

COVID-19 Updates – July 13, 2020

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Executive Orders (“EOs”)

Below is a summary of actions or directives included in the Governor’s recently issued EOs, which directly related to health care services and public health.

EO #202.50 - This EO continues the suspension or modifications of laws and regulations or directives included in EOs #202.30 and #202.40 which amended directives contained in EO #202.30, for 30 days until August 8, 2020, to include, but is not limited to, the following directives.

- All operators and administrators of all nursing homes and all adult care facilities (ACF), including all adult homes, enriched housing programs and assisted living residences are required to test or make arrangements for the testing of all personnel, including all employees, contract staff, medical staff, operators and administrators, for COVID-19, and as amended in EO #202.40 which reduced testing frequency for facilities who have entered into Phase 2 of re-opening from twice per week, to once per week. Facility reporting requirements for positive testing of staff, along with unrestricted access to the facility by DOH or the local health departments when necessary, are also continued.
- Authority of the Commissioner of Health to suspend or revoke the operating certificate of any nursing home or ACF and to appoint a receiver to continue the operations on 24 hours’ notice upon the commissioner’s determination that the facility has not complied with the EO, regulations or directives issued is also continued, along with penalties for any false statements in the attestations provided by the operator and administrator on or before May 15, 2020. Additionally, this EO continues any monetary penalties for non-compliance considered to be violations of section 12 and section 12b of the Public Health Law which range from \$2,000 to \$10,000 per violation, per day. Refusal of testing for COVID-19 by facility staff will deem them to be unable to provide services to such facility, until testing is performed.
- No hospital shall discharge a patient to a nursing home unless the nursing home operator or administrator has first certified that the receiving facility is able to properly care for such patient. Furthermore, no hospital shall discharge a patient to a nursing home without obtaining a negative test result.

The above list of continued actions highlight a majority of those which are continued by this EO #202.50.

EO #202.49 - This EO continues the suspension or modifications of laws and regulations or directives included in EOs #202.15 through #202.21, and EO #202.29 and continued by EO #202.39 for an additional 30 days, through August 6, 2020 to include, but is not limited to, the following highlighted topic areas.

- Allow for certain prescription drugs to be received and delivered in NY from outside re-packers or wholesalers of prescription drug or medical devices.
- Limits to DOH's review functions to essential matters during the COVID-19 health crisis.
- Certain expanded authority to practice for licensed medical professions allowing them to practice in NYS when in response to the COVID-19 public health crisis, including RNs, LPNs, PAs, radiologic technologists, certain medical specialists and specialist assistants, social workers, dental professionals, pharmacists, respiratory therapists, mental health counselors, family and marriage therapists, and funeral directors.
- Mandates for the use of face coverings in public spaces, as well as mandates for essential businesses to provide face coverings to all employees in contact with customers or members of the general public.
- Certain changes to Expanded In-Home Services for the Elderly Program (EISEP).
- Certain reporting requirements for nursing homes and adult care facilities (ACFs) along with associated penalties for non-compliance.

The above list of continued actions highlight a selection of those which are continued by this EO #202.49.

EO #202.48 – This EO continues the suspension or modifications of laws and regulations or directives included in EOs #202 through #202.14 through August 5, 2020, which have not been superseded by any subsequent EO to include, but is not limited to, the following highlighted topic areas.

- Continues modifications included in EO #202, as amended by EOs #202.1, #202.14, 202.28, and 202.38 which relate to:
- allowing non-nursing staff to perform tasks, under the supervision of a nurse, otherwise limited to the scope of practice of a licensed or registered nurse;
- the Child Health Insurance Plan (CHIP), including covered services, premium contributions, eligibility criteria, and documentation requirements;
- allowing the DOH Commissioner to promulgate emergency regulations including regulations regarding the operation of general hospitals, and to amend the State Sanitary Code;
- allowing patients to receive prescribed drugs without delay;
- allowing the rapid discharge of patients by hospitals or nursing homes;
- allowing nursing supervision visits for personal care services as soon as practical;
- professional licensing flexibilities for nurses;

- allowing individuals who meet federal requirements for high complexity testing to test for SARS-CoV-2;
- rapid approval of telemental health services;
- webcast and quorum flexibilities for the Public Health and Health Planning Council (PHHPC);
- allowing general hospitals to make temporary changes to physical plant, bed capacities, and services by the approval of the DOH Commissioner;
- certain expansions in collection by licensed medical professionals and processing of COVID-19 specimens in laboratories; and
- authorization of telehealth services for DOH, OMH, OASAS, and OPWDD.

The above list of continued actions highlight a selection of those which are continued by this EO #202.48.

This EO, as of July 7, also expires various directives and modifications or suspensions to the State's Insurance Law, Banking Law, and Mental Hygiene Law which were included in prior EOs, to include, but is not limited to, the following topic areas.

