



HEALTH LAW ALERT

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IN RESPONSE TO THE COVID-19 OUTBREAK, GOVERNOR CUOMO ISSUES EXECUTIVE ORDER 202.10 MAKING SWEEPING CHANGES FOR HEALTH CARE PROVIDERS **UPDATE**

On March 7, 2020, Governor Andrew Cuomo issued Executive Order Number 202, declaring a State disaster emergency in the State of New York. More recently, on March 23, 2020 the Governor issued Executive Order Number 202.10 (the “Executive Order”), Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency. This Executive Order, effective until April 22, 2020, contains sweeping language that substantially modifies existing laws related to health care providers and the practice of medicine.

Suspension of Supervision Requirements

- Advanced Practice Registered Nurses with a doctorate or master’s degree specializing in the administration of anesthesia may administer anesthesia in a general hospital or free-standing ambulatory surgery center without the supervision of a qualified physician;
- Physician Assistants may 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;
- Nurse Practitioners may 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 lack of written practice agreement or collaborative relationship with a physician; and
- Specialist Assistants may 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.

Civil Liability

The Executive Order limits health care providers’ civil liability in circumstances where they are providing medical services related to the COVID-19 outbreak. Physicians, Physician Assistants, Specialist Assistants, Nurse Practitioners, Licensed Registered Professional Nurses and Licensed Practical Nurses are 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. The Executive Order contains an exception to this immunity for instances where the injury or death was caused by the gross negligence of such medical professional. Health care providers should take notice of this exception. One can imagine a scenario where all malpractice claims brought as a result of injury or death from medical services provided in response to the COVID-19 outbreak will allege gross negligence. Thus, it is unclear whether the Executive Order will actually limit a health care provider’s liability when treating patients in response to the COVID-19 outbreak.

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Medical Students

The Executive Order authorizes healthcare facilities to allow students, in programs to become licensed in NYS 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.

Recordkeeping

In one of the more surprising changes, the Executive Order relieves health care providers of their recordkeeping requirements to the extent necessary for health care providers to perform tasks as may be necessary to respond to the COVID-19 outbreak. This specifically includes the requirements (1) to maintain medical records that accurately reflect the evaluation and treatment of patients; and (2) to assign diagnostic codes or to create or maintain other records for billing purposes. The Executive Order provides that any person acting reasonably and in good faith shall be given absolute immunity from liability for any failure to comply with any recordkeeping requirement. Nevertheless, it is incumbent upon health care providers to use their best efforts to maintain accurate and complete medical records for patients treated in response to the COVID-19 outbreak.

Hydroxychloroquine and Chloroquine

Hydroxychloroquine has made the news recently as a possible treatment for COVID-19 when administered in conjunction with Azithromycin and Zinc Sulfate. Nevertheless, the Executive Order limits the use of hydroxychloroquine and chloroquine only for FDA-approved indications, or as part of a state approved clinical trial related to COVID-19. In that instance, the patient must have tested positive for COVID-19, and that test result must be documented as part of the prescription. The Executive Order expressly prohibits experimental or prophylactic use and limits prescriptions to one fourteen day supply with no refills.

Update:

On March 27, 2020, Governor Cuomo issued Executive Order 202.11 that, amongst other things, amended the directive contained in Executive Order 202.10 related to restrictions on dispensing hydroxychloroquine or chloroquine for prophylactic purposes described above. The amendment allows pharmacists to dispense Hydroxychloroquine or chloroquine when written for patients in inpatient settings and acute settings, as well as for residents in a subacute part of a skilled nursing facility. The prescribing physician is required to denote on the prescription the condition for which the prescription has been issued.

If you have any questions, please contact

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