

SUMMARY

NEW YORK STATE EXECUTIVE ORDER NO. 202.10: CONTINUING TEMPORARY SUSPENSION & MODIFICATION OF LAWS RELATING TO THE DISASTER EMERGENCY

(EFFECTIVE MARCH 23, 2020 THROUGH APRIL 22, 2020)

INTRODUCTION

New York's Governor declared a state of disaster emergency for the entire State of New York on March 7, 2020, which authorizes him to temporarily suspend or modify, to the extent necessary, any statute, local law, ordinance, order, rule, or regulation of any agency pursuant to Executive Law § 29-a and authorizes him to issue directives to cope with the disaster pursuant to Executive Law § 29-b.

DIRECTIVES

- Students of any licensed healthcare profession may volunteer at any healthcare facility for educational credit, without a clinical affiliation agreement.
- All general hospitals, ambulatory surgery centers, office-based surgery practices, and diagnostic and treatment centers are to increase the number of beds by means that include canceling all elective surgeries and procedures (to be defined by the "Commissioner" of the Department of Health).
 - All general hospitals will need to submit COVID-19 Plans to accomplish this purpose to the New York State Department of Health ("DOH") at a date to be determined.
 - Any general hospital that cannot meet the requirements of the necessary capacity directives may have its operating certificate suspended, and the Commissioner is authorized to appoint a receiver to continue its operations.
- No pharmacist shall dispense hydroxychloroquine or chloroquine except when prescribed for an FDA-approved indication (including state approved clinical trials related to COVID-19).
- Health Insurance Companies shall deliver to the Superintendent of the Department of Financial Services ("Superintendent") a list of all persons with a professional license or degree, both current or expired, to allow for a poll on recruitment.

SUSPENDED OR MODIFIED STATUTES & REGULATIONS

The Governor suspended the following statutes and regulations with the purpose of ensuring adequate bed capacity, supplies, and providers to treat patients affected with COVID-19, as well as patients afflicted with other maladies.

- **Public Health Law § 2803** – Provides for the Health Commissioner's authority to inquire, inspect, and ensure compliance of health facilities for the adequacy and fitness, medical care, and hospital services, among other broad authorities to control and regulate such facilities.
 - Affected regulations: 10 NYCRR Parts 400, 401, 405, 409, 710, 711, and 712, which provide for operation certificates, contracts, and medical facility construction.
 - **Ordered:** To permit and require general hospitals to take all measures necessary to increase the number of beds available to patients.
- **Public Health Law §§ 3001, 3005-a, 3008, and 3010** – Controls the medical assistance in an emergency, including regulation of ambulances and transport.
 - **Ordered:** To allow the Commissioner to remove restrictions on ambulance services outside of the territory listed on operating certificates, to issue provisional certificates, and to allow transport of patients to locations other than healthcare facilities.
- **Public Health Law §§ 3002, 3002-a, 3003, 3004-a** – Provides for the creation and authority of the Emergency Medical Services Council, State Emergency Medical Advisory Committee, Regional Emergency Medical Services Councils, and Regional Emergency Medical Advisory Committees, each council and committee have responsibilities for the regulation of ambulance services.
 - **Ordered:** To allow any emergency medical treatment protocol development or modification with the sole approval of the Commissioner.
- **10 NYCRR §§ 405.13, 755.4** – Regulates the organization of anesthesia services, requiring a certified registered nurse anesthetist ("CRNA") be under the supervision of an anesthesiologist who is immediately available as needed or under the supervision of the operating physician who has been found qualified by the governing body and the medical staff to supervise the administration of anesthetics and who has accepted responsibility for the supervision of the CRNA
 - **Ordered:** To allow an advanced practice registered nurse (e.g. CRNA) with a doctorate or master's degree specializing in the administration of anesthesia to administer the same without the supervision of a qualified physician in a general hospital or free-standing ambulatory surgery center.
- **Education Law § 6542 (1) & 10 NYCRR § 94.2 (a), (b)** – Allowing a physician assistant to provide medical services but only when under the supervision of a physician and only when such acts and duties as are assigned to him or her are within the scope of practice of such supervising physician.
 - **Ordered:** To the extent necessary, to allow a physician assistant to provide medical services appropriate to their education, training, and experience without oversight from a supervising physician without civil or criminal penalty related to lack of that oversight.

