RECEIVED
DEC 04 2020
Secretary of State
Tre Hargett

STATE OF TENNESSEE

EXECUTIVE ORDER

BY THE GOVERNOR

No. 68

AN ORDER TO FACILITATE THE CONTINUED RESPONSE TO COVID-19 BY INCREASING HEALTH CARE RESOURCES AND CAPACITY

WHEREAS, ongoing, targeted regulatory flexibility is required to address continuing effects, risks, and persistent negative economic conditions and to assist Tennessee's citizens, health care systems, industries, small businesses, local and state governments, and religious and non-profit institutions to combat and recover from the long-term effects of COVID-19; and

WHEREAS, in addition to the other powers granted by law, Tennessee Code Annotated, Section 58-2-107, provides, among other things, that during a state of emergency, the Governor is authorized to suspend laws and rules if necessary to cope with an emergency, utilize all available state and local resources needed to combat an emergency, and take measures concerning the conduct of civilians; and

WHEREAS, in addition to the other powers granted by law and any applicable federal orders, Tennessee Code Annotated, Section 58-1-106, provides that during an emergency, the Governor is authorized to order into the active service of the state, for such period, to such extent and in such manner as the Governor may deem necessary, all or any part of the national guard or the Tennessee state guard; and

WHEREAS, pursuant to this authority and the general emergency management powers of the Governor under law, such measures, including the measures contained herein, are necessary to facilitate the response to the ongoing effects of COVID-19.

NOW THEREFORE, I, Bill Lee, Governor of the State of Tennessee, by virtue of the power and authority vested in me by the Tennessee Constitution and other applicable law, do hereby declare a continuing state of emergency and major disaster in order to facilitate a targeted response to specific, persistent effects of COVID-19, and accordingly order the following, effective *nunc pro tunc* to 12:01 a.m., Central Standard Time, on December 1, 2020:

Paragraph No. 10 of Executive Order No. 36, dated May 12, 2020, as amended by Executive Order No. 59, dated August 28, 2020, and most recently extended by Executive Order No. 67, dated October 30, 2020, is hereby deleted and the following language is substituted instead:

10. Increased number of hospital beds available for COVID-19 patients. The provisions of Tennessee Code Annotated, Section 68-11-1607, are hereby suspended to the extent necessary to allow hospitals, nursing homes, and home health agencies that would otherwise be subject to certificate of need requirements to temporarily increase their number of licensed hospital beds at any location or temporarily establish hospital, nursing home, home-based, and diagnostic services at any location, if necessary for the treatment of COVID-19 patients, as well as to the extent necessary to facilitate activity authorized by the provisions of this Order and any subsequent order concerning COVID-19.

Paragraph No. 10.2 of Executive Order No. 36, dated May 12, 2020, as amended by Executive Order No. 67, dated October 30, 2020, is hereby deleted and the following language is substituted instead:

10.2 Medical professional staffing flexibility is permitted pursuant to an approved plan to relieve the capacity strain on certain staffing functions. In order to relieve the capacity strain on bedside care and support resulting from staffing shortages (nurses, respiratory therapists, etc.), additional temporary regulatory flexibility measures are necessary to cope with the emergency. To this end, the provisions of Title 63 and Title 68, Chapter 140, are hereby suspended to the extent necessary to authorize professionals licensed under Title 63 or Title 68, Chapter 140, to perform tasks outside of their licensed scope of practice if such tasks are performed in a hospital licensed under Title 68 pursuant to a facility-specific, COVID-19-related plan of delegation that has been submitted by the facility's chief medical officer and approved by the Commissioner of Health or the Commissioner's designee. Such a plan of delegation must include the specific types of licensees covered, the specific tasks outside of their licensed scope of practice that are permitted, and the specific circumstances and directives under which such tasks are permitted. The Commissioner or the Commissioner's designee may approve such plan subject to conditions and may rescind such approval in the Commissioner's or Commissioner's designee's sole discretion. For purposes of regulation and disciplinary action, licensees performing tasks pursuant to this provision remain subject to regulation and disciplinary action as if they were acting within their licensed scope of practice.

Executive Order No. 36, dated May 12, 2020, as most recently extended by Executive Order No. 67, dated October 30, 2020, is amended by adding the following new paragraphs:

9.4 Pre-license, graduate or doctoral level audiology and speech language pathology professionals can provide telehealth services under supervision. The relevant provisions of Tennessee Code Annotated, Title 63, and related rules are hereby suspended to the extent necessary to give the Commissioner of Health the authority

to allow persons who have completed or are actively enrolled in a program to obtain a master's degree or doctoral degree in the field of audiology or speech language pathology to practice without a license and through use of telemedicine services; provided, that the person is, at all times, supervised by a person licensed under Title 63 in that field. The Commissioner of Health shall provide the requisite form for practicing under this Paragraph 9.4 on the Department of Health's Health Professional Boards webpage.

10.3 Discretion to utilize National Guard and State Guard members in connection with certain health care and emergency services operations. This Paragraph 10.3 is issued for the limited purpose of authorizing personnel recognized under Tennessee Code Annotated, Sections 58-1-203, 58-1-204, and 58-1-402 (collectively, "Personnel"), to serve in certain health care and emergency services roles to reduce system capacity strain resulting from COVID-19. Namely, Personnel may: (1) perform authorized diagnostic testing for COVID-19 in health care settings, including but not to limited to hospitals, emergency departments, and alternate care sites (collectively, "Facilities"); (2) perform authorized nursing and other functions in Facilities; and (3) operate public or privately owned, permitted ambulance service vehicles with a licensed service. Accordingly, the following provisions are hereby suspended to the extent necessary to facilitate this Paragraph 10.3: Tennessee Code Annotated, Titles 63 and Title 68, and related rules, with respect to licensure, continuing education, and other requirements for Personnel or Facilities utilizing Personnel; Title 68, Chapter 140, Part 3, with respect to Personnel and licensed ambulance services utilizing Personnel; and any other state or local law, order, rule, or regulation that would limit the application of this Paragraph 10.3 is hereby suspended to the extent necessary to facilitate this Paragraph 10.3. This Paragraph 10.3 is subject to the following conditions:

a. No Personnel shall operate under this Paragraph 10.3 unless designated by the Adjutant General upon request or order of the Governor;
b. Personnel operating pursuant to this Paragraph 10.3 shall have the appropriate training or skills in the area(s) pertaining to their designations;
c. The Adjutant General and Commissioner of Health, or their designees, shall determine the Facilities to which Personnel are assigned, based on need and other reasonable factors, in their sole discretion;
d. Any Facility to which Personnel are assigned must submit, in writing to the Commissioner of Health, the responsibilities and tasks that Personnel will be undertaking while operating pursuant to this Paragraph 10.3;
e. A list of Personnel designated to operate under this Paragraph 10.3 and the Facility or setting in which such Personnel will be operating shall be provided to the Commissioner of Health by the Adjutant General, and this list shall be updated from time to time as necessary;
f. Any authority, duties, or scope of practice suspensions extended to Personnel pursuant to this Paragraph 10.3 shall terminate and be of no

further force and effect upon the expiration or termination of Paragraph 10.3 or other order of the Governor to that effect; and

g. This Paragraph 10.3 shall not affect the requirements and provisions of the suspended statutory and rule provisions with respect to any other person or facility.

10.4 Regulatory flexibility for ambulance transport services. In order to relieve the capacity strain on emergency medical services, temporary regulatory flexibility measures are necessary for nonemergency ambulance transport services. To this end, the provisions of Tennessee Code Annotated, Title 68, Chapter 140, and Tenn. Comp. R. & Reg. 1200-12-01-.14(3)(c)(2)(iii) & (iv) are hereby suspended to the extent necessary to authorize that Level 3 transports may be staffed with one AEMT and Level 4 transports may be staffed with one EMT, provided that there is an ambulance operator in addition to the AEMT or EMT who satisfies the ambulance driver requirements of Tenn. Comp. R. & Reg. 1200-12-01-.10. All other statutes and rules regarding patient transport services remain in full force and effect.

10.5 Delegation of nursing tasks to certified medical assistants under the supervision of a registered nurse is permitted to relieve the capacity strain on vaccination and other staffing functions. In order to ensure prompt administration of a COVID-19 vaccination and relieve the capacity strain on bedside care and support resulting from staffing shortages due to COVID-19, additional temporary regulatory flexibility measures are necessary to cope with the emergency. The provisions of Title 63 and related rules are hereby suspended to the extent necessary to authorize a registered nurse, licensed in Tennessee or working in Tennessee on a multi-state privilege to practice, to delegate to medical assistants certified by the American Association of Medical Assistants tasks that would normally be within the practical nurse scope of practice, including, but not limited to, administration of COVID-19 vaccinations, under the supervision of the registered nurse. Tasks delegated to certified medical assistants and performed under the supervision of the delegating registered nurse are required to have been ordered and authorized by a Tennessee licensed practitioner with prescriptive authority.

10.6 Behavioral health inpatient psychiatric, residential, and crisis care staffing flexibility is permitted pursuant to an approved plan to relieve the capacity strain on certain staffing functions. In order to relieve the capacity strain on bedside care and support resulting from staffing shortages (physician assistants, nurse practitioners, registered nurses, licensed practical nurses, etc.), additional temporary regulatory flexibility measures are necessary to cope with the emergency. To this end, the provisions of Title 33, Title 63, and Title 68, Chapter 140, and related rules are hereby suspended to the extent necessary to authorize professionals licensed under Title 63 or Title 68, Chapter 140, to perform tasks outside of their licensed scope of practice or restricted under Title 33 if such tasks are performed in an inpatient psychiatric facility, in a behavioral health residential facility, or by a behavioral health crisis services provider licensed under Title 33 pursuant to a facility or provider-specific, COVID-19-related plan of delegation

that has been submitted by the facility's or provider's chief medical or chief executive officer and jointly approved by the Commissioner of Mental Health and Substance Abuse Services or the Commissioner's designee and the Commissioner of Health or the Commissioner's designee. Such approval by either Commissioner or Commissioner's designee may be subject to conditions or may be subsequently rescinded in that person's sole discretion. Such a plan of delegation must include the specific types of licensees covered, the specific tasks outside of their licensed scope of practice or restricted under Title 33 that are permitted, and the specific circumstances and directives under which such tasks are permitted. For purposes of regulation and disciplinary action, licensees performing tasks pursuant to this provision remain subject to regulation and disciplinary action as if they were acting within their licensed scope of practice.

38.3 Hospital-level care in home program and telemedicine access expansion is encouraged. In order to relieve the capacity strain on inpatient care due to COVID-19, health insurance carriers are urged to provide equivalent inpatient reimbursement to all providers for the delivery of clinically appropriate, medically necessary covered services via programs in which patients receive hospital-level care in home, irrespective of network status or originating site. Providers are urged to follow the new guidance from the federal Centers for Medicare and Medicaid Services regarding equipment and everyday communications technologies that may be used for the provision of telemedicine services. Carriers are urged to not impose additional prior authorization requirements on medically necessary treatment related to COVID-19 delivered via programs in which patients receive hospital-level care in home.

IN WITNESS WHEREOF, I have subscribed my signature and caused the Great Seal of the State of Tennessee to be affixed this 4th day of December, 2020.

Bill Lee

GOVERNOR

ATTEST:

Tre Hargett

SECRETARY OF STATE