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 have 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 as of the date of this report. 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 that are currently in effect. It is by no means exhaustive. Executive Order # 36 is a recommended read for any licensed health care professional because it consolidates all health-related provisions of previous executive order provisions that are still in effect. Basically, all executive Order provisions affecting health care will expire August 29 unless renewed.

- Executive Order # 55 was effective on July 31.
  - Amends Executive Order 36 so that commercial drivers’ licenses (CDLs) with medical cards set to expire between March 12, 2020, and September 29, 2020 have until September 30, 2020, to submit a new medical card to the Department of Safety and Homeland Security to avoid cancellation. Drivers who, since their last medical certificate was issued, have been diagnosed with a medical condition that would disqualify the driver from operating in interstate commerce, or who, since their last medical certificate was issued, have developed a condition that requires an exemption or Skill Performance Evaluation from FMCSA are not covered under this suspension.
  - Amends Executive Order # 36 to give the Department of Health and the Division of TennCare authority and discretion to select, designate, and reimburse certain nursing facilities, or units within certain nursing facilities, as "COVID-19 Skilled Nursing Facilities/Units".
  - Amends Executive Order # 36 to, retroactively to March 26, 2020, allow telehealth or telemedicine services to be provided by an alcohol and drug abuse counselor licensed under Title 68.
  - Amends Executive Order # 38 to allow local education agencies and schools to allow high school athletics.
  - Extends the limited liability protection of health care workers granted in Executive Order # 53 through August 30.
  - Amends Executive Order # 54 by encouraging local education agencies to require face coverings.
• Executive Order # 54 was effective on July 6 and expired on August 3 but was extended through August 29 by Executive Order # 55. It addresses the wearing of face coverings in public.
  o Urges people in public settings to wear cloth face coverings.
  o Authorizes county mayors in the 89 counties that do not have a locally run county health department to issue orders or measures requiring or recommending the wearing of face coverings within their jurisdictions.
  o Sets forth exemptions to any face covering order issued.

• Executive Order # 53 was issued on July 1, effective on July 2nd. It addressed liability protection for health care workers who provide care in response to the COVID-19 emergency. Executive Order # 58, issued August 17, terminated Executive Order # 53 for purposes of liability protection because of the passage of a liability protection law during the Second Extraordinary Session of the 111th General Assembly. Prior to termination, it reads as follows:

  Limited COVID-related liability protection for health care providers except in cases of gross negligence or willful misconduct. To facilitate provision of the additional medical resources required to combat COVID-19, in accordance with Tennessee Code Annotated, Section 58-2-107(l), health care providers licensed, certified, or authorized under titles 33, 63 or 68, who render services within the limits of their license, certification, or authorization are granted limited liability protection and accordingly shall not be liable for any illness, injury, death, or damages related to the contraction of, or suspected contraction of, COVID-19 alleged to have been caused by acts or omissions within the limits of the provider's license, certification, registration, or authorization, including but not limited to acts or omissions resulting from lack of resources attributable to or arising out of the provider's response to the COVID-19 pandemic that renders the health care provider unable to provide the level or manner of care or services that would otherwise be required in the absence of the COVID-19 pandemic. This protection does not include any act or omission caused by gross negligence or willful misconduct.

  o TMA Note: This protection applied to licensed health care workers and licensed health care facilities such as hospitals and nursing homes. TMA believed that, when effective, it covered situations when supplies or PPE was in short supply or if care during the time period was delayed due to stay at home orders or orders limiting essential surgery or procedures.

• Executive Order # 50 was issued on June 29. It extended Executive Orders # 36, 38, and 49 (summarized below) until August 29.

• In addition, it deletes paragraph 7.4 of Executive Order 36 and replaces it with the following:

  o In-person and live continuing education requirements are suspended for health care professionals. The provisions of the rules and policies adopted pursuant to Tennessee Code Annotated, Titles 63 and 68, regarding continuing education credits and hours for health care professionals are hereby suspended to the extent necessary to suspend the requirement that any continuing education credits and hours be obtained in-person or at a live event for credit and hours earned from March 12, 2020, through the expiration of this Order. Such rules and policies are further suspended to the extent necessary to allow the Commissioner of Health to adopt policies necessary to comply with the
suspension of in-person and live continuing education requirements, and the Commissioner of Health is hereby directed to adopt policies to that effect. Nothing in this provision suspends the requirements that health care professionals obtain a certain number of continuing education credits or hours.

**TMA Note:** Paragraph 7.4 of Executive Order # 36 provided for the suspension of requirements that individuals complete or submit proof of completing continuing education requirements or otherwise demonstrate continuing competence as a condition of reinstating a license, certification, or registration. This provision goes away as of July 1.

**TMA Note:** The new Paragraph 7.4 provides that physicians and other licensed health care professionals are required to timely complete the requisite number of continuing education hours for their profession. However, Executive Order # 50 specifies that such credits obtained after March 12, 2020 do not have to be obtained in-person; they may be obtained online.

