

Update on COVID-19 Health-Related Regulatory Waivers

CURRENT STATUS

On June 23rd, Governor Cuomo announced that New York’s COVID-19 disaster emergency declaration would expire effective 11:59pm on June 24th. As of June 25th, the emergency provisions in Executive Order 202 and its successors through 202.111 have expired, except those that have been enacted into law previously or that have been authorized and remain in effect pursuant to the federal Public Readiness and Emergency Preparedness (PREP) Act. Various state agencies have issued or are planning to issue guidance clarifying the status of emergency COVID-19 policies.

Below, SPG has updated our Waiver Timeline Tracker document to show in detail which policies have expired. This document also includes a summary of NYS agency policy and relevant federal guidance, starting on page 11.

New York State Waivers				
Waiver	Effective Date	Waiver Type	Permissions	Expiration
NYS Executive Order 202	3/7/2020	Provider Flexibilities	<ul style="list-style-type: none"> Allows unlicensed individuals, upon completion of appropriate training, to collect throat or nasopharyngeal swab specimens for COVID-19 or influenza testing. (Modified by Executive Order 202.69 to also include the collection of saliva swab specimens). Permits non-nursing staff to perform tasks under the supervision of a nurse that would be otherwise limited to a licensed or registered nurse. (Modified by Executive Order 202.82 to allow non-nursing staff to also: 1) collect throat, nasal, or nasopharyngeal swab specimens to test for COVID-19 or influenza, 2) collect blood specimens for the diagnosis of acute or past COVID-19 disease, and 3) administer approved vaccinations for influenza or COVID-19). Permits individuals who meet the federal requirements for high complexity testing to perform testing for COVID-19. 	EXPIRED per Executive Order 210 .
NYS Executive Order 202.1	3/12/2020	Telehealth Flexibilities	<ul style="list-style-type: none"> Permits DOH, OMH, OASAS, and OPWDD to allow for additional telehealth provider categories and modalities, to permit other types of practitioners to deliver services within their scopes of practice, and to authorize the use of certain technologies for the delivery of health care services to established patients. Permits providers to use staff members in the most effective means possible to transport individuals receiving services from OMH or a program/provider under the jurisdiction of OMH during the emergency, provided such facilities take all reasonable measures to protect the health and safety of such individuals. EXPIRED per EO 202.48 	EXPIRED per Executive Order 210 – however, see below regarding continued flexibilities under Medicare/federal waivers, DOH, OMH, OASAS, and OPWDD.

New York State Waivers

Waiver	Effective Date	Waiver Type	Permissions	Expiration
DFS 57th Amendment to Insurance Regulation 62	3/16/2020	Cost Sharing	Requires plans to waive cost-sharing for COVID-19 testing.	Extended to July 6, 2021.
DFS 58th Amendment to Insurance Regulation 62	3/16/2020	Cost Sharing	Requires plans to waive cost-sharing for services delivered via telehealth.	EXPIRED on June 4, 2021.
NYS Executive Order 202.5	3/18/2020	Provider Flexibilities, Background Checks	<ul style="list-style-type: none"> • Allows physicians, RNs, LPNs, NPs, and physician assistants licensed and in current good standing in any state to practice in NYS without penalties related to lack of licensure. • Allows physicians licensed and in current good standing but not registered in NYS to practice in NYS without penalties related to lack of registration. • Reduces requirements related to nursing home procedures for individuals affected by the emergency, including approvals for admission and comprehensive assessments. • Permits delayed in-home supervision of home health aides and personal care aides or allowing supervision to be conducted through telephone or video communication. • Extends the time in which home care services entities must submit information to the Home Care Worker Registry. • Prevents transportation to and attendance at adult day care programs. • Allows for abbreviated training of direct support professionals employed in programs and facilities that serve individuals with intellectual/developmental disabilities (I/DD) that are experiencing staff shortages. • Permits providers to temporarily deviate from a service plan of an individual with I/DD or relocating individuals with I/DD to maintain their health and safety during the emergency. • Exempts child care programs from having to comply with regulations of OCFS. Criminal background check exemptions for child care programs have EXPIRED per EO 202.48 	EXPIRED per Executive Order 210 .
DFS Circular Letter No. 8 and Supplements No. 1, No. 2	3/20/2020 4/22/2020 6/26/2020	Provider Flexibilities	<i>Suspends various utilization review requirements and requires expedited payment of hospital claims. EXPIRED June 18, 2020; however, certain preauthorization requirements were temporarily reinstated per Circular Letter No. 17 (see below).</i>	EXPIRED June 18, 2020.

