

CORONAVIRUS (COVID-19) FEDERAL AND ILLINOIS HEALTH CARE – PRIMARY LEGAL SOURCES

A note from Katten’s Health Care team to our friends and colleagues:

Our work involving the health care law of COVID-19 has necessarily involved a large body of “new law” and new resources. Katten’s health care attorneys have consulted many of these links repeatedly during the past few weeks, and we thought it would be helpful to collect them in one place. We hope it will be helpful for you as well.

These links will be regularly updated; don’t hesitate to send us your suggestions. For additional information or assistance, please contact a member of Katten’s [Health Care practice](#).

Federal

H.R.6201 Families First Coronavirus Response Act (Mar. 18, 2020) (among other things, establishes requirements for providing coronavirus diagnostic testing at no cost to consumers, treats personal respiratory protective devices as countermeasures eligible for certain liability protections, and temporarily increases the Medicaid federal medical assistance percentage (FMAP))

<https://www.congress.gov/bill/116th-congress/house-bill/6201/text>

H.R. 748 Coronavirus Aid, Relief, and Economic Security Act or the CARES Act (Mar. 27, 2020) (provides emergency assistance and health care response for individuals, families and businesses affected by the 2020 coronavirus pandemic)

<https://www.congress.gov/bill/116th-congress/house-bill/748/text>

H.R. 266 Paycheck Protection Program and Health Care Enhancement Act (Apr. 24, 2020) (provides additional funding for small business loans, health care providers, and COVID-19 testing)

<https://www.congress.gov/bill/116th-congress/house-bill/266/text>

President’s proclamation of national emergency (Mar. 13, 2020)

<https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>

CARES Act Paycheck Protection Program Applications and Treasury Guidance

<https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses>

CMS Coronavirus Emergency webpage, which points to press releases, billing and coding guidance, survey and certification guidance, lab test coverage, telemedicine, etc.:

<https://www.cms.gov/About-CMS/Agency-Information/Emergency/EPRO/Current-Emergencies/Current-Emergencies-page>, which includes here and elsewhere on the CMS website, e.g.:

CORONAVIRUS (COVID-19) FEDERAL AND ILLINOIS HEALTH CARE – PRIMARY LEGAL SOURCES

- **Press Releases**

<https://www.cms.gov/about-cms/emergency-preparedness-response-operations/current-emergencies/coronavirus-press-releases>

- **CMS Newsroom**

<https://www.cms.gov/index.php/newsroom>

- **CMS Interim Final Rule with Comment Period (CMS-1744-IFC)**

<https://www.cms.gov/files/document/covid-final-ifc.pdf> (new rules and waivers of federal requirements to ensure that local hospitals and health systems have the capacity to absorb and effectively manage potential surges of COVID-19 patients, including increasing hospital capacity, expanding the workforce, reducing paperwork, promoting telehealth, etc.)

- **CMS Coronavirus Waivers & Flexibilities**

<https://www.cms.gov/about-cms/emergency-preparedness-response-operations/current-emergencies/coronavirus-waivers>

- **CMS Medicare Learning Network Connects**

<https://www.cms.gov/Outreach-and-Education/Outreach/FFSProvPartProg/Provider-Partnership-Email-Archive>

- **CMS Medicaid.gov COVID-19 Information**

<https://www.medicaid.gov/resources-for-states/disaster-response-toolkit/coronavirus-disease-2019-covid-19/index.html>

- **FAQS about Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security Act Implementation Part 42**

<https://www.cms.gov/files/document/FFCRA-Part-42-FAQs.pdf>

- **Fact Sheet: Expansion Of the Accelerated and Advance Payments Program For Providers and Suppliers During Covid-19 Emergency**

<https://www.cms.gov/files/document/Accelerated-and-Advanced-Payments-Fact-Sheet.pdf>

- **State Medicaid & CHIP Telehealth Toolkit**

<https://www.medicaid.gov/medicaid/benefits/downloads/medicaid-chip-telehealth-toolkit.pdf>

- **CMS Issues Guidance Allowing Independent Freestanding Emergency Departments to Provide Care to Medicare and Medicaid Beneficiaries during the COVID-19 Public Health Emergency**

<https://www.cms.gov/medicareprovider-enrollment-and-certificationsurveycertificationgeninfopolicy-and-memos-states-and/guidance-licensed-independent-freestanding-emergency-departments-eds-participate-medicare-and>

