

Health Care Alert: Regulators Issue COVID-19 Guidance for Health Care Providers

Related Attorneys

Jolie N. Havens

Robin P. Amicon

Related Industries

Health Care

CLIENT ALERT | 3.12.2020

As COVID-19 spreads throughout the United States, health care providers are on the front lines of this growing crisis, and regulators at both the state and federal levels are releasing new and updated guidance to help them respond to this rapidly-changing industry environment. The Vorys health care team is continuously monitoring developments in this area and has prepared the following summary of key resources for health care providers. This list is not exhaustive and, as the COVID-19 outbreak evolves, updated and additional guidance is being issued by state and federal agencies, as well as private industry leaders and stakeholders.

CMS Guidance

The Centers for Medicare & Medicaid Services (CMS) has announced several actions to address the spread of COVID-19, including the following:

- **Provided guidance to hospitals.** CMS has issued a memorandum that provides guidance for hospitals (including critical access hospitals) in addressing the COVID-19 outbreak and minimizing transmission to other individuals. In particular, CMS recommends that hospitals screen visitors and patients for COVID-19 infection before or immediately upon arrival at their facilities, and that the same screening be performed for hospital staff, subject to applicable employment laws. The memorandum notes that previous Medicare guidance identifies infection control as an example of when restrictions may be placed on visitation rights, but instructs hospitals to ensure that patients are informed of their visitation rights and any clinical restrictions on visitation.
- **Provided guidance to nursing homes.** CMS has issued a memorandum that provides guidance to nursing homes to help control and prevent the spread of COVID-19. This guidance includes guidelines for screening and limiting visitors and health care staff, subject to applicable employment laws, as well as directions for nursing homes transferring or accepting residents with a suspected

or confirmed COVID-19 diagnosis. Specifically, CMS states that a nursing home should admit any individuals that it would normally admit to its facility, but may not accept a patient who is under transmission-based precautions for COVID-19 unless it can follow CDC guidance for transmission-based precautions.

- **Suspended non-emergency inspections.** CMS announced that it is suspending non-emergency inspections, allowing inspectors to focus on the most serious health and safety threats. CMS has also issued new guidance for state survey agencies investigating facilities with actual or suspected COVID-19 cases, specifically instructing them to focus on concerns with (among other things) improper transmission precautions procedures, improper staff use of person protective equipment and hand hygiene, and ineffective or improper laundering of linens.
- **Provided guidance on EMTALA requirements in light of COVID-19.** The Emergency Medical Treatment and Active Labor Act (EMTALA) requires a Medicare-participating hospital with an emergency department (ED) to conduct an appropriate medical screening examination of all individuals who present at the ED. CMS has issued guidance clarifying hospitals' EMTALA obligations with respect to potential COVID-19 patients, in particular noting that alternative screening sites may be set up to minimize the risk of transmission to others in the ED.

In addition to hospitals and nursing homes, CMS has also released specific COVID-19-related guidance for [hospice agencies](#), [home health agencies](#), and [dialysis facilities](#).

Ohio Guidance

On March 9, 2020, in light of the first confirmed cases of COVID-19 in Ohio, Governor Mike DeWine issued an [Executive Order](#) declaring a state of emergency and authorizing various state agencies to coordinate responses to the outbreak. After a fourth case was confirmed on March 11, 2020, the directors of the Ohio Department of Health (ODH) and the Ohio Department of Veterans Services jointly issued an [order](#) requiring all "homes"¹ to restrict access to those personnel who are "absolutely necessary," which includes no more than one visitor per resident per day (except for end-of-life situations).

ODH has also been tasked with "creat[ing] and requir[ing] the use of diagnostic guidelines" by health care providers. ODH has created a webpage of information and resources for health care providers and health districts, the [COVID-19 Resources for Local Health Districts and Providers](#), which includes information on confirmed and suspected cases in Ohio, CDC updates, and resources for local health districts, health care workers, and colleges and universities. ODH has classified COVID-19 as an [immediately reportable disease](#), meaning that hospitals and health care providers are required to report suspected cases by telephone to the local department of health. Further, ODH is requesting that every hospital in Ohio complete the [COVID-19 Hospital Preparedness Assessment Tool](#) by March 17, 2020.

The Ohio Department of Developmental Disabilities (DODD) also has a dedicated [webpage of COVID-19 resources](#), and additional guidance for providers is expected soon.

Texas Guidance

While Governor Greg Abbot has not declared a state of emergency, the City of Houston is under an emergency health declaration, and Harris County is under a disaster declaration. The emergency declaration allows the Mayor flexibility in managing resources to combat the virus while the disaster declaration activates the County’s emergency management plan and allows the County to make emergency-related expenditures without requiring approval from the Commissioner’s Court. The Texas Department of State Health Services has created a [webpage](#) of information and resources for health care providers, first responders, and the public.

Pennsylvania Guidance

Following confirmation of the first two presumptive cases of COVID-19 in Pennsylvania on March 6, 2020, Governor Tom Wolf signed an emergency disaster declaration providing increased resources to support state agencies’ response efforts. The Pennsylvania Department of Health has created a [webpage](#) with links to relevant resources for health care providers and public health professionals, and the Insurance Department has published a [notice](#) outlining recommendations for proactive action by health insurers.

Vorys is continuing to monitor the COVID-19 outbreak and related guidance and will provide updates on relevant developments as they occur. We also strongly urge providers to continually monitor developments that pertain to your specific organization.

If you have questions about COVID-19 or its impact on your organization, please contact Jolie Havens, Robin Amicon, Nita Garg, Mairi Mull, or your regular Vorys attorney.

¹ A “home” is defined as “an institution, residence, or facility that provides, for a period of more than twenty-four hours, whether for a consideration or not, accommodations to three or more unrelated individuals who are dependent upon the services of others, including a nursing home, residential care facility, home for the aging, and a veterans’ home operated under Chapter 5907 of the Revised Code.” O.R.C. § 3701.01(A)(1)(a).