CME rules for medical doctors at Tenn. Comp. R. & Regs. 0880-02-.19 specify that acceptable CME must be:

(3) Acceptable Continuing Education - To be utilized for satisfaction of the continuing education requirements of this rule, the continuing education hours must comply with both of the following:

(a) They must be sponsored by an organization accredited as a sponsor of continuing medical education by either the Accrediting Council for Continuing Medical Education (ACCME) or by a state medical association recognized by the ACCME as an intrastate accreditor of sponsors of continuing medical education; and

(b) They must be designated or certified by the accrediting sponsor as meeting the criteria for Category 1 continuing medical education credit of the American Medical Association's Physician's Recognition Program; or be designated by the AAFP as meeting the criteria of the AAFP's prescribed credit: or

(c) If a licensee provides disciplinary case review at the request of the Department, and submits a written report of his or her conclusions regarding such disciplinary case review, the reviewing licensee shall receive one (1) hour of continuing medical education credit for each hour spent reviewing the materials and preparing the report. A maximum of ten (10) hours credits shall be awarded for reviewing disciplinary case materials during the two (2) calendar years (January 1 - December 31) that precede the licensure renewal year.

Therefore, if a medical doctor’s CME is sponsored according to the rule above and designated as Category I or AAFP, such course even if obtained online, will count towards fulfillment of the CME requirement.
TMA Note: TMA has online CME that will satisfy the mandatory prescribing course for each renewal cycle. Go to TMA’s Education website and choose Proper Prescribing Training to access this class.

- **Executive Order # 49** was issued on June 12 amends Executive Order # 38 regarding visitation of patients in long-term care or assisted living facilities. Executive Order # 50 extended its effectiveness until August 29, 2020.
  - Encourages individuals wishing to visit patients of those facilities to do so via electronic means unless the facility determines the visit is to provide accommodations for support of residents with disabilities, religious exercise or if the resident is receiving life-ending care and the visit will not risk other residents or staff.
  - Visits must be conducted using the Department of Health’s guidelines for facility visitation.
  - Visiting persons must show documentation of a recent negative COVID-19 PCR test.
  - Visitors must be screened for symptoms by the facility.
  - At all times, the facility must follow the Department of Health guidelines.
  - Facilities should minimize the movement of staff between facilities.
  - Senior centers shall remain closed, although staff may deliver service by electronic means.

- **Executive Order # 38** was issued on May 22. It is the Governor’s return to work executive order and is in effect until August 29, 2020 (as extended by Executive Order # 50). It exclusively governs on the subjects they concern in the 89 counties that do not have a locally run county health department.
  - Strongly encourages employers to equip or require employees who can to work from home.
  - Expects employers to follow guidelines in reopening.
  - Sets parameters for gatherings of 50 or more people.
  - Urges people to wear masks in public when close proximity to others is expected.
  - Sets parameters for visitors to facilities like nursing homes. (See Executive Order # 49).
  - Take steps to protect vulnerable populations in all businesses.
  - COVID-19 patients should not work.
  - No local official or local governmental entity shall issue an order or measure regarding the provision of medical, dental, or oral procedures because of COVID-19 absent authority delegated by the Governor.

- **Executive Order # 37** was issued on May 12 and effective on May 18 through August 29, 2020 (as extended by Executive Order # 52).
  - Extends the provision of EO # 26 permitting remote witnessing and notarization of certain “legal documents”. Read Executive Order # 52 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.

- **Executive Order # 36** was issued on May 12 and effective on May 18 through August 29, 2020 (as extended by Executive Order # 50).
  
  - Extends and consolidates provisions in previous Executive Orders # 15, 19, 20, 24, 28 and 32.
  - Extends the provision of EO # 15 that allows licensed health care providers with another state license to practice in Tennessee to assist with the medical response to COVID-19.
  - Extends provision of EO # 15 that permits Tennessee pharmacists to dispense up to a 90-day supply of maintenance medications as necessary to respond to and prevent the spread of COVID-19.
  - Extends provision of EO #15 allowing an extension for health care professional license and facility license renewals due between March 12 and May 31, as long as such renewal application is received by August 31.
  - Revises provision in EO #20 waiving fees for initial Tennessee licensure applications for physicians and other health care applicants between March 12, 2020, and May 31, 2020. The deadline to pay initial application fees is now June 30, 2020.
  - Extends provision in EO # 20 whereby initial health care license applications do not have to include notarized documents.
  - Extends provision in EO # 20 allowing retired health care professionals to have their licenses reinstated without having to show proof of continuing education competency or be interviewed by the licensing board, usually required to reinstate.
  - Issues a new directive that the commissioner of health extend the deadline for licensed health care professionals to obtain required continuing education and suspends continuing education audits by licensing boards.
  - Extends provision in EO # 20 suspending inspection requirements of on-site laboratories.
  - Extends provision in EO # 20 suspending initial inspections of pain management clinics. Applications can proceed without an inspection.
  - Extends the suspension of the requirement in EO # 20 that pain management clinics be inspected every two years as condition for renewal.
  - Extends the provision of EO # 20 Suspending the requirement that the Department of Health conduct inspections of facilities applying for licensure if the applicant facility is physically located in the same location as another licensed facility where patients have been seen within the thirty (30) days preceding the submission of the application.
  - Extends the provision in EO # 20 suspending the requirement that the Department of Health conduct inspections for medical laboratory applicants for licensure if the applicant laboratory is physically located in the same location where another licensed
medical laboratory was located within the thirty (30) days preceding the submission of the new application.

