

Healthcare Legal Alert: Governor Ends Certain Changes to New York Health Regulations and Extends Others

Executive Order No. 202.28, issued by Governor Cuomo on May 7, 2020, extends until June 6, 2020 some facets of the Governor's prior State of Emergency Declaration, including certain Orders that were due to sunset later this month. EO 202.28 extends the reach of each of the Governor's previous Executive Orders up to and including EO 202.14, except for certain specific laws and regulations that have been explicitly carved out. The carved-out laws and regulations reverted to their pre-pandemic force and effect as of May 8, 2020.

Licensure, Registration and Supervision Changes Continue through June 4, 2020

- Under EO 202.27, the Governor extended waivers that allowed certain providers to practice in New York without a New York State license or registration. As originally described in EOs 202.5, 202.10, and 202.18, the following licensure, registration and supervision waivers continue in effect:
- New York registration requirements continue to be waived for many professions, including the following New York providers, as long as they are licensed and in current good standing: Physicians; Physician Assistants ("PA"); Specialists Assistants ("SA"); Nurse Practitioners ("NP"); Clinical Nurse Specialists ("CNS"); Registered Nurses ("RN"); Licensed Professional Nurses ("LPN"); Respiratory Therapists; Radiologic Technologists; Social Workers ("LMSW" and "LCSW").
- New York licensure requirements continue to be waived for the following providers, so long as they are licensed and in current good standing in Canada or anywhere in the U.S.: Physicians; PAs; SAs; CNS; NPs; RNs; LPNs; Radiologic Technologists; LMSWs; LCSWs.
- PAs and SAs may provide medical services without oversight from a supervising physician.
- NPs may provide medical services without a written practice agreement or collaborative relationship with a physician.

All Changes to Hospital Regulations under Part 405, Except One, Ended on May 8, 2020

All hospital minimum standards under 10 NYCRR Part 405, except for the waiver allowing practitioners to practice in a facility where they are not credentialed or have privileges, are back in full force and effect. This includes previous waivers applicable to patient admission and discharge requirements, as well as the requirements for transfer and affiliation agreements between facilities. In addition, effective May 8, 2020, the following requirements under 405 have resumed:

- Certified Registered Nurse Anesthetists must be supervised by a qualified physician.
- Resident work hour restrictions have resumed.
- Licensure requirements have resumed for Foreign Medical Graduates.

Good Samaritan Protections Continue through the End of the State of Emergency

While the Good Samaritan protections under EO 202.10 were not extended by EO 202.28, the 2020 New York State Budget included a new statute – Public Health Law Article 30-D – which establishes Good Samaritan protections for the remainder of the COVID-19 public health emergency. Accordingly, health care facilities and professionals will be immune from liability when arranging for or providing health care services provided in good faith in support of the State’s COVID-19 emergency directives so long as the public emergency remains in effect.

Documentation and Recordkeeping Changes Ended on May 8, 2020

EO 202.28 does not extend previous waivers related to facility documentation and record-keeping requirements provided under EO 202.10. Facilities should resume normal medical record keeping practices and requirements for treatment and billing purposes.

Nursing Homes and Long-Term Care Facilities’ Assessment and Care Planning Changes Ended on May 8, 2020

Changes related to nursing home resident assessment and care planning, as well as nursing home medical services, were not extended and, therefore, the original regulatory requirements are in full effect as of May 8, 2020. Further, regulations related to the assessment of long-term care patients also revert to their pre-Executive Order status.

The Governor’s Executive Orders are available here: <https://www.governor.ny.gov/executiveorders>

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