

CORONAVIRUS INFORMATION & UPDATES

April 15, 2020

Massachusetts COVID-19 FAQs

Throughout the COVID-19 outbreak, Governor Charlie Baker has issued a [series of orders](#) to limit the spread of COVID-19 and to increase the flexibility of health care providers in responding to the outbreak. These include Governor Baker’s declaration of a [state of emergency](#) in the Commonwealth on March 10, 2020, and an [emergency order](#) on March 23, 2020 to close the physical workplaces and facilities of non-essential businesses and advise that individuals stay at home, which was extended, on March 31, 2020, to May 4, 2020.

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In addition to these orders, however, there have been many new updates, emergency rules, and guidance impacting Massachusetts businesses and health care providers in particular. As clients continue to evaluate this new guidance, we have found that a few frequently asked questions have arisen. We address these questions below. These answers include summaries of Governor Baker’s orders, as well as other updates that are pertinent to health care providers, including orders issued by Massachusetts Department of Public Health (“DPH”) Commissioner Monica Bharel.

Because state and local responses to COVID-19 remain fluid, we will continue to monitor these developments and provide updates.

This alert is one of a series of advisories, podcasts and webinars issued by Ropes & Gray on COVID-19 topics. Please check our [Coronavirus Resource Center](#) for additional information concerning developments across the country.

QUESTIONS RELATED TO MASSACHUSETTS ACTIONS IMPACTING HEALTH CARE FACILITIES

1. As a hospital in Massachusetts, are there state regulatory changes or guidance that we should be aware of?

In addition to the changes and guidance relating to licensing, telehealth, and federal payor reimbursement discussed in the section below, hospitals should note that on March 24, 2020, DPH Commissioner Bharel issued an [order](#) waiving Determination of Need (“DoN”) notice requirements in Massachusetts. The order provides that a DoN notice will not be required for any person seeking approval for a Substantial Capital Expenditure, Substantial Change in Service, or Transfer of Site necessary to address COVID-19, as long as the person applying complies with DPH guidance.

DPH Commissioner Bharel also issued an [order](#) on March 24, 2020 exempting hospitals from the nurse staffing requirements of [M.G.L. c. 111, s. 231](#), which requires all intensive care units to have a nurse-to-patient ratio of 1:1 or 1:2 depending on the stability of the patient as assessed by an acuity tool and by the staff nurses in the unit. Per the order, all hospitals licensed by DPH are exempt from the acuity-assessed staffing and nurse-to-patient ratio requirements in intensive care units during the COVID-19 emergency. All facilities must, however, continue to ensure that staffing levels remain adequate to meet patients’ needs, and that staff are trained and competent to meet the needs of their patients.

Up-to-date guidance from DPH is listed [here](#) regarding a number of issues, including allowing asymptomatic health care personnel to work following a known exposure to COVID-19, PPE use optimization and testing requirements (also

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discussed below), implementation of alternative acute inpatient care space, hospital visitor restrictions, and elective procedures.

2. As a pharmacy in Massachusetts, are there state regulatory changes or guidance of which we should be aware?

DPH issued an [order](#) on March 24, 2020 that enables remote processing of prescriptions by pharmacy technicians, garb conservation during periods of shortage, emergency authorization to out-of-state pharmacists to practice in Massachusetts, emergency prescription refills subject to a pharmacist’s professional judgment when a prescriber is unavailable, and central filling of prescriptions. Each of these changes is subject to the DPH’s guidance, which is available [here](#).

In addition, MassHealth has issued several [Pharmacy Facts Sheets](#). Among other modifications and guidance, MassHealth Pharmacy Facts Sheet 142 states that MassHealth is allowing additional exceptions to certain 30-day supply limitations described at 130 CMR 406.411(D) for behavioral health medications and schedule IV benzodiazepines and hypnotics to allow for 90-day supply dispensing, and removing prior authorization requirements for certain drugs. MassHealth Pharmacy Facts Sheet 143 also adopts new policies for prescribing and dispensing chloroquine and hydroxychloroquine without certain prior authorizations.

3. As an academic medical center in Massachusetts, are there state regulatory changes or guidance of which we should be aware?

