In response to the growing concerns of the capacity of the health care workforce as a result of the COVID-19 pandemic, on March 24, 2020 the Secretary of Health and Human Services, Alex Azar, issued a letter and associated Guidance to all Governors urging them to take immediate action. While the federal government, and some states, have admirably waived and relaxed many rules related to the provision of various types of benefits and services, including relaxed telehealth and privacy rules/enforcement, many necessary actions are within the authority of state governments. Presumably, this plea from Secretary Azar is an attempt to “close the gap” between what the federal government has done to remove these barriers and
the stringent restrictions of many state licensure laws. Specifically, Azar sets forth eight action items that he is asking Governors and the District of Columbia to consider in order to lift the limits that state rules currently place on licensure, scope of practice, certification, and recertification/relicensure. The action items include:

1. Waive licensure requirements or restrictions, on a temporary basis, to allow health professionals licensed, registered, or certified in good standing with another state to practice their profession in your state, either in person or through telemedicine.

2. Waive statutory and regulatory standards to allow the use of telehealth modalities to establish a patient-provider relationship, diagnose and deliver treatment recommendations.

3. Waive certain scope of practice requirements to temporarily suspend or relax supervision or collaboration requirements and to allow health care professionals to practice in all settings. Encourage State Boards of Medicine, Nursing and other professions to put in place a temporary enforcement moratorium for scope of practice violations.

4. Remove geographic restrictions and increase the number of health professionals that a physician may supervise and allow supervision using remote or telephonic modalities.

5. Permit the rapid certification/licensure and Recertification/Relicensure of health care professionals.

6. Compile a list of state liability protections for in-state and out-of-state health care providers. Work with state insurance commissioners to modify or temporarily rescind provisions in medical malpractice policies that prevent insurance coverage of a health care provider’s work responding to the COVID-19 emergency in another state and work with insurers to waive similar limitations in their policies.

7. As determined appropriate by state health authorities, modify laws and regulations to utilize medical students to triage, diagnose and treat patients under the supervision of licensed medical staff.

8. Modify laws or regulations to allow for signature-less pharmaceutical deliveries in order to prevent contact between the recipient and the delivery person.

In setting out these action items, Azar calls on the states to immediately use available statutory and regulatory emergency authority to significantly expand the pool of health care professionals available to treat patients infected with the Corona Virus.

These actions, layered on federal waivers, such as the 1135 waiver of certain requirements applicable to the Medicare, Medicaid and CHIP programs, including prior authorization requirements and state licensure requirements, reflect essential federal/state coordination of COVID-19 responses.