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*Coronavirus, Regulation and Licensing*

## Waivers allow expanded alcohol delivery during COVID-19 restrictions

[April 9](#) — More Texas restaurants temporarily may sell alcohol with takeout food and may deliver alcohol directly to customers with food purchases, subject to certain restrictions, after recent waivers of certain requirements in response to hardships faced by the hospitality industry as a result of COVID-19. These waivers follow the expanded alcohol delivery options enacted in 2019 by the 86th Legislature.

On March 18, Gov. Abbott temporarily [waived](#) certain restrictions on restaurants providing takeout and delivery of alcohol. On March 19, he issued Executive Order [GA-08](#), which said that “people shall avoid eating and drinking at bars, restaurants or food courts” but that using drive-through, pick-up, and delivery options for food orders was allowed and encouraged. The Texas Alcoholic Beverage Commission (TABC) issued an industry [notice](#) on implementing the waiver, which includes several requirements applied to alcohol sales and delivery.

**Alcohol takeout and deliveries from restaurants.** The governor’s waiver and the [suspension](#) by TABC of certain limits on the sale of beer, wine, and liquor allow all restaurants with mixed beverage permits to sell alcohol with takeout food and to deliver alcohol with food orders. Before the waiver, restaurants with mixed beverage permits were prohibited from selling alcohol for takeout, and only those that also held food and beverage certificates could deliver alcohol with food. About 10,000 restaurants held permits or certificates allowing alcohol delivery before the waiver was issued.

The TABC industry notice on implementing the waiver includes requiring permanent food service capabilities at the restaurant selling alcohol for takeout or delivery and requiring that the restaurant be mandated by a governmental entity to end

dine-in services due to the coronavirus pandemic. Restaurants may deliver the alcohol themselves, use independent contractors holding a consumer delivery permit authorized by the 86th Legislature, or use a third party that holds an appropriate delivery permit from TABC. [Current law](#), which requires that alcohol delivered to a consumer be in its original container sealed by the beverage manufacturer and that distilled spirits be in containers that are 375 milliliters or less, still applies to alcohol picked up or delivered under the waiver, according to the notice. Questions have been raised about enforcement of these provisions after some restaurants reportedly were selling alcohol that did not adhere to these requirements. At this time, TABC is working to educate restaurants on the rules and reserving penalties for repeat offenders.

Under TABC’s industry notice, alcohol sales remain under the local jurisdiction’s authority, and deliveries may be made only to locations where the delivered type of alcohol is legal and within the county where the restaurant is located or up to two miles beyond the city limits if the restaurant is in a city that crosses county lines. In addition, those conducting the delivery transactions for the restaurant must be at least 21 years old. Those receiving the alcohol delivery cannot be intoxicated and must present proof that they are at least 21 years old.

**Recent statutory changes to alcohol delivery.** The 86th Legislature expanded alcohol delivery options with two laws that took effect September 1, 2019. [SB 1450](#) by Hancock allowed third-party companies, such as Favor or Instacart, to deliver alcohol to consumers from TABC-permitted businesses such as restaurants, bars, and liquor stores. Under the law, delivery companies must obtain a consumer delivery permit and adhere to requirements in the TABC notice. This includes requirements

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for drivers to be at least 21 years old and deliveries to be made only to those with proof of being at least 21. As of early April, TABC had issued eight consumer delivery permits, according to the agency. [SB 1232](#) by Creighton expanded the types of alcohol that certain on-premise beer and wine retailers, such as cafes and coffee shops, may deliver to include ale and wine. Under the

new law, these establishments can obtain the same local cartage permits used by package stores and others to deliver alcohol.

— Kellie A. Dworaczyk

*Coronavirus, Public Health, Regulation and Licensing*

## More health-related licensing regulations waived for COVID-19 response

[April 9](#) — On April 5, Gov. Abbott announced more temporary [waivers](#) of regulations on health-related professional licenses to support Texas' response to the ongoing COVID-19 pandemic.

**Emergency licenses.** The most recent [waiver](#) allows physician assistant (PA), medical physicist, perfusionist, and respiratory care license candidates to obtain emergency medical licenses to work under supervision before passing their final licensing examinations. The waiver also allows name-based background checks, rather than fingerprint checks, for emergency licensees. After the state of disaster [declared](#) by the governor on March 13 ends or the emergency license is terminated by the appropriate authority, pending license applicants will return to applicant status.

To support the rapid deployment of health workers in response to COVID-19, the governor's April 5 [order](#) also allows physicians to establish oral, rather than written, prescriptive agreements with the PAs and advanced practice registered nurses (APRNs) they supervise and [lifts](#) the requirement to register such agreements with the Texas Medical Board (TMB). A prescriptive authority [agreement](#) allows PAs and APRNs to prescribe or order a drug or medical device under physician supervision.

On April 7, Gov. Abbott issued a temporary [waiver](#) allowing pharmacy technicians, rather than only pharmacists, to receive oral prescription drug orders and transfer or receive a transfer of original prescription information on behalf of a patient.

