



COMMONWEALTH of VIRGINIA

M. Norman Oliver, MD, MA
State Health Commissioner


Department of Health
P O BOX 2448
RICHMOND, VA 23218

TTY 7-1-1 OR
1-800-828-1120

April 24, 2020

DECISION MEMORANDUM

TO: The Honorable Daniel Carey, MD
Secretary of Health and Human Resources

FROM: M. Norman Oliver, MD, MA 
State Health Commissioner

SUBJECT: Waiver of Regulatory Provisions Pursuant to Executive Order 51 – In-Service Training of Hospice Home Attendants

PURPOSE

To recommend waiver of certain regulatory provisions pursuant to Executive Order 51, specifically waiving the requirement that hospice home attendants complete at least 12 hours of in-service training or education annually.

BACKGROUND

The novel coronavirus (COVID-19) is a viral disease that spreads easily from person to person, and may result in serious illness or death. COVID-19 has been classified by the World Health Organization as a worldwide pandemic and has spread throughout the Commonwealth, significantly increasing the threat of serious associated health risks statewide. The number of COVID-19 positive patients are increasing rapidly, both nationally and in the Commonwealth.

On March 12, 2020, Governor Ralph Northam declared a state of emergency due to COVID-19. In the declaration, Executive Order 51, the Governor directed state agencies to render appropriate assistance to prepare for and mitigate the effects of the COVID-19 outbreak. In doing so, he ordered authorization for the heads of executive branch agencies, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any state requirement or regulation.

On March 13, 2020, President Donald Trump issued a proclamation declaring that the COVID-19 outbreak in the United States constitutes a national emergency under sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.). On that same day, pursuant to section 1135(b)



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WAIVER OF 12VAC5-391-350(E): IN-SERVICE TRAINING OF HOSPICE HOME ATTENDANTS

On March 12, 2020, Governor Ralph Northam declared a state of emergency due to novel coronavirus (COVID-19). In the declaration, Executive Order 51, the Governor directed state agencies to render appropriate assistance to prepare for and mitigate the effects of the COVID-19 outbreak. In doing so, he ordered authorization for the heads of executive branch agencies, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any state requirement or regulation.

On March 13, 2020, President Donald Trump issued a proclamation declaring that the COVID-19 outbreak in the United States constitutes a national emergency under sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.). On that same day, pursuant to section 1135(b) of the Social Security Act (Act), the Secretary of the U.S. Department of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI in response to the COVID-19 pandemic to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the Medicare and Medicaid programs.

Pursuant to section 1135(b) of the Social Security Act, the U.S. Centers for Medicare and Medicaid Services issued a waiver to 42 C.F.R. § 418.76(d), which requires that hospices must assure that each hospice aide receives 12 hours of in-service training in a 12-month period.

Requirement: Subsection E of 12VAC5-391-350 states, in relevant part, "Relevant in-service education or training for home attendants shall consist of at least 12 hours annually."

Waiver: Notwithstanding 12VAC5-391-350(E), the requirement for home attendants to receive relevant in-service education or training of at least 12 hours annually is suspended during the period of the COVID-19 emergency declared by Executive Order 51.

Questions regarding this document or the information contained within should be addressed to the Director of the Office of Licensure and Certification, Robert A. K. Payne, JD, by email at Robert.Payne@vdh.virginia.gov or by phone at (804) 367-2102.

M. Norman Oliver, MD, MA
State Health Commissioner



Allen, Rebekah <rebekah.allen@vdh.virginia.gov>

EO 51 Waiver for 12VAC5-391-350(E)

MacLeod, Vanessa <VMacLeod@oag.state.va.us>
To: "Allen, Rebekah" <rebekah.allen@vdh.virginia.gov>
Cc: Robert Payne <robert.payne@vdh.virginia.gov>

Thu, Apr 23, 2020 at 1:15 PM

Rebekah,

VDH is within its authority to request a suspension of 12 VAC 5-391-350(E). Suspending the state requirement falls within the authority granted to agency heads and the Secretary by EO51 and is tied to the emergency. I recommend the suspension be worded as follows:

“Notwithstanding 12VAC5-391-350(E), the requirement for home attendants to receive relevant in-service education or training of at least 12 hours annually is suspended during the period of the COVID-19 emergency declared by Executive Order 51.”

Feel free to contact me if you have any questions or concerns.

Best regards,

Vanessa

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