CORONAVIRUS (COVID-19) FEDERAL AND ILLINOIS HEALTH CARE – PRIMARY LEGAL SOURCES

- **Upcoming Requirements for Notification of Confirmed COVID-19 (or COVID-19 Persons under Investigation) Among Residents and Staff in Nursing Homes**
<https://www.cms.gov/files/document/qso-20-26-nh.pdf>
- **COVID-19 Checklists and Tools re State Medicaid & CHIP Programs (3/22/2020)** (generally described here: <https://www.cms.gov/newsroom/press-releases/trump-administration-releases-covid-19-checklists-and-tools-accelerate-relief-state-medicaid-chip>)
 - 1115 Waiver Opportunity and Application Checklist
<https://www.medicaid.gov/medicaid/section-1115-demonstrations/1115-application-process/index.html>
 - 1135 Waiver Checklist
<https://www.medicaid.gov/state-resource-center/disaster-response-toolkit/cms-1135-waivers/index.html> [See also Section 1135 information listed separately below.]
 - 1915(c) Appendix K Template
<https://www.medicaid.gov/state-resource-center/disaster-response-toolkit/hcbs/appendix-k/index.html>
Approved COVID-19 Appendix K Documents for various states are available [here](#).
New York's approved documents:
Approval Letter: <https://www.medicaid.gov/state-resource-center/downloads/ny-appendix-k-appvl-ltr.pdf>
Appendix K: <https://www.medicaid.gov/state-resource-center/downloads/ny-0238-appendix-k-appvl.pdf>
- **Medicaid Disaster State Plan Amendment Template**
<https://www.medicaid.gov/state-resource-center/disaster-response-toolkit/state-plan-flexibilities/index.html>
- **The Center for Consumer Information & Insurance Oversight – COVID-19 Guidance - FAQs**
<https://www.cms.gov/ccii/resources/fact-sheets-and-faqs/index#COVID-19>
- **Trump Administration Champions Reporting of COVID-19 Clinical Trial Data through Quality Payment Program, Announces New Clinical Trials Improvement Activity**
<https://www.cms.gov/newsroom/press-releases/trump-administration-champions-reporting-covid-19-clinical-trial-data-through-quality-payment>
- **CMS Announces Findings at Kirkland Nursing Home and New Targeted Plan for Healthcare Facility Inspections in Light of COVID-19**
<https://www.cms.gov/newsroom/press-releases/cms-announces-findings-kirkland-nursing-home-and-new-targeted-plan-healthcare-facility-inspections>

CORONAVIRUS (COVID-19) FEDERAL AND ILLINOIS HEALTH CARE – PRIMARY LEGAL SOURCES

- **COVID-10 Long-Term Care Facility Guidance**
<https://www.cms.gov/files/document/4220-covid-19-long-term-care-facility-guidance.pdf>
- **CMS Approves Medicaid Section 1135 Waivers for 11 Additional States in Response to COVID-19**
<https://www.cms.gov/newsroom/press-releases/cms-approves-medicaid-section-1135-waivers-11-additional-states-response-covid-19>
- **President Trump Expands Telehealth Benefits for Medicare Beneficiaries During COVID-19 Outbreak**
<https://www.cms.gov/newsroom/press-releases/president-trump-expands-telehealth-benefits-medicare-beneficiaries-during-covid-19-outbreak>
- **Medicare Telemedicine Health Care Provider Fact Sheet**
<https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>
- **Medicare Telehealth FAQs**
<https://edit.cms.gov/files/document/medicare-telehealth-frequently-asked-questions-faqs-31720.pdf>
- **CMS Announces New Measures to Protect Nursing Home Residents from COVID-19**
<https://www.cms.gov/newsroom/press-releases/cms-announces-new-measures-protect-nursing-home-residents-covid-19>
- **Medicare Coverage and Payment Related to COVID-19 Fact Sheet**
<https://www.cms.gov/files/document/03052020-medicare-covid-19-fact-sheet.pdf>
- **CMS Releases Recommendations on Adult Elective Surgeries, Non-Essential Medical, Surgical, and Dental Procedures During COVID-19 Response**
<https://www.cms.gov/newsroom/press-releases/cms-releases-recommendations-adult-elective-surgeries-non-essential-medical-surgical-and-dental>
- **CMS Publishes First Set of COVID-19 FAQs for State Medicaid and CHIP Agencies**
<https://www.cms.gov/newsroom/press-releases/cms-publishes-first-set-covid-19-frequently-asked-questions-faqs-state-medicare-and-childrens-health>
- **Medicaid and CHIP Coverage and Payment Related to COVID-19 Fact Sheet**
<https://www.cms.gov/files/document/03052020-medicare-covid-19-fact-sheet.pdf>
- **COVID-19 Frequently Asked Questions for State Medicaid and CHIP Agencies**
<https://www.medicare.gov/state-resource-center/downloads/covid-19-faqs.pdf>
- **Medicaid Telehealth Guidance**
<https://www.medicare.gov/medicaid/benefits/downloads/medicaid-telehealth-services.pdf>