**License extensions.** TMB announced it will automatically [extend](#) the expiration dates of licenses and permits and waive continuing education requirements for certain physicians, PAs, surgical assistants, medical physicists, medical radiologic technologists, perfusionists, respiratory care practitioners, and individuals on the Non-Certified Radiologic Technician Registry. These extensions are in place until August 31, 2020.

**Retired health professionals.** TMB also has expanded on its earlier [call](#) for recently retired physicians to come out of retirement to assist the state's response to COVID-19 by encouraging retired [medical radiologic technologists](#), [respiratory care practitioners](#), and [PAs](#) whose licenses have been on official retired status for less than four years to apply for a return to active status.

**Previous waivers.** In the past month, the governor [ordered](#) TMB and the Texas Board of Nursing (TBN) to expedite temporary emergency medical licenses for out-of-state physicians, PAs, and other relevant medical personnel. Previous waivers also granted a six-month grace period for nurses with expired licenses, allowed TBN to issue temporary permits to practice for graduate nurses and graduate vocational nurses who have yet to take the licensing exams, and allowed APRNs with expired licenses to reactivate their licenses without paying fees or completing continuing education or current practice requirements. Additional waivers announced on [March 20](#) and [April 2](#) granted extensions for certain pharmacy licenses and allowed certain EMS personnel who are qualified but lack formal certification to provide critical emergency services.

— Andrew McNair

*UPDATE: On April 9, Gov. Abbott and the Health and Human Services Commission (HHSC) [announced](#) an emergency rule that temporarily allows nursing facilities to hire nurse aides without requiring them to complete a full certification program in the first four months of employment. The waiver aims to help nursing facilities address potential worker shortages during the COVID-19 pandemic.*

*On April 11, with the goal of increasing Texas' health care capacity, the governor issued a [waiver](#) temporarily allowing Texas hospitals and medical facilities associated with graduate*

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medical education programs to use holders of physician-in-training permits in areas outside of their relevant training programs.

On April 22, the governor [announced](#) a waiver to [allow](#) new advanced practiced registered nurse graduates who have

applied for licensure with the Texas Board of Nursing and have met all license requirements except passing the test for national certification to practice under the direct supervision of a physician. The waiver does not grant new APRN graduates prescriptive authority.

## Coronavirus, Public Safety

# AG issues opinion on local regulation of firearm sales during declared emergency

[April 16](#) — Cities and counties may not use emergency declarations to regulate or restrict the sale of firearms, according to a recent nonbinding [opinion](#) issued by the Texas attorney general.

The chair of the Texas House Committee on Ways and Means on March 24 [requested](#) the opinion after many city and county officials declared local states of disaster and issued stay-at-home orders, as authorized under the [Texas Disaster Act of 1975](#), in response to the ongoing COVID-19 pandemic. The local orders require all nonessential businesses to close, while allowing essential businesses to remain open. The opinion request noted that the stay-at-home orders issued at the time of the request did not designate firearms manufacturers or retailers or shooting ranges as “essential businesses.” Some local orders were revised prior to the attorney general’s opinion to designate firearm businesses as essential.

The March 27 attorney general opinion concluded that while local officials have some power under state law to address disaster situations, that authority is not without limitation. The opinion points to a state firearms preemption statute enacted by the 86th Texas Legislature in 2019. [HB 3231](#) by Clardy added the possession of, carrying of, or commerce in firearms, air guns, knives, ammunition, or firearm or air gun supplies and accessories to the list of activities a city or county is prohibited from regulating under Local Government Code [sec. 229.001\(a\)](#) or [sec. 236.002\(a\)](#). Cities or counties also may not regulate the transfer, ownership, storage, transportation, or licensing of those items or the discharge of a firearm or air gun at a sport shooting range.

Under the law effective on September 1, 2019, an ordinance, resolution, rule, or policy adopted or enforced by a city or county or an official action, including in any legislative, police power, or proprietary capacity, taken by a city or county in violation of Local Government Code sec. 229.001(a) or sec. 236.002(a) is void. The recently issued attorney general opinion says that

because of this provision, local officials may not use their emergency powers under Government Code sec. 418.108 to regulate the sale of firearms. The attorney general opinion notes that cities do have some authority under Local Government Code sec. 229.001(b)(4) to “regulate the use of firearms, . . . in the case of an insurrection, riot, or natural disaster if the municipality finds the regulations necessary to protect public health and safety” but that this provision does not grant authority to regulate the transfer, possession, ownership, or sale of firearms.

When HB 3231 was enacted in 2019, supporters said that by updating existing state firearms preemption statutes, the bill would ensure more uniform treatment of firearms and ammunition across the state and would protect the rights of lawful gun owners and firearms retailers. They said it would not affect a city’s or county’s legitimate authority to regulate the discharge of firearms or create and enforce other related ordinances. Critics of HB 3231 said it could have a chilling effect on local officials’ willingness to use their authority to adopt effective public safety measures. They said the bill would enable people to challenge firearms regulations, inviting potentially costly litigation for local taxpayers. In effect, critics said, cities and counties might choose not to pass regulations that could have any effect on firearms, even if authorized by law, for fear of legal liability.

