

PUBLICATION

Coronavirus: Executive Order Relaxes Regulatory Requirements on Health Care Facilities, Physicians, and Pharmacists in Georgia

March 23, 2020

On March 20, 2020, Georgia Governor Brian Kemp issued an Executive Order "Reducing Regulations to Assist the State's Response to the Spread of COVID-19" (the Order). The purpose of the Order is to reduce "certain restrictions on the State's health care system." In the Order, the Governor exercised his power under the "Emergency powers of Governor" statute (O.C.G.A. § 38-3-51(d)(1)) to suspend any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, and regulations of any state agency, if strict compliance would interfere with necessary action in addressing the Public Health Emergency presented by COVID-19. This Order directs three important Georgia health care agencies in the state (the Georgia Composite Medical Board, the Georgia Board of Pharmacy, and the Georgia Department of Community Health) to relax and/or eliminate a variety of requirements related to the provision of health care during the emergency.

Under the Order, the Georgia Composite Medical Board must immediately draft and adopt emergency rules to provide telemedicine licenses to out-of-state physicians pursuant to the "Telemedicine licenses; out-of-state physicians" statute (O.C.G.A. § 43-34-31.1). Similarly, the Georgia Board of Pharmacy is authorized to grant temporary Georgia licenses to pharmacists who are currently licensed in good standing in another state. Further, the Order permits all licensed Georgia pharmacists to dispense early prescription refills and to dispense a 90-day supply of a prescription drug when a patient has no refills remaining and the pharmacist is unable to contact the issuing practitioner (Note: these authorizations do not apply to Schedule II controlled substances).

Most significantly, the Order authorizes and directs the Georgia Department of Community Health (the DCH) to implement the suspension of DCH's enabling statute (O.C.G.A. § 31-2-7) as well as the "Certificate of need required" (CON) statute (O.C.G.A. § 31-6-40) to reduce the administrative burden on health care facilities and the state, and to permit capable facilities to expand capacity, offer services, or make expenditures necessary to assist with the Public Health Emergency presented by COVID-19. By authorizing and directing the suspension of these statutes, it appears that the Governor intends for DCH to relax certain state health care facility regulatory requirements. Thus, once DCH complies with the Governor's Order, health care facilities should be able to make expenditures and offer more services that the community desperately needs during the Public Health Emergency presented by COVID-19, without the burden of obtaining a new CON.

Further, the Order authorizes and directs the Commissioner of DCH or his designees to waive any additional rules and regulations that would prevent, hinder, or delay necessary action in assisting, aiding, or coping with the Public Health Emergency presented by COVID-19. Also, DCH will be requiring health care facilities and providers to report any action they take to assist, aid, or cope with the emergency.

The Order is directed primarily to the state agencies listed above which regulate health care, not institutional health care facilities permitted to operate by DCH under the "Permits to operate required; application; issue" statute (O.C.G.A. § 31-7-3). Additionally, unlike the CON statute, the permitting statute is not specifically mentioned in the Order. Accordingly, the Order's further authorization of DCH to grant rule waivers is critical. Specifically, the Order instructs DCH "to implement waivers of those rules . . . necessary to prohibit the prevention, hindrance, or delay of necessary action to assist or aid in coping with . . . COVID-19." Unless a

waiver applicable to all of a class of permitted institutions is granted by DCH, we read the Order to allow health care facilities to request waivers of health care regulatory rules of DCH. For example, a hospital wishing to add beds above its permitted number of beds or wishing to perform services outside of its licensure permit or CON should request a waiver from DCH.

For assistance in crafting a waiver request to DCH or other advice regarding COVID-19, please call one of the members of our Georgia Health Care Practice.