



FAQs on Providing Essential Services During the COVID-19 Emergency

Clarifications for Governor Abbott's Executive Order GA 15

The Texas Hospital Association offers answers to member hospitals' questions about Gov. Greg Abbott's Executive Order GA 15, issued April 17, related to the permissibility of performing certain surgeries and procedures during the COVID-19 pandemic. GA 15 covers the same subject matter as [Executive Order GA 09](#), which was issued on March 22.

1. Where can I find GA 15?

GA 15 can be accessed [here](#).

2. When does GA 15 take effect?

GA 15 takes effect on April 21 at 11:59 p.m.

3. Does GA 15 supersede GA 09?

Not explicitly, but as a practical matter it takes the place of GA 09, which expires at 11:59 p.m. CDT on April 21.

4. How long will GA 15 remain in effect?

GA 15 remains in effect until 11:59 p.m. CDT on May 8, unless it is modified, amended, rescinded, or superseded by the governor.

5. Who does GA 15 apply to?

GA 15 applies to all licensed health care professionals and all licensed health care facilities.

6. Why are limits being placed on surgeries and procedures?

According to GA 15, hospital capacity and personal protective equipment "were being depleted by surgeries and procedures that were not medically necessary to correct a serious medical condition or to preserve the life of a patient..."

7. What does GA 15 require?

GA 15 requires all licensed health care professionals and all licensed health care facilities to postpone all surgeries and procedures that are not medically necessary to diagnose or correct a serious medical condition of, or to preserve the life of, a patient who without timely performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's physician.

8. What surgeries and procedures may proceed under GA 15?

Surgeries and procedures that are medically necessary to diagnose or correct a serious medical condition of, or to preserve the life of, a patient who without timely performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's physician.

9. Does GA 15 contain any exceptions to this requirement?

Yes, by its explicit terms, GA 15 does not prohibit:

1. any procedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete the hospital capacity or the personal protective equipment needed to cope with the COVID-19 disaster, **OR**
2. any surgery or procedure performed in a licensed health care facility that has certified in writing to the Texas Health and Human Services Commission **BOTH**:
 - a. that it will reserve at least 25% of its hospital capacity for treatment of COVID-19 patients, accounting for the range of clinical severity of COVID-19 patients; **AND**
 - b. that it will not request any personal protective equipment from any public source, whether federal, state, or local, for the duration of the COVID 19 disaster.

10. How is GA 15 different from GA 09?

Both GA 15 and GA 09 contain the exception to allow any procedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete the hospital capacity or the PPE needed to cope with the COVID-19 disaster.

GA 15 contains a second exception: permitting any surgery or procedure performed in a licensed health care facility that has certified in writing to HHSC both: (1) that it will reserve at least 25% of its hospital capacity for treatment of COVID-19 patients, accounting for the range of clinical severity of COVID-19 patients; and (2) that it will not request any PPE from any public source, whether federal, state, or local, for the duration of the COVID 19 disaster.

[Note: The second, "certification" exception applies to both a surgery and a procedure; the "non-depletion" exception applies only to procedures.]

11. What is the process for filing the certification described in the new certification exception under GA 15?

The process established by HHSC is described [here](#).

12. Why does the HHSC process only apply to the certification exception?

In GA 15, the certification only applies to that one exception, and not to the non-depletion exception. [Note: as of April 20, neither Texas Medical Board nor HHSC have released substantive rules in support of GA 15.]

13. Is there a required process to follow for complying with the "non-depletion" exception?

There is no process defined by either HHSC or the TMB for complying with the non-depletion exception. (Remember: the non-depletion exception was in GA 09, issued March 22.) The TMB has issued guidance

related to a decision to proceed with a surgery or procedure that does not violate GA 09 in its [FAQs](#), and indicated that “documentation is key”, and that it is “very important that the medical record clearly reflects why the elective surgery or procedure was urgent and necessary to prevent serious adverse medical consequences or death. This documentation could include information on the patient’s medical history, prescriptions, lab results, imaging, or other relevant factors used to make the determination of the urgent necessity of the elective surgery or procedure.” It is reasonable to assume that the TMB would expect to see documentation supporting a decision to proceed with a procedure under the non-depletion exception.

14. Does “personal protective equipment” include testing equipment?

PPE is not defined; however, the plain meaning of PPE does not include testing equipment.

15. Do current COVID-19 patients count in the 25% of reserved capacity requirement under the certification exception?

THA believes so, under a plain reading of GA 15.

16. Is the 25% capacity on a per-hospital basis, or can it be across a hospital system?

While not explicit in GA 15, the Office of the Governor has clarified that it applies on a per-hospital basis. The language of GA 15 supports this interpretation, by requiring “a licensed healthcare facility” to make the certification.

17. With regard to the requirement that a facility must certify that it will reserve 25% of its capacity for COVID-19 patients, some hospital units, e.g., licensed psychiatric beds, labor and delivery/post-partum beds, would not be utilized for treatment of COVID-19 patients. Can those beds be excluded from total bed count for purposes of calculating the hospital’s reserve capacity to treat COVID-19 patients?

