
SUMMARY OF GOVERNOR LEE'S COVID-19 HEALTH CARE EXECUTIVE ORDERS IN EFFECT

On March 19, 2020, Tennessee Governor Bill Lee issued [Executive Order #15](#), his first to address the COVID-19 public health crisis after declaring the pandemic a statewide emergency. It contained 42 points, many of which had direct impact on physicians and health care. It had an original expiration date of May 18, but some of its provisions have been amended and extended since it was issued. This report, prepared by the TMA legal department, culls down the Executive Order provisions related to health care that are in effect. [Here is a link](#) to all of Governor Lee's Executive Orders.

Here are some of the salient health care provisions of the Governor's Executive Orders through Executive Order # 67 that are currently in effect. It is by no means exhaustive.

[Executive Order # 67](#) was effective on October 30 through December 29, 2020.

- Medical professional staffing flexibility is permitted pursuant to an approved plan to relieve the capacity strain on hospital staffing functions in order to relieve the capacity strain on bedside care and support resulting from staffing shortages (nurses, respiratory therapists, etc.). To this end, provisions of law are suspended to the extent necessary to authorize professionals licensed under Title 63 or Title 68, Chapter 140, to perform tasks outside of their licensed scope of practice if:
 - Such tasks are performed in an emergency room or hospital acute care setting
 - Pursuant to a facility-specific, COVID-19-related plan of delegation that has been submitted by the facility's chief medical officer and approved by the Commissioner of Health or the Commissioner's designee.
 - Such plan of delegation includes the specific types of licensees covered, the specific tasks outside of their licensed scope of practice that are permitted, and the specific circumstances and directives under which such tasks are permitted.

The Commissioner or the Commissioner's designee may approve such plan subject to conditions and may rescind such approval in the Commissioner's or Commissioner's designee's sole discretion. Hospitals needing this option should email the proposed plan to: hospitals.covid@tn.gov. For purposes of regulation and disciplinary action, licensees performing tasks pursuant to this provision remain subject to regulation and disciplinary action as if they were acting within their licensed scope of practice.

[Executive Order # 36](#) is a recommended read for any licensed health care professional because it consolidates all health-related provisions in previous executive orders. It was extended by Executive Orders # 63 and # 67. Some of its provisions still in effect include:



- Continued activation of Tennessee Emergency Management Plan.
- Out-of-state health care providers may practice in Tennessee.
- Retired medical professionals can easily reenter the health care workforce.
- In-person and live continuing education requirements are suspended for health care professionals.
- Health Care Inspections:
 - Health care licensing inspections and investigations are suspended.
 - Inspections of health care facilities are suspended.
 - Inspections of mental health and substance abuse facilities and services are suspended.
- Nursing graduates may practice under supervision without examination.
- Pre-license graduate or doctoral level mental or behavioral health professionals can provide telehealth services under supervision. Supervision must be by a person licensed under Title 63 with authorization to diagnose a behavioral or mental health condition. The Commissioner of Health shall provide the requisite form for practicing under this provision on the Department of Health's Health Professional Boards webpage.
- Increased number of hospital beds available for COVID-19 patients.
- Testing for COVID-19 can occur at more medical laboratory facilities.
- Telemedicine/telehealth access is expanded:
 - Telephone assessments for involuntary commitment cases are permitted.
 - All licensed health care providers can practice telemedicine.
 - Licensed alcohol and drug abuse counselors can practice telemedicine.
- Designation and Payment for Certain Nursing Facilities as "COVID-19 Skilled Nursing Facilities/Units."
- Medicaid Payments to "COVID-19 Skilled Nursing Facilities/Units."

The following provisions in Executive Order No. 38, as amended or extended by Executive Order Nos. 49, 55, or 59 and as modified or supplemented were extended:

- Social distancing remain imperative. Persons in Tennessee should to the greatest extent practicable maintain at least six (6) feet of separation from persons outside their household. All persons should also take into account critical factors such as venue capacity and physical characteristics, type of activity involved, and location (indoor vs. outdoor), with respect to social and recreational gatherings in order to properly assess risk and exercise good faith judgment in maintaining appropriate social distancing for each unique situation.
- Persons are urged to wear face coverings in public places.
- Visitation restrictions for elderly-citizen and care-related facilities. "Senior centers or equivalent facilities may be open to members, customers, or the public beginning October 1, 2020; provided, that capacity must be limited to the extent necessary to accommodate adequate social distancing between persons based upon the building's square footage, layout, and other characteristics. Senior centers or equivalent facilities may temporarily close as deemed advisable due to circumstances related to COVID-19 in the area in which such facility is located."
- Persons with COVID-19 or COVID-19 symptoms must stay at home.
- Employers shall not require or allow employees with COVID-19 to work.



Executive Order No. 54, as amended by Executive Order No. 55, providing local governments with authority concerning face coverings was extended.

[Executive Order # 37](#) was issued on May 12 and effective on May 18 through December 29, 2020 (as extended by Executive Order # 52, # 59, # 64, and # 66).

- Extends the provision of EO # 26 permitting remote witnessing and notarization of certain “legal documents”. [Read Executive Order # 67](#) for the most up-to-date process for document notarization.

TMA Note: Title 63 is not one of the *Code* provisions specifically mentioned in the Executive Order. Therefore, it is not clear whether provisions in law requiring the notarization of medical records to present in state court is covered, although the TMA legal department believe that it is. Title 68 regarding health facility records, is covered. TMA believes that the process for notarizing medical records found in # 3 of the Executive Order # 52 can be utilized by physicians if, for example, their records are subpoenaed. The procedure must be followed precisely so read Executive Order # 26 carefully if you use it in your practice.