- **Education Law § 6549 (1) & 10 NYCRR § 94.2 (a), (b)** – Allowing a specialist assistant to perform medical services, but only when under the supervision of a physician and only when such acts and duties as are assigned to him or her are related to the designated medical specialty for which he or she is registered and are within the scope of practice of his or her supervising physician.
 - **Ordered:** To the extent necessary, to allow a specialist assistant to provide medical services appropriate to their education, training, and experience without oversight from a supervising physician without civil or criminal penalty related to lack of that oversight.
- **Education Law § 6902 (3), and any associated regulations** – Requires a nurse practitioner to maintain a collaboration agreement with a licensed physician qualified to collaborate in the specialty involved, or if the nurse practitioner has greater than 3,600 hours of clinical practice, then the nurse practitioner must have a collaborative relationship with either a physician or a hospital.
 - **Ordered:** To the extent necessary, to allow a nurse practitioner to provide medical services appropriate to their education, training, and experience, without a written practice agreement, or collaborative relationship with a physician, without civil or criminal penalty related to the lack of agreement or collaborative relationship.
- **Public Health Law § 3001 (15) & 10 NYCRR §§ 800.3; 800.15; 800.16** – Defines "medical control" under the State Emergency Medical Services Code to mean advice and direction provided by a physician or under the direction of a physician to certified first responders, emergency medical technicians or advanced emergency medical technicians who are providing medical care at the scene of an emergency or en route to a health care facility.
 - **Ordered:** Upon approval of DOH and to the extent necessary, redefines "medical control" to include emergency and non-emergency direction to all emergency medical services personnel to operate under the advice and direction of a nurse practitioner, physician assistance, or paramedic, provided that such medical professional is providing care under the supervision of a physician and pursuant to a DOH-approved plan.
- **Education Law § 6527 (2); 6545; and 6909 (1)** – Good Samaritan Laws for physicians, physician assistants, and licensed registered professional nurses and licensed practical nurses, respectively, that provides immunity from damages for a medical health provider that voluntarily (without expectation of payment) renders first aid or emergency treatment at the scene of an accident – outside a hospital, doctor's office, or any other place with proper and necessary medical equipment – to a person who is unconscious, ill, or injured.
 - **Ordered:** To the extent necessary, to provide that all (1) physicians, (2) physician assistants, (3) specialist assistants, (4) nurse practitioners, (4) licensed registered professional nurses, and (5) licensed practical nurses shall be immune from civil liability for any injury or death alleged to have

been sustained directly as a result of an act or omission by such medical professional in the course of providing medical services in support of the State's response to the COVID-19 outbreak, unless it is established that such injury or death was caused by the gross negligence of such medical professional.

- **Education law § 6530 (32), 8 NYCRR § 29.2 (a) (3), 10 NYCRR §§ 58-1.11; 405.10; and 415.22, & any other such laws or regulations** – Defines a physician's failure to maintain proper medical records as professional misconduct, defines the failure to maintain records by other health professions as unprofessional conduct, requirements of records for clinical laboratories, requirements of medical records by hospitals, and requirements for clinical records by nursing homes.
 - **Ordered:** Notwithstanding any law or regulation to the contrary, health care providers are relieved of recordkeeping requirements to the extent necessary for health care providers to perform tasks as may be necessary to respond to the COVID-19 outbreak, including, but not limited to, (1) maintaining medical records that accurately reflect the evaluation and treatment of patients, (2) requiring the assignment of diagnostic codes, or (3) creating or maintaining other records for billing purposes. Any person acting reasonably and in good faith under this provision shall be afforded absolute immunity from liability for any failure to comply with any recordkeeping requirement.
 - **Caution:** HIPAA preempts New York law.
- **10 NYCRR § 405.45** – Defines and regulates trauma centers.
 - **Ordered:** To the extent necessary, to allow the Commissioner to designate a health care facility as a trauma center or modify the review team for assessment of trauma centers.
- **10 NYCRR §§ 800.3; 800.8; 800.9; 800.10; 800.12; 800.17; 800.18; 800.23; 800.24; 800.26** – Regulations under the State Emergency Medical Services Code.
 - **Ordered:** To extend all existing emergency medical services provider certifications for one year and to allow the Commissioner to modify recertification requirements and to allow the Commissioner to allow foreign certified emergency medical service providers to provide services within New York and to allow the Commissioner to suspend or modify equipment or vehicle requirements to sustain EMS operations.
- **10 NYCRR § 405.4 (b) (6)** – Regulates and limits the working hours of hospital medical staff.
 - **Ordered:** To the extent necessary, to remove the limits on working hours for physicians and postgraduate trainees.
- **10 NYCRR § 405.4 (g) (2) (ii)** – Patient care services may be provided by unlicensed physicians, who possess limited permits to practice medicine under the supervision of a physician licensed and currently registered to practice medicine in the State of New York and is a graduate of a foreign medical school and have satisfactorily completed three years of graduate medical education in a postgraduate training program.

