



## FAQs on Providing Services During the COVID-19 Emergency

### *Clarifications for Governor Abbott's Executive Orders GA 31 and GA 32*

The Texas Hospital Association offers answers to member hospitals' questions about Gov. Greg Abbott's Executive Order GA 31, effective on Sept. 17, related to hospital capacity and the permissibility of performing certain surgeries and procedures in several counties during the COVID-19 pandemic. THA also discusses the new definition of "high hospitalizations"—the state's metric for determining the capacity at which businesses in a region can open—that is provided in Executive Order GA 32, effective Oct. 7.

#### 1. Where can I find GA 31?

GA 31 may be accessed [here](#).

#### 2. What does GA 31 require?

GA 31 imposes two requirements on Texas hospitals:

- A. Each hospital licensed under chapter 241 of the Health & Safety Code **and** located in an "area with high hospitalizations" must 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.

However, by its explicit terms, GA 31 does **not** prohibit any surgery or procedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete any hospital capacity needed to cope with the COVID-19 disaster.

**Note:** these restrictions on surgeries and procedures mirror those under the prior GA 27.

- B. Each hospital licensed under chapter 241 of the Health & Safety Code (regardless of location) shall reserve at least 10% of its hospital capacity for treatment of COVID-19 patients, accounting for the range of clinical severity of COVID-19 patients, as determined by the Texas Health and Human Services Commission.

However, any hospital that is part of a hospital system consisting of multiple member hospitals may reserve less than 10% of its capacity, so long as a cumulative 10% of capacity is reserved through all system hospitals within the same Trauma Service Area.

#### 3. What are "areas with high hospitalizations?"

"Areas with high hospitalizations" is defined under [Executive Order GA 32](#) as any [Texas Trauma Service Areas](#) with seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage

of total hospital capacity exceeds 15%. A TSA will remain an “area with high hospitalizations” until the TSA’s percentage of COVID-19 hospitalized patients drops below the 15% threshold for seven consecutive days.

NOTE: The definition of “areas with high hospitalizations” was modified by GA 32 to reference total hospital capacity; the remainder of GA 31 remains in effect for Texas hospitals.

A list of “areas with high hospitalizations” may be found at: [www.dshs.texas.gov/ga3031](http://www.dshs.texas.gov/ga3031).

At the time of this document’s update, any TSAs that meets the threshold of “areas with high hospitalizations” will receive a written notice from HHSC indicating that additional restrictions are in effect.

**4. How long will GA 31 remain in effect?**

GA 31 remains in effect and in full force until it is modified, amended, rescinded or superseded by the Governor. Therefore, GA 31 does not have an end date noted in the order.

**5. What are the penalties for violating GA 31?**

GA 31 states that failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable under Section 418.173 of the Government Code by a fine not to exceed \$1,000 and may be subject to regulatory enforcement.

**6. What surgeries and procedures may proceed under GA 31 and in “areas of high hospitalizations?”**

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. Additionally, any surgery or procedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete any hospital capacity needed to cope with the COVID-19 disaster.

These restrictions mirror those under the prior GA 27.

The terms “procedure” and “surgery” are not defined in GA 31. The only guidance THA is aware of is prior TMB guidance for now-rescinded executive order GA 15 that indicated “[a] ‘procedure’ does not include physical examinations, non-invasive diagnostic tests, the performing of lab tests, or obtaining specimens to perform laboratory tests.”

**7. Does GA 31’s restrictions apply to outpatient surgeries and procedures?**

Currently, there is no distinction in GA 31 between inpatient and outpatient surgeries or procedures.

**8. Has HHSC or TMB issued rules or guidance?**

No. THA is not aware of any forthcoming guidance from HHSC or the Texas Medical Board, in relation to GA 31.

**9. How do I know if a surgery or procedure may proceed?**

If a hospital is in a TSA not considered an “area with high hospitalizations,” then a surgery or procedure is **not** subject to restriction under GA 31.

For hospitals in an “area with high hospitalizations,” and seeking to proceed with a surgery or procedure, THA developed the following as a tool to assist decision-making, and reminds members that judgment may be used in making a determination:

1. Acts such as acquiring a patient’s history, a physical exam, non-invasive diagnostic, lab test, or other procedure that does not deplete hospital capacity needed to cope with COVID-19 should be outside of GA 31’s scope.
2. A surgery or procedure determined by a physician to be medically necessary to diagnose or correct a serious medical condition, 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 should be permissible under GA 31. This medical necessity should be documented in the medical record.
3. If the procedure is performed in accordance with the commonly accepted standard of clinical practice and would not deplete any hospital capacity needed to cope with the COVID-19 disaster, the procedure should be permissible under GA 31.

**10. What precautions should a hospital take in moving forward with a surgery or procedure subject to restriction under GA 31?**

Remember that “documentation is key” to ensure a surgery or procedure does not violate GA 31. It is important that the medical record clearly show why the performance of a surgery or procedure was necessary to diagnose or correct a serious medical condition, preserve the life of a patient or avoid serious adverse medical consequences or death.

The patient’s physician must make these determinations, and 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 necessity of the surgery or procedure.

Additionally, the hospital should determine and document that the surgery or procedure will not deplete hospital capacity needed to cope with the COVID-19 disaster.

**11. Do GA 19 and GA 27 remain in effect?**

No. Both GA 19 and GA 27 are explicitly superseded by GA 31.

**12. Do other executive orders remain in place?**

GA 31 explicitly states that [GA 10](#), [GA 13](#), [GA 17](#), [GA 24](#), [GA 25](#), [GA 29](#) and [GA 30](#) remain in effect. [GA 32](#) is also in effect.

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

[Steve Wohleb](#) J.D., senior vice president & general counsel, 512/465-1577

[Cesar Lopez](#), J.D., associate general counsel, 512/465-1027

[Jennifer Banda](#), J.D., vice president, advocacy & public policy, 512/465-1046