



COMPLIANCE CONSULTING  
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# Memorandum

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## **The United States Department of Labor Redefines "Health Care Provider" Exception to FFCRA**

The Families First Coronavirus Response Act (FFCRA) requires certain employers with fewer than 500 employees to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19. An employer, however, can elect not to cover employees who are defined as "health care providers" under the FFCRA.

On Friday, September 11, the DOL issued a revised rule updating the definition of employees who are "health care providers." Under the revised rule, health care providers that an employer can elect not to cover under the FFCRA include:

1. Doctor of Medicine or osteopathy who are authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices;
2. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors authorized to practice in the state and performing within the scope of their practice as defined under state law;
3. 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;
4. Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts;
5. Any other employee who is capable of providing health care services, meaning he or she is employed to provide:
  - a) diagnostic services (taking or processing samples, performing or assisting in the performance of x-rays or other diagnostic tests or procedures, and interpreting test or procedure results);
  - b) preventive services (screenings, check-ups, and counseling to prevent illnesses, disease, or other health problems);
  - c) treatment services (performing surgery or other invasive or physical interventions, prescribing medication, providing or administering prescribed medication, physical therapy, and providing or assisting in breathing treatments); or
  - d) other services that are integrated with and necessary to the provision of patient care and, if not provided, would adversely impact patient care (bathing, dressing, hand feeding, taking vital signs, setting up medical equipment for procedures, and transporting patients and samples).

The revised rule further explains that the types of employees falling under this last category (5.d)) include only:

- A. Nurses, nurse assistants, medical technicians, and any other persons who directly provide services described in 5 above;
- B. Employees providing services described in 5 above under the supervision, order, or direction of, or providing direct assistance to, a person described in numbers 1-4 above or A above; and
- C. Employees who are otherwise integrated into and necessary to the provision of health care services, such as laboratory technicians who process test results necessary to diagnoses and treatment.

For skilled nursing facilities, the definition of "health care provider" still includes direct care providers, CNAs, personal care assistants, or other titles providing direct care to residents.

The DOL further clarified that employees who do not provide health care services as described above are not health care providers even if their services could affect the provision of health care services, such as IT professionals, building maintenance staff, human resources personnel, cooks, food services workers, records managers, consultants, and billers.