

CORONAVIRUS IMPACT ON NEW YORK HOSPITALS AND HEALTH CARE WORKERS

Hodgson Russ Healthcare Alert
March 24, 2020

This alert summarizes recent developments in New York State that those in the healthcare industry should note as a result of the Coronavirus pandemic, including topics such as access to free testing, required hospital capacity increases, and the need for additional health care workers.

Access to Free Testing Increases Confirmed COVID-19 Cases in New York

Over the past two weeks, New York State has ramped up its testing efforts in response to the COVID-19 pandemic.

- On March 13, 2020, New York established its first mobile testing site in New Rochelle. Subsequently, the State opened additional mobile testing sites in Rockland County, Staten Island, Long Island City, and the Bronx.
- On March 13, 2020, the New York State Department of Health (“DOH”) reported that it received authority from the FDA to add a total of 28 additional public and private laboratories to conduct testing.
- The health care provisions of the Families First Coronavirus Response Act will also increase New York’s testing efforts and, as a consequence, related hospitalizations. The Act requires that all private plans and government health plans provide free COVID-19 testing and any “items of services related to testing when provided to an individual during health care office visits, or urgent care center, and emergency room visits.”
- As of March 24, 2020, New York Governor Andrew Cuomo reported that New York has increased COVID-19 testing to the highest level in the U.S., and to the highest level per capita in the world.
- As accessible testing has become more available, the State has seen a significant increase in its confirmed COVID-19 cases. During a press conference on March 24, Governor Cuomo reported a total of 25,665 confirmed cases of COVID-19, which was a jump from 5,700 cases reported over the weekend. Of these confirmed cases, 3,234 patients, or 13%, are currently hospitalized. Of the hospitalized patients, 756, or 23%, are ICU patients.

Attorneys

Christine Bonaguide
David Bradley
Jane Bello Burke
Roopa Chakkappan
Reetuparna Dutta
Joshua Feinstein
Peter Godfrey
Charles H. Kaplan
Michelle Merola
Matthew Scherer
Gary Schober
David Stark

Practices & Industries

Healthcare

CORONAVIRUS IMPACT ON NEW YORK HOSPITALS AND HEALTH CARE WORKERS

Governor Orders Increased Hospital Capacity; Additional Health Care Workers Sought

At a press conference on March 24, 2020, Governor Cuomo stated that New York State currently only has 53,000 hospital beds, but it needs as many as 140,000 beds to cope with demand from COVID-19. He also stated that New York State currently has 3,000 ICU beds, but 40,000 ICU beds are needed. There is a corresponding demand for additional health care workers to serve in direct patient care during the ongoing pandemic.

At a press conference on March 23, 2020, the Governor announced that he was mandating all New York hospitals to increase capacity by a minimum of 50%, with a goal of increasing capacity by 100%. Under the Governor's order, the Commissioner of Health (the "Commissioner") is authorized to suspend or revoke the operating certificate of any general hospital which is unable to meet the requirements of the necessary capacity directives. The Commissioner may appoint a receiver to continue the hospital's operations on 24 hours' notice to the current operator.

On March 23, 2020, Governor Cuomo issued Executive Order 202.10. This sweeping order temporarily suspends and modifies certain State laws, orders, rules and regulations through April 22, 2020 to the extent necessary to:

- permit and require general hospitals to take all measures necessary to increase the number of beds available to patients, in accordance with the directives set forth in the order;
- modify the definition of "emergency medical services" to include emergency, non-emergency and low acuity medical assistance; eliminate restrictions on an approved ambulance services or providers operating outside of the primary territory listed on such ambulance service's operating certificate with prior approval by DOH; permit the Commissioner to issue provisional emergency medical services provider certifications to qualified individuals with modified certification periods as approved; and allow emergency medical services to transport patients to locations other than healthcare facilities with prior approval by DOH;
- allow any emergency medical treatment protocol development or modification to occur solely with the approval of the Commissioner;
- permit an advanced practice registered nurse with a doctorate or master's degree specializing in the administration of anesthesia administering anesthesia in a general hospital or free-standing ambulatory surgery center without the supervision of a qualified physician in these health care settings;
- permit a physician assistant to provide medical services appropriate to their education, training and experience without oversight from a supervising physician without civil or criminal penalty related to a lack of oversight by a supervising physician;
- permit a specialist assistant to provide medical services appropriate to their education, training and experience without oversight from a supervising physician without civil or criminal penalty related to a lack of oversight by a supervising physician;
- permit a nurse practitioner to provide medical services appropriate to their education, training and experience, without a written practice agreement, or collaborative relationship with a physician, without civil or criminal penalty related to a