New York State Waivers

Waiver	Effective Date	Waiver Type	Permissions	Expiration
<p>NYS Executive Order 202.10</p>	<p>3/23/2020</p>	<p>Provider Flexibilities</p>	<ul style="list-style-type: none"> • Permits advance practice registered nurses with a related doctorate or master’s degree to administer anesthesia without the supervision of a qualified physician. • Allows NPs, physician assistants, and special assistants to provide medical services appropriate to their education, training, and experience without oversight from or a collaborating agreement with a physician. • Permits radiologic technologists and respiratory therapists licensed in another state to practice in NYS without penalty. • Allows radiologic technologists, physician assistants, registered professional nurses, licensed practical nurses, and nurse practitioners licensed but not registered in NYS to practice without penalty. • Authorizes certified or registered pharmacy technicians to assist in compounding, preparing, labeling, or dispensing drugs for prescriptions or home infusion medication orders under the supervision of a licensed pharmacist. • <i>Ensures that all physicians, physician assistants, special assistants, nurse practitioners, licensed registered professional nurses, and licensed practical nurses are immune from civil liability during the course of providing medical services related to the COVID-19 outbreak, unless related to gross negligence. EXPIRED per EO 202.28</i> • Authorizes any health care facility to allow students on track to become licensed health care professionals in NYS to volunteer at the facility for educational credit without securing a clinical affiliation agreement. • Removes limits on working hours for physicians and postgraduate trainees. • Allows graduates of foreign medical schools with at least one year of graduate medical education to provide patient care in hospitals. • Waives the responsibilities of the hospital governing body to ensure adequate staffing and allow for the use of qualified volunteers or personnel affiliated with other general hospitals. • Requires licensed health insurance companies to provide a list of all personnel with a professional licensure or degree as a medical doctor, physician assistant, licensed RN, licensed NP, or LPN. • Provides general relief from recordkeeping requirements for health care providers, as long as it is done reasonably and in good faith to respond to COVID-19. <i>Expired per EO 202.28, but reinstated per EO 202.83.</i> 	<p>EXPIRED per Executive Order 210.</p>
<p>DFS Circular Letter No. 9 and Supplements No. 1, No. 2, No. 3, No. 4</p>	<p>3/25/2020</p>	<p>Insurance Producer Flexibilities</p>	<ul style="list-style-type: none"> • <i>Suspends the expiration of licenses for insurance producers. EXPIRED September 6, 2020.</i> • <i>Suspends the requirement that a monitor be present to complete producer continuing education and pre-licensing course exams.</i> 	<p>Made permanent by Supplement No. 4 except as otherwise noted.</p>

New York State Waivers

Waiver	Effective Date	Waiver Type	Permissions	Expiration
NYS Executive Order 202.11	3/27/2020	Provider Flexibilities	<ul style="list-style-type: none"> Suspends or modifies regulations related to operating certificates for providers of individuals with I/DD that limit the provision of certain services in certified settings (with OPWDD approval). Allows for abbreviated training and/or extension of recertification deadlines for direct support professionals providing services to individuals with I/DD that are experiencing staff shortages. Permits pharmacy technicians and pharmacists to practice at an alternative location, including their home, as long as there is adequate security to protect Personal Health Information. Permits graduates of registered professional nurse and licensed practical nurse licensure qualifying education programs to be employed to practice nursing under the supervision of a registered professional nurse and with the endorsement of the employing hospital or nursing home for 180 days immediately following graduation. Allows midwives licensed and in current good standing in any state, or in any province or territory of Canada, to practice in NYS without penalty. Amends previous restrictions on dispensing the drugs under investigation or treatment of COVID-19 (hydroxychloroquine or chloroquine) for prophylactic purposes. Ensures that physicians assisting in the State's response to COVID-19 in a facility owned or leased by SUNY and operated by SUNY will be provided with defense from the State in an instance of civil action or proceeding. 	EXPIRED per Executive Order 210 .
NYS Executive Order 202.13	3/30/2020	Background Checks	Allows employees of programs licensed/certified under State agencies (OPWDD, OCFS, OASAS, OMH) who have previously undergone the appropriate background checks to be employed by a program under a different agency without undergoing new background checks.	EXPIRED per Executive Order 210 .
NYS Executive Order 202.14	4/7/2020	Provider Flexibilities	Allows any physician slated to graduate from a medical education program in 2020 who has been accepted to a residency program within or outside NYS to practice at any institution under the supervision of a licensed physician.	EXPIRED per Executive Order 210 .
NYS Executive Order 202.15	4/9/2020	Provider Flexibilities	<ul style="list-style-type: none"> Allows respiratory therapy technicians licensed in any state to practice in NYS without penalty. Allows mental health counselors, marriage and family therapists, creative arts therapists, and psychoanalysts licensed in any state to practice in NYS without penalty. Allows students who have graduated from registered or accredited medical programs in NYS in 2020 to practice medicine in NYS, without the need to obtain a license and without risk of penalty, provided they are supervised by a licensed physician. 	EXPIRED per Executive Order 210 .
NYS Executive Order 202.16	4/12/2020	Provider Flexibilities	Modifies the qualification requirements of medical or clinical laboratory technologists to allow additional individuals to perform testing for the COVID-19 virus or its antibodies.	EXPIRED per Executive Order 210 .

