

Healthcare Legal Alert: NYSDOH Updates on Hospital Visitation and COVID-19 Testing Prior to Elective Procedures

Hospital Visitation: This week during Governor Cuomo's daily coronavirus briefing, he announced that the State will once again allow hospitals to accept visitors at their discretion. Visitation has been suspended at facilities since April 10 due to COVID-19, except in very limited circumstances. On June 17, the New York State Department of Health (NYSDOH) issued guidance allowing hospitals to expand visitation policies beginning Friday, June 19, 2020.

Hospitals are required to notify NYSDOH at least 48 hours in advance of any expansion of their visitation. In addition, hospitals must have an established plan for expanded visitation that takes into account the following NYSDOH parameters:

- Limiting visits to no more than four hours per day per patient, depending on the patient's status and condition; however, hospitals have discretion to determine the appropriate number of visitation hours;
Limiting visitors to one person per patient at a time, unless the hospital determines in its discretion that additional persons may be permitted;
- Allowing a companion into the facility for patients undergoing same day procedures;
Providing PPE to visitors; visitors must also wash their hands and follow other hygiene recommendations from NYSDOH and the CDC;
- Any visitor who fails to wear a face mask and/or other PPE shall be asked to leave the facility;
- Visitors must undergo symptom and temperature checks upon entering the facility, and will be denied entry if they report COVID-19 exposure or symptoms during the prior 14-day period or have a temperature of 100 degrees or higher;
- Visitors allowed into the facility must remain in the patient's room throughout the visit, except when directed by hospital personnel to leave;
- Hospitals should provide visitors with written information discussing the potential risks and benefits of the visitor's presence depending on the patient's condition; and
- All visitors must be more than 18 years of age, except in rare circumstances as determined by the hospital.

Hospitals must post details of any expanded visitation policy on their websites. NYSDOH has reserved its authority to adjust visitation policies based on the prevalence of COVID-19 by region or county.

Finally, the NYSDOH visitation guidance from May 20, 2020 remains in effect, which prohibits visitors during patient procedures except for pediatrics, childbirth and patients with an intellectual, developmental, or other cognitive disability.

Notifications to NYSDOH should be e-mailed to: hospinfo@health.ny.gov.

Elective Procedures and Testing: On June 14, 2020, NYSDOH issued updates to its April 29 and May 19 directives for continuation of elective non-essential surgical procedures, including testing requirements prior to any inpatient or outpatient procedure. Hospitals in all counties may resume non-essential elective surgeries and non-urgent procedures in both inpatient and outpatient settings.

Importantly, hospitals are no longer required to satisfy mandatory thresholds for total bed capacity, ICU bed capacity and total COVID-19 hospitalization rate; however, they are directed to carefully monitor these metrics and make adjustments to capacity and operations as needed.

The requirement to administer a COVID-19 test prior to any inpatient or outpatient elective surgery or procedure continues, but the time frame has been extended from three days before the elective surgery or procedure to five days. Test results must be received and reviewed before the surgery or procedure is performed, except for non-scheduled emergent procedures where testing prior to surgery may not be feasible. In that scenario, hospitals are advised to conduct a screening and take a complete patient history and to implement other appropriate precautions, including testing the patient as soon as possible after the procedure. Hospitals are permitted to rely on tests performed by third parties, so long as the test is a viral molecular assay for detection of SARS-CoV-2 RNA.

Additional information on elective procedures and testing is available at: <https://on.ny.gov/30Xa3gq>

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