

Waivers for Retired or Out of State Healthcare Practitioners to Volunteer to Practice Medicine in California and CMS's Announcement Suspending Rules to Permit Practitioners to Provide Telehealth Services Across State Lines

During this health emergency, we have seen selfless healthcare practitioners place themselves directly on the front line to ensure the health and safety of the general population. These practitioners are not limited to those with active licenses. A tremendous number of practitioners have come out of retirement or from out of state to volunteer during the COVID-19 pandemic.

Following the Executive Order ([Executive Order N-39-20](#)) by Governor Newsom on March 30, 2020 authorizing the Director of the Department of Consumer Affairs (DCA) to cooperate with healthcare licensing boards, including the Medical Board of California and the Osteopathic Medical Board of California, to waive certain professional licensing requirements and develop a process to reinstate licensees with inactive and retired licenses who wish to provide care during this pandemic. The list of DCA waiver, and the requirements to apply for each type of waiver, is being continuously updated (https://www.dca.ca.gov/licensees/dca_waivers.shtml).

Moreover, on April 9, 2020, the Centers for Medicare & Medicaid Services (CMS) announced that it was placing a temporary suspension on rules to permit physicians to provide telehealth services across state lines and midlevel practitioners to provide much care as their state licenses allow. While the announcement did not address whether these suspensions override state law, CMS did state that, as an agency, it "sets and enforces essential quality and safety standards for the nation's healthcare system that supplement State scope-of-practice and licensure laws for healthcare workers. CMS has continuously examined its regulations to identify areas where Federal requirements may be more stringent than State laws and requirements. The change CMS is announcing today will ensure that healthcare facilities across the national can expand their staffs and organize them in the most efficient way possible to handle the incoming surge of COVID-19 patients." To date, however, CMS has not officially changed its regulations to allow physicians to provide telehealth consultations in states where they are not licensed.

As a result of CMS's temporary suspension:

- Doctors can now directly care for patients at rural hospitals, across state lines if necessary, via phone, radio, or online communication, without having to be physically present. Remotely located physicians, coordinating with nurse practitioners at rural facilities, will provide staffs at such facilities additional flexibility to meet the needs of their patients.
- Nurse practitioners, in addition to physicians, may now perform some medical exams on Medicare patients at skilled nursing facilities so that patient needs, whether COVID-19 related or not, continue to be met in the face of increased care demand.
- Occupational therapists from home health agencies can now perform initial assessments on certain homebound patients, allowing home health services to start sooner and freeing home-health nurses to do more direct patient care.
- Hospice nurses will be relieved of hospice aide in-service training tasks so they can spend more time with patients.

The following is a link for the most up to date list of waivers:

<https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>

In addition to the temporary suspension above, CMS has also temporarily:

- Permitted physicians whose privileges will expire to continue practicing at a hospital, and allowed new physicians to begin working prior to full hospital medical staff/governing body review and approval.
- Lifted regulatory requirements regarding hospital personnel qualified to perform specific respiratory care procedures, allowing these professionals to operate to the fullest extent of their licensure;
- Waived federal minimum personnel qualifications for clinical nurse specialists, nurse practitioners, and physician assistants so they can work at rural hospitals as long as they meet state licensure requirements, allowing for maximum staffing flexibility at such facilities
- Allowed physicians and non-physician practitioners to use telehealth technology to care for patients at long-term care facilities, rather than having to treat patients there in person.

- Waived certain training and certification requirements for nurse's aides at long term care facilities, to help address potential staffing shortages during the pandemic;
- Waived paperwork requirements so that hospital doctors can use more verbal, rather than written medical orders.

Physicians and other healthcare providers should be further aware that, during this state of emergency, both California law and Federal law currently provide a broad base of liability protection, however, each situation should be analyzed based on facts specific to a particular provider to determine whether immunity applies. For instance, under California law, physicians and other health providers, including respiratory care practitioners and nurses, are generally immune from liability for injuries stemming from medical care and treatment during a state of emergency; however, such immunity does not apply in the event of a willful act or omission. Similarly, the U.S. Department of Health and Human Services issued a "Notice of Declaration under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19" (<https://www.phe.gov/Preparedness/legal/prepact/Pages/COVID19.aspx>) which provides immunity from suit and liability under state and federal law for certain actions in relation to COVID-19.

Opportunity to Volunteer to Provide Emotional Support to Physicians Impacted by the Pandemic without Practicing Medicine

If physicians and nurses, active, retired or inactive, are interested in volunteering during this pandemic to provide mental and emotional support to their colleagues, the California Medical Association's Wellness Program (CMA Wellness) is organizing volunteers to serve as remote peer care coaches.

CMA Wellness launched the Care 4 Caregivers Now program, which focuses on practitioners' mental and emotional well-being. Coaching sessions are not considered practicing medicine and are conducted remotely. To learn more about the training program or to volunteer, please see the following link: <https://www.cmadoes.org/wellness/care4caregivers>.

For more COVID-19 related legal updates, please consider [subscribing to our COVID-19 Task Force Newsletter](#).

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