

**The Status of Temporary Changes to State and Federal Laws Enacted During the COVID-19 Crisis**

As the State and Federal government reopen the economy in phases, it is important for healthcare providers to stay up to date on temporary statutory and regulatory changes that went into effective during the COVID-19 crisis. Some of these important changes are waivers, exceptions, and immunities from liability. Below is an overview and table reference that provides useful information on:

- The start and expiration dates of the state and federal statutory/regulatory changes;
- The source and title of the statutory/regulatory change;
- An explanation of the statutory/regulatory change.

**This reference will be updated periodically to reflect ongoing changes and additional information.**

MLMIC policyholders may contact the law firm of **Fager Amsler Keller & Schoppmann, LLP** as a free value-added service at **1-855-FAKS-LAW** for current information on these statutes/regulations as well as other important COVID-19 information.

**Important Dates:**

- **January 31, 2020** the Secretary of the Department of Health and Human Services, Alex M. Azar, II declared a Public Health Emergency for the entire United States to aid in response to the 2019 Novel Coronavirus. The declaration was retroactive to January 27, 2020 and will remain in effect for the duration of the crisis.
- On **March 7, 2020**, Governor Andrew Cuomo issued **Executive Order 202** (periodically updated) which declared a State Disaster Emergency for the entire state of New York. This declaration shall remain in effect until September 7, 2020.
- In NYS it is anticipated that further extensions of these orders will be issued as this crisis continues.

**Overview of State and Federal Changes:**

NEW YORK STATE	FEDERAL (HHS)
Telehealth (see table below)	Enforcement Discretion for Telehealth
Licensure-State Reciprocity	Enforcement Discretion for Violations of the Privacy Rule
Emergency or Disaster Treatment Protection Act	Expansion of Medicare Coverage for Telehealth
Supervision for Physician Extenders	Limited Immunity for Use of Countermeasures (Medications, treatments)
Anesthesia Services-Expansion for Extenders	Federal: Emergency Medical Treatment & Legal Act (EMTALA) – Waiver
Record Keeping Relief	Waiver of Requirements for Verbal Orders
PPE	Waiver of Patient Rights for Hospitals Considered Impacted by a Widespread Outbreak of COVID-19
Virtual Notary Services	Waiver of Requirement for Medicare Patients to be Under Care of Physician
Tolling the Statute of Limitations	Supervision of Certified Registered Nurse Anesthetist (CRNA)
Notifications of Positive Test or Death within 24 hours for Certain Facilities	
Performance of Elective Surgeries and Procedures	

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Topic	Effective Dates	Temporary Change
<p><b><u>Federal: Health Insurance Portability and Accountability HIPAA - Enforcement Discretion for Telehealth</u></b></p> <p>Source: HHS Office of Civil Rights Directive 3/17/20</p> <p>Link: <a href="https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html">https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html</a></p> <p>Regulation Impacted: 45 CFR Parts 160 and 164</p>	<p><b>March 17, 2020 – until further notice from HHS</b></p>	<ul style="list-style-type: none"> <li>• <b>Waiver of penalties for HIPAA violations relating to telehealth</b></li> <li>• Applies to good faith use of basic applications – <b>FaceTime, Zoom, Skype</b></li> <li>• <b>Business Associate Agreement with platform not required</b></li> </ul>
<p><b><u>Federal: Health Insurance Portability and Accountability Act HIPAA – Enforcement Discretion of Privacy Rule</u></b></p> <p>Source: HHS Office of Civil Rights Directive 4/2/20</p> <p>Link: <a href="https://www.hhs.gov/about/news/2020/04/02/ocr-announces-notification-of-enforcement-discretion.html">https://www.hhs.gov/about/news/2020/04/02/ocr-announces-notification-of-enforcement-discretion.html</a></p> <p>Regulation Impacted: 45 CFR Parts 160 and 164</p>	<p><b>April 2, 2020 – until further notice from HSS</b></p>	<ul style="list-style-type: none"> <li>• HHS Office of Civil Rights will exercise enforcement discretion and will not impose penalties for violations of certain provisions of the HIPAA Privacy Rule against providers and business associates for use and disclosure of protected health information during COVID-19 public health emergency</li> </ul>

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<p><b><u>Federal: Liability Immunity for Countermeasures against COVID-19</u></b></p> <p><u>Source:</u> DHHS Declaration 3/10/20</p> <p><u>Link:</u> <a href="https://www.federalregister.gov/documents/2020/03/17/2020-05484/declaration-under-the-public-readiness-and-emergency-preparedness-act-for-medical-countermeasures">https://www.federalregister.gov/documents/2020/03/17/2020-05484/declaration-under-the-public-readiness-and-emergency-preparedness-act-for-medical-countermeasures</a></p>	<p><b>February 4, 2020-until further notice</b></p>	<ul style="list-style-type: none"><li>• The Secretary of the Department of Health and Human Services has declared, pursuant to the Public Health Service Act § 319F-3 (42 U.S.C. § 247d-6d), that a covered person's activities related to medical countermeasures against COVID-19 will be immune from liability under Federal and State law.</li><li>• The liability protections provide that a covered person shall be immune from suit and liability under federal and state law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or use by an individual of a covered countermeasure.</li><li>• Authorized actions to: (1) prescribe, (2) administer, (3) deliver, (4) distribute, or (5) dispense the "Covered Countermeasures," absent willful misconduct.</li><li>• Any antiviral, any other drug, any biologic, any diagnostic, any device, or any vaccine, used to treat, diagnose, cure, prevent, or mitigate COVID-19 or the transmission of SARS-CoV-2 or a virus mutating therefrom, or any device used in the administration of any such product.</li></ul>
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<p><b><u>NYS: Emergency or Disaster Treatment Protection Act Related to COVID-19 (Limited Immunity from Liability)</u></b></p> <p><b><u>Source: Emergency or Disaster Treatment Protection Act</u></b></p> <p><b><u>Statute Enacted: NYS PHL Art. 30-D</u></b></p>	<p><b>March 7, 2020 –End of COVID-19 Emergency declaration</b></p>	<ul style="list-style-type: none"> <li>• Healthcare facility or health care professionals which includes physicians, physician assistants, special assistants, nurse practitioners, registered nurses, licensed practical nurses, midwives, pharmacists, psychologists, respiratory therapists, clinical laboratory technicians, nursing attendants, certified nurse aides, first responders, emergency medical technicians.</li> <li>• Provides immunity from civil or criminal liability for injury or death</li> <li>• Applies to acts or omissions that occur in providing health care services and treatment to individuals in response to COVID-19 Emergency.</li> <li>• Immunity also applies to activities and decisions in response to COVID-19 outbreak and in support of the state’s directives.</li> <li>• Does not apply to willful or intentional criminal misconduct, gross negligence, reckless misconduct or intentional infliction of harm</li> <li>• Resource or staff shortages shall not be considered as willful or intentional criminal conduct, gross negligence or reckless misconduct.</li> <li>• Does not apply to Dentists</li> </ul>
<p><b><u>NYS: Supervision Requirements for Physician Extenders</u></b></p> <p><b><u>Source: Executive Order 202.10</u></b></p> <p><b><u>Link: <a href="https://www.governor.ny.gov/news/no-20210-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency">https://www.governor.ny.gov/news/no-20210-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency</a></u></b></p> <p><b><u>Statutes and Regulations Impacted:</u></b></p>	<p><b>March 23, 2020 – May 7, 2020</b></p>	<ul style="list-style-type: none"> <li>• Applies to Physician Assistants, Special Assistants, Nurse Practitioners</li> <li>• To the extent necessary these extenders are permitted to provide medical services appropriate with their education training and experience without oversight from a physician or without a written practice agreement or collaborating relationship.</li> <li>• Extenders are provided immunity from civil or criminal penalty</li> </ul>

