

Governor Abbott Eases Ban on Elective Procedures

04.22.20

On April 17, 2020, Texas Governor Greg Abbott issued a series of Executive Orders, including [Executive Order GA-15](#), which go into effect as of 11:59 pm on April 21, 2020, and continue through May 8, 2020, unless amended or extended by the Governor.

Executive Order GA-15 is intended to loosen previous restrictions on surgeries and procedures that were put in place under [Executive Order GA-09](#), issued by Governor Abbott on March 22, 2020. In response to Executive Order GA-15, the Texas Medical Board (TMB) [adopted new emergency rules](#), [published updated FAQs](#), and confirmed that the prior emergency rules associated with Executive Order GA-09, including the characterization of violations as “continuing threats” and mandatory reporting requirements, will expire when Executive Order GA-15 goes into effect. Despite the expiration of Executive Order GA-09, suspected violations of Executive Order GA-15 may still be reported to the TMB as unprofessional conduct and may result in investigation or disciplinary action.

As described in the TMB guidance, Executive Order GA-15 emphasizes the importance of patient safety and focuses on preservation of hospital capacity and protective personal equipment (PPE). Executive Order GA-15 and the TMB guidance require healthcare professionals and facilities to postpone 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,” unless the procedure meets one of the following two exceptions:

1. procedures that, if performed in accordance with commonly accepted standard of clinical practice, would not deplete hospital capacity or PPE needed to cope with COVID-19; or
2. procedures performed in a licensed health care facility, provided that written certification has been made to the Texas Health and Human Services Commission that such facility will (a) reserve at least 25% of its hospital capacity for treatment of COVID-19 patients, and (b) not request any PPE from any public source for the duration of the COVID-19 disaster.

The TMB FAQs, dated April 21, 2020, expressly state that if either of the foregoing exceptions to Executive Order GA-15 is satisfied, “a surgery or procedure **can** go forward,” even if the surgery or procedure is not medically necessary to diagnose or correct a serious medical condition of or preserve the life of a patient. While the TMB did not publish a list of approved or prohibited procedures, the TMB FAQs indicate that non-urgent elective procedures (including elective cosmetic procedures) may be performed as scheduled only if a physician determines and documents that such surgery or procedure either (a) cannot be postponed or (b) satisfies one of the above exceptions, including the exception for procedures that would not potentially deplete hospital capacity or PPE.

Accordingly:

- The applicability of the exceptions under Executive Order GA-15 are fact-specific, so providers should evaluate each situation and possible medical or surgical procedure on a case-by-case basis.
- All healthcare providers and facilities should ensure that patient and clinical records clearly document and reflect the provider’s or facility’s reasoned analysis and determination as to both the necessity of a particular procedure and, if performed in a healthcare facility, the potential or anticipated impact on hospital bed availability and usage of PPE relating to the performance of such procedure.
- Providers and facilities should also consider and abide by applicable municipal or county ordinances that may impose greater restrictions on business and operational activities.

Finally, the COVID-19 pandemic is a fluid and ever-evolving situation. Pandemic-related declarations and orders are arriving at a rapid pace. Providers should continually monitor updates and cautiously implement new policies, procedures, and operating standards when updates are issued.

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