CORONAVIRUS (COVID-19) FEDERAL AND ILLINOIS HEALTH CARE – PRIMARY LEGAL SOURCES

Re Section 1135 Waivers

- [Social Security Act § 1135](#) (codified at 42 U.S.C. § 1320b–5) (“Authority To Waive Requirements During National Emergencies”); [1135 Waivers](#) (CMS master web page); [Waiver – At a Glance](#) (CMS memo); [1135 Waivers and the Emergency Preparedness Rule](#) (CMS slide presentation); [Medicare FFS Additional Emergency and Disaster-Related Policies and Procedures That May Be Implemented Only With a § 1135 Waiver](#) (CMS memo, March 15, 2019); [Public Health Emergency Declaration Questions and Answers](#) (CMS memo)
- [President’s declaration](#) of “national emergency, beginning March 1, 2020”; [HHS Secretary Azar’s authorization](#) of Section 1135 waivers and modifications effective at 6:00 P.M. on March 15, having retroactive effect to March 1, but only to the extent determined necessary by CMS.
- CMS article, “[Medicare Fee-for-Service \(FFS\) Response to the Public Health Emergency on the Coronavirus \(COVID-19\)](#)” (March 20, 2020); “[COVID-19 Emergency Declaration Health Care Providers Fact Sheet](#)” (March 13, 2020).
- See also **COVID-19 Checklists and Tools re State Medicaid & CHIP Programs**, above.
- **State Medicaid Waivers; Individual Health Care Provider Waivers:** See, generally, [Requesting an 1135 Waiver](#) and [1135 Waiver Request, Communication Method - Best Practice](#) (CMS memos). States of [Florida](#) (March 16, 2020) and [Washington](#) (March 19, 2020) waivers. CMS [press release](#) re Florida.
- CMS Administrator has stated that all sec. 1135 approval letters will be posted publicly [here](#) (“Federal Disaster Resources”).
- See also **CMS Coronavirus Waivers & Flexibilities** above.

OIG COVID-19 Portal

<https://oig.hhs.gov/coronavirus/index.asp>

CDC COVID-19 Webpage

<https://www.cdc.gov/coronavirus/2019-nCoV/index.html>

FEMA COVID-19 Response

<https://www.fema.gov/coronavirus>

FDA - Latest COVID-19 Information from the FDA

<https://www.fda.gov/emergency-preparedness-and-response/counterterrorism-and-emerging-threats/coronavirus-disease-2019-covid-19>

HHS COVID-19 Updates

<https://www.hhs.gov/about/news/coronavirus/index.html> and, e.g.:

CORONAVIRUS (COVID-19) FEDERAL AND ILLINOIS HEALTH CARE – PRIMARY LEGAL SOURCES

HHS Office for Civil Rights – Guidance on HIPAA, Civil Rights and COVID-19

<https://www.hhs.gov/hipaa/for-professionals/special-topics/hipaa-covid19/index.html>

CARES Act Provider Relief Fund Information

<https://www.hhs.gov/provider-relief/index.html>

<https://www.hhs.gov/sites/default/files/relief-fund-payment-terms-and-conditions-04132020.pdf>

Office of the Assistant Secretary for Preparedness and Response (ASPR), the Technical Resources, Assistance Center, and Information Exchange (TRACIE) - Novel Coronavirus Resources Page

<https://asprtracie.hhs.gov/COVID-19>, including:

COVID-19 Crisis Standards of Care Resources

<https://asprtracie.hhs.gov/technical-resources/112/covid-19-crisis-standards-of-care-resources/99> and, e.g.:

FEMA’s National Response Coordination Center (NRCC) Healthcare Resilience Task Force COVID-19 Hospital Resource Package

<https://files.asprtracie.hhs.gov/documents/covid-19-hospital-resource-package-document.pdf>

HRSA COVID-19 Information

<https://www.hrsa.gov/coronavirus>

National Practitioner Data Bank COVID-19 Information

<https://www.npdb.hrsa.gov/coronavirus.jsp>

U.S. Department of Justice re COVID-19 Fraud, Hoarding, Price Gouging, and Other Resources

<https://www.justice.gov/coronavirus>

White House Guidelines for Opening up America Again

<https://www.whitehouse.gov/openingamerica/>

CORONAVIRUS (COVID-19) FEDERAL AND ILLINOIS HEALTH CARE – PRIMARY LEGAL SOURCES

State of Illinois

Governor Pritzker's Gubernatorial Disaster Declaration (March 9, 2020)

<https://www2.illinois.gov/sites/gov/Documents/APPROVED%20-%20Coronavirus%20Disaster%20Proc%20WORD.pdf>

Governor Pritzker's Executive Orders

<https://www2.illinois.gov/government/executive-orders>

- [No. 2020-19](#) (April 1, 2020). Defines healthcare facilities, health care professionals and health care volunteers. Calls for the postponement or cancelation of elective surgeries. Health care facilities, professionals, and volunteers are immune from civil liability for any injury or death alleged, unless caused by gross negligence or willful misconduct.
- [No. 2020-17](#) (March 28, 2020). Further extends the deadline for cannabis craft grower, infuser and transporter license applications and directs applicants to mail completed applications.
- [No. 2020-16](#) (March 28, 2020). Suspends the repossession of vehicles; however, individuals must still comply with any obligation they may have to a loan agreement or otherwise. Suspends classroom training for private security and fingerprint vendors, as any training can be conducted online.
- [No. 2020-15](#) (March 27, 2020). Suspends requirements on the administration of assessments, school terms, and the calculation of daily pupil attendance. Allows ISBE to implement rules regarding remote learning. Permits the use of early childhood block grant funding to provide child care for children of employees performing essential work. Any bids received by a school district for construction purposes may be communicated and accepted electronically.
- [No. 2020-14](#) (March 26, 2020). Any act of notarization or witnessing required by Illinois law may be completed remotely by via two-way audio-video communication technology provided that the acts follows specific guidelines set forth in the Order and by the Secretary of State.
- [No. 2020-13](#) (March 26, 2020). Admissions to the Illinois Department of Corrections from all Illinois county jails are suspended, except at the discretion of the Director of the Illinois Department of Corrections for limited essential transfers.
- [No. 2020-12](#) (March 24, 2020). Individuals who are certified as a nurse assistant, but are currently inactive on the Health Care Worker Registry, may be hired under certain provisions, such as the inactive status being no more than five years and limiting conditional employment to three months pending the result of a more extensive background check.
- [No. 2020-11](#) (March 23, 2020): Individuals may leave their residence to work for or obtain any Human Services Operations, such as adoption agencies, long-term care facilities, residential settings for individuals with disabilities and day care centers for children of essential employees. Illinois school districts do not need approval by the school board for an e-learning curriculum.

CORONAVIRUS (COVID-19)

FEDERAL AND ILLINOIS HEALTH CARE – PRIMARY LEGAL SOURCES

- [No. 2020-10](#) (March 20, 2020): All individuals must stay at home, with exceptions for essential activities, essential government functions, and essential businesses and operations. All non-essential business and operations must cease, aside from Minimum Basic Operations. Business can continue with employees working from home. Local government units across the state must halt all evictions, and gatherings of more than 10 people are prohibited. Extended by [No. 2020-18](#).
- [No. 2020-09](#) (March 19, 2020): All health insurers regulated by the Department of Insurance are required to cover telehealth services and reimburse providers at the same rate as in-person visits and are prohibited from imposing any cost-sharing for in-network providers.
- [No. 2020-08](#) (March 17, 2020): During the duration of the disaster proclamation and 30 days thereafter, the urgent need to address the expiration of vehicle registrations, driver's licenses, permits, parking decals, Illinois identification cards and hearings pursuant to the Illinois Vehicle Code is suspended, as are the filing of statements of economic interest.
- [No. 2020-07](#) (March 16, 2020): Beginning March 16, bars and restaurants must suspend on-premises consumption, but are permitted to continue delivery service, drive-through and curbside pick-up. Gatherings of 50 or more people are prohibited, including fitness centers, private clubs, and theaters.
- [No. 2020-05](#) (March 13, 2020): All public and private K-12 schools must close for educational purposes; however, this will not affect the availability of school buildings to supply food for students in need (as amended by [No. 2020-06](#), clarifying that all public and private schools must close for educational purposes, but schools operated by the Illinois Department of Juvenile Justice, the Illinois State Board of Education or the Illinois Department of Human Services may remain open).
- [No. 2020-04](#) (March 13, 2020): Gatherings of 1,000 or more people are prohibited, including concerts, conferences and sporting events as well as closes the James R. Thompson Center to the public, except for necessary state business.