CORONAVIRUS IMPACT ON NEW YORK HOSPITALS AND HEALTH CARE WORKERS

- lack of written practice agreement, or collaborative relationship, with a physician;
- define “medical control” to include emergency and non-emergency direction to emergency medical services personnel by a regional or state medical control center and to permit emergency medical services personnel to operate under the advice and direction of 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 DOH;
 - provide that all physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered professional nurses and licensed practical nurses shall be immune 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, unless it is established that such injury or death was caused by the gross negligence of such medical professional;
 - authorize any healthcare facility to allow students, in programs to become licensed in New York State to practice as a healthcare professional, to volunteer at the healthcare facility for educational credit as if the student had secured a placement under a clinical affiliation agreement, without entering into any such clinical affiliation agreement;
 - relieve health care providers of recordkeeping requirements to the extent necessary for health care providers to perform tasks as may be necessary to respond to the COVID-19 outbreak, including, but 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;
 - permit the Commissioner to designate a health care facility as a trauma center, or extend or modify the period for which a health care facility may be designated as a trauma center, or modify the review team for assessment of trauma center;
 - extend all existing emergency medical services provider certifications for one year; permit the Commissioner to modify the examination or recertification requirements for emergency medical services provider certifications; suspend or modify, at the discretion of the Commissioner, any requirements for the recertification of previously certified emergency medical services providers; at the discretion of the Commissioner, develop a process determined by DOH, to permit any emergency medical services provider certified or licensed by another State to provide emergency medical services within New York State; and at the discretion of the Commissioner, suspend or modify equipment or vehicle requirements in order to ensure sustainability of EMS operations;
 - remove limits on working hours for physicians and postgraduate trainees;
 - allow graduates of foreign medical schools having at least one year of graduate medical education to provide patient care in hospitals, to allow such graduates without licenses to provide patient care in hospitals if they have completed at least one year of graduate medical education;
 - permit general hospitals affected by the disaster emergency to maintain adequate staffing;

CORONAVIRUS IMPACT ON NEW YORK HOSPITALS AND HEALTH CARE WORKERS

- allow general hospitals to use qualified volunteers or personnel affiliated with different general hospitals, subject to the terms and conditions established by the Commissioner;
- permit radiologic technologists licensed and in current good standing in New York State but not registered in New York State to practice in New York State without civil or criminal penalty related to lack of registration;
- permit radiologic technologists licensed and in current good standing in any state in the U.S. to practice in New York State without civil or criminal penalty related to lack of licensure;
- allow respiratory therapists licensed and in current good standing in any state in the U.S. to practice in New York State without civil or criminal penalty related to lack of licensure;
- allow physician's assistants licensed and in current good standing in New York State but not registered in New York State to practice in New York State without civil or criminal penalty related to lack of registration;
- allow registered professional nurses, licensed practical nurses and nurse practitioners licensed and in current good standing in New York State but not registered in New York State to practice in New York State without civil or criminal penalty related to lack of registration;
- allow a hospice residence to designate any number of beds within such facility as dually certified inpatient beds;
- allow laboratories holding a Clinical Laboratory Improvement Acts (CLIA) certificate and meeting the CLIA quality standards described in 42 CFR Subparts H, J, K and M, 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 the collection of throat or nasopharyngeal swab specimens from individuals suspected of being infected by COVID-19, for purposes of testing; and
- permit a certified or registered pharmacy technician, under the direct personal supervision of a licensed pharmacist, to assist such licensed pharmacist, as directed, in compounding, preparing, labeling, or dispensing of drugs used to fill valid prescriptions or medication orders for a home infusion provider licensed as a pharmacy in New York, compliant with the U.S. Pharmacopeia General Chapter 797 standards for Pharmaceutical Compounding – sterile preparations, and providing home infusion services through a home care agency licensed under Article 36 of the Public Health Law.

Executive Order 202.10 also includes the following additional directives, issued through April 22, 2020:

- Any healthcare facility is authorized to allow students, in programs to become licensed in New York State to practice as a healthcare professional, to volunteer at the healthcare facility for educational credit as if the student had secured a placement under a clinical affiliation agreement, without entering into any such clinical affiliation agreement.
- The Commissioner is authorized to direct, and shall so 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, as the Commissioner shall define. General hospitals shall

CORONAVIRUS IMPACT ON NEW YORK HOSPITALS AND HEALTH CARE WORKERS

comply with such order by submitting COVID-19 Plans to DOH, on a schedule to be determined by DOH, to accomplish this purpose.

- The Commissioner is authorized to suspend or revoke the operating certificate of any general hospital should they be unable to meet the requirements of the necessary capacity directives; and the Commissioner may appoint a receiver to continue the operations on 24 hours' notice to the current operator, in order to preserve the life, health and safety of the people of the State of New York.
- No pharmacist shall dispense hydroxychloroquine or chloroquine except when written as prescribed for an FDA-approved indication; or as part of a state approved clinical trial related to COVID-19 for a patient who has tested positive for COVID-19, with such test result documented as part of the prescription. No other experimental or prophylactic use shall be permitted, and any permitted prescription is limited to one 14-day prescription with no refills.
- Any licensed health insurance company shall deliver to the Superintendent of Financial Services, no later than March 24, 2020, a list of all persons who have a professional licensure or degree, whether physician's assistant, medical doctor, licensed registered nurse, licensed nurse practitioner or licensed practical nurse, and whether or not the person has a currently valid, or recently (within the past five years) expired license in the State of New York. The Department of Financial Services shall poll such individuals to determine whether or not such professionals would serve in the COVID-19 response effort.

Contact Us

Hodgson Russ continues to monitor this and all other healthcare issues presented by the Coronavirus pandemic. Please contact Christine A. Bonaguide or Roopa Chakkappan with any questions you may have about this alert.

Hodgson Russ remains on top of these circumstances as they develop. Our attorneys are working remotely, and ready, willing, and able to address the needs of our clients, so do not hesitate to contact us. **Please check our Coronavirus Resource Center to view many other alerts our attorneys in various practice areas have published on topics related to the pandemic.**

If you received this alert from a third party or from visiting our website, and would like to be added to any of our mailing lists, please visit us at: <https://forms.hodgsonruss.net/sign-up-for-email-and-other-communications.html>.