New York State Waivers

Waiver	Effective Date	Waiver Type	Permissions	Expiration
NYS Executive Order 202.18	4/16/2020	Provider Flexibilities	<ul style="list-style-type: none"> Allows nurses (RN, LPN, NP), physicians, physician assistants, radiologic technologists from Canada to practice in NYS. Allows clinical nurse specialists, specialist assistants, and licensed master or clinical social workers from out of state to practice in NYS. Allows a wide variety of licensed professionals with an unencumbered license to practice in NYS without registration. Allows nurse practitioners to practice in a hospital or nursing home for 180 days following graduation and permits clinical laboratory technologists and technicians to practice for 180 days following licensure. Permits pharmacy technicians and pharmacists to practice at an alternative location, including their home. 	EXPIRED per Executive Order 210 .
NYS Executive Order 202.24	4/25/2020	Provider Flexibilities	<ul style="list-style-type: none"> Authorizes licensed pharmacists to order tests to detect SARS-CoV-2 or its antibodies, and to administer COVID-19 tests after completion of appropriate DOH training. (Modified by Executive Order 202.92 to allow pharmacists to order FDA-approved COVID-19 tests, including by standing order, under certain conditions). Permits licensed pharmacists to be designated as a qualified health care professional for the purpose of directing a clinical service laboratory to test patients for COVID-19 or its antibodies. (Modified by Executive Order 202.92 to include FDA-approved rapid tests under certain conditions). 	EXPIRED per Executive Order 210 – however, see below regarding continued flexibilities under the federal HHS PREP Act.
DFS Circular Letter No. 10 and DFS 60th Amendment to Insurance Regulation 62	5/2/2020	Cost Sharing	Requires regulated health insurance plans to waive out-of-pocket costs (i.e. cost-sharing, deductibles, copayments, and coinsurance) for in-network mental health services for frontline essential workers during the COVID-19 emergency.	EXPIRED on May 26, 2021.
NYS Executive Order 202.32	5/21/2020	Provider Flexibilities	<ul style="list-style-type: none"> Allows physicians to order COVID-19 tests for self-collection, without otherwise having an initial physician-patient relationship with the patient. Allows clinical laboratories to accept and examine specimens for COVID-19 testing from personnel of nursing homes and adult care facilities without a prescription or order from an authorized ordering source, and to report the results of such tests to the appropriate operators and administrators of the nursing home or adult care facility. (Modified by Executive Order 202.92 to allow limited service laboratories to accept and examine specimens for COVID-19 rapid testing without a patient specific order or a prescription or order from an authorized ordering source under certain conditions). 	EXPIRED per Executive Order 210 .
NYS Executive Order 202.36	6/2/2020	Telehealth Flexibilities	Permits a practitioner to establish a patient relationship using only a questionnaire for the purpose of ordering a clinical laboratory test, which may be administered through an asynchronous electronic interface, including email.	EXPIRED per Executive Order 210 .