Governor Baker issued an [order](#) on March 17, 2020 expanding the ability of residents to provide critical services under supervision (i.e., internal moonlighting). In addition, on March 27, 2020, the Baker-Polito Administration [announced](#) that Massachusetts medical schools may facilitate early graduation of their qualified fourth-year students to allow graduates to support the health care workforce during the COVID-19 response. Participating schools include Boston University School of Medicine, University of Massachusetts Medical School, Tufts University School of Medicine and Harvard Medical School. In conjunction with early graduation, the Board of Registration in Medicine will provide medical school graduates who have matched as an intern, resident or fellow with a Board-approved Massachusetts health care facility or training program with Emergency 90-Day Limited Licenses to practice medicine during the COVID-19 emergency.

On April 9, 2020, Governor Baker issued two similar orders to further expand the health care workforce. The first [order](#) allows physicians educated in foreign medical schools to be eligible for licensure if they have completed at least two years of postgraduate medical training in a U.S. or Canadian-accredited program. The second [order](#) allows verified nursing school graduates and students in their final semester of nursing education programs to practice nursing as long as they are employed by a licensed health care facility or licensed health care provider, are directly supervised, and are providing health care services in response to the COVID-19 outbreak.

4. Has Massachusetts provided guidance for other health care organizations or practitioners?

Massachusetts has issued guidance for Advanced Practice Registered Nurses (“APRNs”), Physician Assistants (“PAs”), dentists, long-term facilities and substance addiction service providers.

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DPH issued an [order](#) on March 26, 2020 to provide APRNs in good standing with greater flexibility in their prescribing practices. This includes allowing APRNs who have at least two years of supervised practice experience to prescribe without physician supervision, and authorizing APRNs with fewer than two years of supervised practice experience to prescribe with physician supervision, but without the normally required written guidelines.

DPH also issued an [order](#) on March 18, 2020 enabling the flexible reassignment of PAs. Employers of physician assistants may designate a new supervising physician for the PA as needed to maximize health care provider availability. In addition, a physician may delegate performance of medical services to a PA, and the PA may perform such medical services provided that certain specified conditions are met.

For dentists, DPH and the Board of Registration in Dentistry have issued [guidance](#) strongly recommending that dentists close their offices to patients seeking elective and non-urgent care. The guidance notes, however, that it is expected that dentists will continue to be available as needed for emergency management.

For long-term facilities, DPH issued an [order](#) on March 30, 2020 that certain MassHealth regulations regarding the transfers and discharge of long-term facility residents are now waived for the purposes of moving residents to designated COVID-19 facilities. These include 130 CMR 456.701 through 456.704, and the related fair hearing rules at 130 CMR 610.015 and 610.028 through 610.032.

Finally, for substance addiction service providers, DPH has issued a variety of guidance [here](#). This includes an [alert](#) regarding the use of telemedicine on March 24, 2020 that allows Drug Enforcement Agency-registered practitioners to issue prescriptions for buprenorphine and other controlled substances to patients for whom they have not conducted an in-person medical evaluation, provided that, among other conditions, the telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system.

GENERAL QUESTIONS RELATED TO MASSACHUSETTS ACTIONS IMPACTING HEALTH CARE OPERATIONS

5. Have there been any changes to Massachusetts licensing regulations for health care professionals?

Massachusetts has taken significant actions to relax licensing regulations to enable more medical professionals to help during the COVID-19 emergency.

While Governor Baker and DPH Commissioner Bharel previously issued a series of orders [reactivating retiree licenses](#) and [extending licensure status](#) for various professional licensees, on April 3, 2020, Governor Baker issued a new [order](#) rescinding and replacing these previous orders. DPH subsequently provided [guidance](#) for these licensing changes.

These changes include the following: (1) licenses issued to individuals by DPH's Bureau of Health Professions Licensure that were due to expire after March 10, 2020 will not expire until 90 days after the Governor issues notice that the COVID-19 emergency is no longer in place; (2) health care providers whose Massachusetts license expired between March 10, 2010 and March 9, 2020 may be temporarily renewed or reactivated upon request during the COVID-19

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emergency; and (3) health care providers who are licensed in another state and whose license can be verified to be in good standing are eligible for a temporary, corresponding Massachusetts license that shall remain valid during the State of Emergency—this temporary license covers the provision of services via telemedicine.

