Michigan Health Care Facilities Required to Postpone Non-Essential Procedures

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On March 20, 2020 Governor Whitmer issued Executive Order 2020-17 in connection with Michigan's response to the spread of the novel coronavirus COVID-19. The executive order imposed temporary restrictions on certain medical and dental procedures beginning no later than March 21, 2020 at 5:00 p.m. and continuing while the declared COVID-19 state of emergency remains in effect. Under the executive order, certain health care businesses or operations are required to implement a plan to temporarily postpone all non-essential procedures.

Covered Facilities

The executive order does not apply to all health care businesses or operations, however. It applies only to covered facilities, which means all:

- hospitals
- freestanding surgical outpatient facilities
- dental facilities
- state-operated outpatient facilities
The definition of covered facilities is broad but not all-encompassing. Some health care businesses and operations (like many private outpatient clinics that do not otherwise qualify as one of the other categories of covered facilities) are not covered by the executive order.

**Non-Essential Procedures**

The executive order does not require the postponing of all medical or dental procedures. It only requires postponing non-essential procedures, which means medical or dental procedures that a licensed medical provider determines are not necessary in order to address a medical emergency or to preserve the health and safety of a patient. The executive order specifically identifies certain medical and dental procedures that **must** or **should be** postponed pursuant to a covered entity's postponement plan. These include:

- **Medical Procedures:**
  - joint replacement
  - bariatric surgery
  - cosmetic surgery

- **Dental Procedures:**
  - cosmetic or aesthetic procedures, such as veneers, teeth bleaching or cosmetic bonding
  - any routine hygiene appointments
  - any orthodontic procedures that do not relieve pain or infection, do not restore oral function or are not trauma-related
  - initiation of any crowns, bridges or dentures that do not relieve pain or infection, do not restore oral function or are not trauma-related
  - any periodontal plastic surgery
  - any extractions of asymptomatic non-carious teeth
  - any recall visits for periodontally healthy patients

**Essential Procedures**

Emergency or trauma-related surgery and procedures are excluded from any requirement for postponement where postponement would significantly impact the health, safety, and welfare of the patient. While not express in the executive order, it is logical (and advisable) that the foregoing determination, like a determination regarding a procedure not being necessary to address a medical emergency or to preserve the health and safety of a patient, be made by a licensed medical provider.
In addition, the executive order is clear about certain medical procedures that **must not** be postponed pursuant to a covered entity's postponement plan. These include:

- **Medical Procedures:**
  - surgeries related to advanced cardiovascular disease (including coronary artery disease, heart failure and arrhythmias) that would prolong life
  - oncological testing, treatment and related procedures
  - pregnancy-related visits and procedures
  - labor and delivery
  - organ transplantation
  - procedures related to dialysis

**Executive Order 2020-21**

On March 23, 2020 in an escalated response to the spread of the novel coronavirus COVID-19, the Michigan joined other states in issuing stay at home orders through Executive Order 2020-21. The effect of Executive Order 2020-21 on health care businesses and operations is wide-ranging and impacts entities whether or not they meet the definition of covered facility. Executive Order 2020-17 remains in effect, and continues to impact the scope of procedures that health care businesses and operations may be required to postpone. Of note, the same standards for determining whether a procedure is essential in Executive Order 2020-17 are used in Executive Order 2020-21 to describe when travel is permitted for medical or dental care (i.e., travel is expressly permitted only when obtaining care is necessary to address a medical emergency or necessary to preserve health and safety). See what Varnum's Health Care Practice Team has to say about Executive Order 2020-21 in the advisory [Michigan Health Care Operations in a Stay at Home World](#).

**Takeaways**

Some health care businesses and operations had already voluntarily limited or canceled non-essential procedures and appointments. For those that continue to provide medical or dental procedures, it is critical to determine:

- whether the business or operation is a covered facility
- whether and to what extent the facility can or has been performing non-essential procedures
- in what scenarios the facility may perform non-essential procedures because of emergent or trauma-related circumstances or a significant impact on the health, safety and welfare of patients

In light of the issuance of Michigan's stay at home order, it is further paramount that health care businesses and operations evaluate the need to use in-person services.
to deliver health care to patients after considering the costs and benefits of doing so.

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