

# CORONAVIRUS (COVID-19) FEDERAL AND NEW YORK HEALTH CARE – PRIMARY LEGAL SOURCES

A note from Katten’s Health Care team to our friends and colleagues:

Our work involving the health care law of COVID-19 has necessarily involved a large body of “new law” and new resources. Katten’s health care attorneys have consulted many of these links repeatedly during the past few weeks, and we thought it would be helpful to collect them in one place. We hope it will be helpful for you as well.

These links will be regularly updated; don’t hesitate to send us your suggestions. For additional information or assistance, please contact [Joseph Willey](#) or other members of Katten’s [Health Care practice](#).

## Federal

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**H.R.6201 Families First Coronavirus Response Act (Mar. 18, 2020)** (among other things, establishes requirements for providing coronavirus diagnostic testing at no cost to consumers, treats personal respiratory protective devices as countermeasures eligible for certain liability protections, and temporarily increases the Medicaid federal medical assistance percentage (FMAP))

<https://www.congress.gov/bill/116th-congress/house-bill/6201/text>

**President’s proclamation of national emergency (Mar. 13, 2020)**

<https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>

**CMS Coronavirus Emergency webpage**, which points to press releases, billing and coding guidance, survey and certification guidance, lab test coverage, telemedicine, etc.:

<https://www.cms.gov/About-CMS/Agency-Information/Emergency/EPRO/Current-Emergencies/Current-Emergencies-page>, which includes here and elsewhere on the CMS website, e.g.:

- **COVID-19 Checklists and Tools re State Medicaid & CHIP Programs (3/22/2020)** (generally described here: <https://www.cms.gov/newsroom/press-releases/trump-administration-releases-covid-19-checklists-and-tools-accelerate-relief-state-medicaid-chip>)
  - **1115 Waiver Opportunity and Application Checklist**  
<https://www.medicaid.gov/medicaid/section-1115-demonstrations/1115-application-process/index.html>
  - **1135 Waiver Checklist**  
<https://www.medicaid.gov/state-resource-center/disaster-response-toolkit/cms-1135-waivers/index.html> [See also Section 1135 information listed separately below.]
  - **1915(c) Appendix K Template**

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<https://www.medicaid.gov/state-resource-center/disaster-response-toolkit/hcbs/appendix-k/index.html>

- **Medicaid Disaster State Plan Amendment Template**

<https://www.medicaid.gov/state-resource-center/disaster-response-toolkit/state-plan-flexibilities/index.html>

- CMS Announces Findings at Kirkland Nursing Home and New Targeted Plan for Healthcare Facility Inspections in light of COVID-19  
<https://www.cms.gov/newsroom/press-releases/cms-announces-findings-kirkland-nursing-home-and-new-targeted-plan-healthcare-facility-inspections>
- CMS Approves Medicaid Section 1135 Waivers for 11 Additional States in Response to COVID-19  
<https://www.cms.gov/newsroom/press-releases/cms-approves-medicaid-section-1135-waivers-11-additional-states-response-covid-19>
- President Trump Expands Telehealth Benefits for Medicare Beneficiaries During COVID-19 Outbreak  
<https://www.cms.gov/newsroom/press-releases/president-trump-expands-telehealth-benefits-medicare-beneficiaries-during-covid-19-outbreak>
- Medicare Telemedicine Health Care Provider Fact Sheet  
<https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>
- Medicare Telehealth FAQs  
<https://edit.cms.gov/files/document/medicare-telehealth-frequently-asked-questions-faqs-31720.pdf>
- CMS Announces New Measures to Protect Nursing Home Residents from COVID-19  
<https://www.cms.gov/newsroom/press-releases/cms-announces-new-measures-protect-nursing-home-residents-covid-19>
- Medicare Coverage and Payment Related to COVID-19 Fact Sheet  
<https://www.cms.gov/files/document/03052020-medicare-covid-19-fact-sheet.pdf>
- CMS Releases Recommendations on Adult Elective Surgeries, Non-Essential Medical, Surgical, and Dental Procedures During COVID-19 Response  
<https://www.cms.gov/newsroom/press-releases/cms-releases-recommendations-adult-elective-surgeries-non-essential-medical-surgical-and-dental>
- CMS Publishes First Set of COVID-19 Frequently Asked Questions (FAQs) for State Medicaid and Children’s Health Insurance Program (CHIP) Agencies

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<https://www.cms.gov/newsroom/press-releases/cms-publishes-first-set-covid-19-frequently-asked-questions-faqs-state-medicaid-and-childrens-health>

- Medicaid and CHIP Coverage and Payment Related to COVID-19 Fact Sheet  
<https://www.cms.gov/files/document/03052020-medicaid-covid-19-fact-sheet.pdf>
- COVID-19 Frequently Asked Questions for State Medicaid and CHIP Agencies  
<https://www.medicare.gov/state-resource-center/downloads/covid-19-faqs.pdf>
- Medicaid Telehealth Guidance  
<https://www.medicare.gov/medicaid/benefits/downloads/medicaid-telehealth-services.pdf>