In addition, on March 17, 2020, the Governor issued an emergency [order](#) directing all hospitals and facilities licensed under DPH to implement expedited credentialing procedures for all licensed independent practitioners. This order also expedites transfers of licensed clinical staff among facilities. DPH's accompanying guidance is available [here](#).

6. I am a health care provider who would like to provide telehealth services during the COVID-19 crisis. What guidance or changes have impacted the provision of telehealth in Massachusetts?

Under Governor Baker's emergency [order](#) maximizing available health care providers on April 3, 2020, the DPH has provided [guidance](#) stating that the Boards of Registration within the DPH will not take disciplinary action or other enforcement action based solely upon the provision of telemedicine services to a patient in Massachusetts. Telemedicine providers, however, must hold a valid Massachusetts license (including a temporary license as described above) at the time the service is provided.

Similarly, the Board of Registration in Nursing has stated that it will not take any disciplinary action based solely upon a nurse's provision of telemedicine services to established patients who are students enrolled in a college or university located in Massachusetts and who return to their home state during the 2019-2020 academic year. Nevertheless, nurses who provide such continued care should contact the applicable licensing board in the state where the patient is located to ensure compliance with that jurisdiction's requirements.

In terms of reimbursement, on March 15, 2020, Governor Baker executed an [order](#) requiring the state's Group Insurance Commission ("GIC"), all commercial health insurers, Blue Cross and Blue Shield of Massachusetts, Inc., and health maintenance organizations ("Carriers") regulated by the Division of Insurance to allow all in-network providers to deliver clinically appropriate, medically necessary covered services to members via telehealth and mandating reimbursement for such services.

The order mandates that the GIC and all Carriers shall not impose any specific requirements on the technologies used to deliver telehealth services (including any limitations on audio-only or live video technologies). Providers delivering services via telehealth must still meet all health record standards required by applicable licensing bodies, as well as MassHealth regulatory and program specifications (discussed below). This includes storage, access, and disposal of records. In general, the order applies Massachusetts guidelines previously provided for Medicaid behavioral health providers to the provision of telehealth services more broadly.

The order requires payment parity for services delivered via telehealth. The Order also requires the GIC and all Carriers to cover, without any cost-sharing (i.e., copayments, deductibles, or coinsurance), medically necessary treatment delivered via telehealth related to COVID-19 at in-network providers, and prohibits imposition of prior authorization requirements on medically necessary treatment delivered via telehealth related to COVID-19 at in-network providers.

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7. I am a health care provider who receives federal payor reimbursement. Of what guidance or changes to Medicare or MassHealth requirements should I be aware?

On March 26, 2020, the Centers for Medicare & Medicaid Services (“CMS”) [approved](#) Massachusetts’ request for a Section 1135 Medicaid waiver. The approved waiver enables Massachusetts to provide flexibilities in Medicaid provider screening and enrollment, forgo certain pre-admission screening and annual resident review assessments, lift prior authorization requirements, allow for reimbursement facility services in alternative settings, extend fair hearing timelines, and waive public comment and tribal consultation requirements for certain changes to the Medicaid state plan.

Per MassHealth’s [All Provider Bulletin 289](#) issued on March 12, 2020, MassHealth will also permit qualified providers to deliver clinically appropriate, medically necessary MassHealth-covered services to MassHealth members via telehealth (including telephone and live video). Rates of payment for services delivered via telehealth will be the same as rates of payment for services delivered via traditional (e.g., in-person) methods set forth in the applicable regulations.

In terms of prescribing, providers may prescribe medications via telehealth as long as they comply with all applicable state and federal statutes and regulations and maintain policies for providing patients with timely and accurate prescriptions by use of mail, phone, e-prescribing and/or fax. Providers must also document prescriptions in the patient’s medical record consistent with in-person care.

These changes have been expanded and clarified in [All Provider Bulletin 291](#) and will likely continue to be expanded and clarified in future bulletins.