New York State Waivers

Waiver	Effective Date	Waiver Type	Permissions	Expiration
NYS Executive Order 202.40	6/10/2020	Nursing Homes	Operators and administrators of all nursing homes and all adult care facilities, which are located in regions that have reached Phase Two of reopening, must test or make arrangements for the testing of all personnel, including all employees, contract staff, medical staff, operators, and administrators, for COVID-19, once per week.	EXPIRED per Executive Order 210 .
NYS Executive Order 202.55	8/6/2020	Provider Flexibilities	Hospitals, not-for-profit housing providers, and others may offer temporary housing to any individual assisting with COVID-19 response or displaced due to COVID-19 for a period of 30 days or more without creating a landlord-tenant relationship.	EXPIRED per Executive Order 210 .
NYS Executive Order 202.73	11/9/2020	Nursing Homes	Modifies Executive Order 202.40 to require nursing homes located in designated red, orange, or yellow cluster zones to test or make arrangements for the testing of all personnel, including all employees, contract staff, medical staff, operators, and administrators for COVID-19 as directed by the Commissioner of Health.	EXPIRED per Executive Order 210 .
NYS Executive Order 202.82	12/13/2020	Provider Flexibilities, Vaccine Requirements	<p><u>Vaccine Ordering and Administration</u></p> <ul style="list-style-type: none"> • Authorizes the use of new/temporary vaccination sites (PODs) for administering the COVID-19 and influenza vaccine and authorizes a broad array of individuals to administer vaccines (with training and supervision), including those who are either: 1) Not currently authorized to administer vaccinations, but who are appropriately licensed or certified health professionals, including midwives, dentists, certain dental hygienists, podiatrists, emergency medical technicians, advanced emergency medical technicians, and certain newly licensed pharmacists; or 2) Enrolled in one of the following educational or training programs and evaluated and trained to administer vaccinations: <ul style="list-style-type: none"> ○ A medical program; ○ A registered professional nursing program or licensed practical nursing program; ○ A physician assistant program; ○ A pharmacy program (pharmacy students who have obtained a limited permit, including a certificate to administer immunizations, are deemed to have the minimum necessary clinical experience to administer COVID-19 and influenza vaccinations); ○ A dentistry program; ○ A podiatric medicine program; or ○ A midwifery program. • Allows non-nursing staff who have completed appropriate training to: <ul style="list-style-type: none"> ○ collect throat, nasal, or nasopharyngeal swab specimens to test for COVID-19 or influenza; ○ collect blood specimens for the diagnosis of acute or past COVID-19 disease; ○ administer approved vaccinations for influenza or COVID-19, and ○ perform tasks, under the supervision of a nurse, that would be otherwise limited to a licensed or registered nurse, in order to provide care for individuals diagnosed or suspected of suffering from a COVID-19 or influenza infection. • Allows licensed physicians and certified nurse practitioners to issue a non-patient specific regimen to nurses, physician assistants, special assistants, pharmacists, or other individuals authorized by this EO to complete the above tasks. 	EXPIRED per Executive Order 210 – however, see below regarding continued flexibilities under the federal HHS PREP Act.

New York State Waivers

Waiver	Effective Date	Waiver Type	Permissions	Expiration
<p>EO 202.89 (continued)</p>		<p>Provider Flexibilities, Vaccine Requirements</p>	<ul style="list-style-type: none"> • Permits registered professional nurses to prescribe, order, and execute non-patient specific regimens for the administration of the COVID-19 vaccine. • Allows licensed practical nurses, following appropriate training and certification, to prescribe, order, and execute COVID-19 and influenza vaccinations at PODs under supervision and following appropriate training and certification. • Permits licensed pharmacists to administer COVID-19 vaccines less than 90 days after approval of the vaccine by the Food and Drug Administration (FDA). • Allows patient specific orders or non-patient specific regimens for COVID-19 or influenza vaccination administration to be prescribed, ordered to, and executed by licensed pharmacists certified to administer immunizations and newly licensed pharmacists that received a limited permit with certification to administer immunizations under certain conditions. • Allows licensed pharmacists not certified to administer immunizations to administer COVID-19 and influenza vaccinations at PODs under supervision following appropriate training and certification. • Permits licensed physicians and certified nurse practitioners located within any county to issue a patient specific prescription or a non-patient specific regimen for COVID-19 and influenza vaccination to licensed pharmacists certified to administer vaccines or to newly licensed pharmacists as authorized by this EO unless administering COVID-19 or influenza vaccinations at a POD site. • Permits a physician assistant to provide medical services appropriate to their education, training, and experience without oversight from a supervising physician, including administering COVID-19 and influenza vaccines and medically supervising PODs or other vaccination sites without civil or criminal penalty related to a lack of oversight. • Permits 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, including administering COVID-19 and influenza vaccines and medically supervising PODs or other vaccination sites without civil or criminal penalty. <p><u>Reporting Requirements</u></p> <ul style="list-style-type: none"> • Allows licensed pharmacists and registered professional nurses to administer influenza and COVID-19 vaccinations without reporting such administrations to patients' attending physicians (but are still required report the vaccination to the City or State). • Removes the requirement for registered professional nurses, licensed pharmacists, and other professionals to ensure that a record is maintained and retained for those to whom they administer influenza and COVID-19 vaccinations, provided that they comply with all DOH recordkeeping requirements. • Suspends the requirement that individuals 19 years of age and older must consent to have their immunization information reported to the New York State Immunization Information Registry (NYSIIS) or the City Immunization Registry (CIR), so that adult immunization information may be included in NYSIIS or the CIR, as applicable, without such consent. • Requires all influenza and COVID-19 vaccinations for any individual (child or adult) to be 	<p>EXPIRED per Executive Order 210 – however, see below regarding continued flexibilities under the federal HHS PREP Act.</p>

