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# **NEW JERSEY STATE SOCIETY OF ANESTHESIOLOGISTS**

**COVID-19 Legal Updates:  
Impact on Anesthesia  
June 23, 2020**

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# COVID-19 Legal Update Topics

1. Re-opening ambulatory surgery centers in New Jersey
2. Expanded scope of practice for advance practice nurses and physicians assistants

# Re-opening ambulatory surgery centers in New Jersey

- **March 23, 2020: Executive Order No. 109**
  - Suspended elective procedures.
- **May 15, 2020: Executive Order No. 145**
  - Allowed resumption of elective procedures.
- **May 19, 2020: Guidance for Ambulatory Surgery Centers to Resume Elective and Invasive Procedures issued by DOH**
  - Set initial guidance protocols for resuming elective procedures.
- **June 16, 2020: Executive Directive No. 20-016 issued by DOH**
  - Ordered updated protocols for elective procedures.

# Re-opening ambulatory surgery centers in New Jersey

- On March 23, 2020, Executive Order 109:
  - Suspended elective surgeries and invasive procedures in New Jersey, effective March 27, 2020 at 5:00pm.
  - Required businesses and non-hospital health care facilities to inventory PPE, ventilators, respirators, and anesthesia machines not required for critical health services and report to the State.
- Effective May 26, 2020 at 5:00am, Executive Order No. 109's suspension of elective surgeries and invasive procedures was rescinded.
- “Elective surgeries and invasive procedures” may proceed, subject to the limitations and precautions set out in government policies and guidance.

## **“Elective surgeries and invasive procedures”**

- any surgery or invasive procedure that can be delayed without undue risk to the current or future health of the patient as determined by the patient’s treating physician or dentist

# Conditions for ASCs to resume elective surgery and invasive procedures

1. Take additional steps to prevent spread of COVID-19
2. Plan for potential future surges
3. Resume procedures based on hospital capacity for transfers
4. Care prioritization and scheduling
5. PPE, staffing, disinfecting, equipment and transfer requirements

# Conditions for ASCs to resume elective surgery and invasive procedures *(continued)*

6. Cohort COVID-19 and non-COVID-19 patients
7. Require patient testing, self-quarantine and other measures
8. Policies surrounding visitors
9. Policies surrounding patient discharge
10. Reporting metrics to the State by the ASCs

# 1. Take additional steps to prevent spread of COVID-19

- Comply with State and CDC guidelines.
- Institute screening of staff for symptoms and have policies in place for removal of symptomatic employees from workplace.
- Enforce social distancing in work and common areas.
- Require masks for patients and permitted visitors, except for patients when receiving services that would prevent the use of a mask.
- Have a plan for cleaning and disinfecting prior to treating non-COVID-19 patients.

## 2. Plan for potential future surges

- Be prepared to modify resumption of clinical services in conjunction with surge status. As surge status increases, access to non-urgent care should decrease.
- Be prepared to repurpose and deploy staff to urgent care roles to the extent feasible.
- Follow CDC guidelines.

### 3. Resume procedures based on hospital capacity for transfers

At least one hospital that the ASC has a transfer agreement with:

- (1) shall not be on divert; and
- (2) shall be located in a region that has a downward or horizontal trajectory in all of the following:
  - Hospitalization
  - Intensive Care Unit (ICU)/ Critical Care utilization
  - Medical surgical bed utilization
  - Ventilator utilization

This information is available online on the NJDOH Hippocrates system and the NJ COVID-19 Data Dashboard, respectively.

## 4. Care prioritization and scheduling

- Gradually resume full scope of services when safe to do so and when physical layout and flow of care delivery areas permit social distancing.
- Have a process and policy for determining priority of types of services and scheduling. All cases should be reviewed by a governance group to ensure consistency.
- Governance group shall:
  - develop and review prioritization of surgical and procedural care for essential cases (fractures, cancer), and
  - model capacity based on extended turnover and spacing out procedures and any pre/post-procedure appointments.

