

The COVID-19 Legislative Dashboard

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, modifications, exceptions, and immunities from liability**. Below is a **Dashboard** 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 Dashboard 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.

Topic	Effective Dates	Temporary Change
<p>Federal: Health Insurance Portability and Accountability HIPAA - Enforcement Discretion for Telehealth</p> <p>Source: HHS Office of Civil Rights Directive 3/17/20</p> <p>Link: https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html</p> <p>Regulation Impacted:</p> <p>45 CFR Parts 160 and 164</p>	<p>March 17, 2020 – until further notice from HHS</p>	<ul style="list-style-type: none"> • Waiver of penalties for HIPAA violations relating to telehealth • Applies to good faith use of basic applications – FaceTime, Zoom, Skype • Business Associate Agreement with platform not required

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<p>Federal: Health Insurance Portability and Accountability Act HIPAA – Enforcement Discretion of Privacy Rule</p> <p><u>Source:</u> HHS Office of Civil Rights Directive 4/2/20</p> <p><u>Link:</u> https://www.hhs.gov/about/news/2020/04/02/ocr-announces-notification-of-enforcement-discretion.html</p> <p><u>Regulation Impacted:</u> 45 CFR Parts 160 and 164</p>	<p>April 2, 2020 – until further notice from HSS</p>	<ul style="list-style-type: none"> • 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
<p>Federal: Liability Immunity for Countermeasures against COVID-19</p> <p><u>Source:</u> DHHS Declaration 3/10/20</p> <p><u>Link:</u> https://www.federalregister.gov/documents/2020/03/17/2020-05484/declaration-under-the-public-readiness-and-emergency-preparedness-act-for-medical-countermeasures</p>	<p>February 4, 2020-until further notice</p>	<ul style="list-style-type: none"> • 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. • 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. • Authorized actions to: (1) prescribe, (2) administer, (3) deliver, (4) distribute, or (5) dispense the "Covered Countermeasures," absent willful misconduct. • Any antiviral, any other drug, any biologic, any diagnostic, any device, or any vaccine, used to treat, diagnose, cure, prevent, or mitigate

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		<p>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.</p>
<p><u>NYS: Emergency or Disaster Treatment Protection Act Related to COVID-19 (Limited Immunity from Liability)</u></p> <p><u>Source:</u> Emergency or Disaster Treatment Protection Act</p> <p><u>Statute Enacted:</u> NYS PHL Art. 30-D</p>	<p>March 7, 2020 –End of COVID-19 Emergency declaration</p>	<ul style="list-style-type: none"> • 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. • Provides immunity from civil or criminal liability for injury or death • Applies to acts or omissions that occur in providing health care services and treatment to individuals in response to COVID-19 Emergency. • Immunity also applies to activities and decisions in response to COVID-19 outbreak and in support of the state’s directives. • Does not apply to willful or intentional criminal misconduct, gross negligence, reckless misconduct or intentional infliction of harm • Resource or staff shortages shall not be considered as willful or intentional criminal conduct, gross negligence or reckless misconduct. • Does not apply to Dentists

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<p><u>NYS: Supervision Requirements for Physician Extenders</u></p> <p><u>Source:</u> Executive Order 202.10 (Extended by Executive Order 202.28) (Extended by Executive Order 202.38)</p> <p><u>Link:</u> https://www.governor.ny.gov/news/no-20210-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency</p> <p><u>Statutes and Regulations Impacted:</u></p> <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>March 23, 2020 – July 6, 2020</p>	<ul style="list-style-type: none"> • Applies to Physician Assistants, Special Assistants, Nurse Practitioners • 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. • Extenders are provided immunity from civil or criminal penalty relative to lack of oversight by physician
<p><u>NYS: Anesthesia Services – Expansion</u></p> <p><u>Source:</u> Executive Order 202.10 (Extended by Executive Order 202.28) (Extended by Executive Order 202.38)</p> <p><u>Link:</u> https://www.governor.ny.gov/news/no-20210-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency</p> <p><u>Regulation Impacted:</u></p> <p>10 NYCRR §405.13 10 NYCRR §755.4</p>	<p>March 23, 2020 – July 6, 2020</p>	<ul style="list-style-type: none"> • 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 <u>without supervision of a physician.</u>
<p><u>NYS: Record Keeping - Relief of Medical Record Keeping Requirements</u></p> <p><u>Source:</u> Executive Order 202.10 (Not Extended per Executive Order 202.28)</p>	<p>March 23, 2020 – May 7, 2020 EXPIRED</p>	<ul style="list-style-type: none"> • To the extent necessary to perform tasks relative to the COVID-19 crisis • When acting in good faith a provider is immune from liability for failing to comply with record keeping requirements

