STATE *of* NEBRASKA

OFFICE OF THE GOVERNOR

LINCOLN

EXECUTIVE ORDER NO. 20-12

CORONAVIRUS—RELIEF FOR HOSPITALS & HEALTH CARE FACILITIES AND EXPANDED USE OF TELEHEALTH SERVICES

WHEREAS, a state of emergency was declared in Nebraska on March 13, 2020, to control the spread of the coronavirus known as COVID-19;

WHEREAS, hospitals, health care facilities and services play an important role in responding to COVID-19 by ensuring that patients have access to health care and receive necessary health care services;

WHEREAS, the Centers for Medicare and Medicaid Services (CMS) has issued broad waivers allowing hospitals and health care facilities to operate without complying with certain federal regulations during the coronavirus emergency;

WHEREAS, telehealth provides a way for patients to obtain needed health services while observing social distancing, is a means to limit potential exposure to coronavirus, and is currently permitted under Nebraska law, including Neb. Rev. Stat. § 38-120.01, § 38-120.02, § 38-1,143, and § 38-2845.01 and §71-8506(2);

WHEREAS, the U.S. Department of Health and Human Services is exercising its enforcement discretion to not impose penalties for noncompliance with HIPAA Rules in connection with the good-faith provision of telehealth services using such non-public facing audio or video communication products as FaceTime, Skype, Facebook Messenger video chat, Google Hangouts video, or Zoom;

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WHEREAS, hospitals and health care facilities and services may be unable to comply with certain Nebraska statutes and regulations while providing needed support to patients as COVID-19 continues to spread across the country; and

WHEREAS, this pandemic may threaten essential health care services if relief from certain Nebraska statutory and regulatory requirements is not granted.

NOW THEREFORE, I, Pete Ricketts, Governor of the State of Nebraska, by virtue of the authority vested in me by the Constitution and laws of Nebraska, do hereby waive specific statutes and regulations arising from the Health Care Facility Licensure Act, the Assisted-Living Facility Act, the Nebraska Health Care Certificate of Need Act, and Nebraska Revised Statute §71-6039(c), § 71-6039.01(3), and § 71-6725(4) which could impair Nebraskans' ability to receive care and treatment in licensed hospitals and health care facilities during the COVID-19 state of emergency.

Pursuant to this declaration, I hereby order and direct the following:

1. The provisions of Neb. Rev. Stat. § 71-409 and its implementing regulations require critical access hospitals to maintain an average length of stay of 96 hours and limit critical access hospitals to no more than 25 acute care inpatient beds are temporarily suspended in order to permit critical access hospitals to provide care and treatment for longer periods of time as necessary and to increase their number of beds to provide necessary hospital availability; and

2. The provisions of Neb. Rev. Stats. § 71-433, § 71-434, and § 71-435 and their implementing regulations regarding the renewal and expiration dates of facility licenses are temporarily suspended so that the licenses of facilities and services do not need to be renewed during this emergency; and

3. The provisions of Neb. Rev. Stat. § 71-405 and its implementing regulations which require ambulatory surgical centers to provide services to persons who are admitted to and discharged from the facility within the same working day and which prohibit overnight stays are temporarily suspended so that patients' care and treatment needs may be met at such facilities if no other facility beds are available for transfer of patients; and

4. The provisions of Neb. Rev. Stat. § 71-5903 and its implementing regulations which impose a 21-day limitation on complex nursing interventions in an assisted living facility are temporarily suspended so that such facilities may be used to provide complex nursing interventions for additional periods of time, if deemed necessary by the facility; and

5. The provisions of Title 175 Nebraska Administrative Code § 4-003.01A; § 7-003.01A(4); § 9-003.01A(4); and § 16-003.01A, which require the submission and approval of schematic plans and, if new construction is involved, submission of construction plans for hospitals, health clinics, assisted living facilities and hospice facilities are temporarily suspended in order to permit these facilities to meet space needs during the pendency of the COVID-19 emergency; and

6. The provisions of Title 175 Nebraska Administrative Code § 9-003.01A(5) which require prior notification of planned patient occupancy for hospitals are temporarily suspended in order to give hospitals additional flexibility in accommodating changing numbers of patients; and

7. The provisions of Title 175 Nebraska Administrative Code § 9-004.01 which require buildings where care and treatment are provided to comply with, Title 175 N.A.C. § 9-006, Standards of Operation, Care, and Treatment, and, if applicable, Title 175 N.A.C. § 9-007, Physical Plant Standards, are temporarily suspended insofar as they may pose a restriction on providing care and treatment to patients in hospitals as long as such sites meet Centers for Disease Control and Prevention guidance for alternate care sites and isolations sites; and