**Other states.** In their initial stay-at-home orders, states differed on whether firearms retailers were listed as essential businesses. In subsequent revisions or extensions of those orders, some states have continued not to list gun stores as essential businesses, some have reclassified gun stores as essential businesses after initially ordering them to close, and others have allowed gun stores, but not shooting ranges, to remain open.

Those who support classifying firearms retailers as essential businesses say doing so protects the constitutional rights of lawful

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gun owners and promotes the safety of families, property, and businesses. They say keeping stores open also may reduce sales occurring through unregulated, private transactions. Some have said that gun stores are not essential businesses and that closing them is in line with other measures taken to combat COVID-19, including measures restricting travel and assembly. They have raised concerns that some gun owners, including first-time gun buyers, may not have access to adequate training, and that this could be especially dangerous during a time of rising tension and anxiety.

On March 28, the U.S. Cybersecurity and Infrastructure Security Agency (CISA), the Department of Homeland Security agency that manages risk to critical infrastructure, issued guidance to state, local, tribal, and territorial officials on identifying essential critical infrastructure workers during the COVID-19 response. The guidance lists workers supporting the operation of firearm or ammunition product manufacturers, retailers, importers, distributors, and shooting ranges as part of the essential critical infrastructure workforce. CISA's [guidance](#) is advisory and not a federal directive or standard.

— MacKenzie Nunez

## Coronavirus, Public Health

### Some telehealth regulations waived for COVID-19 response

[April 22](#) — Gov. Abbott earlier this month announced temporary [waivers](#) of certain telehealth regulations for physicians, speech language pathologists, and audiologists to increase Texans' access to care during the COVID-19 pandemic. The waivers expanded on a March 17 [directive](#) to the Texas Department of Insurance (TDI) to adopt an emergency rule for health professionals providing telemedicine under certain health insurance plans.

Texas is one of several states that have implemented temporary measures to expand telehealth services. These measures generally have allowed the doctor-patient relationship to be established using telephone calls and allowed health providers to be reimbursed for more services provided through telehealth and telemedicine.

Telehealth and telemedicine are defined in Occupations Code [sec. 111.001](#) as health care provided through telecommunication technology by a practitioner in a different location from the patient receiving the care. In telemedicine the practitioner in charge of delivering the care is a physician, while in telehealth it is another health professional, such as a chiropractor, not under a physician's supervision.

**Speech pathologists and audiologists.** The Texas Department of Licensing and Regulation on April 9 temporarily [suspended](#) certain requirements for speech language pathologists and audiologists. The suspensions allow speech-language pathology interns to receive all direct and indirect supervision hours through telehealth. Audiology assistants and interns also may be supervised for all assigned tasks through telehealth.

With the suspension, speech-language pathology licensees who are approved to provide telehealth services may use certain devices not otherwise on the [list](#) of approved technology, including a smart phone or any audio-visual, real-time, or two-way interactive communication system. Audiologists and audiology interns who fit and dispense hearing instruments through telehealth are not required under the suspension to first meet the client in person at the same physical location.

**Telemedicine services and reimbursement.** The Texas Medical Board (TMB) on March 14 temporarily suspended certain [requirements](#) for establishing the doctor-patient relationship. The [suspension](#) allows a doctor-patient relationship to be established via telephone (audio-only) consultations, rather than requiring audiovisual interaction between the physician and patient. Under the suspension, telemedicine, including telephone calls, also may be used for diagnosis, treatment, ordering of tests, and prescribing for all conditions.

**Prescriptions.** Gov. Abbott on April 9 [extended](#) until May 8 a previously issued [waiver](#) to allow telephone refills of a valid prescription for treatment of chronic pain by a physician with an existing chronic pain patient. Health providers are being encouraged by TMB to visit the U.S. Drug Enforcement Administration's website for additional [guidance](#) when prescribing controlled substances during the COVID-19 pandemic.

**Provider reimbursement.** TDI on March 17 adopted an emergency [rule](#) to ensure payment parity for providers offering telemedicine to patients and to ensure that health benefit plans offer telemedicine coverage on the same basis as in-person

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visits. Under the rule, a health plan must reimburse a preferred or contracted health professional for providing a telemedicine service to a covered patient on the same basis and at least at the same rate as for in-person visits. The rule applies to a health plan offered by a health maintenance organization, a group hospital service corporation, and a nonprofit health corporation holding a certificate of authority, among several other plans, as specified under Insurance Code [secs. 1455.002](#) and [1455.003](#).

*Medicaid.* The Health and Human Services Commission on March 20 [authorized](#) Medicaid providers to submit claims dated

March 20 through April 30 to receive reimbursement for certain behavioral health services delivered through telephone (audio-only), including substance use disorder services, mental health rehabilitation, and psychotherapy.

For more background on telehealth and telemedicine, see the House Research Organization's 2017 focus report, [Emerging issues in Texas telemedicine regulation](#).

— Alison Hern