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<p><u>Link:</u> https://www.governor.ny.gov/news/no-20210-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency</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>		<ul style="list-style-type: none"> • Applies to healthcare provider, hospitals, laboratories and nursing facilities • Includes accurate documentation of: <ul style="list-style-type: none"> ▪ Evaluation and treatment of patients ▪ Diagnostic codes ▪ Billing records
<p><u>NYS: Licensure -State Reciprocity Expansion</u></p> <p><u>Source:</u> Executive Order 202.5 (states) and Executive Order 202.18 (Canada) (Extended by Executive Order 202.28) (Extended by Executive Order 202.38)</p> <p><u>Link:</u> https://www.governor.ny.gov/news/no-2025-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency</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>March 7, 2020 – July 6, 2020</p>	<ul style="list-style-type: none"> • 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.
<p><u>NYS: Personal Protective Equipment -Face Covering Requirements</u></p> <p><u>Source:</u> Executive Order 202.16 (Extended by Executive Order 202.29) (Extended by Executive Order 202.39)</p> <p><u>Link:</u> https://www.governor.ny.gov/news/no-20216-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency</p>	<p>April 15, 2020 – July 7, 2020</p>	<ul style="list-style-type: none"> • Essential businesses shall provide, and employees shall wear face coverings when in direct contact with customers or members of the general public
<p><u>NYS: Performance of Elective Surgeries and Procedures</u></p>	<p>April 29, 2020 – June 28, 2020</p>	<ul style="list-style-type: none"> • General Hospitals may perform elective surgeries and procedures

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<p><u>Source:</u> Executive Order 202.25</p> <p><u>Link:</u> https://www.governor.ny.gov/news/no-20225-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency</p> <p><u>Modifies:</u> Executive Order 202.10 (Extended by Executive Order 202.35)</p>		<ul style="list-style-type: none"> • The General Hospital and County where located <u>both</u> must meet the following criteria: <ul style="list-style-type: none"> ▪ Total inpatient capacity greater than 30% ▪ Total available ICU capacity greater than 30% ▪ Between 4/17 and 4/27 the number of hospitalized COVID-19 patients was less than 10 ▪ General Hospital must report to DOH the number and type of surgeries or procedures performed • General Hospitals not meeting criteria can seek a waiver from prohibition by submitting a prescribed plan • Patient undergoing elective surgery or procedure must test negative for COVID-19
<p><u>NYS: Resumption of Elective Outpatient Surgeries an Non-Urgent Procedures</u></p> <p><u>Source:</u> NYS DOH Directive of May 19, 2020</p> <p><u>Link:</u> https://coronavirus.health.ny.gov/system/files/documents/2020/05/guidance-for-elective-surgery-and-non-urgent-procedures-in-ambulatory-settings.pdf</p>	<p>May 20, 2020 -</p>	<ul style="list-style-type: none"> • Applies to: Ambulatory Surgery Centers, Office Based Surgery Practices, and Diagnostic and Treatment Centers • Must be located in an eligible county • Failure to comply with directive is subject to civil penalties • Must adhere to additional requirements for the following per the directive: <ul style="list-style-type: none"> ▪ Patient testing ▪ Preparedness and Screening ▪ PPE Supplies ▪ Infection Prevention and Control

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<p>NYS: Telehealth – Expansion of Services in General</p> <p><u>Source:</u> Executive Order 202 (Extended by Executive Order 202.28) (Extended by Executive Order 202.38)</p> <p><u>Link:</u> https://www.governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york</p> <p><u>Statute Impacted:</u> NYS PHL §2999-cc</p>	<p>March 7, 2020 – July 6, 2020</p>	<ul style="list-style-type: none"> • To the extent necessary, Commissioners allowed to expand telehealth to additional provider categories and modalities • Allows other types of practitioners to deliver telehealth services within scope of practice • Authorizes the use of certain technologies for the delivery of health care to established patients.
<p>NYS: Telehealth – Tele-Mental Health expansion</p> <p><u>Source:</u> Executive Order 202 (Extended by Executive Order 202.28) (Extended by Executive Order 202.38)</p> <p><u>Link:</u> https://www.governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york</p> <p><u>Regulations Impacted:</u> 10 NYCRR §58-1.5 14 NYCRR §596</p>	<p>March 7, 2020 – July 6, 2020</p>	<ul style="list-style-type: none"> • To extent necessary, allows for rapid approval of the use of tele-mental health services • Removes requirement for initial in person assessment prior to telehealth services • Reduce limitations on how can deliver services • Reduce requirements for who must be present while services are provided
<p>Federal: Telehealth – Center for Medicare Services Expansion of Medicare Coverage</p> <p><u>Source:</u> CMS Directive 3/17/20</p> <p><u>Link:</u> https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet</p> <p><u>Regulation Impacted:</u> 42 CFR §410.78</p>	<p>March 6, 2020 until end of COVID-19 Public Health Emergency</p>	<ul style="list-style-type: none"> • Telehealth considered same as in-person visits and paid at same rate • Conducted from patient’s place of residence • Patient not required to reside in rural area or travel to a clinic, hospital office to initiate telehealth • HHS will not conduct audit to ensure a prior relationship existed
<p>Telehealth – State Reciprocity: Waivers between States Bordering NYS</p>	<p>Vary depending upon state</p>	<ul style="list-style-type: none"> • Connecticut, New York and New Jersey have waived state licensing requirement. Provider must have a license in good standing

