On March 23, 2020, New York Governor Andrew Cuomo issued an executive order (Executive Order) related to the COVID-19 public health emergency to ease regulatory requirements and expand the resources available to address the emergency.

Significant provisions of the Executive Order are as follows:

**Provisions to Expand Facility Capacity**

- Orders the Commissioner of Health to direct all general hospitals, ambulatory surgery centers, office-based surgery practices and diagnostic and treatment centers to increase the number of beds available to patients, including by canceling all elective surgeries and procedures, as determined by the Commissioner. General hospitals in New York must submit to the New York Department of Health (DOH) their plans to increase available beds. As of this writing, the Commissioner has not yet released guidance defining elective surgeries or procedures or the schedule for general hospitals to submit their plans to DOH. The Executive Order gives the Commissioner the authority to suspend or revoke the operating certificate of any general hospital that is unable to meet the requirements of these directives.
- Permits hospice residences to designate any number of beds as inpatient beds.
- Permits the Commissioner to designate a health care facility as a trauma center.
or to extent a facility's designation.

- Waives laws related to hospital construction, minimum facility requirements, and governance to the extent necessary to provide for capacity expansion. Specifically, the Executive Order waives Section 2803 of the Public Health Law, and Parts 400, 401, 405, 409, 710, 711 and 712 of Title 10 of the NYCRR. Of note, the earlier Executive Order 202.5 had provided similar waivers but required prior approval from the Commissioner of Health or the Commissioner of the Office for Persons with Developmental Disabilities (see our summary of Executive Order 202.5 [here](#)).

### Provisions to Expand Practitioner Staffing

- Waives certain requirements related to hospital medical staff operations to allow hospitals to appointment physicians to a hospital’s medical staff without undergoing the traditional process and procedure, to the extent necessary to maintain adequate staffing.
- Radiologic technologists and respiratory therapists who are licensed and in good standing in any state may temporarily practice in New York without obtaining a New York-specific license.
- Radiologic technologists, physician assistants, registered professional nurses, licensed practical nurses, and nurse practitioners who are licensed and in good standing in New York but not registered in New York may practice in New York.
- Permits hospitals to use qualified volunteers or personnel affiliated with different general hospitals, subject to conditions that may be imposed by the Commissioner of Health.
- Health care facilities may allow students who are currently in programs to become a licensed health care professional in New York to volunteer at the facility for educational credit as if they were placed in a clinical affiliation, without entering into a clinical affiliation agreement.
- Waives working hours limitations on physicians and postgraduate trainees.

### Waiver of Certain Provider Supervision Requirements

- Permits an advanced practice registered nurse with a doctorate or master’s degree specialized in administering anesthesia to administer anesthesia in a general hospital or free-standing ambulatory surgery center without the supervision of a qualified physician.
- Permits physician assistants and specialist assistants to provide medical services within their scope of practice without oversight from a supervising physician.
- Permits nurse practitioners to provide medical services within their scope of practice without a written practice agreement or collaborative relationship with a physician.

### Waiver of Provider Civil Liability

- Waives civil liability for physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered professional nurses, and licensed practical nurses for any injury or death alleged as a result of such practitioner’s
act or omission while providing medical services in support of New York’s response to the COVID-19 outbreak, unless the injury or death was caused by the practitioner’s gross negligence.

**Waiver of Recordkeeping Requirements**

- Waives certain recordkeeping requirements to the extent necessary for health care practitioners to respond to the COVID-19 outbreak. This waiver includes requirements that medical records accurately reflect the evaluation and treatment of patients, and requirements related to assignment of diagnostic codes or creating records for billing purposes. The Executive Order states that individuals acting in good faith in reliance on the Executive Order will be immune from liability in New York for failure to comply with recordkeeping requirements.

**COVID-19 Testing Related Provisions**

- Permits laboratories holding a Clinical Laboratory Improvement Acts (CLIA) certificate and meeting the CLIA quality standards to perform testing for SARS-CoV-2 in patients suspected of being infected with COVID-19.
- Permits registered nurses to order throat or nasopharyngeal swab specimen collections for the purposes of COVID-19 testing.

**Pharmacy Related Provisions**

- Waives restrictions to the extent necessary to permit 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.
- Mandates that pharmacists may not dispense hydroxychloroquine or chloroquine unless it is prescribed for an FDA-approved indication or as part of a state-approved, COVID-19-related clinical trial.

This Executive Order is in effect from March 23, 2020 to April 22, 2020.

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