- **Ordered:** To allow graduates of foreign medical schools with at least one year of graduate medical education to provide patient care in hospitals.
- **10 NYCRR § 405.2 (e)** – Regulates credentialing of hospital medical staff.
 - **Ordered:** To the extent necessary, to permit hospitals affected by the disaster emergency to maintain adequate staffing.
- **10 NYCRR § 405.3 (b)** – Regulates hospital personnel.
 - **Ordered:** To the extent necessary, to allow general hospitals to use qualified volunteers or personnel affiliated with different general hospitals, subject to the Commissioner further direction.
- **Public Health Law §3507 & 10 NYCRR Part 89** – Regulates the practice of radiologic technologists and provides that a license is valid for the lifetime of the licensee but requires registration with the Commissioner to practice in New York.
 - **Ordered:** To allow radiologic technologists licensed and in current good standing in New York State but not currently registered to practice without civil or criminal penalty.
- **Public Health Law §§ 3502; 3505 & 10 NYCRR Part 89** – Regulates licenses in the areas of radiography, radiation therapy, and nuclear medicine technology and required New York State licenses.
 - **Ordered:** To the extent necessary, to allow radiologic technologists licensed and in current good standing in any state in the United States to practice in New York State without civil or criminal penalty related to lack of licensure.
- **Education Law §§ 8502; 8504; 8504-a; 8505; 8507 & 8 NYCRR subpart 79-4** – Regulates the practice of respiratory therapists and requires a New York State license to practice respiratory therapy in New York.
 - **Ordered:** To the extent necessary, to allow respiratory therapists licensed and in current good standing in any state in the United States to practice in New York State without civil or criminal penalty related to lack of licensure.
- **Education Law § 6502 & 8 NYCRR § 59.8** – Regulates the duration and registration of a license and provides that a license for a physician assistant is valid for the licensee's lifetime but requires registration with the Education Department to practice in New York.
 - **Ordered:** To the extent necessary, to allow licensed physician assistants in good standing in New York but not currently registered to practice in New York, to practice in New York State without civil or criminal penalty related to lack of registration.
 - **Ordered:** To the extent necessary, to allow registered professional nurses, licensed practical nurses, and nurse practitioners licensed and in good standing in New York but not registered in New York, to practice in New York without civil or criminal penalty related to lack of registration.
- **Public Health Law § 4002 (2-b)** – Provides definition of hospice residence.

- **Ordered:** To allow a hospice residence to designate any number of beds within such facility as dually certified inpatient beds.
- **Public Health Law, Article 5, Title V & 10 NYCRR subparts 19 and 58** – Regulates the performance of clinical laboratory and blood banking services.
 - **Ordered:** To allow laboratories holding a Clinical Laboratory Improvement Acts (CLIA) certificate and meeting the CLIA quality standards to perform SARS-CoV-2 testing.
- **Education Law Article 139, Public Health Law § 576-b, & 10 NYCRR § 58-1.7** – General provisions for the profession of nursing, the performance of certain clinical laboratory services, and regulation of clinical laboratories and blood banks, respectively.
 - **Ordered:** To allow registered nurses to order the collection of throat or nasopharyngeal swab specimens from individuals suspected of being infected by COVID-19, for purposes of testing.
- **Education Law §§ 6801 (1); 6832 & 8 NYCRR § 29.7 (a) (21) (ii) (b) (4)** – Defining the practice of pharmacy, the limitations on assistance of an unlicensed person in a pharmacy, and prohibition of an unlicensed person to measure, weigh, compound, or mix ingredients in a pharmacy, respectively.
 - **Ordered:** To the extent necessary, to allow a certified or registered pharmacy technician, under the direct personal supervision of a licensed pharmacist, to assist in compounding, preparing, labeling, or dispensing of drugs used to fill valid prescriptions or medication orders for a home infusion provider licensed as a pharmacy in New York.

CONCLUSION

Executive Order 202.10 provides for the suspension and modifications of many statutes and regulations that apply to healthcare and healthcare providers. However, almost all the orders are qualified with the phrase "to the extent necessary," and other orders require further direction of the Commissioner of Health. Any questions regarding this Executive Order or the laws and regulations modified therein, may be directed to Mia VanAuken at Fager, Amsler, Keller & Schoppmann, LLP, at 518-786-2880 or mvanauken@fakslaw.com. The Executive Order can be accessed at this site: https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.10.pdf