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California State Assembly

BUSINESS AND PROFESSIONS



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B&P Update on the COVID-19 Crisis – April 1, 2020

The following is an update on the state's activities in response to the COVID-19 crisis relating to the jurisdiction of the Assembly Business and Professions Committee.

Essential Workforce Classification of Licensed Professionals

- The Governor's stay at home order, which went into effect on March 19, exempted those who seek or provide certain essential services. Guidance from the State Public Health Officer, updated March 22, expressly exempts from the order the following professionals regulated by the Department of Consumer Affairs (DCA):
 - Physicians and Surgeons;
 - Dentists;
 - Psychologists;
 - Mid-level practitioners (generally interpreted to include optometrists, physician assistants, nurse practitioners, certified nurse midwives, nurse anesthetists, and naturopathic doctors);
 - Nurses and assistants;
 - Pharmacists and necessary pharmacy employees;
 - Physical Therapists and assistants;
 - Occupational Therapists and assistants;
 - Social Workers and behavioral health workers;
 - Speech-Language Pathologists;
 - Workers in other medical facilities;
 - Funeral homes, crematoriums, and cemetery workers;
 - Veterinarians;
 - Private security, including Private Patrol Operators;
 - Construction workers, engineers, and contractors, including plumbers and electricians;
 - Cannabis retailers and workers;
 - Automotive Repair Dealers and workers;
 - Structural Pest Control operators and exterminators;
 - Court Reporters, subject to guidance from the Chief Justice for essential operation of the courts;
 - Professional service providers, including accountants, when necessary for compliance with legally mandated activities and critical sector services.

- The services included in the Governor’s Essential Critical Infrastructure Guidance is not considered to be an exhaustive list, and some professions are believed to be essential despite not being expressly listed; for example, the guidance refers broadly to “health care providers and caregivers,” which has been interpreted to include chiropractors despite their exclusion as an enumerated example.
- Boards under the DCA are simply encouraging their licensees to “assess whether your business is an essential job function as outlined by the Governor and follow the guidelines from the Centers for Disease Control and Prevention.”
- Notwithstanding their classification as essential, some health professions, including dentists and optometrists, have been urged by their state associations to limit their appointments to urgent care services only.
- The Governor’s order is not believed to be preemptive of local directives, which may at times be more restrictive than what is contained in statewide guidance.

DCA Waiver Process

- On March 30, the Governor issued Executive Order N-39-20, which created a new process for the waiver of certain requirements for licensure.
- The order authorized the Director of DCA, “to the extent necessary and only for the duration of the declared emergency,” to waive professional licensing requirements and amend scopes of practice, including “the examination, education, experience, and training requirements necessary to obtain and maintain licensure, and requirements governing the practice and permissible activities for licensees.”
- These waivers are limited to licensees under Division 2 of the Business and Professions Code, which includes most health care professionals.
- The DCA is required to provide guidance to professions that have been granted waivers.
- Associations and organizations may request a waiver by filling out a request form (a copy of which is attached to this document) and emailing the form to waiverrequest@dca.ca.gov.
- Each licensing board will be authorized to request waivers, which will be reviewed by the DCA Director for approval, then subsequently submitted for approval by the Secretary for the Business, Consumer Services, and Housing Agency and the Governor’s Office; this process is expected to take approximately 4-7 business days.
- The waiver process is not intended for individual-specific situations, but is for broadly applicable waivers of law for entire classifications of licensed professions.
- The DCA will post a list of each waiver that has been granted on the following website: https://www.dca.ca.gov/licensees/dca_waivers.shtml

- Initially, the DCA Director sent five waivers to Agency, to become effective April 3, 2020. At this time, two waivers have been granted:
 - Renewals – Waiver of continuing education and examination requirements for those whose licenses set to expire between March and June 2020; licensees have an additional six months to complete these requirements.
 - Reinstatement – Waiver of requirements for those who with retired or inactive licenses in the last five years.
- The following waivers were additionally submitted by the DCA Director and are pending approval:
 - Board of Registered Nursing – Allow students who assist in the COVID-19 pandemic to have their time counted towards their clinical requirements.
 - Physician Supervision Ratio – Waive the physician supervision ratio requirements for nurse practitioners and physician assistants. The current ratio is 1:4 (One physician supervision up to four NP or PA. This does not allow for independent practice.)
 - Medical Residents – Waives the requirement for medical students to complete three years of postgraduate training if their residency program ended a few months early due to COVID-19. This change allows these medical students to qualify to receive their medical license.