New York State Waivers

Waiver	Effective Date	Waiver Type	Permissions	Expiration
<p>EO 202.89 (continued)</p>		<p>Provider Flexibilities, Vaccine Requirements</p>	<p>reported to the NYSIIS or CIR, as applicable, within 24 hours of administration of such vaccine.</p> <p><u>Laboratories</u></p> <ul style="list-style-type: none"> • Upon approval from DOH, allows laboratories holding a Clinical Laboratory Improvement Acts (CLIA) certificate in the relevant specialty of testing and meeting the CLIA quality standards to perform testing for the detection of influenza virus, respiratory syncytial virus RNA, or other respiratory panels in specimens collected from individuals suspected of suffering from a COVID-19 infection, including postmortem specimens. • Requires all clinical laboratories having more than 25 employees to become qualified entity participants and connect to the Statewide Health Information Network (SHIN-NY) through a qualified entity and allow private and secure bi-directional access to patient information by other qualified entity participants within 60 days of this EO. • Modifies the qualification requirements of medical or clinical laboratory technologists to allow additional individuals to perform any clinical laboratory test on any specimen, provided such individual is under appropriate supervision and meets the federal requirements for testing personnel appropriate to the assay or device authorized by the FDA or DOH. <p><u>Other</u></p> <ul style="list-style-type: none"> • Modifies the provision of EO 202.1 that allowed for construction applications for temporary hospital locations and extensions to be approved by the Commissioner of Health, without considering the recommendation of the health systems agency or the Public Health and Health Planning Council, to also include temporary vaccination sites. • Permits an authorized vaccine provider within New York State to furnish federal COVID-19 vaccine and ancillary supplies (obtained as a result of enrollment in the Centers for Disease Control (CDC) COVID-19 Vaccination Program) to another authorized vaccine provider within New York State who has also enrolled in the CDC COVID-19 Vaccination Program for the purposes of administering such vaccination at no cost in accordance with storage/handling requirements and other CDC and DOH guidance. • Requires any licensed physician, licensed physician assistant, and certified nurse practitioner who is medically supervising PODs or other vaccination sites to have a current certification in cardiopulmonary resuscitation (CPR). • Allows licensed pharmacists to order tests for the detection of influenza virus or respiratory syncytial virus RNA in specimens collected from individuals suspected of suffering from or having recovered from a COVID-19 or influenza infection, and to administer such tests upon completion of appropriate DOH training. • Applies sections 3216(i)(17)(E), 3221(l)(8)(E) and (F), and 4303(j)(3) of the Insurance Law to “grandfathered health plans” with regards to COVID-19 immunization coverage. 	<p>EXPIRED per Executive Order 210 – however, see below regarding continued flexibilities under the federal HHS PREP Act.</p>