## HHS OCR notification of enforcement discretion for telehealth

<https://www.hhs.gov/about/news/2020/03/17/ocr-announces-notification-of-enforcement-discretion-for-telehealth-remote-communications-during-the-covid-19.html>

## Re Section 1135 Waivers

- [Social Security Act § 1135](#) (codified at 42 U.S.C. § 1320b–5) (“Authority To Waive Requirements During National Emergencies”); [1135 Waivers](#) (CMS master web page); [Waiver – At a Glance](#) (CMS memo); [1135 Waivers and the Emergency Preparedness Rule](#) (CMS slide presentation); [Medicare FFS Additional Emergency and Disaster-Related Policies and Procedures That May Be Implemented Only With a § 1135 Waiver](#) (CMS memo, March 15, 2019); [Public Health Emergency Declaration Questions and Answers](#) (CMS memo)
- [President’s declaration](#) of “national emergency, beginning March 1, 2020”; [HHS Secretary Azar’s authorization](#) of Section 1135 waivers and modifications effective at 6:00 P.M. on March 15, having retroactive effect to March 1, but only to the extent determined necessary by CMS.
- CMS article, “[Medicare Fee-for-Service \(FFS\) Response to the Public Health Emergency on the Coronavirus \(COVID-19\)](#)” (March 20, 2020); “[COVID-19 Emergency Declaration Health Care Providers Fact Sheet](#)” (March 13, 2020).
- See also **COVID-19 Checklists and Tools re State Medicaid & CHIP Programs**, above.
- **State Medicaid Waivers; Individual Health Care Provider Waivers:** See, generally, [Requesting an 1135 Waiver](#) and [1135 Waiver Request, Communication Method - Best Practice](#) (CMS memos). States of [Florida](#) (March 16, 2020) and [Washington](#) (March 19, 2020) waivers. CMS [press release](#) re Florida.
- CMS Administrator has stated that all sec. 1135 approval letters will be posted publicly [here](#) (“Federal Disaster Resources”).

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## OIG re COVID-19

<https://oig.hhs.gov/coronavirus/index.asp>

## New York State

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### Governor Cuomo's Executive Orders

<https://www.governor.ny.gov/executive-orders>

- [No. 202.10: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency](#) (Mar. 23, 2020) (numerous provisions ensuring adequate bed capacity, supplies, and providers to treat patients affected with COVID-19, e.g., increasing the number of beds available to patients; revising the definition of ambulance emergency medical services; allowing certain healthcare providers to operate without physician supervision/collaborative relationships/agreements; allowing certain healthcare providers licensed in other states to provide services; emergency treatment protocols; definition of medical control; easing recordkeeping requirements; use of students; use of volunteers; dispensing hydroxychloroquine or chloroquine, etc.)
- [No. 202.9: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency](#) (Mar. 21, 2020) (re banking law, forbearance of payments, ATM/overdraft/credit card fees)
- [No. 202.8: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency](#) (Mar. 20, 2020) (extending time limits under “procedural laws of the state”; provisions re driver’s licenses, motor vehicle registrations, corporate shareholder meetings; modifying E.O. 202.6 re work from home & essential businesses; no enforcement of eviction or foreclosure; tax filing and payment late penalties & interest)
- [No. 202.7: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency](#) (Mar. 19, 2020) (provisions relating to notarial acts, personal care services, and telecommuting/work from home)
- [No. 202.6: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency](#) (Mar. 18, 2020) (provisions relating to telecommuting/work from home)
- [No. 202.5: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency](#) (suspension of various Education Law provisions and regulations to allow physicians, RNs, LPNs, NPs, and PAs licensed and in current good standing in any state to practice in New York State; various nursing home and HHAs and other programs provisions; temporary hospital facilities; abbreviated training of direct support professionals; abbreviated medication administration training, and others)
- [No. 202.4: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency](#) (local government or political subdivision non-essential personnel, state workers, school closures)

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- [No. 202.3: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency](#) (cancelling large gatherings and events)
- [No. 202.2: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency](#) (provisions regarding elections)
- [No. 202.1: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency](#) (suspending various provisions of DOH regulations to allow hospitals to make temporary changes to physical plants, bed capacities, and services provided; allowing construction applications for temporary hospital location to be approved without considering recommendation of health systems agency; allowing clinical labs to operate temporary collecting stations; allowing Art. 16 facilities to increase and exceed certified capacity; other health care related provisions)
- [No. 202: Declaring a Disaster Emergency in the State of New York](#) (suspension of various laws, including relating to rapid discharge, transfer or receipt of patients, PRI, EMS, personal care services, COVID-19 testing, rapid approval of telemental health services)

**NYS DOH – Communicable Diseases Reporting and Control** – Adding Severe or Novel Coronavirus, Effective 2020-02-06 – Amending sections 2.1 and 2.5 of Title 10 NYCRR.

