

Governor's Executive Order 112 Gives Civil Immunity To Healthcare Facilities and Limited Group of Practitioners

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Below is a summary of the Executive Order 112, which was issued in an effort to expand the capacity of NJ's healthcare by (i) waiving certain requirements to allow retired and foreign physicians to become temporarily licensed in NJ; (ii) removing certain limits on the scope of practice for Advanced Practice Nurses and Physician Assistants, for the duration of the longer of the State of Emergency or Public Health Emergency; and (iii) providing civil immunity for acts done in good faith in furtherance to the State's COVID-19 response by the temporary licensees, APN/PAs and healthcare facilities, including hospitals and nursing homes. Notably, there is no civil immunity for private practitioners, who are not employees or agents of hospitals, to provide care outside of their scope of practice to COVID-19 patients.

Retired Physicians

For the duration of the State of Emergency/Public Health Emergency, whichever is longer:

- Department of Community Affairs (DCA) is authorized to reactivate the license of any healthcare professional who previously practiced in NJ who retired from active practice within the last 5 years.
- Retiree will need to submit the appropriate form to DCA.
- Statutory requirements for fees, affidavits of employment during retirement, proof of CE credits and requirements pertaining to liability insurance are suspended and waived.

Foreign Physicians

For the duration of the State of Emergency/Public Health Emergency, whichever is longer:

- DCA is authorized to issue a license to practice medicine to any physician (MD, DO, or plenary licensed equivalent in another country) who is licensed, in good standing, in another country who has engaged in clinical practice within the last 5 years.

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- Foreign physician must submit the appropriate form to DCA.
 - Statutory requirements for license exams, premedical and additional education, exam and other fees and requirements pertaining to malpractice insurance are suspended and waived.

Advanced Practice Nurses (APN)

For the duration of the State of Emergency/Public Health Emergency, whichever is longer:

- Certain statutory provisions limiting APN scope of practice will be suspended and waived and compliance with the provisions will not be required for APNs acting within their scope of training, experience and competence.
- No joint protocol with an individual collaborating physician is required.
- The name/address/phone number of the collaborating physician on prescriptions or orders is not required.
- Review of patient charts/records with collaborating physician is not required.
- No authorization or written approval of collaborating physician for dispensing narcotic drugs for maintenance treatment or detoxification or to determine medical necessity for treatment of substance use disorders.

Physician Assistants (PA)

For the duration of the State of Emergency/Public Health Emergency, whichever is longer:

- Certain statutory provisions limiting PA scope of practice will be suspended and waived and compliance with the provisions will not be required for PAs acting within their scope of training, experience and competence.
- No physician supervision of PA is required.
- PA is not required to enter into a delegation agreement limiting the scope of practice of the PA to the supervising physician's specialty, delegated or as explicitly authorized.
- Physician supervision requirements are waived for the supervising physicians.
- No authorization required to order or prescribe a controlled dangerous substance.
- No limit to the type of assistance given by PA in the OR.

Immunity from Civil Liability

Civil liability immunity for good faith acts or omissions, whether or not within the scope of practice (where applicable), in the course of providing healthcare services in support of the NJ's COVID-19's

response. This applies to:

- Retired physicians who apply for reactivation and are licensed under the EO-112.
- Foreign physicians who are licensed under the EO-112.
- APNs/PAs acting under EO-112.
- Health care facilities (as defined in N.J.S.A. 26: 13-2), modular treatment facilities, and any other site designated by DOH for temporary use for the purpose of providing essential services in support of the State's COVID-19 response, including hotels and student dorms for acts done by employees, agents, volunteers, servants or representatives. Immunity does not extend to a crime, actual fraud, actual malice, gross negligence or willful misconduct.

Under N.J.S.A. 26:13-2, "Health care facility" means any non-federal institution, building or agency, or portion thereof whether public or private for profit or nonprofit that is used, operated or designed to provide health services, medical or dental treatment or nursing, rehabilitative, or preventive care to any person.

Health care facility includes, but is not limited to: an ambulatory surgical facility, home health agency, hospice, hospital, infirmary, intermediate care facility, dialysis center, long-term care facility, medical assistance facility, mental health center, paid and volunteer emergency medical services, outpatient facility, public health center, rehabilitation facility, residential treatment facility, skilled nursing facility, and adult day care center.

Health care facility also includes, but is not limited to, the following related property when used for or in connection with the foregoing: a laboratory, research facility, pharmacy, laundry facility, health personnel training and lodging facility, patient, guest and health personnel food service facility, and the portion of an office or office building used by persons engaged in health care professions or services.

CDS Registration

For the duration of the State of Emergency/Public Health Emergency, whichever is longer, no CDS Registration is required for registering for the Prescription Monitoring Program (PMP) for anyone granted a temporary license by the DCA who holds a valid DEA registration.

Signature Requirements for Prepaid Funeral Arrangements

For the duration of the State of Emergency/Public Health Emergency, whichever is longer, written signature requirements for certain prepaid funeral arrangements and authorization to commence funeral services can be met by electronic signature.

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