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<p>Treatment of Out of State Patients – Boarding State Reciprocity of Licensure with State of New York</p>		<ul style="list-style-type: none"> • Rhode Island, Pennsylvania, Massachusetts and Vermont allow out of state providers to apply for temporary license. • Expanded to Canada
<p>NYS: Notary Public – Officiate Execution of Documents Remotely</p> <p><u>Source:</u> Executive Order 202.7 (Extended by Executive Order 202.28) (Extended by Executive Order 202.38)</p> <p><u>Link:</u> https://www.governor.ny.gov/news/no-2027-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency</p>	<p>March 19, 2020- July 6, 2020</p>	<ul style="list-style-type: none"> • Notary Public can witness execution of document via audio-visual technology • Audio-Visual technology must have direct interaction • Person must present valid ID on video • Person must affirm he/she is in New York State • Signed document must be transmitted to notary the same day it is signed
<p>NYS: Statute of Limitations – Tolloed</p> <p><u>Source:</u> Executive Order 202.8 (Extended by Executive Order 202.28) (Extended by Executive Order 202.38)</p> <p><u>Link:</u> https://www.governor.ny.gov/news/no-2028-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency</p> <p><u>Statutes Impacted:</u> NYS CPLR Article 2</p>	<p>March 20, 2020 – July 6, 2020</p>	<ul style="list-style-type: none"> • Statutes of limitations to commence lawsuits or serve legal process are tolled during the COVID-19 crisis • Effects all causes of action including but not limited to claims of medical malpractice, breach of contract and general negligence • Causes of action that accrued prior to March 20, 2020 are extended 108 days • Causes of action that accrue during the toll period will commence running on July 6, 2020
<p>NYS: Personal Attendance of a Physician or Medical Personnel for Discovery or Deposition</p> <p><u>Source:</u> NYS Court Administrative Order 88-20</p> <p><u>Link:</u> https://www.nycourts.gov/whatsnew/pdf/AO-88-20.pdf</p> <p><u>Statutes Impacted:</u> CPLR Article 31</p>	<p>May 2, 2020 – Conclusion of COVID-19 Public Health Emergency</p>	<ul style="list-style-type: none"> • Courts shall not order or compel the personal attendance of a physician or other medical personnel (including administration) for a deposition or litigation discovery • Physician or medical personnel must be performing services at a hospital or medical facility that is active in the treatment of COVID-19 patients

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<p>NYS: Notification of Positive COVID-19 Test or Death within 24 Hours of Event to Family or Next of Kin</p> <p>Source: Executive Order 202.17 & 202.18 (Extended by Executive Order 202.29) (Extended by Executive Order 202.39)</p> <p>Link: https://www.governor.ny.gov/news/no-20217-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency</p>	<p>Effective April 16, 2020 through July 7, 2020</p>	<ul style="list-style-type: none"> • 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. • Noncompliance is subject to \$2,000 fine per day
<p>NYS: Nursing Home and Adult Care Personnel COVID-19 Testing and Reporting</p> <p>Source: Executive Order 202.30</p> <p>Link: https://www.governor.ny.gov/news/no-20230-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency</p> <p>Statutes Impacted: 18 NYCRR § 415.26 18 NYCRR § 487.9 18 NYCRR § 488.9 NYS PHL § 4656</p>	<p>May 10, 2020 - June 9, 2020</p>	<ul style="list-style-type: none"> • Facilities must test or arrange to test all personnel, including: all employees, contract staff, medical staff, operators and administrators for COVID-19 twice per week • Facility Administrator must develop and file a plan for testing with DOH by May 13th • Positive tests must be reported to DOH by 5 p.m. of the day the result is received. • Operator and Administrator of facility must file a certificate of compliance with DOH no later than May 15th • Failure to comply with order is subject to fines, suspension or revocation of operating certificate • False statements regarding testing are subject to criminal punishment • Personnel who refuse to be tested will be considered to have outdated or incomplete health assessments and will be prohibited from providing services at the facility
<p>Federal: New COVID-19 Reporting Requirements for Long Term Care Facilities</p> <p>Source: HHS</p>	<p>Effective May 8, 2020</p>	<p>Long Term Care Facilities must report electronically to CDC and NHSN on at least a weekly basis:</p>

