768 or baziere@foulston.com or **Lisa Brown** at 785.354.9414 or lbrown@foulston.com. For more information on the firm, please visit our website at www.foulston.com.

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PRACTICE AREAS

- Healthcare