

## Published Articles

# Elective Surgeries and Invasive Procedures Set to Resume in New Jersey: Department of Health and Division of Consumer Affairs Issue Guidance

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*Greenbaum, Rowe, Smith & Davis LLP Client Alert*

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On May 15, 2020, New Jersey Governor Phil Murphy signed Executive Order 145, rescinding the suspension on elective surgeries and invasive procedures in the state effective 5:00am on May 26, 2020.

The Governor further mandated that the Department of Health (DOH) and Division of Consumer Affairs (DCA) issue guidance regarding the limitations and precautions under which elective surgeries and invasive procedures can resume in healthcare facilities and in outpatient settings.

### **Department of Health Guidance**

On May 19, 2020, the DOH issued two guidance documents, one for **hospitals** and one for **ambulatory surgery centers**. The guidance documents for both facility types are almost identical in their areas of focus, as summarized below. Providers, however, should review the full DOH guidance to ensure compliance with all requirements therein before resuming elective surgeries and invasive procedures.

**Conditions for Facilities to Resume Elective Surgeries and Invasive Procedures** – Facilities must ensure additional steps are implemented to protect patients and their healthcare workforce from COVID-19 exposure including implementation of state and CDC guidelines, screenings for staff with symptoms, enforcing social distancing and mask usage, utilization of COVID-19 and non-COVID-19 zones, and cleaning and disinfecting plans. Hospitals are also required to have sufficient plans for future surges including allocation of resources and repurpose/redeployment of staff to urgent care roles.

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**Eligibility to Resume Elective Surgeries and Invasive Procedures** – Facilities must review capacity data to ensure a downward trajectory of COVID-19 cases. Hospitals must also have sufficient availability and staffed ICU, Critical Care and Medical Surgical beds, while ambulatory surgery centers must ensure sufficient staff training on the use of personal protective equipment (PPE) and infection prevention practices before resuming elective surgeries and invasive procedures.

**Standards to Guide Prioritization Decisions** – In addition to ensuring that social distancing is maintained, facilities must establish a prioritization policy for providing care and scheduling cases. All cases must be reviewed by a site-based governance group to ensure consistency and consider the urgency of the case. Hospitals are required to utilize a Level 1-5 system to rank the urgency of procedures. The guidance also includes a list of factors for the governance group to consider in making its prioritization decisions.

**PPE and Staffing Requirements** – Facilities must ensure they have sufficient supplies of PPE to protect healthcare workers and patients. They must also ensure sufficient staffing for all planned surgical and invasive procedures and update their disinfection and cleaning protocols to ensure they are COVID-19 compatible. Ambulatory surgery centers are also required to have a transfer agreement in place with an acute healthcare facility to prepare for a potential second wave of COVID-19 infections.

**Cohorting COVID-19 and Non-COVID-19 Patients** – Hospitals are required to separate COVID-19 and non-COVID-19 patients from each other, while ambulatory surgery centers are prohibited from performing procedures on COVID-19 positive patients.

**Requirements That Patients Seeking Procedures Undergo Testing, Self-Quarantine and Other Preventative Measures** – In hospitals, elective surgical or invasive procedures for COVID-19 positive patients must only be performed if the procedure is categorized as a Level 1 (lifesaving/critical), Level 2 (urgent/intensive) or Level 3 (essential/acute), which are defined in the guidance. Furthermore, scheduling for all facilities must be done in a manner that promotes social distancing, and all patients must be tested no more than 96 hours before a scheduled procedure with a preoperative COVID-19 RT-PCR test to ensure that the patient is COVID-19 negative. Further, facilities must counsel patients on COVID-19 practices such as social distancing, self-quarantining and notification of the facility of symptoms or contact with a COVID-19 diagnosed individual or those who are presenting COVID-19 symptoms.

**Policies Surrounding Visitors** – Facilities are required to continue prohibiting visitors with the following exceptions: (1) pediatric patients are entitled to have one parent or guardian present; (2) same-day surgery or procedure patients may have one support person present; and (3) outpatients may be accompanied by one adult.