GA 15 is not clear on this issue. However, the exception requires reserving 25% of “hospital capacity,” not 25% of hospital beds. THA believes a reasonable reading of GA 15 requires a hospital filing a certification to determine what its capacity for treating COVID-19 patients is, which in our opinion must include an assessment of where in the hospital COVID-19 patients could be treated.

18. What does it mean for a hospital to “reserve at least 25% of its hospital capacity”?

This is not specified in GA 15. 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 the hospital is certifying that at all times, at least 25% of its capacity to treat COVID-19 patients is actually available to treat COVID-19 patients, either as being actually used to treat COVID-19 or available to treat an influx of patients.

19. Does the certification exception apply to outpatient surgery? How do you make a certification for outpatient surgeries to occur?

There is no distinction in GA 15 or HHSC’s process between inpatient and outpatient surgeries or procedures, and we believe the certification exception applies to either or both without the need to make a distinction when filing the certification.

20. Can an ambulatory surgery center file a certification and resume surgeries and procedures?

The certification exception applies to a surgery or procedure performed in “a licensed health care facility,” and ASCs are licensed health care facilities. However, one of the certifications that must be made is that the licensed facility “will reserve at least 25% of *its hospital capacity* for treatment of COVID-19 patients, accounting for the range of clinical severity of COVID-19 patient”, suggesting that “licensed health care facility” refers only to a hospital.

THA is seeking clarification from HHSC whether it will accept a certification from a non-hospital entity.

21. The non-depletion exception applies to procedures, but the certification exception applies to procedures and surgeries. How are those defined?

The terms “procedure” and “surgery” are not defined in either GA 15 or GA 09. The only guidance THA is aware of is in the TMB’s [FAQs](#), wherein it indicates that “[a] ‘procedure’ does not include physical examinations, non-invasive diagnostic tests, the performing of lab tests, or obtaining specimens to perform laboratory tests.”

22. How long does the capacity and PPE certification apply?

By its explicit terms, the certification related to not requesting PPE is for “the duration the COVID-19 disaster.” Otherwise, the duration of the certification is not specified. However, a hospital filing a certification should expect that the certification will be in effect for at least as long as GA 15 is in effect, including any extensions of GA 15, and potentially through the extent of the Governor’s disaster declaration, if not longer.

THA is seeking additional clarity on this question.

23. If I want to file a certification and I have a pending State of Texas Assistance Request for PPE, should I withdraw the STAR request? Is that even permitted?

This is not discussed either in GA 15, or in HHSC’s published certification process. However, a pending STAR would seem inconsistent with a certification that the facility “will not request any PPE from any public source, whether federal, state, or local, for the duration of the COVID-19 disaster.”

We are seeking clarification on this question, and whether it is possible and permissible to withdraw a STAR, or if a previously submitted STAR will not be fulfilled if a certification has been filed.

24. If I file a certification, am I barred from requesting PPE if the situation at my facility unexpectedly becomes critical?

Eligibility for PPE distribution in the future is not addressed in either GA 15 or HHSC’s process.

THA is seeking clarification on this question.

25. Would an unsolicited donation of PPE from a federal, state or local government entity, violate the certification that the hospital will not request PPE from any public source, whether federal, state, or local, for the duration of the COVID 19 disaster?

The certification addresses requests for PPE from a public source, whether federal, state, or local. Based on a plain reading of GA 15, THA believes accepting a donation of PPE from a public source would not violate the certification and would be permissible.

26. Does the TMB have rules implementing GA 09 or GA 15?

The TMB passed two emergency rules on March 24 implementing GA 09, amending [Rule 187.57\(c\)](#) and [Rule 178.4](#).

As of April 19, no rules had been issued related to GA 15, and neither of the March 24 rules have been withdrawn.

27. Will the TMB's Rule 178.4, requiring immediate reporting to the TMB of non-urgent elective surgery or procedures scheduled or performed, remain in place for GA 15?

The emergency rule adopted along with GA 09 related to immediate reporting of physicians reads: "Pursuant to Executive Order GA 09...any peer review committee, licensee, and other group, entity, or person shall immediately report any physician scheduling to perform, preparing to perform, performing, or who has performed a non-urgent elective surgery or procedure while Executive Order GA 09 is in effect, immediately to the board. This duty to report is mandatory whether any type of proceeding, inquiry, investigation, or action of any kind is being considered, has been initiated, or is on-going at a hospital, ambulatory surgical center, or any other facility or medical setting."

As of April 19, the TMB's emergency rules had not been altered, but were based on GA 09. THA has asked the TMB for information about its intentions related to the existing and any new emergency rules.

28. Can't a doctor/hospital use the non-depletion exception instead of the certification exception to resume procedures?

Yes, the non-depletion exception was contained in GA 09 and is also contained in GA 15. However, the TMB emergency rule requiring immediately reporting of physicians who perform "non-urgent elective surgeries or procedures" deterred physicians from using this exemption during the duration of GA 09.

Contact a member of THA's advocacy & legal teams for additional information:

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