

Notice to State Chapters on Scope of Practice Requirements During the COVID-19 Public Health Emergency

FOR YOUR NEWSLETTER HEALTH & PUBLIC POLICY *Posted on April 3, 2020*

On March 24, 2020, Health and Human Services Secretary Alex Azar sent a letter to state governors with guidance on actions they could take to address the COVID-19 public health emergency. The letter includes a number of recommendations supported by ACP, including policies on telehealth, facilitating participation of inactive physicians, and medical liability protections. However, HHS also calls on states, territories, and the District of Columbia to take immediate action to “waive restrictions on licensure, scope of practice, certification, and recertification/relicensure consistent with the changes announced for federal programs.” The letter encourages states to work with licensing boards to place moratoria on enforcement of scope of practice and licensure issues “to ensure that health care professionals can quickly respond to COVID-19 emergency without fear of penalty or license revocation” and recommends that states take action to permit nurse practitioners, physician assistants and other health care professionals to “practice to the fullest extent of their license and without restrictive supervision requirements.” If states do not make changes to scope of practice requirements, HHS encourages relaxation of geographic restrictions on physician supervision and temporary expansion of the number of health care professionals a physician may supervise. In addition to state-based changes, HHS is permitting temporary scope of practice changes to other federal programs. For example, Medicare is waiving certain physician supervision requirements and allowing non-physician clinicians to care for hospitalized patients in accordance with the state’s emergency plan.

State chapters should note that HHS’ recommended policy interventions are temporary measures to address health care workforce needs during the COVID-19 emergency. The Secretary’s guidance recommends that states (emphasis added):

Temporarily suspend any requirements for written agreements to meet supervision or collaboration requirements, in order to avoid significant delays in the provision of services. States should also encourage their State Boards of Medicine, Nursing, and other health professions to put in place an enforcement moratorium, **for the length of the public health emergency**, for scope of practice violations to ensure all practitioners can deliver needed care during the crisis.

ACP policy strongly reaffirms the importance of patients having access to a personal physician who is trained in the care of the “whole person” and has leadership responsibilities for a team of health professionals, consistent with the Joint Principles of the Patient-Centered Medical Home. Patient care should be delivered in the context of a physician-led dynamic clinical care team.

In the context of the current public health emergency, and the immediate need to devote attention and resources to addressing COVID-19, ACP’s Division of Governmental Affairs and Public

Policy recommends that state chapters not challenge a **temporary** easing of physician supervision and other state licensure restrictions that are consistent with Secretary Azar's request, **as long as they would be in effect only for the duration of the declared national emergency**. While we are aware that even a temporary easing of such restrictions may be viewed, and likely cited as precedent by non-physician professions to argue for longer-term or permanent changes, we don't think it will be effective to divert your chapter, or ACP's national advocacy resources, to opposing Secretary Azar's request and associated actions by your states, during this national emergency. ACP and the chapters can appropriately re-engage on such issues, based on national ACP policy, after the emergency declaration ends.

Chapters are encouraged to track any scope of practices changes that occur in their state. We also encourage chapter leaders to review HHS' guidance on addressing workforce needs during the COVID-19 emergency.

- Sec. Azar letter to state governors: <https://www.nga.org/wp-content/uploads/2020/03/Governor-Letter-from-Azar-March-24.pdf>
- HHS Guidance to States: Lifting Restrictions to Extend the Capacity of the Health Care Workforce during the COVID-19 National Emergency <https://www.nga.org/wp-content/uploads/2020/03/Enclosure-in-March-24-Letter-from-Secretary-Azar-to-Governors-with-Recommendations-for-Maximizing-Healthcare-Workforce-for-COVID-19.pdf>
- CMS: Physicians and Other Clinicians: CMS Flexibilities to Fight COVID-19 <https://www.cms.gov/files/document/covid-19-physicians-and-practitioners.pdf>

Other Resources

- ACP COVID-19-Related Advocacy: <https://www.acponline.org/advocacy/where-we-stand/coronavirus-disease-2019>
- National Governors Association: Coronavirus: What You Need to Know <https://www.nga.org/coronavirus/#states>
- ACP letter to CMS Administrator Verma regarding scope of practice https://www.acponline.org/acp_policy/letters/acp_letter_to_cms_regarding_scope_of_practice_requirements_jan_2020.pdf