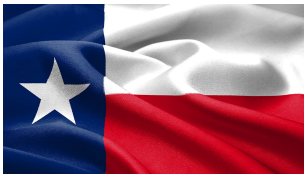

Texas Developments, Week of April 20, 2020

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Coronavirus Response Team
Publications

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Frost Brown Todd's Coronavirus Response Team continues to closely monitor state-by-state shelter-in-place orders to suppress the spread of COVID-19. Now, some states are moving forward with "reopening" their economies.

On April 17, 2020, Texas Governor Greg Abbott issued several executive orders to "Open Texas." This means they will begin a process of "safely and strategically reopening the state of Texas." An overview of those orders appears below.

The Governor's latest executive order will preempt certain county/city orders, and thus highlights the tension that can exist between state and local responses to the COVID-19 virus. The Governor stated he will issue an order on April 27 to resolve any such disparities.

Texas: gradual reopening of the Texas economy.

In March, Governor Abbott issued several executive orders, including Executive Order GA-14, which declared COVID-19 to be a statewide disaster and imposed social-distancing and other restrictions on a "statewide basis." (See Frost Brown Todd's earlier article for more details.)

On April 17, 2020, Governor Abbott issued Executive Order No. GA-16 , relating to "the safe, strategic reopening of select services as the first step to Open Texas in response to the COVID-19 disaster." While noting the ongoing threat posed by COVID-19, the order also acknowledges the "havoc" wrought on "many Texas businesses and workers affected by social-distancing restrictions that were necessary to protect human life." The order, therefore, seeks to "protect lives while restoring livelihoods, both of which can be achieved with the expert advice of medical professionals and business leaders."

Executive Order GA-16 supersedes Executive Order GA-14 but retains many of its features. One significant difference is that, under

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Order GA-16, Texans may now provide or access "essential services" and "reopened services." The order defines "reopened services" as "retail services that are not 'essential services,' but may be provided through pickup, delivery by mail, or delivery to the customer's doorstep in strict compliance with the terms required by" the Texas Department of State Health Services (DSHS). The order states that "reopened services" may be "enumerated" in future orders or proclamations.

In addition, Executive Order GA-16 orders all schools shall remain closed through the end of the 2019-2020 academic year. The order went into effect immediately on April 17, and will remain in effect through April 30, subject to further extension or modification.

Like GA-14, Executive Order GA-16 contains a preemption provision. The terms of the order "shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts essential services or reopened services allowed by this executive order or allows gatherings prohibited by this executive order."

This preemption provision is notable because certain counties and cities may impose different levels of restrictions. For example, Dallas County announced that it will extend its "shelter-in-place" order through May 15, 2020. In contrast, the Mayor of Colleyville (a North Texas suburb), issued a proclamation on April 20 permitting, among other things, religious services in houses of worship, elective surgeries, social gatherings outside family units, and outdoor patio dining in restaurants (all subject to social distancing practices).

As part of the Open Texas effort, the Governor issued Executive Order GA-17, which appointed "the Governor's Strike Force to Open Texas," which will "study and make recommendations on safely and strategically restarting and revitalizing all aspects of the Lone Star State—work, school, entertainment, and culture." The Governor's office describes the Strike Force as "a team of nationally recognized medical experts and private and public leaders."

Governor Abbott also issued Executive Order GA-15, "relating to hospital capacity during the COVID-19 disaster." The Governor's office describes Executive Order GA-15 as "loosen[ing] restrictions

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on surgeries" put in place by an earlier executive order. While surgeries and procedures that are not "medically necessary" must still be postponed, the order provides two exceptions:

- "procedures" that "would not deplete the hospital capacity or the personal protective equipment needed to cope with the COVID-19 disaster," and
- "any surgery or procedure" by health care facilities that will reserve at least 25% of their hospital capacity for treating COVID-19 patients and will not request PPE from any public source (federal, state, local) "for the duration of the COVID-19 disaster."

Executive Order GA-15 goes into effect at 11:59 on April 21, 2020, and will remain in effect through May 8, 2020, subject to further extension of modification.

Dallas County: "Safer at Home" order extended to May 15, "essential business" employees required to wear face coverings.

In March, Dallas County issued a series of orders, including a "shelter-in-place" order, to limit the spread of the COVID-19 virus (see Frost Brown Todd's earlier article for more details).

As reported in the *Dallas Morning News*, on April 21, 2020, Dallas County extended its "shelter-in-place" order through May 15.

On April 15, 2020, Dallas County issued another order requiring all employees of "essential businesses," where possible, to use face coverings over the nose and mouth when performing their job duties. This provision went into effect at 11:59 pm on April 17, 2020.

The Dallas County order provides in pertinent part:

"To the greatest extent possible, all non-medical employees who work at an essential business or perform services that are exempt under this Order must wear face coverings over their noses and mouths while performing their work. An owner or operator of an essential business may refuse admission or service to any individual who fails to wear face covering. Wearing a face covering is not a

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substitute for maintaining 6 feet social distancing and hand washing, as these remain important steps to slowing the spread of the virus."

The Dallas County Order also requires any person over the age of two who patronizes an essential business, or uses public transportation, taxis, or ride shares to wear some form of covering over their nose and mouth, such as a homemade mask, scarf, bandana, or handkerchief. An addendum to the order clarifies that the face covering requirement does not apply to persons who are: 1) riding in a personal car; 2) engaging in outdoor activity (i.e. jogging or going for a walk); 3) eating; or 4) when wearing a covering poses a greater mental or physical health, safety, or security risk. Dallas County also issued a list of Frequently Asked Questions and Answers related to face coverings.

As a result of the demand for fabric to create cloth masks, on April 17, 2020, Dallas County amended its Order to ease restrictions on fabric stores to permit them to sell fabric and supplies necessary for the creation of cloth coverings and masks, as well as supplies necessary for home schooling students. Fabric stores that remain open are required to comply with the Rules for Essential Retail Establishments.

It is important to note that the face covering requirement does not mean that non-medical personnel should use medical grade (N95) and surgical masks when out in the public. In fact, the addendum to the Order specifies that the medical grade and surgical masks should be reserved and used only by medical professionals and first responders. For most of the public, face coverings can be made with a variety of materials, such as cotton, silk, or linen. A cloth face covering may be factory-made, sewn by hand, or can be improvised from household items such as scarfs, T-shirts, sweatshirts, or towels. It can be secured to the head with ties, straps, or simply wrapped around the lower face. Additional information on how to create face coverings can be found here.

For more information, please contact Thomas Allen, Fred Gaona, Mark Platt, or any attorney in Frost Brown Todd's Government Services Practice Group.

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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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