State of New York

Executive Chamber

No. 72

EXECUTIVE ORDER

TEMPORARY SUSPENSION AND MODIFICATION OF HEALTH STATUTES AND REGULATIONS DURING THE STATE DISASTER EMERGENCY

WHEREAS, on October 26, 2012, I issued Executive Order Number 47, declaring a disaster emergency in all 62 counties in the State of New York; and

WHEREAS, on October 30, 2012, the President issued a major disaster declaration for the counties of Bronx, Kings, Nassau, New York, Queens, Richmond and Suffolk, and on November 2, 2012, extended such declaration to include Rockland and Westchester Counties; and

WHEREAS, Hurricane Sandy necessitated the evacuation of numerous health care facilities while simultaneously increasing the threat of injury and disease in the impacted areas, and resulted in power outages and shortages of fuel that have complicated the efforts of health care providers to serve their patients; and

WHEREAS, it is incumbent upon the State to ensure that the provision of health care services to New Yorkers continues with minimal disruption to the maximum extent feasible; and

WHEREAS, full compliance with certain statutory and regulatory requirements may delay or impede the ability of providers to furnish such services;

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify specific provisions of any statute, local law, ordinance, orders, rules or regulations, or parts thereof, of any agency during a State disaster emergency, if compliance with such provisions would prevent, hinder or delay action necessary to cope with the disaster emergency, hereby temporarily suspend or modify, as the case may be, during the period from the date that the disaster emergency was declared pursuant to Executive Order Number 47, issued on October 26, 2012, until further notice, the following:

Subdivision (2) of section 3320 of the Public Health Law, and any associated regulations, to the extent necessary to allow licensed facilities, including but not limited to hospitals, nursing homes, and institutional dispensers, to temporarily accept, store and administer those controlled substances lawfully prescribed to patients and residents affected by the disaster emergency, while maintaining appropriate patient specific record-keeping and diversion prevention practices, and subject to any terms and conditions that the Commissioner of Health may deem appropriate;

Subdivision (1) of section 3333 and subdivision (2) of section 3338 of the Public Health Law, and any associated regulations, to the extent necessary to allow a licensed pharmacist to dispense a controlled substance to a patient whose access to prescriptions or previously dispensed controlled substances has been directly affected by the disaster emergency, if the pharmacist, through the use of a shared database can verify the authenticity of the prescription and the prescription indicates authorized refills;

Subdivision (3) of section 3332, subdivision (1) of section 3333 and subdivision (3) of section 3339 of the Public Health Law, and any associated regulations, to the extent necessary to allow a licensed practitioner to prescribe and a licensed pharmacist to dispense a controlled substance more than seven days prior to the date the previously dispensed supply would have been exhausted if the patient's supply has been destroyed, made unusable or made inaccessible due to the disaster emergency;

Subpart 58-1 of Title 10 of the New York Codes, Rules and Regulations ("NYCRR"), to the extent necessary to permit the Commissioner of Health to issue provisional permits to laboratories or blood banks for the purpose of conducting permitted categories of tests at alternate locations or conducting categories of tests not listed in the laboratory's permit if, in the discretion of the Commissioner, the laboratory has provided sufficient information to show that such testing can be conducted safely and accurately so as not to present an undue risk to patient health and fills a need for testing created by the disaster emergency to protect the public health and safety;

Section 400.9 and paragraph (7) of subdivision (f) of section 405.9 of Title 10 of the NYCRR, to the extent necessary to permit general hospitals and nursing homes licensed pursuant to Article 28 of the Public Health Law ("Article 28 facilities") and affected by the disaster emergency to rapidly discharge, transfer or receive patients, as authorized by the Commissioner of Health, provided that such facilities take all reasonable measures to protect the health and safety of patients and residents, including safe transfer and discharge practices, and comply with the Emergency Medical Treatment and Active Labor Act (42 U.S.C. § 1395dd) and any associated regulations;

Section 400.11 of Title 10 of the NYCRR, to the extent necessary to permit Article 28 facilities receiving patients evacuated from other Article 28 facilities due to the disaster emergency to complete patient review instruments as soon as practicable;

Section 400.12 of Title 10 of the NYCRR, to the extent necessary to allow patients affected by the disaster emergency to be transferred to receiving Article 28 facilities as authorized by the Commissioner of Health;

Subdivision (e) of section 405.2 of Title 10 of the NYCRR, to the extent necessary to permit general hospitals affected by the disaster emergency to maintain adequate staffing;

Subdivision (b) of section 405.3 of Title 10 of the NYCRR, to the extent necessary to allow general hospitals affected by the disaster emergency to use qualified volunteers or personnel affiliated with different hospitals, subject to terms and conditions established by the Commissioner of Health;

