

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>

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/>

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.:

- CMS Approves Additional State Medicaid Waivers and Amendments to Give States Flexibility to Address Coronavirus Pandemic (March 27, 2020)
<https://www.cms.gov/newsroom/press-releases/cms-news-alert-march-27-2020>
- Clinical Laboratory Improvement Amendments (CLIA) Guidance During COVID-19 Emergency (March 27, 2020)
<https://www.cms.gov/newsroom/press-releases/cms-news-alert-march-27-2020>
- 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>

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- 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>
- Medicaid Disaster State Plan Amendment Template
<https://www.medicaid.gov/state-resource-center/disaster-response-toolkit/state-plan-flexibilities/index.html>
- 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>
- 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

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<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 Frequently Asked Questions (FAQs) for State Medicaid and Children’s Health Insurance Program (CHIP) Agencies
<https://www.cms.gov/newsroom/press-releases/cms-publishes-first-set-covid-19-frequently-asked-questions-faqs-state-medicaid-and-childrens-health>
- Medicaid and CHIP Coverage and Payment Related to COVID-19 Fact Sheet
<https://www.cms.gov/files/document/03052020-medicaid-covid-19-fact-sheet.pdf>
- COVID-19 Frequently Asked Questions for State Medicaid and CHIP Agencies
<https://www.medicaid.gov/state-resource-center/downloads/covid-19-faqs.pdf>
- Medicaid Telehealth Guidance
<https://www.medicaid.gov/medicaid/benefits/downloads/medicaid-telehealth-services.pdf>

HHS OCR notification of enforcement discretion for telehealth

<https://www.hhs.gov/about/news/2020/03/17/ocr-announces-notification-of-enforcement-discretion-for-telehealth-remote-communications-during-the-covid-19.html>

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.

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- CMS Administrator has stated that all sec. 1135 approval letters will be posted publicly [here](#) (“Federal Disaster Resources”).

OIG re COVID-19

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

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. 2020-11](#) (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.
- [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.
- [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

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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>

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>

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- 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)

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>

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Other

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/>

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