Gary Richard Herbert

Governor

EXECUTIVE ORDER
2020-69

Extending the Suspension of Enforcement of Statutes Relating to Telehealth Services

WHEREAS, on September 19, 2020, I issued Executive Order 2020-63, declaring a new state of emergency in response to the ongoing and evolving effects of the COVID-19 pandemic in Utah;

WHEREAS, on September 19, 2020, I announced my intent not to suspend the enforcement of statutes pursuant to the state of emergency declared in Executive Order 2020-63 except on the recommendation of the Public Health and Economic Emergency Commission (the "Commission");

WHEREAS, on September 25, 2020, I issued Executive Order 2020-68, temporarily extending the suspension of enforcement of certain statutes within Utah Code Title 26, Chapter 60, Telehealth Act through September 29, 2020, to address the state of emergency while providing time for the Commission to make a recommendation on the continued suspension of enforcement those statutes;

WHEREAS, on September 29, 2020, the Commission unanimously recommended that I extend the suspension of enforcement of certain statutes within the Telehealth Act in Executive Order 2020-68;

WHEREAS, I find that facts and conditions justifying the suspension of enforcement of certain statutes related to the provision of telehealth services continue to exist;

WHEREAS, COVID-19 has been characterized by the World Health Organization as a worldwide pandemic caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), a virus that spreads easily from person to person and can cause serious illness or death;

WHEREAS, COVID-19 continues to spread and threaten public health and safety, causing loss of life, human suffering, and social and economic disruption throughout Utah;

WHEREAS, the use of telehealth services is critical to ensure that the healthcare system is not overwhelmed and to mitigate the spread of COVID-19;

WHEREAS, the Centers for Disease Control and Prevention have issued guidelines encouraging healthcare facilities to use telehealth services to reduce in-person healthcare visits and to mitigate the transmission of COVID-19 and other respiratory viruses;

WHEREAS, the federal Office for Civil Rights announced an enforcement discretion policy giving providers flexibility during the COVID-19 nationwide public health emergency to increase telehealth services under certain conditions;

WHEREAS, state and local health authorities have encouraged patients needing access to healthcare to use telehealth services when possible rather than go to a healthcare facility or doctor's office;

WHEREAS, healthcare providers have expressed that increased access to telehealth services has been well-received and successful, and have requested the continued suspension of enforcement of telehealth-related statutes that create overly-burdensome barriers to provide telehealth services;

WHEREAS, Utah Code Title 26, Chapter 60, Telehealth Act governs the use of telehealth services in Utah;

WHEREAS, Utah Code §§ 26-60-102(9)(b)(ii) and 26-60-103(4)(a) may limit the ability of a healthcare provider to offer telehealth services during this state of emergency;

WHEREAS, Utah Code § 53-2a-209(4) authorizes the governor to suspend by executive order enforcement of a statute that is directly related and necessary to address a state of emergency;

WHEREAS, Utah Code § 53-2a-204(1)(b) authorizes the governor to employ measures and give direction to state and local officers and agencies that are reasonable and necessary to secure compliance with orders made pursuant to Utah Code Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act;

WHEREAS, a delay in the effect of this order facilitating access to healthcare services would increase the threat of serious bodily injury or loss of life;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, hereby order the following:

1. Enforcement of the following statutes is suspended:
    a. Utah Code § 26-60-102(9)(b)(ii); and
    b. Utah Code § 26-60-103(4)(a) to the extent that it interferes with a medical provider's ability to offer telehealth services.
2. A medical provider that pursuant to this Order offers telehealth services that do not comply with the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended, or the federal Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5, 123 Stat. 226, 467, as amended, shall:
    a. inform the patient the telehealth service does not comply with those federal acts;
    b. give the patient an opportunity to decline use of the telehealth service; and
    c. take reasonable care to ensure security and privacy of the telehealth service.

This Order shall take effect September 30, 2020, and shall remain in effect until the termination of the state of emergency declared in Executive Order 2020-63, or until otherwise lawfully modified, amended, rescinded, or superseded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 29th day of September, 2020.

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor