

# Health Law Alert: Governor Cuomo Executive Order No. 202.10 (March 23, 2020)

Governor Cuomo issued an amendment to his disaster declaration last night. The new Executive Order (No. 202.10) includes expansive waivers and modifications to rules applicable to health care providers aimed at increasing New York's healthcare system capacity. This alert highlights the additional statutes, rules and regulations which have been temporarily suspended or modified through April 22, 2020. A copy of No 202.10 is available here: <https://www.governor.ny.gov/executiveorders>

**Increase in Hospital Capacity:** Hospitals can expect additional details from the Commissioner of Health regarding directives to increase capacity. While the order does not specifically mandate that hospitals cancel all elective procedures, expectations for increased capacity may make this a necessity. Specifically, the Order provides additional authority to the Commissioner of Health to permit and require general hospitals to take all measures necessary to increase the number of beds available to patients, which may include specifically ordering hospital to cancel elective procedures. In addition, the Commissioner is authorized to suspend or revoke the operating certificate of any general hospital should such hospital be unable to meet the requirements of the Commissioner's capacity directives and, further, may appoint a receiver to continue hospital operations on 24 hours' notice for failure to meet capacity directives.

**Expansion of the Good Samaritan Immunity:** Clinicians may be aware that New York law provides immunity to certain practitioners who provide voluntary treatment in response to emergencies occurring outside of a facility or regular medical office. This "Good Samaritan" protection is extended under the Order to provide immunity from civil liability for any injury or death sustained from any act or omission by a medical professional in the course of providing medical services in support of 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. The protection is extended to all physicians, physician assistants, specialist assistants, nurse practitioners, registered nurses and licensed professional nurses and includes services provided within a health care facility or medical office.

**Supervision and Licensure Waivers:** The Order includes various waivers of supervision and licensure requirements for healthcare personnel, including the following:

- Certified Registered Nurse Anesthetists (CRNA) permitted to practice without the supervision of a qualified physician.
- Physician Assistants ("PA") may provide medical services without oversight from their supervising physician. Any PA licensed in any US State and in current good standing may practice in NY.
- Special Assistants may provide medical services without oversight from their supervising physician.
- Nurse Practitioners ("NP") may provide medical services without a written practice agreement, or collaborative relationship with a physician. Any NP licensed in any US State and in current good standing may practice in NY.

- Medical School Students may volunteer for educational credit as if the student secured a placement under a clinical affiliation agreement.
- Foreign Medical School Graduates with at least one year of experience may provide patient care at hospitals without licensure.
- Radiologic Technologists (“RT”) licensed and in current good standing in NY, but not registered, may practice in NY. Similarly, RTs licensed in any US State and in current good standing may practice in NY.
- Respiratory Therapists licensed anywhere in the US and in current good standing may practice in NY.
- Limitations on working hours for physicians and residents have been removed.

**Waivers Applicable to Emergency Medical Services & Responders:** The Order loosens restrictions applicable to EMS services, including:

- Elimination of restrictions and extension of ambulance services outside the territory listed in such ambulance’s operating certificate.
- Allows all Emergency Services Personnel to operate under the advice and direction of NPs, PAs, or paramedics.
- Extends all Emergency Services Providers certifications by one year.

**Recordkeeping:** Health care providers are relieved of, and are afforded absolute immunity from liability for, any failure to comply with any recordkeeping requirements to the extent necessary for such providers to perform tasks as may be necessary to respond to the COVID-19 outbreak. These include, but are not limited to, requirements to maintain medical records that accurately reflect the evaluation and treatment of patients, or requirements to assign diagnostic codes or to create or maintain other records for billing purposes. Please note, the Order requires providers to act reasonably and in good faith to be afforded immunity. The impact of this waiver upon non-New York payers is unclear.

**Pharmacy and Lab Waivers:**

- Any laboratories holding a CLIA certificate may perform testing for SARS-CoV-2 in specimens collected from individuals suspected of suffering from COVID-19.
- Pharmacy technicians may assist licensed pharmacists with filling valid prescriptions or medication orders for a home infusion provider licensed in NY.
- No pharmacists shall dispense hydroxychloroquine or chloroquine, except when written as prescribed for an FDA-approved indication or pursuant to a NYS approved clinical trial related to COVID-19.

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