



FAQs on Providing Services During the COVID-19 Emergency

Clarifications for Gov. Abbott's Executive Order GA 19

The Texas Hospital Association offers answers to member hospitals' questions about Gov. Greg Abbott's Executive Order GA 19, effective May 1, related to hospital capacity during the COVID-19 pandemic. Executive Order GA 19, and related rules and guidance, addresses requirements under which hospitals can deliver services, including surgeries and procedures, during the pandemic.

1. Where can I find GA 19?

GA 19 may be accessed [here](#).

2. What does GA 19 require?

GA 19 requires:

1. Each hospital licensed under chapter 241 of the Health & Safety Code to reserve at least 15% of its hospital capacity for treatment of COVID-19 patients, accounting for the range of clinical severity of COVID-19 patients; and
2. All licensed healthcare professionals to abide by any limitations, or other requirements, set forth in any emergency rule(s) promulgated by their respective licensing agencies dictating minimum standards for safe practice during the COVID-19 disaster.

3. Does GA 19 supersede GA 15?

Yes. GA 15, along with related emergency rules promulgated by the Texas Medical Board and guidance issued by the Texas Health and Human Services Commission, was withdrawn when GA 19 became effective on May 1.

4. What happened to certifications filed with HHSC in response to GA-15?

HHSC's response to that question is as follows:

Executive Order GA-19 superseded Executive Order GA-15 in its entirety at 12:01 a.m. on May 1, 2020. HHSC's role under GA-15 was limited to receiving the certifications required under that executive order. HHSC is maintaining the certifications it received according to state records retention requirements and will provide those certifications on request and as required by state law, including the Texas Public Information Act. However, it is our understanding that certifications submitted pursuant to GA-15, like the order itself, do not have continuing effect.

5. How long will GA 19 remain in effect?

GA 19 remains in effect until modified, amended, rescinded, or superseded by the governor.

6. Do prior limits on surgeries and procedures remain?

No, except for those requirements pertaining to minimum safety standards, as set out herein. Hospitals do not need to attest to capacity or PPE supplies under GA 19.

7. Did HHSC release guidance?

Yes, HHSC [issued a guidance letter](#) requiring chapter 241 hospitals to reserve 15% of their hospital capacity for treatment of COVID-19 patients. The letter does not put forth any additional parameters about how to arrive at the capacity percentage, and states that all licensed health care professionals must comply with any emergency rules adopted by their respective licensing agencies.

8. Did the Texas Medical Board issue a rule?

Yes, TMB adopted [emergency rule 190.8\(2\)\(U\)](#), effective May 1, in response to GA 19. The emergency rule sets forth minimum standards for safe practice for all physicians providing patient care or engaging in an in-person patient encounter and requires the following.

1. A mask must be worn by both the patient and physician or the physician's delegate when in proximity of the patient (meaning less than a 6-foot distance between the patient and the physician or the physician's delegate);
2. Follow policies the physician, medical and healthcare practice, or facility has in place regarding COVID-19 screening and testing and/or screening patients;
3. That, before any encounter, patients must be screened for potential symptoms of COVID-19 or verified previously screened within last 20 days; and
4. That prior to care involving a medical procedure or surgery on the mucous membranes, including the respiratory tract, with a high risk of aerosol transmission, the minimum safety equipment used by a physician or physician's delegate should include N95 masks, or an equivalent protection from aerosolized particles, and face shields.

Furthermore, all physicians providing patient care or engaging in an in-person patient encounter in medical and health care practices, offices, and facilities, *other than hospitals as defined under chapter 241 of the Texas Health & Safety Code*, shall post a [COVID-19 Minimum Standards of Safe Practice Notice](#), delineating the minimum standards of safe practice described in this subsection, in each public area and treatment room or area of the office, practice, or facility.

9. Did TMB issue guidance?

Yes, [TMB issued an FAQ](#) clarifying, among other things:

- That the minimum standards apply regardless of practice settings.
- Physicians may refuse to treat or see a patient who refuses to wear a mask.
- That masks may be removed if necessary for care (e.g. during surgery).
- That masks are required even if the patient screened negative for COVID-19.