New York State Waivers

Waiver	Effective Date	Waiver Type	Permissions	Expiration
NYS Executive Order 202.83	12/18/2020	Provider Flexibilities	Reinstates relief around health care providers maintaining recordkeeping requirements. Specifically, providers acting reasonably and in good faith will be afforded absolute immunity from liability for any failure to comply with any recordkeeping requirement, if needed to perform tasks to respond to the COVID-19 outbreak. This includes, but is not limited to, requirements related to: <ul style="list-style-type: none"> • Maintaining medical records that accurately reflect the evaluation and treatment of patients; • Assigning diagnostic codes; or • Creating or maintaining other records for billing purposes. 	EXPIRED per Executive Order 210 .
DFS Circular Letter No. 17	12/23/20	Provider Flexibilities	<i>Directs insurers to suspend the following requirements:</i> <ul style="list-style-type: none"> • <i>Preauthorization review for urgent or non-elective scheduled inpatient surgeries, hospital admissions, and transfers between hospitals;</i> • <i>Preauthorization review for inpatient rehabilitation and home health care services following an inpatient hospital admission;</i> • <i>Preauthorization review for inpatient mental health services following an inpatient hospital admission; and</i> • <i>Notification requirements that include the submission of medical records by the hospital to the insurance plan following an emergency hospital admission or financial penalties on a hospital for failure to provide notification of an emergency admission.</i> Expired; however, on March 10th DFS issued guidance (here) that includes new requirements for insurance plans regarding administrative denials, settlement of claims, utilization review timeframes, and retrospective denials.	EXPIRED February 21, 2021 (see note).
NYS Executive Order 202.86	12/28/20	Provider Flexibilities, Vaccine Requirements	<ul style="list-style-type: none"> • Authorizes retired physicians, registered professional nurses, licensed practical nurses, and nurse practitioners who are licensed and in good standing in New York State to re-register through an expedited automatic registration form without any registration fees. • Requires health care providers administering the vaccine to ensure that individuals receiving the vaccine are a member of a specific priority group that has been determined by DOH to be eligible for the vaccine. EXPIRED per EO 202.105 	EXPIRED per Executive Order 210 .
NYS Executive Order 202.87	12/30/2020	Provider Flexibilities	Removes limits on working hours for physicians and postgraduate trainees.	EXPIRED per Executive Order 210 .
NYS Executive Order 202.88	01/04/2021	Nursing Homes	Modifies Executive Orders 202.40 and 202.73 to authorize the Commissioner of Health to set forth testing requirements of all nursing home personnel in any area of the state, irrespective of location in a micro-cluster zone.	EXPIRED per Executive Order 210 .

New York State Waivers

Waiver	Effective Date	Waiver Type	Permissions	Expiration
NYS Executive Order 202.90	01/12/2021		<ul style="list-style-type: none"> • Authorizes licensed pharmacists to supervise up to four unlicensed assistants or pharmacy technicians holding a temporary license; • Requires practitioners, who were authorized by Executive Order 202.82 to administer the COVID-19 vaccine, to meet training requirements and other conditions set by the Commissioner of Health prior to vaccine administration; and • Allows certain individuals with certifications from pharmacy technician programs to be temporarily licensed as “pharmacy technicians” for the sole purpose of administering COVID-19 vaccines under direct supervision at Points of Dispensing (POD) sites overseen by the State or local health departments. Such individuals must complete required training prior to administering vaccines. 	EXPIRED per Executive Order 210 .
NYS Executive Order 202.92	01/27/2021	Provider Flexibilities	<ul style="list-style-type: none"> • Permits pharmacist-directed limited service laboratories to also test for COVID-19 infection using a rapid test as part of the enhanced economic activity plan authorized by DOH, provided that such test is FDA-approved and waived for use in a limited service laboratory. • Authorizes licensed pharmacists to order tests for the detection of COVID-19, including by standing order, as part of the enhanced economic activity plan authorized BY DOH, provided that such test is FDA-approved and subject to certificate of waiver requirements. • Permits a limited service laboratory, authorized by DOH to test for COVID-19 infection as part of the enhanced economic activity plan authorized by DOH, to accept and examine specimens for COVID-19 rapid testing without a patient specific order or a prescription or order from an authorized ordering source. Such laboratories must make available to patients (including via an online registration) the guidance to be issued by DOH related to rapid testing under this Executive Order. The laboratory must also report any positive results within 24 hours to the local department of health and DOH through the Electronic Clinical Laboratory System (ECLRS). • Authorizes the Commissioner of Health to direct COVID-19 testing for all staff or to modify or eliminate visitation or leave for residents at any state, local, or voluntary not-for-profit congregate facility supervised or licensed by the Office of Mental Health, Office of Addiction Services and Supports, Department of Corrections and Community Supervision, Office for People with Developmental Disabilities, or the Department of Health on a regular schedule or in order to control an outbreak as necessary. 	EXPIRED per Executive Order 210 .
DFS 62nd Amendment to Insurance Regulation 62	June 4, 2021	Telehealth Flexibilities	<ul style="list-style-type: none"> • Clarifies that the definition of telehealth includes audio-only visits. • Clarifies that an insurer may engage in reasonable fraud, waste, and abuse detection efforts, including to prevent payments for services that do not warrant a separate billable encounter. 	July 6, 2021. However, DFS intends to adopt the emergency rule as a permanent rule and will publish a notice of proposed rulemaking in the State Register at a future date.

