

## COVID-19: New York Governor Temporarily Suspends Various Health Care Rules and Requires Health Care Facilities to Increase Bed Capacities

By **Leonard Lipsky** and **Alison M. Wolf**

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The number of positive COVID-19 cases in New York State continues to grow exponentially, far surpassing the number of cases in any other state. For the last two weeks, New York Governor Andrew Cuomo has been issuing executive orders, aimed on combatting COVID-19, on an almost daily basis.

On March 23, 2020, Governor Cuomo issued [New York State Executive Order No. 202.10](#) (“EO 202.10”), which focuses on the health care industry by instituting temporary suspensions and modifications to a wide array of health care laws and regulations and creating strict new requirements for health care facilities to increase bed capacities in order to treat COVID-19 patients.<sup>1</sup>

The purpose and goal of EO 202.10 is “to ensure that the State of New York has adequate bed capacity, supplies, and providers to treat patients affected with COVID-19 ... and other maladies,” as well as “to eliminate any obstacle to the provision of supplies and medical treatment to ensure the New York health care system has adequate capacity to provide care to all who need it.”

Following the issuance of EO 202.10, Governor Cuomo gave a briefing at the Jacob K. Javits Center in Manhattan, which is being converted into a 1,000-bed temporary hospital to care for COVID-19 patients. During the briefing, the governor emphasized the importance of increasing hospital capacity, stating that hospitals must increase their capacity by 50 percent and that the goal is to try to increase capacity by 100 percent. The governor also gave new projections indicating an anticipated need of up to 140,000 beds (30,000 more than prior projections) at the “apex” of the curve of rising COVID-19 cases.

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<sup>1</sup> EO 202.10 also contains a broad, general directive that all non-essential gatherings of individuals of any size for any reason (e.g., parties, celebrations, or other social events) are canceled or postponed at this time.

## **Parties and Actions Affected by EO 202.10**

EO 202.10, which applies to health care facilities; emergency medical services; health care professionals; and laboratories, testing, pharmacy, and home infusion (each of which is addressed in this Client Alert), temporarily suspends and modifies certain New York State laws, orders, rules, and regulations to the extent necessary to take the actions listed below.

- **Health Care Facilities – Bed Capacity, Trauma Centers, and Staffing**
  - Permit and require general hospitals to take all measures necessary to increase the number of beds available to patients.
  - Authorize and require 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.
  - Require all general hospitals to submit their COVID-19 plans regarding increasing bed capacity to the Department of Health, on a schedule to be determined by the Department of Health.
  - Authorize the Commissioner of Health to suspend or revoke the operating certificate, or appoint a receiver to replace the current operator, of any general hospital that fails to meet the requirements of the necessary capacity directives.
  - Permit the Commissioner of Health to designate a health care facility as a trauma center so that it can temporarily provide trauma care.
  - Waive the regulatory requirements of general hospitals regarding governing bodies and medical staff to permit hospitals to maintain adequate staffing.
  - Allow general hospitals to use qualified volunteers and/or personnel affiliated with different hospitals, subject to the terms and conditions established by the Commissioner of Health.
  - Allow hospices to designate beds as dually-certified inpatient beds.
- **Emergency Medical Services**
  - Expand the definition of “emergency medical services” in Pub. Health Law § 3001 to include emergency, non-emergency, and low-acuity medical assistance.

