

# What Texas Licensed Healthcare Facilities Need to Know About Resuming Nonessential Surgeries

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**PRACTICES** Healthcare and Life Sciences, Healthcare Transactions and Regulatory

We recently discussed how the Coronavirus Aid, Relief, and Economic Security Act (the “**CARES Act**”) allocates \$100 billion to the Public Health and Social Service Emergency Fund, to be distributed as relief funds to hospitals and other healthcare providers on the front lines of the coronavirus response (“**Provider Relief Fund**”). More information on our analysis of the federal Provider Relief Fund, earmarked, in part, for hospitals to support healthcare-related expenses or lost revenue attributable to COVID-19 can be found [here](#).

On April 17, 2020, Governor Abbott issued Texas Executive Order (GA-15), which goes into effect on April 21, 2020, at 11:59 p.m., and continues until May 8, 2020. This recent order allows certain nonessential surgeries<sup>1</sup> at Texas licensed healthcare facilities, so long as those surgery procedures would not deplete the hospital capacity or the personal protective equipment (“**PPE**”) needed to safely handle the COVID-19 disaster, and on the condition that such facilities (i) will reserve at least 25% of the hospital capacity for treatment of COVID-19 patients, accounting for the range of clinical severity of COVID-19 patients; and (ii) will not request any PPE from any public source, whether federal, state, or local, for the duration of the COVID-19 disaster (collectively, the “**GA-15 Conditions**”).

The Texas Health and Human Services Commission (“**HHSC**”) also issued Health Facility Licensing Guidance Letter ([GL-20-1007](#)) to further describe the requirements set forth in Executive Order (GA-15) and the responsibilities of licensed health care facilities. If the licensed healthcare facility elects to continue certain nonessential surgeries, it should certify in the form of a letter to the HHSC that it will follow and meet the GA-15 Conditions described above. More specifically, the certification must:

1. Be on the licensed healthcare facility’s letterhead;
2. Be addressed to

Health Facility Licensing Certification Coordinator  
Health and Human Services Commission  
Health Facility Licensing – MC 1868  
P.O. Box 149347  
Austin, TX 78714-9347

3. Reference the facility’s name, license type, and license number in the subject line;
4. Identify by name the facility’s administrator, director, or other individual with authority to bind the facility;
5. Include the following language:

- I certify, on behalf of [name of licensed healthcare facility], that this facility will reserve at least 25% of its hospital capacity for treatment of COVID-19 patients, accounting for the range of clinical severity of COVID-19 patients; and
- I certify, on behalf of [name of licensed healthcare facility], that this facility will not request any personal protective equipment from any public source, whether federal, state, or local, for the duration of the COVID-19 disaster.

6. Not limit or qualify the required certification language in any way;

7. Be signed by the facility's administrator, director, or other individual with authority to bind the facility, as identified above; and

8. Be submitted to the Health and Human Services Commission via e-mail to [\[email protected\]](#).<sup>2</sup>

If you have questions about how the Executive Order will affect you and/or how COVID-19 is affecting the healthcare industry, please contact a member of our [Healthcare and Life Sciences Practice Group](#) below. You can also review our [COVID-19 Resources page](#) for more information.

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<sup>1</sup> Nonessential surgeries would be those "that are not medically necessary to diagnose or correct a serious medical condition of, or to preserve the life of, a patient who without timely performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's physician." See [https://gov.texas.gov/uploads/files/press/EO-GA-15\\_hospital\\_capacity\\_COVID-19\\_TRANS\\_04-17-2020.pdf](https://gov.texas.gov/uploads/files/press/EO-GA-15_hospital_capacity_COVID-19_TRANS_04-17-2020.pdf).

<sup>2</sup> If the healthcare facility meets all the required elements upon submitting this certification, it will receive an acknowledgement via e-mail from HHSC.