



INSTITUTE FOR JUSTICE

May 6, 2020

VIA EMAIL AND UPS

Director LaQuandra S. Nesbitt
District of Columbia Department of Health
899 North Capital Street NE, 2nd Floor
Washington, D.C. 20002
laquandra.nesbitt@dc.gov

Re: Response to May 1, 2020 correspondence.

Dear Director Nesbitt:

Thank you for your May 1, 2020 response regarding the District's temporary certificate-of-need (CON) exemptions during the COVID-19 pandemic. The Institute for Justice (IJ) is grateful to hear your office is quickly processing and issuing temporary CON exemptions to healthcare facilities upon request. This added flexibility is greatly needed. To improve awareness and transparency, we urge you to update the Department of Health website to: (1) publish copies all CON decisions since 2017 and (2) provide clear instructions about the process of requesting a CON exemption during the pandemic.

IJ also writes with a second request. On March 13, 2020, you issued Administrative Order 2020-02 to expand access to telehealth services within the District. Once again, this was a very welcome, thoughtful action that properly recognized the immense benefits offered by expanding access to telemedicine.

Telehealth services are vital to District residents who choose to shelter in place and healthcare providers who are called to serve patients where they are needed most. Administrative Order 2020-02, however, only allows patients to utilize telehealth services if they have an existing relationship with their telehealth provider. IJ thus respectfully requests that you **eliminate the requirement that telehealth services be provided by a practitioner with whom a patient has an existing relationship.**¹

District residents may be harmed by Administrative Order 2020-02, even unintentionally, in many ways. Your office correctly recognized that many medical conditions can be addressed through a quick phone call or online visit, yet residents without a regular provider, with a provider who does not offer telehealth services, with a recently retired provider, or residents who need access to a new type of specialist are all prohibited from utilizing telemedicine. This puts many District residents in the unenviable position of choosing between visiting a crowded emergency room or physician's office or forgoing treatment altogether.

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But there is another option. By eliminating the limitation that patients only see telehealth providers with whom they have an existing relationship, District residents and healthcare providers will both be able to reap the full benefit of Administrative Order 2020-02. In fact, this is precisely what states like Idaho² and Utah³ have already allowed. As a result, residents there have immediate access to specialists anywhere in the U.S. from the comfort of their homes.

Allowing District residents greater access to telehealth services puts patients in control of their health and ensures that providers who continue to serve patients in-person are able to work where they are most needed. **Therefore, IJ requests that you eliminate the requirement in Administrative Order 2020-02 that telehealth services be provided by a practitioner with whom a patient has an existing relationship.** We also ask that you consider making this change and others you have recently implemented permanent.

IJ stands ready to assist you in crafting a tailored solution. We look forward to working with you further. You may call us at (703) 682-9320 or email us at the addresses below. Thank you.

Sincerely,



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cc: John Falcicchio, Chief of Staff to Mayor Bowser, john.falcicchio@dc.gov

¹ Administrative Order 2020-02 (Mar. 13, 2020).

² Ida. State Bd. of Medicine Proclamation (Mar. 18, 2020), https://bom.idaho.gov/BOMPortal/BOM/Procedures/board_of_medicine_proclamation_03-18-2020.pdf.

³ Utah Executive Order, *Suspending Enforcement of Statutes Relating to Telehealth Servs.* (Mar. 25, 2020), https://dopl.utah.gov/docs/Telehealth_Executive_Order.pdf.