- Extends the provision in EO # 28 whereby the Commissioner of Health has the authority and discretion to allow a person who has graduated on or after December 1, 2019, from an approved RN or LPN education program, and who has applied and fulfilled all other requirements for licensure as a nurse but has yet to take the National Council Licensure Exam (NCLEX), to practice nursing under the supervision of a licensed registered nurse. **TMA Note:** Medical practices need to be careful about hiring these nurses. The Executive Order provides that these nurses must be supervised by an RN. It fails to specify that these nurses can be supervised by a physician. Therefore, if your medical practice does not have an RN not subject to this Executive Order to supervise these nurses, the practice could be in violation of law.

- Extends the provision of EO # 24 allowing some masters’ degree behavioral health professionals to treat without a license by telemedicine if supervised by a licensee authorized to treat mental health conditions.

- Expands locations at which COVID-19 testing may take place without the prior approval of the medical laboratory board.

- Suspends new construction approval for construction of quarantine structures.

- Gives the department of labor authority to authorize unemployment payment to workers who left work upon order of a medical professional for quarantine due to COVID-19 who intends to return to work and is otherwise eligible for benefits.

- Reaffirms the provision in EO # 24 extending the deadline for payment of the State professional privilege tax until July 1.

-Suspends inspections of mental health and substance abuse facilities.

- Extends the provision in EO # 20 allowing the issuance of a certificate of need under Tennessee Code Annotated, Section 33-6-404, for the emergency involuntary commitment of a person with a mental illness or serious emotional disturbance based upon a telephone assessment of such person by a mandatory pre-screening agent if the following conditions are met: a. The mandatory pre-screening agent is not reasonably able to conduct an evaluation in-person or via readily available telehealth services; and b. The mandatory pre-screening agent determines in the agent’s professional judgment that conducting the assessment via telephone with the person is clinically appropriate.

- Extends the provision in EO # 15 suspending the requirement that a patient admitted to a mental health facility receive an admission review within 7 days.

- Extends the provision in EO # 15 suspending the Certificate of Need (CON) requirement in order for hospitals to expand beds.

- Extends the provision in EO # 15 directing the department of health and the department of commerce and insurance to work with health insurers to identify and remove any burdens to responding to the COVID-19 and to improve access to treatment options and medically necessary screening and testing for COVID-19.

- Extends provision in EO # 15 merely urging health insurance companies to provide coverage for services via telemedicine regardless of network status and to not impose prior authorization on treatment related to the virus delivered by in-network providers via telemedicine.

- Extends the provision in EO # 15 allowing providers in other states to provide telemedicine services to patients located in Tennessee without a Tennessee license.

- Extends the provision in EO # 15 allowing telehealth or telemedicine services to be provided by any provider licensed under Title 63, regardless of the provider’s authority
to diagnose. This suspension does not otherwise alter or amend any licensee’s scope of practice or record keeping requirements.

- Extends the provision in EO # 15 allowing pain management clinics to use telemedicine for chronic non-malignant pain treatment.
- Extends provision of EO # 15 permitting the TBI to use name background checks rather than fingerprint checks to check backgrounds of new health care license applicants.
- Extends provision of EO # 19 whereby driver’s licenses set to expire between March 12 and May 18 will now expire June 30.

- **Executive Order # 33** was issued on May 5, 2020. It was repealed by **Executive Order # 38**.

- **Executive Order # 32** was issued on May 1, 2020.

  - It authorized physical therapists, occupational therapists, and speech language pathologists to provide services to workers’ compensation patients via telemedicine until May 18. Payment is to be in parity with in-office visits.
  - **TMA Note:** **Executive Order # 36** did not specifically extend this provision, however, provision # 38.1 of **Executive Order # 36** (as extended by Executive Order # 50) allows any licensee to provide telehealth services within the scope of their licenses until August 29, 2020.

- **Executive Order # 28** amended provisions of Executive Order # 15 which expired on May 15. It was not one of the provisions extended by **Executive Order # 36**.

  - Provisions # 5.1 and 6.1 of the Order do away with requirements that APRNs and PAs collaborate with physicians until May 15, 2020. This expired on May 15.
  - **TMA Note:** These were regulatory provisions and nothing prevented physicians from requiring collaboration with APRNs and PAs who are employed by physicians as a condition of employment. The most notable public health danger this created was that APRNs and PAs who practiced on their own, like the infamous “Rock Doc” accused of over-prescribing and other transgressions with patients, did not have to collaborate with physicians between March 19 and May 15, 2020.
  - Provision 7.17 suspended TCA Section 68-11-201 (20), regarding physician orders. The result was that nurse practitioners and physician assistants could write orders for home health services, as necessary to respond to and prevent the spread of COVID-19. This provision expired on May 15.

- **Executive Order # 25** expired on April 30.

  - The expiration of the Order had the effect of lifting an earlier prohibition on elective medical and non-urgent surgical and invasive procedures.