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<p>NYS EDU Law §6542  NYS EDU Law §6902  NYS EDU Law §6545  NYS EDU Law §6527  10 NYCRR §94.2  8 NYCRR §64.5</p>		<p>relative to lack of oversight by physician</p>
<p><b>NYS: Anesthesia Services – Expansion</b></p> <p><u>Source:</u> Executive Order 202.10</p> <p><u>Link:</u> <a href="https://www.governor.ny.gov/news/no-20210-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency">https://www.governor.ny.gov/news/no-20210-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency</a></p> <p><u>Regulation Impacted:</u></p> <p>10 NYCRR §405.13  10 NYCRR §755.4</p>	<p><b>March 23, 2020 – May 7, 2020</b></p>	<ul style="list-style-type: none"> <li>• To the extent necessary, permits advanced practice registered nurse with a doctorate or master’s degree specializing in anesthesia administration in a general hospital or ambulatory surgery center <b><u>without supervision of a physician.</u></b></li> </ul>
<p><b><u>NYS: Record Keeping - Relief of Medical Record Keeping Requirements</u></b></p> <p><u>Source:</u> Executive Order 202.10</p> <p><u>Link:</u> <a href="https://www.governor.ny.gov/news/no-20210-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency">https://www.governor.ny.gov/news/no-20210-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency</a></p> <p><u>Statute and Regulations Impacted:</u></p> <p>NYS EDU Law §6530(32)  8 NYCRR §29.2  10 NYCRR §405.10  10 NYCRR §405.22</p>	<p><b>March 23, 2020 – May 7, 2020</b></p>	<ul style="list-style-type: none"> <li>• To the extent necessary to perform tasks relative to the COVID-19 crisis</li> <li>• When acting in good faith a provider is immune from liability for failing to comply with record keeping requirements</li> <li>• Applies to healthcare provider, hospitals, laboratories and nursing facilities</li> <li>• Includes accurate documentation of: <ul style="list-style-type: none"> <li>▪ Evaluation and treatment of patients</li> <li>▪ Diagnostic codes</li> <li>▪ Billing records</li> </ul> </li> </ul>

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<p><b><u>NYS: Licensure -State Reciprocity Expansion</u></b></p> <p><u>Source:</u> Executive Order 202.5 (states) and Executive Order 202.18 (Canada)</p> <p><u>Link:</u> <a href="https://www.governor.ny.gov/news/no-2025-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency">https://www.governor.ny.gov/news/no-2025-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency</a></p> <p><u>Statute and Regulation Impacted:</u></p> <p>NYS EDU Law §6512-6516          NYS EDU Law §6905          NYS EDU Law §6909-6910          NYS EDU Law §6541          8 NYCRR Part 59.8          8 NYCRR Part 60          8 NYCRR Part 64</p>	<p align="center"><b>March 7, 2020 – May 7, 2020</b></p>	<ul style="list-style-type: none"> <li>To the extent necessary, allows physicians, registered nurses, licensed practical nurse, nurse practitioners and physician assistants licensed and in good standing in any state in the United States or province or territory of Canada to practice in New York State without civil or criminal penalty for a lack of licensure.</li> </ul>
<p><b><u>NYS: Personal Protective Equipment -Face Covering Requirements</u></b></p> <p><u>Source:</u> Executive Order 202.16</p> <p><u>Link:</u> <a href="https://www.governor.ny.gov/news/no-20216-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency">https://www.governor.ny.gov/news/no-20216-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency</a></p>	<p align="center"><b>April 15, 2020 – May 20, 2020</b></p>	<ul style="list-style-type: none"> <li>Essential businesses shall provide, and employees shall wear face coverings when in direct contact with customers or members of the general public</li> </ul>
<p><b><u>NYS: Performance of Elective Surgeries and Procedures</u></b></p> <p><u>Source:</u> Executive Order 202.25</p> <p><u>Link:</u> <a href="https://www.governor.ny.gov/news/no-20225-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency">https://www.governor.ny.gov/news/no-20225-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency</a></p> <p><u>Modifies:</u> Executive Order 202.10</p>	<p align="center"><b>April 29, 2020 – May 29, 2020</b></p>	<ul style="list-style-type: none"> <li>General Hospitals may perform elective surgeries and procedures</li> <li>The General Hospital and County where located <u>both</u> must meet the following criteria:             <ul style="list-style-type: none"> <li>Total inpatient capacity greater than 30%</li> <li>Total available ICU capacity greater than 30%</li> <li>Between 4/17 and 4/27 the number of hospitalized</li> </ul> </li> </ul>