Continuing Education Requirements

- In addition to being submitted as a waiver by the DCA Director, a subsequent executive order issued by the Governor on March 30 (N-40-20) authorized postponement of the deadline for meeting continuing education requirements for certain licensed professionals, including those not included in Division 2.
- This executive order authorized the DCA director to waive continuing education requirements for licensed professionals for 60 days from the date of the order.

Scope of Practice Changes

- Some professions have requested executive action to expand their scopes of practice and increase their independence to help address the pandemic; however, at this time, no such actions have occurred.
- In response to a question about whether any scope expansions were anticipated that was asked on April 1, the Health and Human Services Agency Secretary stated that the Administration would first assess the impact of the new Health Corps system before looking at “other interventions to make sure our healthcare workforce is sufficient to meet the need”; the Governor reiterated that all options are being considered as part of the state’s pandemic planning.

Interstate Reciprocity Foreign-Licensed Professionals

- Pursuant to an executive order issued by the Governor, medical professionals who are licensed in other states may request approval from the Director of the Emergency Medical Services Authority to provide services in California.

- At this time, no waivers have been granted to allow medical professionals who are licensed in countries outside the United States to provide services within California; this would likely require additional executive action, which is not currently anticipated.

Nursing Issues

- Healthcare workforce – As noted above, the Governor’s executive order allows nursing students and medical residents to apply through healthcorps.ca.gov and practice without a license.
 - The goal of the executive order is to ensure a sufficient supply of healthcare workers; the website specifies that malpractice insurance will be provided and that they will attempt to match geographical preferences.
 - Nursing students are already authorized to perform nursing services during an emergency pursuant to Business and Professions Code § 2727.
- Clinical Simulation Hours – The Committee and numerous member offices have heard from a coalition of schools and nursing students about the inability to obtain clinical hours due to the closure of a number of clinical placement facilities.
 - The request from the coalition is to increase the amount of clinical simulation laboratory hours students may obtain to count towards their approved education. Currently, the requirement is that only 25% percent of clinical hours may be obtained using clinical simulation. The other 75% must be direct patient care in an approved healthcare facility.
 - The executive order is silent on this ask, and as of March 30 is not being considered as a waiver. The Board of Registered Nursing has the authority to promulgate emergency regulations on this issue, but the soonest it would be able to meet to discuss the issue would be at its April 15 and 16 board meeting.
- Clinical Simulation Alternatives – A waiver to count the work performed as part of the Health Corps program towards clinical hours is under consideration. If the waiver is approved, it will not be a one size fits all. The schools will have to work with their Nurse Education Consultants (NECs) to implement the waiver.
 - In the meantime, the Board of Registered Nursing recommends that all schools reach out to their NECs to see if there are options for telehealth or screening at their clinical placement facilities. Schools have successfully worked with their NECs to do so, allowing students to continue attending class.
 - The Board of Registered Nursing has issued guidance on the executive order, including scope of practice for nursing students being deployed as part of the Health Corps program. To learn more, please visit the board’s website: www.rn.ca.gov

Additional Resources

- [List of Essential Critical Infrastructure Workers \(pdf\)](#) *(updated March 22, 2020)*
- [Text of Executive Order N-39-20 \(pdf\)](#) *(includes waivers of certain professional licensure requirements)*
- [List of waivers issued by the Department of Consumer Affairs](#)
- [DCA Waiver Request Information](#)



DEPARTMENT OF CONSUMER AFFAIRS WAIVER REQUEST FORM

Executive Order N-39-20 authorized the Director of the Department of Consumer Affairs to waive any of the professional licensing requirements that govern healthcare professionals in Division 2 of the Business and Professions Code, and the associated regulations. Any waiver may include alternative measures that, under the circumstances, will allow the regulated individual to treat patients while protecting public health and safety.

NAME (FIRST/LAST):

LICENSING ENTITY:

BUSINESS AND PROFESSIONS CODE/REGULATIONS REQUESTED TO BE WAIVED:

STATEMENT OF NEED:

AUTHORIZED CONTACT PERSON:

PHONE:

EMAIL:

FOR OFFICIAL USE ONLY

WAIVER REQUEST #:

DCA DIRECTOR SIGNATURE