Paragraph (6) of subdivision (b) of section 405.4 of Title 10 of the NYCRR, to the extent necessary to allow general hospitals affected by the disaster emergency to assess the fitness of medical postgraduate trainees and attending physicians to continue working without a specific hourly limit;

Paragraph (1) of subdivision (e) of section 405.4 and subdivision (b) of section 707.3 of Title 10 of the NYCRR, to the extent necessary to permit physicians to supervise up to ten physician assistants and registered specialist assistants in general hospitals affected by the disaster emergency;

Paragraph (12) of subdivision (b) of section 405.9 of Title 10 of the NYCRR, to the extent necessary to permit general hospitals receiving patients transferred from Article 28 facilities evacuated as a result of the disaster emergency to arrange for the performance of histories and physical examinations of the evacuated patients as soon as practicable following admission;

Subdivision (d) of section 405.19 of Title 10 of NYCRR, to the extent necessary to allow general hospitals affected by the disaster emergency to staff their emergency departments as needed;

Subdivision (a) of section 405.28 of Title 10 of the NYCRR, to the extent necessary to permit general hospitals receiving individuals affected by the disaster emergency to provide social services screenings as soon as practicable following admission or to forego such screenings for individuals returned to facilities from which they were evacuated;

Section 415.11 of Title 10 of the NYCRR, to the extent necessary to permit nursing homes receiving individuals affected by the disaster emergency to perform comprehensive assessments of those residents temporarily evacuated to such nursing homes as soon as practicable following admission or to forego such assessments for individuals returned to facilities from which they were evacuated;

Subdivision (b) of section 415.15 of Title 10 of the NYCRR, to the extent necessary to permit nursing homes receiving individuals affected by the disaster emergency to obtain physician approvals for admission as soon as practicable following admission or to forego such approval for individuals returned to facilities from which they were evacuated;

Subdivision (i) of section 415.26 of Title 10 of the NYCRR, to the extent necessary to permit nursing homes receiving individuals affected by the disaster emergency to comply with admission procedures as soon as practicable following admission or to forego such procedures for individuals returned to facilities from which they were evacuated;

Paragraph (7) of subdivision (h) of section 763.4 and paragraph (1) of subdivision (d) of section 766.5 of Title 10 of the NYCRR, to the extent necessary to permit certified home health agencies, long term home health care programs, AIDS home care programs, and licensed home care services agencies serving individuals affected by the disaster emergency to conduct in-home supervision of home health aides and personal care aides as soon as practicable after the initial service visit;

Subdivision (a) of section 763.5 of Title 10 of the NYCRR, to the extent necessary to permit initial patient visits for certified home health agencies, long term home health care programs and AIDS home care programs serving individuals affected by the disaster emergency to be made within 48 hours of receipt and acceptance of a community referral or return home from institutional placement;

Paragraph (3) of subdivision (a) of section 763.7 and subdivision (d) of section 766.4 of Title 10 of the NYCRR, to the extent necessary to permit certified home health agencies, long term home health care programs, AIDS home care programs and licensed home care services agencies serving individuals affected by the disaster emergency to obtain medical orders signed by authorized practitioners within 60 days;

Paragraph (3) of subdivision (b) of section 505.14 and paragraph (1) of subdivision (d) of section 505.28 of Title 18 of the NYCRR, to the extent necessary to permit a physician's order to be completed and forwarded to the social services district within 60 days after the medical examination of a patient affected by the disaster emergency;

Subparagraph (ix) of paragraph (5) of subdivision (b) of section 505.14 and subdivision (f) of section 505.28 of Title 18 of the NYCRR, to the extent necessary to permit an additional 30 days for reauthorizations of personal care and consumer directed personal assistance program services for individuals affected by the disaster emergency, where the authorized period of services otherwise would terminate during the period of the disaster emergency declared pursuant to Executive Order Number 47;

Subparagraph (ii) of paragraph (2) of subdivision (e) of section 505.14 of Title 18 of the NYCRR, to the extent necessary to permit training for personal care workers serving individuals affected by the disaster emergency to be held as soon as practicable after the conclusion of such period, where such training otherwise would be required during the period of the disaster emergency declared pursuant to Executive Order Number 47, provided that such workers have sufficient competence to provide such services; and

Paragraph (3) of subdivision (f) of section 505.14 of Title 18 of the NYCRR, to the extent necessary to permit nursing supervision visits for personal care services provided to individuals affected by the disaster emergency to be made as soon as practicable.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this eleventh day of November in the year two thousand twelve.

BY THE GOVERNOR

Secretary to the Governor