

To Combat COVID-19, Delaware Opens Its Doors to Out-of-State and Retired Healthcare Providers (and Limits Their Liability, Too)

By: John D. Balaguer and Lindsey E. Imbrogno

Healthcare Alert

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Delaware has issued two emergency orders which allow the State broad powers to ease licensing burdens and re-allocate healthcare resources in the midst of the COVID-19 pandemic. These orders stem from the Delaware Emergency Health Powers Act which allows the State to act during a Public Health Emergency such as the COVID-19 pandemic. So how does this actually affect hospitals and healthcare workers inside and outside of Delaware?

The orders provide for the availability of more healthcare workers. Under these orders, in-state health care providers retired for less than 5 years, out-of-state licensed providers, and even some student healthcare workers are authorized to practice in Delaware. This includes physicians, pharmacists, nurses, physician's assistants, nurse practitioners, emergency medical personnel, respiratory therapists, and mental health professionals. These providers will be considered public employees and thus protected from liability (lawsuits) so long as they are not grossly negligent.

The orders also provide the State a means to inventory, purchase, and re-allocate healthcare resources. This not only means bringing more supplies to Delaware (medicine, personal protective equipment, medical equipment), but it also means that previous allocation of funds and supplies from the State could change. For example, the State could designate facilities which never before served as a hospital (such as outpatient clinics) to treat inpatient COVID-19 patients.

The orders allow the State to direct healthcare providers to test, treat, and vaccinate COVID-19 patients. This means that healthcare providers could be required to provide treatment to patients outside of their area of specialty, for example, pediatricians treating adult patients or surgeons treating patients in the ICU. Under Delaware's existing Public Health Emergency law, such providers should also be considered public employees protected from lawsuits related to their care in this context so long as they are not grossly negligent.

The orders lessen the restrictions of health insurance, including requiring health insurance companies to waive preauthorization requirements for testing and treatment of COVID-19 and requiring Medicaid to allow for telehealth visits.

The orders suspend most licensing and inspection requirements for healthcare facilities. This means that healthcare facilities can expect to have their routine licensing inspections take place after the pandemic, regardless of whether the facility is due for license renewal.

You can find the full emergency orders from Governor John Carney and the Delaware Department of Health/Delaware Emergency Management Agency [here](#) and [here](#).

If you have any questions or would like more information, contact John D. Balaguer (balaguerj@whiteandwilliams.com; 484.433.6014) or Lindsey E. Imbrogno (imbrogno@whiteandwilliams.com; 609.351.3094).

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As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

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