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		<p>COVID-19 patients was less than 10</p> <ul style="list-style-type: none"> <li>▪ General Hospital must report to DOH the number and type of surgeries or procedures performed</li> <li>• General Hospitals not meeting criteria can seek a waiver from prohibition by submitting a prescribed plan</li> <li>• Patient undergoing elective surgery or procedure must test negative for COVID-19</li> </ul>
<p><b><u>NYS: Telehealth – Expansion of Services in General</u></b></p> <p>Source: Executive Order 202</p> <p>Link: <a href="https://www.governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york">https://www.governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york</a></p> <p>Statute Impacted: NYS PHL §2999-cc</p>	<p><b>March 7, 2020 – May 7, 2020</b></p>	<ul style="list-style-type: none"> <li>• To the extent necessary, Commissioners allowed to expand telehealth to additional provider categories and modalities</li> <li>• Allows other types of practitioners to deliver telehealth services within scope of practice</li> <li>• Authorizes the use of certain technologies for the delivery of health care to established patients.</li> </ul>
<p><b><u>NYS: Telehealth – Tele-Mental Health expansion</u></b></p> <p>Source: Executive Order 202</p> <p>Link: <a href="https://www.governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york">https://www.governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york</a></p> <p>Regulations Impacted: 10 NYCRR §58-1.5 14 NYCRR §596</p>	<p><b>March 7, 2020 – May 7, 2020</b></p>	<ul style="list-style-type: none"> <li>• To extent necessary, allows for rapid approval of the use of tele-mental health services</li> <li>• Removes requirement for initial in person assessment prior to telehealth services</li> <li>• Reduce limitations on how can deliver services</li> <li>• Reduce requirements for who must be present while services are provided</li> </ul>

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<p><b><u>Federal: Telehealth – Center for Medicare Services Expansion of Medicare Coverage</u></b></p> <p>Source: CMS Directive 3/17/20</p> <p>Link: <a href="https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet">https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet</a></p> <p>Regulation Impacted:</p> <p>42 CFR §410.78</p>	<p><b>March 6, 2020 until end of COVID-19 Public Health Emergency</b></p>	<ul style="list-style-type: none"> <li>• Telehealth considered same as in-person visits and paid at same rate</li> <li>• Conducted from patient’s place of residence</li> <li>• Patient not required to reside in rural area or travel to a clinic, hospital office to initiate telehealth</li> <li>• HHS will not conduct audit to ensure a prior relationship existed</li> </ul>
<p><b><u>Telehealth – State Reciprocity: Waivers between States Bordering NYS</u></b></p> <p>Treatment of Out of State Patients – Boarding State Reciprocity of Licensure with State of New York</p>	<p><b>Vary depending upon state</b></p>	<ul style="list-style-type: none"> <li>• Connecticut, New York and New Jersey have waived state licensing requirement. Provider must have a license in good standing</li> <li>• Rhode Island, Pennsylvania, Massachusetts and Vermont allow out of state providers to apply for temporary license.</li> <li>• Expanded to Canada</li> </ul>
<p><b><u>NYS: Notary Public – Officiate Execution of Documents Remotely</u></b></p> <p>Source: Executive Order 202.7</p> <p>Link: <a href="https://www.governor.ny.gov/news/no-2027-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency">https://www.governor.ny.gov/news/no-2027-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency</a></p>	<p><b>March 19, 2020- May 7, 2020</b></p>	<ul style="list-style-type: none"> <li>• Notary Public can witness execution of document via audio-visual technology</li> <li>• Audio-Visual technology must have direct interaction</li> <li>• Person must present valid ID on video</li> <li>• Person must affirm he/she is in New York State</li> <li>• Signed document must be transmitted to notary the same day it is signed</li> </ul>
<p><b><u>NYS: Statute of Limitations – Tolloed</u></b></p> <p>Source: Executive Order 202.8</p> <p>Link: <a href="https://www.governor.ny.gov/news/no-2028-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency">https://www.governor.ny.gov/news/no-2028-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency</a></p> <p>Statutes Impacted:</p> <p>NYS CPLR Article 2</p>	<p><b>March 20, 2020 – May 7, 2020</b></p>	<ul style="list-style-type: none"> <li>• Statutes of limitations to commence lawsuits or serve legal process are tolled during the COVID-19 crisis</li> <li>• Effects all causes of action including but not limited to claims of medical malpractice, breach of contract and general negligence</li> </ul>

