



April 3, 2020

Arkansas's Legal Responses to COVID-19 Affecting Healthcare Providers

At the direction of Arkansas Governor Asa Hutchinson, the State has recently taken numerous measures to address the continuing effects of the COVID-19 pandemic on healthcare providers. These measures include (i) changes to state regulations applicable to the licensing and operations of providers, and (ii) a requested Medicaid waiver to be titled the Arkansas COVID-19 Care Continuity Initiative (the "Waiver") from the Centers for Medicare & Medicaid Services ("CMS") that, if approved, will provide additional funding available to certain facilities and providers to support responses to the pandemic.

Licensing and Operations

Pursuant to Ark. Code Ann. §§ 12-75-114, 20-7-109, and 20-7-109, Governor Hutchinson and various state agencies have taken various actions affecting the licensure and operations of healthcare providers in response to COVID-19. Governor Hutchinson has declared a state of emergency and issued multiple Executive Orders that have suspended or modified the regulatory requirements generally applicable to Arkansas healthcare providers. Additionally, various state agencies have taken action to enhance, or in some cases limit, the ability of providers to offer care.

The following is a broad, but not exhaustive, summary of some of these significant changes:

1. Physicians

Pursuant to its existing authority under the Medical Practices Act, the Arkansas State Medical Board is granting emergency temporary licenses to Arkansas medical residents who have completed at least one (1) year of postgraduate training and have the written recommendation of their respective program director. Any temporary medical licenses granted pursuant to this authority are valid until June 5, 2020, subject to renewal by the Board for an additional two (2) months if necessary; however, any early withdrawal or termination of the Executive Orders declaring a state of emergency would render such licenses inactive.

2. Nurses

The Arkansas State Board of Nursing is accepting applications on an expedited basis for renewal of inactive or expired nursing licenses. If granted, a nursing license would be issued at no charge for an effective period of three (3) months.

3. Dentists

By order of the Arkansas Secretary of Health, only urgent and emergent dental care is permitted until April 17, 2020. The Secretary has specifically identified the services that constitute "urgent" and "emergent" services. Additionally, any urgent dental care rendered during this time period must be performed with minimal invasiveness.

4. Child Care Centers and Out-of-School Time Facilities

For both licensed Child Care Centers and Out-of-School Time Facilities, staff-child ratios have been changed allow ratios of at least one (1) staff to twenty-two (22) children, and group size restrictions have been suspended. The education and training requirements for staff have also been suspended.

5. Nursing Assistants in Long-Term Care Facilities

Nursing assistants are temporarily not required to pass an examination. Similarly, long-term care facilities are not prohibited from employing a nursing assistant for more than one hundred twenty (120) days if the individual has not passed an examination.

6. Telemedicine

Governor Hutchinson has suspended certain requirements of the Arkansas Telemedicine Act: physicians are temporarily not required to first establish a professional relationship with a patient through an in-person encounter prior to utilizing telemedicine, so long as the physician has access to the patient's personal health record and can offer real-time telemedicine services. Additionally, the Arkansas Board of Examiners in Counseling's requirements for specialized licenses to offer distant care have been suspended so that applicable providers may provide reasonable mental health treatment using any appropriate technology.

Medicaid Waiver

On March 26, 2020, Governor Hutchinson and the Arkansas Department of Human Services ("DHS") submitted the Waiver to propose a number of initiatives that would provide a projected additional \$116 million in Medicaid funding for facilities and individual providers. If approved by CMS, the Waiver program would make available the following reimbursements; however, it is important to note that any reimbursement requested pursuant to the Waiver following approval would be subject to meeting eligibility requirements, which are critical to maintain regulatory compliance.

1. Physical Plant Modifications

Various facilities would be eligible for funding used make changes to their buildings that enhance social distancing, such as drive-through testing, reconfiguration of patient intake areas, enhancing cleaning and sanitation services, improving emergency operational capabilities, and the purchase or leasing of specialized equipment. These grants would be available to hospitals, physician practices, and clinics meeting certain eligibility requirements.

2. Enhanced Payments for Non-Physician Clinicians

Providers not eligible for reimbursement of the Physical Plant Modifications may be eligible for pass-through payments for direct "long-term services and supports" healthcare workers in institutional and home settings. This would consist of an additional \$250 per week for non-physician direct-care workers generally, or \$500 per week for non-physician direct-care workers employed in a facility that treats COVID-19 patients.

3. Changes to Office Hours, Business Models, and Patient Access

Financial support would be available to support healthcare providers in adjusting operations so that face-to-face encounters could continue in a safe manner. These adjustments include extension of office hours, changing schedules, and accommodation of sick visits. Additionally, payments would be available to upgrade telemedicine capabilities and provision of non-emergency transportation for clinical services. Additionally, certain expansions to facilities to allow overnight care would be eligible.

4. Enhanced Payments for Nursing Facilities

Additional payments would be made to nursing facilities experiencing a cluster incident of COVID-19 infection. The maximum amount of available payments is to be determined by the State.

5. Workforce Training

A fixed rate, time-limited payment would be available for workforce support, safety, and training. The payment would be flexible to meet the specific priority needs of the provider.

6. Screening of Uninsured

An all-inclusive payment for screening and testing for COVID-19 for individuals who are uninsured would be available.

We caution providers that the regulatory measures referenced herein are temporary and may be modified. Additionally, while Governor Hutchinson has indicated CMS's tentative pre-approval of the Waiver, as of the date of this Client Alert it remains a proposal that is subject to change even if approved. Providers should anticipate additional developments and announcements from the state and federal government soon. If you have any questions about the federal and state regulatory responses to the COVID-19 pandemic, please contact a member of our Arkansas Healthcare practice group.

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