# 5. PPE, staffing, disinfecting, equipment and transfers

- PPE:
  - Have a plan for patient and visitor use based on CDC and DOH guidelines.
  - Workers must wear appropriate PPE based on CDC and DOH guidelines.
  - Masking required for all employees.
  - Workers treating COVID-19 positive / presumptive positive patients must be trained on and have access to PPE.
  - Have PPE policies for workers not in direct patient care roles.
  - Have PPE policies: to ensure a minimum 7-day supply, to train staff on appropriate use of PPE in non-crisis situations, and about conservation, extended use and reuse of PPE per CDC, DOH and FDA guidelines.

# 5. PPE, staffing, disinfecting, equipment and transfers *(continued)*

- Staffing
  - Staff must be trained and educated for planned procedures, patient populations and on facility resources.
  - Use available testing when possible and implement policy addressing requirements and frequency of patient and staff testing. Staff should be screened based on CMS guidance.
  - Have qualified staff to safely perform procedures, provide care and conduct any needed follow-up.
- Disinfecting
  - Confirm supplies are COVID-19 compatible.
  - Ensure adequate supply of hand sanitizer, tissues, and non-touch trash receptacles with disposable liners in all restrooms and patient areas.

# 5. PPE, staffing, disinfecting, equipment and transfers *(continued)*

- Equipment and supplies
  - Ensure all equipment is up to date on maintenance and tested before use/reopening.
  - Check supplies for expiration.
  - Take necessary actions, such as removing magazine from waiting areas.
  - Update and confirm all preventive infection policies.
- Transfer agreements
  - Before each surgery day, confirm and document transfer arrangement with acute care facility and confirm that the acute care facility has appropriate number of ICU and non-ICU beds, PPE, ventilators and staff to support emergent transfers.

## 6. Cohort COVID-19 and non-COVID-19 patients

- Only perform procedures on COVID-19 positive patients where documented urgent care is necessary and for family planning.
- Coordinate scheduling to promote social distancing.
- Follow infection control protocols when treating COVID-19 positive patients.

# 7. Require patient testing, self-quarantine and other measures

- Patients must be tested within a 6-day maximum before scheduled procedure. If result not received, must re-test.
  - Must be a COVID-19 test that is FDA-approved, FDA-authorized or approved by the NJ Clinical Laboratory Improvement Services.
  - Any specimen collection method is permissible.
  - Test performed by the laboratory must be a nucleic acid amplification test (molecular tests are okay).
  - May not be an antibody test (rapid finger stick tests are not okay).
  - No test required if waiting for results would endanger the patient's health.
  - Recommended to contract with a lab for timely results.
- Counsel patients to self-quarantine, social distance, wear a mask (even when in their own home when necessary) and inform facility of any potential contact or symptoms.
- Have a process to screen patients and ensure patients followed self-quarantining, mask wearing and social distancing requirements since testing.

## 8. Policies surrounding visitors

- No visitors should be allowed, except:
  - If the patient is a pediatric, he or she may have one parent or guardian.
  - A same-day surgery or procedure patient may have one support person.
  - As permitted in DOH waivers, available on the COVID-19 NJ DOH webpage.

# 9. Policies surrounding patient discharge

- The policies surrounding ambulatory surgery center patient discharges are not changed.

# 10. Reporting metrics to the State by the ASCs

- ASCs must report data about capacity and supplies on a daily basis, in compliance with Executive Order No. 111 and as required by Executive Directive No. 20-016.
- The reporting portal is available at [ppe.njha.com](http://ppe.njha.com).
- Purpose is to ensure the ability of hospitals and health systems to surge during a potential second wave.

