

NEW YORK DOH EXTENDS EMERGENCY RULES REQUIRING HOSPITALS AND NURSING HOMES TO MAINTAIN SUFFICIENT SUPPLIES OF PPE

Hodgson Russ Healthcare Alert
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On November 4, 2020, the New York State Department of Health (DOH) extended emergency rules requiring hospitals and nursing homes to possess and maintain supplies of personal protective equipment (PPE), including masks, gloves, respirators, face shields and gowns, sufficient to protect healthcare personnel, consistent with Centers for Disease Control guidance.

For hospitals, the emergency rulemaking extends 10 NYCRR § 405.11(g), which requires, by September 30, 2020, a 90-day supply of PPE at a usage rate equal to the average daily rate of usage between April 13, 2020 and April 27, 2020. For nursing homes, the emergency rulemaking extends 10 NYCRR § 415.19(f), which requires, also by September 30, 2020, a 60-day supply of PPE at a usage rate equal to the highest average daily rate of usage between April 19, 2020 and April 27, 2020.

The emergency rules also authorize DOH, in its discretion, to extend the September 30 deadlines to October 30, 2020, if the facility can demonstrate that: (i) its inability to purchase PPE is solely attributable to supply chain issues beyond its control and purchasing PPE at market rates would facilitate PPE-vendor price gouging; or (ii) the seven-day rolling average of new COVID-19 infection in New York is below 1.5% of the total seven-day rolling average of COVID-19 tests performed over the same period; and ten or fewer U.S. States have a seven-day average of new COVID-19 infections exceeding 5,000 cases. If the hospital or nursing home fails to possess and maintain the required supplies of PPE, the emergency rules authorize DOH to revoke or suspend the facility's license, subject to a 14-day grace period for first-time violations to achieve compliance.

These rules extend emergency rules previously published in the New York State Register on August 5, 2020 (for hospitals) and August 12, 2020 (for nursing homes).

Please contact Roopa Chakkappan (716.848.1258) and Jane Bello Burke (518.433.2404) with any questions you have on how this extension may impact your health care facility.

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