

March 20, 2020

Eugene Scalia  
Secretary  
U.S. Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

***RE: Families First Coronavirus Response Act***

Dear Mr. Scalia:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, our clinician partners – including more than 270,000 affiliated physicians, 2 million nurses and other caregivers – and the 43,000 health care leaders who belong to our professional membership groups, **the American Hospital Association (AHA) urges the Department of Labor to accurately define “health care provider” when promulgating regulations implementing key sections of the Families First Coronavirus Response Act and clarify how this policy will be operationalized, including how it interacts with state law.** We applaud Congress and the Administration for steps already taken to assist hospitals as they help combat this public health emergency and ask that you provide further assistance to ensure that an adequate workforce will be available to care for our communities.

Hospitals and health systems are on front lines of COVID-19, and their ability to care for their communities during this unprecedented time requires all hands on deck. Every single function is critical to the provision of health care services – from the clinical staff collecting specimens, running tests, and providing direct care, to the facilities management staff who ensure a sterile environment and maintain the availability of critical supplies. No single position is more important than the other – hospitals simply cannot function without each type of provider.

The Families First Coronavirus Response Act places new requirements on certain employers with respect to family and medical leave, as well as paid leave. The legislation acknowledges that there may be instances where an employer must exempt certain health care providers or emergency responders. This is the tough reality of dealing with a global pandemic: We must ask heroic efforts of health care providers to protect the broader community.

The legislation directs the Secretary of Labor to promulgate regulations defining “health care provider.” Existing regulations are not sufficient to protect patients and provide for safe care throughout the hospital. For example, the current regulations do not include many classes of



nurses, as well as many other forms of front line health care providers, such as custodial staff or facility management personnel.

We urge the Secretary to amend the regulations for purposes of the Families First Coronavirus Response Act to enable hospitals and health systems to exempt any employee whom the employer deems necessary to the provision of health care or response to an emergency. Our proposed language is highlighted in the attached.

In addition, we seek clarification on how this policy will be operationalized, including how it interacts with existing state laws regarding paid leave. We urge you to confirm our reading that these provisions are not additive to existing leave that employers may already provide, including to be consistent with state law. For example, please confirm that employers are not necessarily required to add 80 hours (for full time works) of paid sick leave if they already provide such leave. Employers may, however, need to modify their policies to ensure that they are in compliance with this law. For example, if an employer currently offers 40 hours of paid sick leave to full time employees, they would need to increase the amount available to at least 80 hours. In addition, most employers would likely need to modify their policies to allow employees to use paid sick leave for the public health emergency scenarios outlined in the law.

We also ask that the Department clarify:

- How the rate would be calculated for employees whose pay is variable or, if they are not working, there is no regular rate?
- That the paid leave provisions do not apply where state law is more generous.
- That the paid leave provisions recognize state provided benefits where available. In other words, employers would not need to provide benefits already available through the state.

Thank for your assistance in ensuring that hospitals and health systems have the workforce resources they need to care for their communities.

Please contact me if you have questions, or feel free to have a member of your team contact Molly Smith, vice president of policy, at (202) 626-4639 or [mollysmith@aha.org](mailto:mollysmith@aha.org).

Sincerely,

/s/

Ashley Thompson  
Senior Vice President  
Public Policy Analysis & Development

Cc: Cheryl Stanton, Administrator, Wage and Hour Division, U.S. Department of Labor

**Attachment: Proposed Revisions to §825.125 Definition of health care provider**

**§825.125 Definition of health care provider.**

(a) The Act defines health care provider as:

(1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(2) Any other person determined by the Secretary to be capable of providing health care services.

(b) Others capable of providing health care services include only:

(1) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;

(2) Nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;

(3) Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement;

(4) Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and

(5) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

(6) Any employee whom the employer deems necessary to the provision of health care or response to an emergency.

(c) The phrase authorized to practice in the State as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.