8. Is MassHealth providing any additional funding to support health care providers during the COVID-19 pandemic?

On April 7, 2020, the Baker-Polito Administration [announced](#) a new infusion of \$800 million at MassHealth in critical stabilization funding to support health care providers impacted by and responding to COVID-19. This funding will support hospitals, nursing facilities, primary care providers, behavioral health providers, and long-term services and will be distributed starting in April and through July 2020. The majority of this funding will support 28 safety net and high-Medicaid hospitals to address lost revenue and increased costs for hospitals at the front lines of treating patients with COVID-19. This includes a 20% rate increase for COVID-19 care, as well as a 7.5% across-the-board rate increase for other hospital care.

This infusion is in addition to the \$290 million in immediate cash relief and \$550 million in accelerated payments to providers announced in March 2020. The Executive Office of Health and Human Services will be continuing to monitor and evaluate the situation.

9. If I provide covered services not related to COVID-19 through telehealth, how should I bill these services to MassHealth?

MassHealth has expressed a commitment to enabling patients to remain in their homes to reduce exposure and transmission, and to preserve health system capacity for the duration of the COVID-19 emergency. To that end, MassHealth has stated in [All Provider Bulletin 289](#) that reimbursement rates for services delivered via telehealth will be

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the same as rates of payment for services delivered via traditional (e.g., in-person) methods. Providers must include Place of Service Code 02 when submitting a claim for services delivered via telehealth. Providers will be able to bill MassHealth for these services delivered via telehealth beginning April 1, 2020, for dates of service beginning March 12, 2020.

MassHealth will also reimburse physicians (including midlevel practitioners under the direction of a physician in accordance with 130 CMR 433), acute outpatient hospitals (“AOHs”), community health centers (“CHCs”), outpatient behavioral health providers, and early intervention providers for clinically appropriate, medically necessary telephone evaluations through the following CPT codes for physicians: 99441, 99442, 99443; and for qualified non-physicians: 98966, 98967, 98968. MassHealth will issue transmittal letters that formally add these codes to the relevant provider manuals. Payment rates for these codes can be found at 101 CMR 317: Medicine. Providers will be able to bill MassHealth for these telephonic codes beginning April 1, 2020, for dates of service beginning March 12, 2020. Existing performance specifications for Children’s Behavioral Health Initiative (“CBHI”) services allow for the telephonic delivery of services, other than for initial assessments. Notwithstanding any requirements that initial assessments be conducted in person, where appropriate, services for new clients may be initiated via telephonic means. CBHI providers should use the regular CBHI codes when billing for CBHI services delivered telephonically.

Furthermore, in [All Provider Bulletin 291](#), MassHealth updated guidance to provide that an eligible distant site provider rendering covered services via telehealth in accordance with All Provider Bulletin 289 may bill MassHealth a facility fee if such a fee is permitted under such provider’s governing regulations or contracts. Providers rendering services via telehealth must continue to comply in all other respects with the telehealth-related section of All Provider Bulletin 289.

For COVID-19-related services, including diagnostic laboratory services, COVID-19 home visits, and COVID-19 quarantine in a hospital, please see [All Provider Bulletin 289](#) for specific guidance.

10. What other sources should I consult when trying to stay up to date on Massachusetts developments on COVID-19?

Massachusetts’s [COVID-19 State of Emergency](#) and [COVID-19 Guidance and Directives](#) webpages are regularly updated and good sources to consult. Additionally, several Massachusetts administrative agencies have taken measures to combat the spread of COVID-19 and protect individuals and businesses. Additional resources and announcements are set forth below.

- a. [Massachusetts Attorney General](#). The Massachusetts Attorney General’s office has created a [Resources during COVID-19](#) webpage that contains helpful legal guidance for employers, small businesses and others. Massachusetts Attorney General Maura Healey has also filed an [emergency regulation](#) banning price-gouging of essential products and services during the COVID-19 pandemic.
- b. [MassHealth](#). MassHealth maintains an up-to-date [webpage](#) on the steps MassHealth has taken to increase flexibility for providers and expand benefits during the COVID-19 emergency.
- c. [Boston Public Health Commission](#). To stay current on all Boston Public Health Commission announcements applicable to Boston health care providers, we recommend checking the Boston Public Health Commission’s [COVID-19 webpage](#) and [Coronavirus blog](#).