NEW YORK STATE POLICIES

Department of Health (DOH)

DOH issued emergency telehealth regulations (available [here](#)) to allow Medicaid providers to continue to provide telehealth services, including audio-only telephone services, effective June 25th. DOH has released updated guidance (available [here](#)), which indicates that Medicaid providers will be permitted to continue providing services under the same flexibilities awarded by DOH during the public State Disaster Emergency until permanent regulations are promulgated. The guidance and continuation of telehealth flexibilities **will remain in effect until the end of the federal Public Health Emergency (PHE) or until the issuance of subsequent guidance by DOH, whichever comes first**. The federal PHE is expected to last through 2021. The guidance largely does not include significant changes but does clarify that Article 29-I health facilities serving children in foster care are eligible to provide services via telehealth.

For Health Homes serving adults and children, Care Management Agencies (CMAs), and Care Coordination Organizations/Health Homes (CCOs) serving individuals with intellectual and developmental disabilities, DOH has indicated that flexibilities granted to such entities will continue for the duration of the federal PHE, or until notified by DOH, whichever comes first. However, DOH implores Health Homes, CMAs, and CCOs to work towards full reinstatement of non-emergency policy, procedures, and timelines in anticipation of the end of COVID-19 flexibilities. DOH anticipates that providers will have at least 30 days noticed prior to the termination of flexibilities. Such flexibilities that remain in place include:

- Use of electronic signatures, which will continue to be an acceptable Health Home practice permanently.
- Verbal consent when all other methods of obtaining consent are exhausted, permitted that a wet or electronic signature is obtained within 60 days of verbal consent.
- Extended timeframe for completion of the comprehensive assessment and plan of care for new members to 120 days from 60 days.
- Waiver of face-to-face requirements.

DOH also released the following updated guidance documents for Health Homes and children's providers:

- [COVID-19 Guidance for Health Homes](#)
- [COVID-19 Guidance Regarding 1915\(c\) HCBS Children's Waiver](#)
- [COVID-19 Guidance for CFTSS Providers](#)
- [Guidance for 1915\(c\) HCBS Children's Waiver Respite Providers](#)

Office of Mental Health (OMH)

OMH released a regulatory waiver on June 25th (available [here](#)) that grants temporary relief from various requirements of Title 14 of the New York Codes, Rules, and Regulations (NYCRR), in recognition of the ongoing effects of COVID-19 on operations. The waived provisions that will continue include:

- Regulations around the provision of telemental health services, including temporary approvals, expanded practitioner types, and audio-only services.
- Requirements continuing the reduction of minimum service durations and allowing rounding up of service times.
- Requirements to waive timeframes around treatment planning reviews and to waive initial in-person assessments.

These waivers will remain in effect for 60 days or until suspended. During this time, OMH intends to put forth and adopt permanent regulatory changes. The regulatory waiver may also be renewed by OMH at its discretion. The following flexibilities will not continue as part of the temporary waiver:

- Provisions allowing practitioners who are out of state and not licensed in New York State to provide services.
- Amended regulations regarding who can order and conduct in-person reviews for restraint and seclusion.
- Incident reporting and investigation timeline adjustments.
- Flexibility regarding the criminal background check process for staff.

OMH intends to issue a guidance document this week regarding the temporary waiver, which will be posted on the OMH website. Current OMH infection control guidance (available [here](#)) remains in effect.

Office of Addiction Services and Supports (OASAS)

OASAS released guidance on June 24th (available [here](#)) on continuing COVID-19 disaster emergency-related flexibilities for OASAS programs. The following telehealth flexibilities **will continue until they are permanently adopted** into the State's regulations under 14 NYCRR Part 830:

- Allow for the telehealth practitioner's distant site to be located anywhere within the United States;
- Allow for the patient's originating site to include temporary locations out-of-state;
- Allow for telephonic-only services;
- Allow for all OASAS services to be provided via telehealth if appropriate;
- Permit Certified Recovery Peer Advocates (CRPAs) to deliver telehealth services;
- Waive requirement that patients have an initial in-person evaluation prior to receiving telehealth services;
- Waive requirements for application and operating certificate designation for certified program approval to deliver telehealth services; and
- Waive APG requirements regarding minimum time requirements for service delivery.