10. What does it mean for a hospital to “reserve at least 15% of its hospital capacity”?

This is not specified in GA 19 or HHSC's guidance. Logically, a hospital's utilization of its capacity to treat COVID-19 patients will change frequently as COVID-19 patients come into and leave the facility. THA

believes the most reasonable interpretation is that at all times the hospital has at least 15% of its actual capacity available to treat COVID-19 patients. The 15% can be calculated as capacity currently used to treat COVID-19, available to treat an influx of COVID-19 patients, or both. In considering capacity, hospitals must account for the various types of beds in the range of clinical severity that COVID-19 patients might experience.

11. How do I comply with the TMB's notice requirement?

This is one of the more confusing aspects of the TMB's rule. The rule requires all physicians providing patient care or engaging in an in-person patient encounter to post certain notices in (1) public area(s) and (2) treatment room(s) or area(s). The TMB emergency rule specifically excludes from its scope a hospital "as defined under chapter 241 of the Texas Health & Safety Code". THA believes this includes all facilities covered by a chapter 241 hospital's license (generally the main hospital building and other on-campus facilities).

However, the impact of the rule on other facilities where a physician may provide patient care or engage in an in-person patient encounter (for example: a nursing home, a psychiatric facility licensed under chapter 577, an off-campus hospital department, an ambulatory surgery center, and the many other locations not strictly under a physician's control but where the physician may provide patient care), is unclear. The TMB's regulatory authority extends to its licensees and the procedures they undertake, and not to these facilities.

THA is seeking clarification of this issue from the TMB.

12. How do hospitals comply with TMB's minimum standards for safe practice?

The TMB does not regulate hospitals. Under its emergency rule, the TMB is requiring patients and physicians (or their delegates) to wear masks when within 6 feet of each other. A mask may be removed if required by the examination, treatment, procedure, or in emergent situations. CDC guidelines should be followed when a high risk of transmission exists, or with regards to children wearing masks. It is not recommended that children under the age of 2 wear masks.

Patients should be screened prior to any encounter or verify that they screened negative in the prior 20 days. Facilities may enact additional requirements for screening or testing patients.

According to its FAQ, the TMB's minimum standards on masking and screening of patients apply to all physicians, no matter the practice setting (and including hospitals).

13. What if a patient refuses a screening or will not wear a mask?

According to the TMB's FAQ, a physician may refuse to treat or see a patient if the patient refuses to wear a mask or submit to screening, as may be required.

There may be situations where a patient cannot wear a mask or is incapable of donning a mask. TMB indicates a practitioner "must use his or her judgment in these situations, utilizing all possible safety means while taking into account the needs of the patient and the safety of health care workers and other patients," while documenting the circumstances around the provision of care to a patient who is not wearing a mask.

14. Must a hospital follow TMB's rule?

The TMB does not regulate hospitals or have enforcement authority over licensed hospitals and facilities. However, TMB indicates they will investigate complaints and violations of the emergency rule. This means a physician could face discipline for failing to meet the TMB requirements as applicable in a hospital setting.

15. Is an N95 respirator really required during a medical procedure/surgery on the mucous membranes?

The TMB's rule indicates for surgeries or procedures "with a high risk of aerosol transmission," the minimum safety equipment used by a physician or physician's delegate should include N95 masks, or an equivalent protection from aerosolized particles, and face shields. THA believes there is discretion in determining when a high risk of aerosol transmission exists. However, the requirement applies regardless of the patient's COVID-19 screening status. Additionally, despite the use of the word "should", the TMB indicates in FAQ 20 "[t]hese procedures and surgeries require minimum safety equipment standards to be used by a physician or physician's delegate that include N95 masks, or an equivalent protection from aerosolized particles, and face shields," suggesting that the rule is being viewed by the TMB as a mandate.

16. Does a hospital have to provide masks to patients and visitors?

The TMB's FAQ is clear that doctor's offices must provide masks to patients. No specific type of mask is required. While this FAQ does not apply to hospitals, the regulatory implications for a physician providing patient care in a hospital that does not provide masks to patients is less clear.

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