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<p><b><u>NYS: Notification of Positive COVID-19 Test or Death within 24 Hours of Event to Family or Next of Kin.</u></b></p> <p>Source: Executive Order 202.17 &amp; 202.18</p> <p>Link: <a href="https://www.governor.ny.gov/news/no-20217-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency">https://www.governor.ny.gov/news/no-20217-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency</a></p>	<p><b>Effective April 16, 2020 through May 16, 2020</b></p>	<ul style="list-style-type: none"> <li>• Skilled nursing facilities, nursing homes and adult care facilities must notify family member or next of kin within 24 hours of a positive covid-19 test or death related to covid-19.</li> <li>• Noncompliance is subject to \$2,000 fine per day</li> </ul>
<p><b><u>Federal: Emergency Medical Treatment &amp; Legal Act (EMTALA) – Waiver of Emergency Department Screening Requirement</u></b></p> <p>Source: CMS Directive 4/15/20</p> <p>Link: <a href="https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf">https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf</a></p> <p>Statute Impacted: Social Security Act §1867(a)</p>	<p><b>March 1, 2020 – End of Emergency Declaration</b></p>	<ul style="list-style-type: none"> <li>• Allows hospitals, psychiatric hospitals, and critical access hospitals to screen patients at a location offsite from hospital’s campus to prevent spread of COVID-19</li> <li>• Must not be inconsistent with a states’ emergency preparedness or pandemic plan</li> </ul>
<p><b><u>Federal: Waiver of Requirements for Verbal Orders</u></b></p> <p>Source: CMS Directive 4/15/20</p> <p><b>Federal: Waiver of Requirements for Verbal Orders</b></p> <p>Link: <a href="https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf">https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf</a></p> <p>Statutes Impacted:</p> <p>42 CFR §482.23, §482.24 and §485.635</p>	<p><b>March 1, 2020 – End of Emergency Declaration</b></p>	<ul style="list-style-type: none"> <li>• Applies to verbal orders where readback verification is required and authentication may occur later than 48 hours.</li> <li>• Permits verbal orders for use of drugs and biologicals</li> <li>• Waives requirements for orders to be dated, timed and authenticated promptly</li> <li>• Waives requirement for hospitals to use pre-printed and electronic standing orders, order sets and protocols for patient orders</li> </ul>

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<p><b><u>Federal: Waiver of Patient Rights for Hospitals Considered Impacted by a Widespread Outbreak of COVID-19</u></b></p> <p>Source: CMS Directive 4/15/20</p> <p>Link: <a href="https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf">https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf</a></p> <p>Statute Impacted: 42 CFR §482.13</p>	<p><b>March 1, 2020 – End of Emergency Declaration</b></p>	<ul style="list-style-type: none"> <li>• Applies to hospitals in a state with widespread confirmed cases per CDC</li> <li>• Waiver of timeframes for providing a copy of medical record</li> <li>• Waiver of visitation of patients in COVID-19 isolation and quarantine and seclusion</li> </ul>
<p><b><u>Federal: Waiver of Requirement for Medicare Patients to be Under Care of Physician</u></b></p> <p>Source: CMS Directive 4/15/20</p> <p>Link: <a href="https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf">https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf</a></p> <p>Statute Impacted: 42 CFR §482.12</p>	<p><b>March 1, 2020 – End of Emergency Declaration</b></p>	<ul style="list-style-type: none"> <li>• Allows hospitals to use other practitioners to the fullest extent possible.</li> <li>• Must not be inconsistent with a state’s emergency preparedness or pandemic plan</li> </ul>
<p><b><u>Federal: Supervision of Certified Registered Nurse Anesthetist (CRNA)</u></b></p> <p>Source: CMS Directive 4/15/20</p> <p><b><u>Federal: Supervision of Certified Registered Nurse Anesthetist (CRNA)</u></b></p> <p>Link: <a href="https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf">https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf</a></p> <p>Statute Impacted: 42 CFR §482.52</p>	<p><b>March 1, 2020 – End of Emergency Declaration</b></p>	<ul style="list-style-type: none"> <li>• Waiver of requirement of physician supervision</li> <li>• Applies to hospitals, critical access hospitals and ambulatory surgical centers</li> <li>• Supervision will be at discretion of hospital and state law</li> </ul>

If there are any questions regarding the above legal changes and how they impact your practice please do not hesitate to contact **Fager Amsler Keller & Schoppmann, LLP at 855-FAKS-LAW.**

Last update: 4/29/20