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GOVERNOR LAURA KELLY

EXECUTIVE ORDER NO. 20-26

Temporary relief from certain restrictions and requirements governing the provision of medical services

WHEREAS, securing the health, safety, and economic well-being of residents of the State of Kansas is this Administration's top priority;

WHEREAS, Kansas is facing a crisis—the pandemic and public health emergency of COVID-19—with effects of illness, quarantines, school closures, and temporary closure of businesses resulting in lost wages and financial hardship to Kansas citizens;

WHEREAS, the United States Departments of Health and Human Services declared a public health emergency for COVID-19 beginning January 27, 2020, with more than 776,000 cases of the illness and more than 41,000 deaths as a result of the illness across the United States;

WHEREAS, the World Health Organization declared a pandemic on March 11, 2020;

WHEREAS, a State of Disaster Emergency was proclaimed for the State of Kansas on March 12, 2020;

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 50 1 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act");

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, et seq. and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared a national emergency that the COVID-19 outbreak in the United States constitutes a national emergency beginning March 1, 2020;

WHEREAS, as of this date, there have been over 2,211 positive cases of COVID-19 in Kansas, spread among 70 counties, with 110 deaths as a result of the illness;

WHEREAS, the continued spread of COVID-19 throughout Kansas and the potential for further spread in the days and weeks ahead threatens local health care systems with overload of hospital beds, personal protective equipment, testing and treatment supplies, and other critical resources for responding to the COVID-19 pandemic;

WHEREAS, suspension of certain state statutes and administrative rules is necessary to reduce the risk of further exposure and spread of COVID-19 and to assist with mitigation efforts during the COVID-19 public health emergency;

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease;

WHEREAS, responding effectively to the urgent and steep demands created by the COVID-19 pandemic will require the help of as many health care professionals as possible, working in whatever capacities are appropriate to their respective education, training, and experience. To ensure health care professionals and facilities are fully enabled to provide the critical assistance and care needed by this state and its residents during this unprecedented emergency, it is reasonable and necessary to provide limited and temporary relief from certain restrictions and requirements governing the provision of medical services; and

WHEREAS, in these challenging times this Administration will do whatever it can to avoid immediate dangers to the health, safety, and welfare of Kansans, including providing guidance and support for local authorities who are making difficult and important decisions to protect the health and safety of their populations, as well as certainty to the broader population that essential functions will not be interrupted.

NOW, THEREFORE, pursuant to the authority vested in me as Governor of the State of Kansas, including the authority granted me by K.S.A 48-924 and K.S.A 48-925, in order to slow the spread of COVID-19, I hereby direct and order the following:

1. Any and all provisions in Kansas Statutes relating to supervision, delegation, and related issues by and to healthcare providers that are licensed, registered or certified and ancillary workers, are temporarily suspended, in whole or part, to the extent necessary to allow licensed, registered, or certified health care professionals to provide, within a designated health care facility at which the professional is employed or contracted to work, medical services that are necessary to support the facility's response to the COVID-19 pandemic and are appropriate to the professional's education, training, and experience, as determined by the facility in consultation with the facility's medical leadership.

    a. Medical services may be provided under this section without supervision from a licensed physician or nurse, without criminal, civil, or administrative penalty related to a lack of supervision or to the lack of a supervision agreement;

    b. The suspensions under this section include, but are not limited to, the following:

        i. K.S.A. 65-28a08, 65-28a09 and K.A.R. 100-28a-6, 100-28a-10, 100-28a-13, 100-28a-14, and 100-28a-17 as they relate to supervision, delegation, and related issues to the extent necessary to permit physician assistants to provide medical services appropriate to the professional's education, training, and experience, without a written practice agreement with a

physician and without criminal, civil, or administrative penalty related to a lack of such agreement;

ii. K.S.A. 65-1130, 65-1158 and K.A.R. 60-11-101, 60-11-104a, 60-11-104, 60-11-105, and 60-11-107 and related provisions of Kansas law, as they relate to supervision, delegation, and related issues to the extent necessary to permit advanced practice registered nurses to provide care without a written collaborative agreement and protocols, and including nurse anesthetists, to provide medical services appropriate to the professional's education, training, and experience, without physician supervision or direction and without criminal, civil, or administrative penalty related to a lack of such supervision;

iii. K.S.A 65-1113 and related provisions of Kansas law, as they relate to supervision, delegation, and related issues to the extent necessary to permit registered nurses and licensed practical nurses to order the collection of throat or nasopharyngeal swab specimens from individuals suspected of being infected by COVID-19, for purposes of testing;

iv. K.S.A. 65-1113 and related provisions of Kansas law, as they relate to supervision, delegation, and related issues to the extent necessary to permit licensed practical nurses to provide medical services appropriate to the professional's education, training, and experience, without registered nurse supervision and without criminal, civil, or administrative penalty related to a lack of such supervision;

v. K.S.A. 65-1626a and related provisions of Kansas law, as they relate to supervision, delegation, and related issues to the extent necessary to permit licensed pharmacists to provide care for routine health maintenance, chronic disease states, or similar conditions, as appropriate to the professional's education, training, and experience, without physician supervision and without criminal, civil, or administrative penalty related to a lack of such supervision.

vi. K.S.A. 65-1115, 65-1116, 65-1117, and K.A.R. 60-3-112, 60-3-15, and 60-3-111 and related provisions of Kansas law, as they relate to supervision, delegation, and related issues to the extent necessary to permit registered nurses and licensed practical nurses, who hold a license that is exempt, inactive, or has lapsed within the past five (5) years, to provide medical services appropriate to their education, training, and experience and without criminal, civil, or administrative penalty related to only having an exempt, inactive, or has lapsed license.

c. Nothing in this section diminishes the ability of unlicensed health care professionals to practice in Kansas, which statutes provide certain exceptions to licensure and which statutes remain in full force and effect.

2. Notwithstanding any law, regulation, or executive order to the contrary, and without the need for a clinical affiliation agreement, a designated health care facility is temporarily authorized:

    a. To allow students who are enrolled in programs to become licensed, registered, or certified health care professionals to volunteer or work within the facility in whatever roles that are necessary to support the facility's response to the COVID-19 pandemic and are appropriate to the students' education, training, and experience;

    b. To allow licensed, registered, or certified health care professionals and emergency medical personnel who are serving in the military in any duty status, to volunteer or work within the facility in whatever roles that are necessary to support the facility's response to the COVID-19 pandemic and are appropriate to the service members' education, training, and experience; and

    c. To allow medical students, physical therapists, and emergency medical personnel to volunteer or work within the facility as "respiratory therapist extenders" under the supervision of physicians, respiratory therapists, or advanced practice registered nurses. Such extenders may assist respiratory therapists and other health care professionals in the operation of ventilators or related devices. Nothing in this section shall be taken to preclude such extenders from providing any other services that are necessary to support the facility's response to the COVID-19 pandemic and are appropriate to their education, training, and experience, as determined by the facility in consultation with the facility's medical leadership.

3. Any and all provisions in Kansas law are temporarily suspended, in whole or part, to the extent necessary to allow health care professionals licensed and in good standing in any state or territory in the United States to practice in Kansas without criminal, civil, or administrative penalty related to lack of licensure. A license that has been suspended or revoked is not considered a license in good standing, and a licensee with pending disciplinary action is not considered to have a license in good standing. Any license that is subject to a limitation in another state is subject to the same limitation in this state.

4. Notwithstanding any law or regulation to the contrary, a designated health care facility is temporarily authorized to use qualified volunteers or qualified personnel affiliated with other designated health care facilities, as if the volunteers or personnel were affiliated with the facility. This section is subject to any terms and conditions that may be established by the Secretary of the Kansas Department of Health and Environment.

5. Notwithstanding any other provision of law, all health care providers, including but not limited to "health care provider" as defined in K.S.A. 40-3401, and also including registered nurses, advanced practice registered nurses, licensed practical nurses, pharmacists, unlicensed volunteers, military personnel, or students and other support personnel and all entities or individuals referenced in K.S.A. 48-915, making clinical and triage decisions and rendering assistance, testing, care or advice in the care of patients

reasonably suspected or confirmed to be infected with COVID-19, rendered in response to any Kansas Department of Emergency Management mission related to the COVID-19 outbreak, and the proclamation issued declaring a state of disaster emergency pursuant to K.S.A. 48-924, shall be deemed immune from suit pursuant to K.S.A. 48-915, unless it is established that any adverse event or injury was caused by the willful misconduct, gross negligence, recklessness, or bad faith of such facility or health care provider. Nothing in this Executive Order shall be construed to modify, impair or supersede State law governing legal standards, procedures or judicial interpretation used in any civil action against an entity or individual where this Order is deemed not to cover such an entity or individual because of an allegation of willful misconduct or for any other reason.

a. Nothing in this Executive Order shall be construed to limit or change the protections from liability provided under K.S.A. 48-915, K.S.A. 65-2891, K.S.A. 75-6101, *et seq.*, or any other state or federal statute.

b. The liability protections addressed in paragraph 5 of this order are not intended to extend to medical treatment or procedures performed in the ordinary or customary course of practice.

6. Any and all provisions in Kansas law or regulations are temporarily suspended to the extent that they require for any health care professional, as a condition of licensure, certification, registration, or the renewal of a license, certification, or registration, or reinstatement within five (5) years of a lapsed license:

   a. An exam, to the extent that the exam's administration has been canceled while the emergency declaration is in effect;

   b. Fingerprinting, as locations to have fingerprints taken are substantially unavailable on account of closures arising from the COVID-19 pandemic;

   c. Continuing education while the emergency declaration is in effect; and

   d. Payment of a fee.

7. For individuals who hold professional certifications in basic life support, advanced cardiac life support, or first aid, such certifications shall continue to remain in effect while the emergency declaration is in effect, even if they are otherwise due to expire during the emergency.

8. Any law or regulation is temporarily suspended to the extent that it requires fingerprinting of any individual as a condition of licensure and certification for hospitals, nursing homes, county medical care facilities, or psychiatric hospitals.

9. For purposes of this Order, "designated health care facility" means the following facilities, including those which may operate under shared or joint ownership:

a. The entities listed in K.S.A. 40-3401(f);

b. State-owned surgical centers;

c. State-operated hospitals and veterans facilities;

d. Entities used as surge capacity by any of the entities listed in subsections (a)-(c) of this section;

e. Adult Care Homes; and

f. Any other location specifically designated by the Governor or the Secretary of the Kansas Department of Health and Environment to exclusively treat patients for COVID-19.

This document shall be filed with the Secretary of State as Executive Order No. 20-26. It shall become effective immediately and remain in force until rescinded, until May 31, 2020, or until the statewide State of Disaster Emergency proclaimed on March 12, 2020, relating to COVID-19 expires, whichever is earlier.

THE GOVERNOR'S OFFICE

BY THE GOVERNOR Laura Kelly

DATED 4.22.2020

Scott Schwab
Secretary of State

Bryan A. Cash
Assistant Secretary of State

FILED
APR 22 2020
SCOTT SCHWAB
SECRETARY OF STATE