- Eliminate restrictions on ambulance services to allow them to operate and receive patients outside of their permitted territory, and to allow emergency medical services to transport patients to locations other than health care facilities.
  - Permit the Commissioner of Health to issue provisional emergency medical services provider certifications to qualified individuals with modified certification periods as approved.
  - Expand the definition of “medical control” in Pub. Health Law § 3001 to include emergency and non-emergency direction given to all emergency medical services personnel by a regional or state medical control center, and to allow such advice and direction to be given by a nurse practitioner, physician assistant, or paramedic, provided that such medical professional is providing care under the supervision of a physician and pursuant to a plan approved by the Department of Health.
  - Extend all existing emergency medical services provider certifications for one year, permit the Commissioner of Health to modify the examination/recertification requirements, develop a process for out-of-state emergency medical services providers to provide services in New York, and suspend or modify any equipment or vehicle requirements in order to ensure sustainability of emergency medical service operations.
- **Health Care Professionals – Scope of Practice, Supervision, and Liability**
    - Remove limits on working hours for physicians and postgraduate trainees.
    - Allow advanced practice registered nurses with a doctorate or master’s degree specializing in the administration of anesthesia to administer anesthesia in a general hospital or free-standing ambulatory surgery center without the supervision of a qualified physician.
    - Permit physician assistants or specialist assistants to provide medical services appropriate to their education, training, and experience without oversight from a supervising physician.
    - Permit nurse practitioners to provide medical services appropriate to their education, training, and experience without a written practice agreement or collaborative relationship with a physician.
    - Allow unregistered radiologic technologists, physician assistants, registered professional nurses, licensed practical nurses, and nurse practitioners licensed and in current good standing in New York State to practice without civil or criminal penalty related to lack of registration.

- Allow out-of-state radiologic technologists and respiratory therapists to practice in New York State without a license.
  - Allow students in medical or other health care professional programs to volunteer at health care facilities without clinical affiliation agreements.
  - Allow (unlicensed) graduates of foreign medical schools to provide patient care in hospitals if they have completed at least one year of graduate medical education.
  - Protect all physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered professional nurses, and licensed practical nurses from civil liability for any injury or death alleged to have been sustained directly as a result of an act or omission by such medical professional in the course of providing medical services in support of the State's response to the COVID-19 outbreak, except for instances of gross negligence.
  - Temporarily relieve health care providers from certain recordkeeping requirements, and protect such health care providers acting reasonably and in good faith from liability for any failure to comply with recordkeeping requirements, to the extent necessary for such providers to perform tasks necessary to respond to the COVID-19 outbreak.
  - Require all licensed health insurance companies to deliver a list to the Superintendent of the Department of Financial Services ("DFS") by March 24, 2020, of all persons who have a professional health care license or degree, and whether or not the person has a current or recently expired license in the State of New York. DFS will poll such individuals to determine whether or not such professionals would serve in the COVID-19 response effort.
- **Laboratories, Testing, Pharmacies, and Home Infusion**
    - Allow CLIA-approved laboratories to perform testing for the detection of SARS-CoV-2 in specimens collected from individuals suspected of suffering from a COVID-19 infection.
    - Permit registered nurses to order specimen collections from individuals suspected of being infected by COVID-19 for testing purposes.
    - Permit certified or registered pharmacy technicians to assist (under the direct supervision of a licensed pharmacist) in compounding, preparing, labeling, or dispensing drugs used to fill prescriptions for a home infusion provider licensed as a pharmacy, and in providing home infusion services through a home care agency.

- Prohibit pharmacists from dispensing hydroxychloroquine or chloroquine, except when written as prescribed for a Food and Drug Administration-approved indication (limited to one 14-day prescription without refills) or as part of a state-approved clinical trial related to COVID-19.

While EO 202.10 states that it is effective through April 22, 2020, the governor has the authority, upon reconsideration of all the relevant facts and circumstances, to extend any and all of the suspensions and modifications contained therein for one or more additional 30-day periods.

More information regarding COVID-19 and how the State of New York is addressing these issues can be found on the [New York State Department of Health's website](#). In addition, please visit Epstein Becker Green's [Coronavirus Resource Center](#) for ongoing updates.

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*This Client Alert was authored by **Leonard Lipsky** and **Alison M. Wolf**. For additional information about the issues discussed in this Client Alert, please contact one of the authors or the Epstein Becker Green attorney who regularly handles your legal matters.*

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