8. The provisions of Title 175 Nebraska Administrative Code § 9-004.05 which prohibit facilities from putting into use more than the total number of beds for which the hospital is licensed and locating more patients in a patient room than the capacity for which the room was initially approved are temporarily suspended insofar as additional beds are available or could be added for use in treating COVID-19 or meeting the health care needs of non-COVID-19 patients and sufficient safety and comfort for patients and staff are provided; and

9. The provisions of Title 175 Nebraska Administrative Code § 9-004.07 which require notice of increase or changes in the type of use and location of hospital beds and similar notices are temporarily suspended in order to permit facilities to mobilize rapidly to meet patient care needs during this emergency; and

10. The provisions of Title 175 Nebraska Administrative Code § 3-005.3; § 4-005.03; §7-005.03, § 9-005.03; § 16-005.03; § 17-005.03; and § 18-005.03 which require inspections for conformity with construction plans and compliance after new construction prior to use and occupancy in hospitals, health clinics, hospice, assisted living facilities, centers for the developmentally disabled, centers for the care and treatment of individuals with intellectual disabilities, and mental health substance use treatment centers are temporarily suspended in order to permit facilities to use available space to meet patient needs during this emergency; and

11. The provisions of Title 175 Nebraska Administrative Code § 7-006.01; § 9-006.01A(6)(7); § 17-004.07; and § 18-004.07 which require notifications regarding Administrator changes are temporarily suspended so that facilities may make necessary changes to Administration to ensure appropriate management of the facility; and

12. The provisions of Title 175 Nebraska Administrative Code § 9-006.01B which require hospital administrators to maintain staffing as appropriate to meet patient needs are temporarily suspended insofar as patient needs may exceed staffing availability during this emergency; and

13. The provisions of Title 175 Nebraska Administrative Code §7-006.03B1a and § 9-006.03B(1)(a) regarding training and orientation requirements for supplemental staff at hospitals and health clinics are temporarily suspended insofar as such training and orientation is not immediately necessary for the job responsibilities to be performed by the staff; and

14. The provisions of 175 Title 175 Nebraska Administrative Code § 9-006.07A3 regarding telephone or verbal orders are temporarily suspended to allow additional qualified individuals not named in hospital Medical Staff Bylaws to accept telephone or verbal orders; and

15. The provisions of Title 175 Nebraska Administrative Code § 9-006.07A4 which require medical records to be completed within 30 days of patients' discharge is temporarily suspended insofar as a surge in demand for hospital services, combined with diminished availability of staff for this purpose, may require additional time for records to be fully completed; and

16. The provisions of Title 175 Nebraska Administrative Code § 9-006.09B2 permitting a Director of Nursing to serve as a charge nurse only in a hospital with 25 or fewer beds are temporarily suspended in order to give hospitals additional staffing flexibility in responding to the emergency; and

17. The provisions of Title 175 Nebraska Administrative Code § 7-006.12 which require ambulatory surgical centers to meet all Medicare Conditions of Participation are temporarily suspended in order to permit such facilities to meet patient needs during this emergency; and

18. The provisions of Neb. Rev. Stat. § 71-5829.03(3)-(4) which require certificates of need for long-term care and rehabilitation beds and impose a moratorium on such beds are temporarily suspended in order to permit hospitals to add or convert any beds to long-term care or rehabilitation beds in appropriate locations to care for COVID-19 patients who no longer require acute care support and to prepare for patients who require longer lengths of stay for supportive care; and

19. The provisions of Neb. Rev. Stat. § 71-6039(c) and its implementing regulations which require certain training for nurse aides are temporarily suspended in order to permit to expand the available workforce; and

20. The provisions of Neb. Rev. Stat. § 71-6725(4) and its implementing regulations which require certain training for medication aides are temporarily suspended to help address staffing needs during the coronavirus emergency; and

21. The provisions of Neb. Rev. Stat. § 71-6039.01(3) and its implementing regulations regarding training for dining assistants are temporarily suspended as long as training complies with CMS regulations and requirements; and

22. The Nebraska Department of Health and Human Services shall establish and publish guidance for facilities and services regarding the statutes and regulations temporarily suspended by this Executive Order.

23. The Nebraska Department of Health and Human Services shall establish and publish guidance for health care providers regarding the use of telehealth by licensed practitioners and guidance for the payment of Medicaid services provided via telehealth.

24. This Executive Order shall become effective immediately and shall remain in effect until 30 days after the lifting of the COVID-19 state of emergency.

IN WITNESS THEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nebraska to be affixed on this 31st day of March, 2020.

Pete Ricketts, Governor
State of Nebraska

Attest:

Robert B. Evnen,
Secretary of State
State of Nebraska