



Commonwealth of Virginia
Office of the Governor

Executive Order

NUMBER SIXTEEN (2022)

PROVIDING FLEXIBILITY TO HOSPITALS, HEALTH SYSTEMS, NURSING HOMES, CERTIFIED NURSING FACILITIES, ASSISTED LIVING FACILITIES, EMERGENCY MEDICAL SERVICES, AND OTHER HEALTH CARE PROVIDERS TO COMBAT COVID-19

By virtue of the authority vested in me as Governor, I hereby issue this Executive Order to provide flexibility to hospitals, health systems, nursing homes, assisted living facilities, certified nursing facilities, and other health care providers to combat COVID-19. This order expires March 22, 2022.

Importance of the Issue

Over the last two years, Virginia's hospitals, health systems, nursing homes, certified nursing facilities, assisted living facilities, emergency medical services, and other health care providers have been on the frontlines responding to the novel coronavirus (COVID-19) pandemic. The relentless pace of the pandemic has had an innumerable burden on our healthcare system, exacerbating pre-existing workforce shortages and creating new challenges. Our frontline health care workers are tired, facing unprecedented burnout, grappling with their own mental and physical health, but yet, many of them continue to sacrifice time with their loved ones so that they can continue to provide care for their neighbors. Virginia is grateful to these heroes and humbled by their daily service.

Now, the Omicron variant is driving cases due to its highly infectious characteristics bringing both the seven-day average and the total number of hospitalizations across the Commonwealth among their highest points since the pandemic began at 3,742 and 3,673 patients, respectively. The significant increase in hospitalizations, combined with the severe staffing shortages universally experienced across the Commonwealth and nationwide, is placing an unsustainable strain on our healthcare system and health care workforce. To further

compound the strain on the system, hospital emergency departments are also overwhelmed due to a variety of factors including inadequate community-based behavioral health services, at-capacity state psychiatric facilities, and unavailability of testing in the community which limits hospitals' ability to transfer behavioral health and other patients to more appropriate care settings, placing further strains on hospital capacity.

Given these challenges, it is critical that the Commonwealth extends to hospitals, health systems, nursing homes, certified nursing facilities, assisted living facilities, emergency medical services, and other health care providers every available flexibility and waiver necessary to ensure that our healthcare system has the resources needed to care for patients and communities. Any and all measures are needed to expand the workforce, meet surge demand, and leverage other tools and technologies to respond to this crisis, provide relief for our overburdened frontline workers, and ensure their safety and that of their patients.

The General Assembly afforded immunity from certain liability in circumstances such as those presented by the COVID-19 health crisis. §§ Sections 8.01-225.01 and 8.01-225.02 of the Code of Virginia provide certain liability protection to all health care providers during a state of emergency. § Section 44-146.23 of the Code of Virginia provides certain liability protection to public and private agencies and their employees engaged in emergency services activities, which include medical and health services.

Directive

Therefore, on this date, February 20, 2022, I declare that a limited state of emergency exists in the Commonwealth of Virginia due to COVID-19, a communicable disease of public health threat and its impact on the healthcare system and its workforce. The effects of COVID19 constitute a disaster as described in § 44-146.16 of the Code of Virginia (Code). By virtue of the authority vested in me by Article V of the Constitution of Virginia and by § 44-146.17 of the Code, I declare that a limited state of emergency exists in the Commonwealth of Virginia. In order to marshal all public resources and appropriate preparedness, response, and recovery measures, I order the following actions:

1. I authorize for the Commissioner of the Virginia Department of Health, the Commissioner of the Department of Behavioral Health and Developmental Services, the Director for the Department of Medical Assistance Services, the Commissioner of the Virginia Department of Social Services, and the Director of the Department of Health Professions, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any state regulation, and enter into contracts as required to implement this order without regard to normal procedures or formalities, and without regard to application or permit fees or royalties. All waivers issued by agencies shall be posted on their websites.
2. Notwithstanding the provisions of Article 1.1 of Chapter 4 of Title 32.1 of the Code, I further direct the State Health Commissioner, at his discretion, to authorize any general hospital or nursing home licensed or exempt from licensure by the Virginia Department

of Health (VDH) to increase licensed bed capacity as determined necessary by the Commissioner to respond to increased demand for beds resulting from COVID-19, including plans for safely staffing services across the facility. Notwithstanding § 32.1-132 of the Code, I further direct that any beds added by a general hospital or nursing home pursuant to an authorization of the Commissioner under this Order will constitute licensed beds that do not require further approval or the issuance of a new license. Any authorization by the Commissioner to increase bed capacity, and the authority for any resulting increased number of beds, will expire 30 days after the expiration or rescission of this Order, as it may be further amended. To provide relief on existing bed capacity, and notwithstanding § 32.1 of the Code, I also direct the State Health Commissioner to authorize programs to allow hospitals to offer intensive at-home treatment enabled by digital technologies, multidisciplinary teams, and ancillary services consistent with the Centers for Medicare & Medicaid Services (CMS) Acute Hospital Care at Home Program, provided that a hospital has received a waiver from CMS of 42 CFR § 482.23(b)(1) of the Hospital Conditions of Participation.