- **Expires** the directives included in EO #202.1, as amended by EOs #202.14, 202.28, and 202.38 which permits OMH providers to utilize staff members in the most effective means possible to transport individuals receiving services.
- **Expires** the directive included in EO #202.5, as amended by EOs #202.14, 202.28, and 202.38 suspending requirements for background checks for child care providers.
- **Expires** the directive included in EO #202.9, as amended by EOs #202.14, 202.28, and 202.38 regarding the suspension of Banking Law §39 (2) deeming an unsafe and unsound business practice if, in response to the COVID-19 pandemic, any bank under the jurisdiction of the Department of Financial Services (DFS) shall not grant a forbearance for a period of ninety days to any person or business who is experiencing a financial hardship as a result of the COVID-19 pandemic. Certain provisions of this directive are superseded by Chapter 112 of the Laws of 2020, including a limited time period forbearance of mortgage payments (180 days) under certain circumstances of repayment for qualified mortgagors.
- **Expires** the directive included in EO #202.14, as amended by EOs #202.28 and 202.38 regarding the modification of §3216(d)(1)c) and §4306 (g) of the Insurance Law and any regulated authority provided within EO #202.14 to DFS which extended the health insurance premium payment period for any individual or small group policy holder who faced a financial hardship as a result of the COVID-19 pandemic, to the later of the end of their applicable contractual grace period, or through June 1, 2020 (subsequently extended through July 6, 2020), and requires the health insurer to cover claims through that point in time. The associated [emergency regulation](#) has also expired.
- **Expires** the directive included in EO #202.10, as amended by EOs #202.14, 202.28, and 202.38 regarding the restrictions on dispensing of

hydroxychloroquine or chloroquine by pharmacists under FDA approval, or as part of a state approved clinical trial, as FDA actions have alleviated supply shortages for permitted use of these medications.

Additionally, this EO modifies or suspends, for 30 day through Aug 5, 2020, provisions included under Article 11-A and 11-B of the State Finance Law which relate to interest payments on certain amounts owed by the State and prompt contracting and interest payments for not-for-profit organizations, allowing for tolling of interest payments during such time.

Lastly, this EO extends the directive in EO #202.41 that discontinues the reductions and restrictions on in-person workforce at non-essential businesses or other entities in Phase 3, **to exclude** that indoor food services and dining continue to be prohibited in New York City.

EO #202.47 – This EO modifies or suspends sections of Education Law or Public Health Law to allow the use of an electronic questionnaire or e-mail to establish a practitioner-patient relationship for purposes of ordering a clinical lab test, permits barber shops and hair salons to open in regions that are authorized for Phase 2 of re-opening, and includes outdoor, low-risk recreational activities in Phase 1 of re-opening.

EO #202.45 – Among other provisions, this EO extends through July 26, 2020 those directives included in **EO #202.34** which have not been superseded by a subsequent directive, which authorizes business owners to deny admittance to individuals who fail to comply with the directive in **EO #202.17** (requiring masks and facial coverings in public when unable to social distance), and directives which instrument a phased regional re-opening of “NY on Pause.” Additionally, this EO extends directives in **EO #202.35** which have not been superseded by a subsequent directive, related to non-essential gatherings, modifying restrictions for in person workforce at non-essential businesses entering Phase 2 of the state’s phased re-opening plan.

This EO implements modifications which allow or authorize the following through July 26, 2020:

- Allows gatherings of fifty (50) or fewer individuals for any lawful purpose or reason, and effective June 26, lifts reductions and restrictions on the in-person workforce at non-essential businesses or other entities within regions entering phase four of the state’s re-opening plan and as determined by, and under compliance of guidance set forth by, the DOH; and
- Authorizes general hospitals to perform elective surgeries and procedures so long as the certain established criteria are met, and in compliance with **guidance issued by DOH on June 14, 2020**.

EO #202.44 – Highlights of this EO provide the continued allowance for licensed pharmacists to order and administer COVID tests or COVID antibody tests, while also allowing NYS licensed pharmacists to be designated as qualified healthcare professionals so they can direct a limited service laboratory to test patients for COVID or its antibodies.

Under this EO, DOH is allowed to approve and certify dedicated birthing sites operated by licensed birthing hospitals and centers.

This EO also allows clinical labs to process testing kits from nursing home and adult care facilities (ACFs) without a prescription or order and report test results to the appropriate staff while require that facilities report positive results to local health departments for treatment and isolation orders, and allow physicians to order COVID-19 tests for self-collection without having a physician-patient relationship.

Additionally, this EO includes directives which authorizes the DOH Commissioner to suspend or revoke operating certificate of any skilled nursing facility or ACF if it is determined that the facility is non-compliant or has not adhered to any regulations or directives issued by the Commissioner of Health, and the Commissioner may appoint a receiver to such facility within 24 hours' notice.

This EO also modifies the directive contained in EO #202.10 regarding elective surgeries to the extent necessary to authorize general hospitals to perform elective surgeries and procedures so long as certain criteria regarding hospital surge capacity of 30% or greater are met. Finally, professional practice of individuals who are validly licensed in another state or Canada, is extended for an additional period of thirty days to allow those professionals the ability to continue to provide services necessary for the State's COVID-19 response. The above directives and provisions included in EO #202.44 are valid until July 21, 2020, unless extended or modified by a superseding directive or law.