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<p><u>Link:</u> https://www.cms.gov/files/document/covid-medicare-and-medicaid-ifc2.pdf</p> <p><u>Statute Amended:</u> 42 CFR §483.80(g)(1)(2)(3)</p>		<ul style="list-style-type: none"> • Suspected and confirmed COVID-19 cases among residents and staff • Total deaths among residents and staff • Status of PPE and hand hygiene supplies • Ventilator capacity and supply • Resident beds and resident census • Access to COVID-19 testing for residents • Staffing shortages <p>Long Term Care Facilities must inform residents, their representatives and families by 5:00 p.m. the following day of:</p> <ul style="list-style-type: none"> • A single confirmed COVID-19 infection or three or more residents/staff with respiratory symptoms that occur within 72 hours of each other
<p>Federal: Emergency Medical Treatment & Legal Act (EMTALA) – Waiver of Emergency Department Screening Requirement</p> <p><u>Source:</u> CMS Directive 4/15/20</p> <p><u>Link:</u> https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf</p> <p><u>Statute Impacted:</u> Social Security Act §1867(a)</p>	<p>March 1, 2020 – End of Emergency Declaration</p>	<ul style="list-style-type: none"> • 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 • Must not be inconsistent with a states’ emergency preparedness or pandemic plan
<p>Federal: Waiver of Requirements for Verbal Orders</p> <p><u>Source:</u> CMS Directive 4/15/20</p>	<p>March 1, 2020 – End of Emergency Declaration</p>	<ul style="list-style-type: none"> • Applies to verbal orders where readback verification is required and authentication may occur later than 48 hours.

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<p>Federal: Waiver of Requirements for Verbal Orders</p> <p><u>Link:</u> https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf</p> <p><u>Statutes Impacted:</u></p> <p>42 CFR §482.23, §482.24 and §485.635</p>		<ul style="list-style-type: none"> • Permits verbal orders for use of drugs and biologicals • Waives requirements for orders to be dated, timed and authenticated promptly • Waives requirement for hospitals to use pre-printed and electronic standing orders, order sets and protocols for patient orders
<p>Federal: Waiver of Patient Rights for Hospitals Considered Impacted by a Widespread Outbreak of COVID-19</p> <p><u>Source:</u> CMS Directive 4/15/20</p> <p><u>Link:</u> https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf</p> <p><u>Statute Impacted:</u> 42 CFR §482.13</p>	<p>March 1, 2020 – End of Emergency Declaration</p>	<ul style="list-style-type: none"> • Applies to hospitals in a state with widespread confirmed cases per CDC • Waiver of timeframes for providing a copy of medical record • Waiver of visitation of patients in COVID-19 isolation and quarantine and seclusion
<p>Federal: Waiver of Requirement for Medicare Patients to be Under Care of Physician</p> <p><u>Source:</u> CMS Directive 4/15/20</p> <p><u>Link:</u> https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf</p> <p><u>Statute Impacted:</u> 42 CFR §482.12</p>	<p>March 1, 2020 – End of Emergency Declaration</p>	<ul style="list-style-type: none"> • Allows hospitals to use other practitioners to the fullest extent possible. • Must not be inconsistent with a state’s emergency preparedness or pandemic plan
<p>Federal: Supervision of Certified Registered Nurse Anesthetist (CRNA)</p> <p><u>Source:</u> CMS Directive 4/15/20</p> <p><u>Link:</u> https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf</p> <p><u>Statute Impacted:</u> 42 CFR §482.52</p>	<p>March 1, 2020 – End of Emergency Declaration</p>	<ul style="list-style-type: none"> • Waiver of requirement of physician supervision • Applies to hospitals, critical access hospitals and ambulatory surgical centers • Supervision will be at discretion of hospital and state law

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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.**

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