The following provider flexibilities **will continue** for the duration of the federal PHE:

- Allow DATA 2000 waived practitioners to provide buprenorphine induction via telehealth and telephone-only.
- Allow providers to utilize certain video-conference technologies that are not fully compliant with HIPAA rules.
- Allow providers to use verbal consent to provide services, as documented in the patient record, until written consent can be obtained (written consent is still required to share patient records).

As of June 25th, flexibilities regarding background checks have **ended**:

- OASAS providers must resume routine processing of background checks for all prospective employees, including for staff hired on or after June 24th.
- In cases where background checks were abbreviated, required background checks must be submitted by August 25th.
- Staff members with abbreviated background checks and who have regular and substantial contact with patients must be supervised in accordance with OASAS regulations, beginning September 25th.

In addition, out-of-state practitioners that are not licensed in New York State are no longer permitted to deliver services.

Office for People with Developmental Disabilities (OPWDD)

OPWDD’s Amendment 06 to its 1915(c) waiver, which was approved by CMS and is effective July 1st, includes changes to permanently adopt telehealth and in-residence service delivery models initially used to address COVID-19. Other flexibilities provided in Appendix K may be continued up to **six months after the end of the ongoing federal PHE**.

However, OPWDD has released the following updated guidance documents regarding the expiration of flexibilities related to the criminal background check process for staff and related to training and recertification requirements.

- [Expiration of Interim Guidance Regarding the Criminal Background Check Process for Staff Members](#)
- [Updated Interim Training & Recertification Guidance](#)

State Education Department (NYSED)

NYSED has published an Advisory Notice (available [here](#)) stating that licensure and scope of practice exemptions pursuant to Executive Order 202 have expired, but NYSED “understands the concern regarding the short notice” and will take this into account into any inquiries into previously authorized activities. However, Title VIII professionals should “exercise good faith efforts” to return to compliance with all professional requirements.

FEDERAL POLICIES

HHS PREP Act Declaration

HHS issued a Declaration under the PREP Act in March 2020 to expand flexibility and waive liability for health care providers to offer “covered countermeasures” for COVID-19. Such countermeasures include any drug, biological product, or device used to address the pandemic, as authorized for use by the Food and Drug Administration. A January 28, 2021 amendment to this Declaration (available [here](#)) explicitly authorized additional personnel to prescribe, dispense, and administer COVID-19 vaccinations and other “covered countermeasures” for COVID-19. The amendment:

- Authorizes any health care provider licensed in a state to administer COVID-19 vaccinations in any other state or territory;

- Authorizes any physician, registered nurse, or practical nurse whose license or certification expired within the past five years to administer COVID-19 vaccinations, as long as the license was in good standing at the time of expiration; and
- Requires such personnel to complete COVID-19 vaccination training and, if their license is expired, complete an on-site observation period under a currently practicing professional.

The PREP Act Declaration preempts any state law that would otherwise prohibit healthcare professionals who are “qualified persons” from prescribing, dispensing, or administering COVID-19 vaccines or other covered countermeasures. Qualified persons and permitted activities under the Declaration include:

- State-licensed pharmacists may order and administer, and licensed or registered pharmacy interns may administer under supervision, FDA authorized, licensed, or approved COVID-19 vaccines following immunization training.
- State-licensed pharmacists may order and administer COVID-19 tests, including serology tests.
- Healthcare personnel using telehealth to order or administer covered countermeasures for patients in a state other than the state where the healthcare personnel are licensed or permitted to practice.

Medicare

Since the federal PHE remains in place, the current Medicare COVID-19 telehealth policies and flexibilities are in effect, including the ability to deliver services via telehealth to Medicare beneficiaries regardless of geographic restrictions or distant/originating site limitations and to deliver certain services via audio-only telephonic modalities. In December 2020, CMS [added](#) a large number of services to the telehealth permissible list, some on a permanent basis, some temporarily for the emergency, and some that will be available until the end of the calendar year in which the PHE ends.