



Apr 23, 2020

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West Virginia Plans to Reopen Starting with Elective Surgeries

West Virginia has a plan to start to reopen for business. Governor Jim Justice laid out this plan through an Executive Order on April 20, 2020. From a healthcare perspective, the first step is to allow elective surgeries in hospitals and certified ambulatory surgery centers (“ASCs”) that meet the following criteria:

- Providers must demonstrate they have an established plan to safely phase-in elective surgeries based upon sound clinical judgment, using the American College of Surgeons Guidelines as a benchmark.
- Providers must have an established plan to provide for prioritization of surgical procedures while meeting the demands of COVID-19 patients.
- Providers must assure that during the ramp-up of elective surgeries that more urgent elective surgeries can be flexibly triaged and adjusted as public health conditions changes or surges in COVID-19 cases occur.
- Providers must demonstrate that there are sufficient measures in place to provide for a 14-day supply of personal protective equipment (“PPE”) necessary for medical staff and patients following Centers for Disease Control (“CDC”) guidelines and allowing for sharing of PPE resources between facilities based upon the relative need to meet the demand during surges.
- Providers must comply with all other guidelines developed by the CDC, the Centers for Medicare and Medicaid Services, DHHR and other regulatory agencies.

While West Virginia has generally lagged behind the rest of the United States in both the number of COVID-19 infections and deaths, the state faces serious challenges in reopening during the COVID-19 crisis. Those challenges include a population that has a high rate of people over 65 years of age, a high number of citizens below the poverty line, and a high rate of several comorbidities

placing its citizens at significant risk of consequences if they contract the virus. When compared with surrounding states and the nation as a whole, West Virginia may seem ready to reopen immediately. But health planners have opted for a cautious approach given West Virginia's experience with several severe surges in the nursing home population.

West Virginia reacted swiftly to the COVID-19 crisis early by placing severe restrictions on visitation to nursing homes across the state on March 12, 2020. The only permitted exception allowed is for end-of-life visitation. Nevertheless, despite these early restrictions and other proactive measures, West Virginia has experienced several severe outbreaks in nursing homes, resulting in threats that may overwhelm local hospital resources and staff in several areas of the state. To address the surges in nursing homes, on April 17, 2020, Governor Justice ordered the West Virginia Department of Health and Human Resources ("DHHR") to test all residents and staff of nursing homes across the state. While the prohibition on visitation remains in effect, this situation clearly demonstrates that reopening hospitals and ASCs to elective surgeries is complicated from a public health perspective.

On March 21, 2020, Governor Justice first limited elective procedures in West Virginia in order to expand availability of hospital beds for COVID-19 cases, and, as a result, elective procedures were halted except for procedures certified to be emergent in nature. As noted above, however, West Virginia continued to see less COVID-19 cases and deaths than other states.

President Donald J. Trump announced general guidelines on April 16, 2020, for opening America again. The guidelines include a showing of continued decline in COVID-19 cases and a demonstrated ability of the health care system to handle existing capacity and any surges which occur with the reopening. West Virginia appeared to be one of the few states ready to reopen for business almost immediately upon issuance of the guidelines from President Trump.

After a month, despite small increases in the number of cases and deaths, West Virginia remains cautious about reopening elective surgeries due to the problems encountered with protecting nursing home residents. However, Governor Justice is also attempting to

strike a balance, recognizing that by delaying elective procedures, the health, safety and wellbeing of citizens has also been negatively affected. Thus, he has made the decision to reopen businesses, with the first step being the authorization of a limited number of elective procedures for hospitals and ASCs starting April 27, 2020.

Hospitals and ASCs that meet the criteria outlined above will be able to initiate the more urgent elective medical procedures upon approval by DHHR, or on or after April 27, 2020 (whichever occurs later). For more information, please contact [Chuck Johnson](#) of FBT Gibbons' [Health Care Innovation Team](#).

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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