3. Notwithstanding any contrary provision in Title 54.1 of the Code, in order to relieve the capacity strain on bedside care and support resulting from staffing shortages, a license issued to a health care provider, pharmacist, pharmacy intern, or pharmacy technician by another state, and in good standing with such state, shall be deemed to be an active license or registration issued by the Commonwealth to provide health care or professional services as a health care practitioner of the same type for which such license or registration is issued in another state provided the health care practitioner is engaged by a hospital (or an affiliate of such hospital where both share the same corporate parent), licensed nursing home, certified nursing facility, dialysis facility, the VDH, or a local or district health department for the purpose of assisting that facility with public health and medical and health operations. Hospitals, licensed nursing homes, certified nursing facilities, dialysis facilities, and health departments must submit to the applicable licensing authority each out-of-state health care practitioner's name, license type, state of license, and license identification number within a reasonable time of such health care practitioner providing services at the applicable facility in the Commonwealth.
4. Health care physical or behavioral health providers with an active license issued by another state may provide continuity of care to their current patients who are Virginia residents through telehealth services. Establishment of a relationship with a new patient requires a Virginia license unless pursuant to paragraph 3 of this Order.
5. Physician assistants licensed in Virginia with two or more years of clinical experience may practice in their area of knowledge and expertise and may prescribe without a written or electronic practice agreement.

6. A health care or behavioral health provider may use any non-public facing audio or remote communication product that is available to communicate with patients, provided that such communication product is not inconsistent with the waivers and flexibilities issued by the United States Department of Health and Human Services and the Centers for Medicare and Medicaid Services. This exercise of discretion applies to telehealth services provided for both COVID-19 and for other diagnosis and treatment services unrelated to COVID-19.
7. A licensed practical nurse may administer the COVID-19 vaccine without the supervision of a registered nurse or licensed medical practitioner.
8. Licensed health professionals of health systems or hospitals whose scope of practice includes administration of the vaccine and who have administered the COVID-19 vaccine in a health system or hospital setting may administer the COVID-19 vaccine at any point of distribution that is held in collaboration between a health system or hospital and a local health department without undergoing additional training.
9. A local health department may collaborate with a federal health facility, whether civilian or military, for the purpose of COVID-19 vaccine administration. Federal personnel whose scope of practice includes vaccination may serve with the Medical Reserve Corps after a training and skills assessment as required by VDH.
10. The Department of Medical Assistance Services (DMAS) shall suspend pre-admission screening pursuant to § 32.1-330 of the Code. All new nursing home and assisted living facility admissions will be treated as exempted hospital discharges. Community based LTSS screening teams shall be exempt from face-to-face screenings and may screen for nursing home and assisted living facility admissions from a community setting or waiver services using telehealth or telephonic screening.
11. DMAS shall waive requirements pursuant to § 32.1-325(A)(14) of the Code concerning certificates of medical necessity. Any supporting verifiable documentation requirements are waived with respect to replacement of durable medical equipment (DME). DMAS shall also suspend enforcement of additional replacement requirements for DME, prosthetics, orthotics, and supplies that are lost, destroyed, irreparably damaged, or otherwise rendered unusable, such that the face-to-face requirement, a new physician's order, and new medical necessity documentation are not required for replacement equipment.
12. Any health care provider as defined in §32.1-127.1:03 of the Code, or any other person permitted by law to administer the COVID-19 vaccine, who administers COVID-19

immunizations, shall report to the Virginia Immunization Information System in a manner consistent with the Virginia Immunization Information System Regulations.

13. The number of technicians a pharmacist may supervise shall be increased. No pharmacist shall supervise more than five persons performing the duties of a pharmacy technician at one time. Pharmacy technicians performing COVID-19 administrative tasks will not be counted in the ratio count.
14. Emergency Medical Services (EMS) agencies shall continue to coordinate and work with health care providers to address the overwhelming demands and capacity shortages being experienced by EMS agencies and other first responders. This includes strategies to manage and coordinate pre-hospital care as well as patient discharge and transport.
15. Temporary nurse aides practicing in long term care certified facilities under the federal Public Health Emergency 1135 Waiver may be deemed eligible by the Board of Nursing to take the National Nurse Aide Assessment Program examination upon submission of a completed application, the employer's written verification of competency and employment as a temporary nurse aide, and provided no other grounds exist under Virginia law to deny the application.
16. Copays required under § 32.1-351(C) of the Code for Virginians receiving health insurance through the Family Access to Medical Insurance Security Plan are waived.
17. Personal care, respite, and companion providers in the agency- or consumer-directed program, who are providing services to individuals over the age of 18, may work for up to 60 days, as opposed to the current 30-day limit in § 32.1-162.9:1 of the Code, while criminal background registries are checked. Consumer-directed Employers of Record must ensure that the attendant is adequately supervised while the criminal background registry check is processed. Agency providers must adhere to current reference check requirements and ensure that adequate training has occurred prior to the aide providing the services in the home. Agency providers shall conduct weekly supervisory visits through telehealth methods when the aide works prior to receiving criminal background registry results. This section does not apply to services provided to individuals under the age of 18, with the exception of parents of minor children in the consumer-directed program.
18. Requirements under § 2.2-4002.1 of the Code related to the 30-day advance -public notice and comment period are waived as to DMAS only, so that DMAS can issue Medicaid Memos to ensure that health care providers receive immediate information on flexibilities to ensure access to care for Medicaid members.

Effective Date

This Executive Order shall be effective upon its signing and shall remain in effect until March 22, 2022, unless sooner amended or rescinded by further executive order or directive.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 20th day of February, 2022.



A handwritten signature in black ink, appearing to read "Glenn Youngkin".

Glenn Youngkin, Governor

Attest:

A handwritten signature in black ink, appearing to read "Kay Coles James".

Kay Coles James, Secretary of the Commonwealth