# Expanded scope of practice for APNs, CRNAs and PAs

- **April 1, 2020: Executive Order No. 112**
  - APN scope of practice waivers
  - PA scope of practice waivers
- **Executive Order No. 112 also:**
  - Reactivated licensed of retired healthcare professionals
  - Granted healthcare providers immunity from liability
  - Waived CDS registration requirement as a precondition to registering with the Prescription Monitoring Program for providers granted a temporary license
- **April 17, 2020: Letter from DOH Commissioner**
  - Anesthesiology APN and CRNA scope of practice waivers

# General Supervisory Requirements for APNs

Generally, APNs must abide by the following supervision requirements:

- Initiate orders for CDS in compliance with the joint protocols established with the collaborating physician.
- Write orders in compliance with joint protocols or at a physician's direction.
- Print the collaborating physician's name on orders.
- Review patient charts with collaborating physician.
- Have collaborating physician readily available.
- Annually review, update and sign joint protocols with collaborating physician.
- Authorize qualifying patients and issue written instructions for medical cannabis in compliance with joint protocols or at physician's direction.
- Make medical necessity determinations for substance abuse disorder treatment in compliance with joint protocols.
- Dispense narcotic drugs for maintenance treatment or detoxification only if collaborating physician provides written approval.

# General Supervisory Requirements for PAs

Generally, PAs may only provide the following when supervised by a supervising physician:

- Non-invasive lab procedures and related studies.
- Injections, administering medications and requesting diagnostic studies.
- Suture and care for facial wounds, traumatic wounds requiring suturing in layers, and infected wounds.
- Write prescriptions or order medications in an inpatient or outpatient setting or when ordering or prescribing CDS.
- Prescribe the use of patient restraints.
- Authorize qualifying patients and issuing written instructions for medical cannabis.
- Assist a supervising surgeon in the operating room when deemed necessary.
- Perform other medical services that are delegated by a supervising physician under a signed delegation agreement.
- Dispense narcotic drugs for maintenance treatment or detoxification only if collaborating physician provides written approval.

# Purpose of Expanded Scope of Practice

- Governor Murphy's stated purpose in expanding the scope of practice for APNs and PAs was to reduce physician oversight to deploy APNs and PAs to meet the anticipated needs with more autonomy, greater agility and with all necessary tools, including independent authority to prescribe controlled dangerous substances when appropriate.

# APN Expanded Scope of Practice

The following APN requirements are suspended and waived:

- Entering into a joint protocol with a collaborating physician who is present and readily available through electronic communications (*NJSA 45:11-49*)
- Including the name, address and phone number of a collaborating physician on prescriptions or orders (*NJSA 45:11-49*)
- Reviewing patient charts and records with the collaborating physician (*NJSA 45:11-49*)
- Obtaining authorization or written approval from collaborating physician to dispense narcotic drugs for maintenance treatment or detoxification treatment or to determine medical necessity for services for treatment of substance use disorder (*NJSA 45:11-49.3*)

# Anesthesiology APN and CRNA Expanded Scope of Practice

The following specific Anesthesiology APN and CRNA requirements are suspended and waived:

- Administer general or major anesthesia only when monitored by and under the supervision of an anesthesiologist, or a physician with privileges in accordance with the medical staff bylaws to administer or supervise the administration of anesthesia.
- Administer anesthetic agents for conscious sedation only when under the supervision of a physician with privileges to administer or supervise who is immediately available for consult.
- Administrations to be done when an anesthesiologist is present during (1) induction, (2) emergence, and (3) critical change in status

Note that this will last throughout the Public Health Emergency.

# PA Expanded Scope of Practice

The following PA requirements are suspended and waived:

- Obtaining physician supervision (*NJSA 45:9-27.15, NJSA 45:9-27.16(b), NJSA 45:9-27.17, and NJSA 45:9-27.18*)
- Entering into a signed delegation agreement limiting the scope of practice to procedures set forth in the agreement and customary to the physician's medical specialty, either delegated or explicitly authorized (*NJSA 45:9-27.16*)
- Obtaining authorization to order or prescribe a controlled dangerous substance (*NJSA 45:9-27.19*)
- Limiting assistance provided in the operating room (*NJSA 45:9-27.16*)

# PA Expanded Scope of Practice *(continued)*

Physician supervisory responsibilities are also suspended and waived as they apply to both the physicians and PAs (*NJSA 45:9-27.17*).

# Limitations on the Expanded Scope of Practice

- Duration of expanded scope of practice:
  - During the State of Emergency or Public Health Emergency, whichever is longer.
- APNs and PAs may only act within the scope of their education, training, experience and competence.

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