**Policies Surrounding Discharge of Patients** – The DOH has expressly confirmed that facility discharge policies do not need to be changed.

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**Reporting Metrics for the Resumption of Procedures** – In an effort to continue maintaining data in preparation for a possible second surge of infections, hospitals must continue to collect and report data through the portal regarding COVID-19 case counts, non-COVID-19 case counts, and capacity data. Furthermore, ambulatory surgery centers must continue reporting PPE inventory and caseloads.

**Key Resources, Recommendations, and Guidance Documents** – The DOH posted links to a number of state and federal documents providing further guidance on each of these areas of focus and the requirements set forth within each.

### Division of Consumer Affairs Guidance

On May 18, 2020, the DCA published an **Administrative Order and Notice of Rule Adoption** outlining its policy guidance regarding the resumption of elective procedures in any outpatient setting. The guidance identifies several key areas of focus, as summarized below. Once again, however, providers should review the full DCA guidance to ensure compliance with all requirements therein before resuming elective surgeries and invasive procedures.

**Avoid Person-To-Person Contact In the Office** – Healthcare professionals should utilize telemedicine where possible, triage whether in-person appointments are necessary, prioritize critical services and at-risk populations, and sufficiently socially distance, screen and require protective equipment for those that do visit the office.

**Facilitate Social Distancing Within the Office** – Healthcare professionals must install physical barriers and minimize patient contact with staff in the reception area along with isolating patients with respiratory illnesses and minimizing the number of individuals in examination and other rooms. Furthermore, to the extent possible, staff should be given their own workspace and supplies/equipment to minimize sharing.

**Adopt Enhanced Office Cleaning and Disinfection** – Healthcare professionals must allocate sufficient time between appointments for appropriate disinfection, ensure compliance with CDC guidelines, remove any waiting room materials intended for reuse and which are difficult to disinfect, and allow staff sufficient break time for hand washing throughout the day.

**Establish Rigorous Protections for Staff** – Healthcare professionals should accommodate work-from-home, if possible, along with monitoring the temperatures of all staff in the office, ensuring they utilize sufficient PPE, and staggering schedules to minimize infection risks.

**Stay Informed About Developments and Obligations** – Healthcare professionals must continue to monitor CDC and state guidance along with continuing to log patients for contact tracing and reporting of COVID-19 cases and exposure to the local boards of health.

## Published Articles (Cont.)

The DCA also made clear that healthcare licensees performing elective surgery or elective invasive procedures involving direct contact with the patient's face, eyes or mouth, or which present a high risk of aerosolization, shall not only comply with the items above but also the following requirements:

- Defer elective surgery or procedures or routine dental or eye care, if a patient is COVID-19 positive or symptomatic, until at least 10 days have passed since the patient first experienced symptoms and at least 3 days have passed since recovery
- Postpone any elective surgery or procedure for asymptomatic patients if a postponement will be unlikely to result in an adverse outcome
- Weigh, and review with the patient, the risks of elective surgery, invasive procedures or routine eye or dental care if the patient is identified to be at a higher risk of contracting COVID-19
- Wear PPE to protect mucous membranes of the eyes, nose and mouth during aerosol-generating procedures as well as those likely to generate splashing or spattering of blood or other bodily fluids
- Implement additional infection control measures, assuring that all surfaces are disinfected between patients
- Dental professionals should continue to comply with OSHA regulations and CDC Recommended Infection Control Practices for Dentistry and should use high volume evacuators and isolation strategies including rubber dams when appropriate to limit exposure to aerosols
- Eye care professionals should use a slit lamp "breath" shield/barrier that is as large as possible without interfering with clinical care

It is anticipated that the Department of Health and the Division of Consumer Affairs will continue to adjust their guidance and policies as circumstances evolve here in New Jersey. We will continue to monitor these agencies for new developments and will keep you advised accordingly.

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