IDPH Clinical Guidance for Managing COVID-10 (March 18, 2020)

<https://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus/health-care-providers>

IDPH Elective Surgical Procedure Guidance

<https://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus/health-care-providers/elective-procedures-guidance>

IDPH Persons Under Investigation Testing Decision Matrix

<https://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus/health-care-providers/PUI-decision-matrix>

CORONAVIRUS (COVID-19) FEDERAL AND ILLINOIS HEALTH CARE – PRIMARY LEGAL SOURCES

IDPH Guidance for Preventing Spread in Communities

- **Schools Guidance**

<https://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus/schools-guidance>

- **Business and Organizational Guidance**

<https://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus/business-guidance>

- **Community Planning Organizations Guidance**

<https://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus/preventing-spread-communities/community>

- **Adult Day Program Guidance**

<https://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus/preventing-spread-communities/adult-day-centers>

- **Long Term Care Facilities Guidance**

<https://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus/long-term-care-guidance>

- **Homeless Shelters Guidance**

<https://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus/preventing-spread-communities/homeless-shelters>

- **Hotels Guidance**

<https://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus/preventing-spread-communities/hotels>

- **Household Preparedness**

<https://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus/preventing-spread-communities/household>

- **Personal Guidance and Testing**

<https://www.dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus/personal-guidance-and-testing>

Local

Mayor Lightfoot's Emergency Executive Orders:

https://chicityclerk.s3.amazonaws.com/s3fs-public/EO%202020-1_20200318092851_0.pdf (declaration of state of emergency)

CORONAVIRUS (COVID-19) FEDERAL AND ILLINOIS HEALTH CARE – PRIMARY LEGAL SOURCES

Note: Other executive orders are not currently available on City Clerk’s website.

Commissioner of Health of the City of Chicago Orders:

- **Duties of Hospitals and Congregate Facilities**

<https://chicityclerk.s3.amazonaws.com/s3fs-public/pages/CDPHOrderDutiesofHospitalsFinal3.19.20.pdf>

- **Shelter in Place**

<https://chicityclerk.s3.amazonaws.com/s3fs-public/pages/Order%20re%20Shelter%20in%20Place%20FINAL.pdf>

Other

America’s Health Insurance Plans

Health Insurance Providers Respond to Coronavirus (COVID-19)

<https://www.ahip.org/health-insurance-providers-respond-to-coronavirus-covid-19/>

ACGME

Updated: ACGME Guidance Statement on Coronavirus (COVID-19) and Resident/Fellow Education and Training in the United States

<https://www.acgme.org/Newsroom/Newsroom-Details/ArticleID/9962/ACGME-Guidance-Statement-on-Coronavirus-COVID-19-and-Resident-Fellow-Education-and-Training-in-the-United-States>

ACGME Guidance Statement on Coronavirus (COVID-19) and Resident/Fellow Education and Training Considerations

<https://acgme.org/Newsroom/Newsroom-Details/ArticleID/10068/ACGME-Guidance-Statement-on-Coronavirus-COVID-19-and-Resident-Fellow-Education-and-Training-Considerations>

The Hastings Center

Ethical Framework for Health Care Institutions and Guidelines for Institutional Ethics Services Responding to the Novel Coronavirus Pandemic

<https://www.thehastingscenter.org/ethicalframeworkcovid19/>

CORONAVIRUS (COVID-19) FEDERAL AND ILLINOIS HEALTH CARE – PRIMARY LEGAL SOURCES

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