NYS Register Feb. 26, 2020, pp. 38-41, <https://www.dos.ny.gov/info/register/2020/022620.pdf>

**NYS DOH Coronavirus Information for Providers** <https://coronavirus.health.ny.gov/information-providers>. Some other interesting DOH issuances, include, e.g.:

- COVID-19 Special Edition Medicaid Updates, e.g., Telephonic Communication Services, Coverage and Reimbursement Policy, and Comprehensive Telehealth Guidance  
[https://www.health.ny.gov/health\\_care/medicaid/program/update/2020/index.htm](https://www.health.ny.gov/health_care/medicaid/program/update/2020/index.htm)
- Health Advisory: Respiratory Illness in Nursing Homes and Adult Care Facilities in Areas of Sustained Community Transmission of COVID-19  
[https://coronavirus.health.ny.gov/system/files/documents/2020/03/22-doh\\_covid19\\_nh\\_alf\\_ilitest\\_032120.pdf](https://coronavirus.health.ny.gov/system/files/documents/2020/03/22-doh_covid19_nh_alf_ilitest_032120.pdf)
- Health Advisory: COVID-19 Guidance for Hospital Operators Regarding Visitation Updated Guidance Regarding Obstetrical and Pediatric Settings  
[https://coronavirus.health.ny.gov/system/files/documents/2020/03/healthadvisoryupdatehospitalvisitation\\_obpeds\\_3.21.20.pdf](https://coronavirus.health.ny.gov/system/files/documents/2020/03/healthadvisoryupdatehospitalvisitation_obpeds_3.21.20.pdf)
- UPDATED Guidance for Emergency Approval for Additional Capacity or alternative sites for testing, triage, screening or treatment related to COVID-19 Surge Response  
[https://coronavirus.health.ny.gov/system/files/documents/2020/03/doh\\_emergencyapprovalscapacitysites\\_031920.pdf](https://coronavirus.health.ny.gov/system/files/documents/2020/03/doh_emergencyapprovalscapacitysites_031920.pdf)
- Emergency Medicaid Pharmacy Guidance  
<https://oasas.ny.gov/system/files/documents/2020/03/nys-doh-emergency-medicaid-pharmacy-guidance-3-12-20-1.pdf>

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- Coronavirus-related Guidance for Health Homes and Children’s Waiver Services  
[https://www.health.ny.gov/health\\_care/medicaid/program/medicaid\\_health\\_homes/policy/index.htm](https://www.health.ny.gov/health_care/medicaid/program/medicaid_health_homes/policy/index.htm)
- Hospital Visitation Guidance  
<https://coronavirus.health.ny.gov/system/files/documents/2020/03/covid19-hospital-visitation-guidance-3.18.20.pdf>
- Interim Guidance for Home Care Services Regarding COVID-19  
[https://coronavirus.health.ny.gov/system/files/documents/2020/03/03-16-20\\_home\\_care\\_services.pdf](https://coronavirus.health.ny.gov/system/files/documents/2020/03/03-16-20_home_care_services.pdf)
- Medicaid Coverage and Reimbursement Policy for Services Related to COVID-19  
[https://coronavirus.health.ny.gov/system/files/documents/2020/03/2020-03-10\\_covid-19.pdf](https://coronavirus.health.ny.gov/system/files/documents/2020/03/2020-03-10_covid-19.pdf)
- Nursing Home Guidance  
[https://coronavirus.health.ny.gov/system/files/documents/2020/03/nursing\\_home\\_guidance.pdf](https://coronavirus.health.ny.gov/system/files/documents/2020/03/nursing_home_guidance.pdf)
- New York State Task Force on Life and the Law DOH Ventilator Allocation Guidelines  
[https://www.health.ny.gov/regulations/task\\_force/reports\\_publications/docs/ventilator\\_guidelines.pdf](https://www.health.ny.gov/regulations/task_force/reports_publications/docs/ventilator_guidelines.pdf)
- DOH COVID-19 Guidance for the Authorization of Community-Based, Long-Term Services and Supports Covered by Medicaid  
<https://www.nyshcp.org/common/Uploaded%20files/Public%20Policy/EP/2020%20Coronavirus/NYSDOH/DLTCCCOVID19Guidance31820.pdf>
- DOH COVID-19 Guidance for CHHAs, LTHHCPs, LHCSAs, Hospices  
[https://www.nyshcp.org/common/Uploaded%20files/Public%20Policy/EP/2020%20Coronavirus/NYotification\\_102830.pdf](https://www.nyshcp.org/common/Uploaded%20files/Public%20Policy/EP/2020%20Coronavirus/NYotification_102830.pdf)

**NYS Office for People with Developmental Disabilities Coronavirus Guidance**, including re telehealth, intermediate care facilities, etc.

<https://opwdd.ny.gov/coronavirus-guidance>

**NYS Office of Mental Health Coronavirus Guidance**, including re telemental health, behavioral health programs, health homes, visitor restrictions, etc.

<https://omh.ny.gov/omhweb/guidance/>

**NYS Office of Alcoholism and Substance Abuse Services Coronavirus Guidance**

<https://oasas.ny.gov/keywords/coronavirus>, including, e.g.:

- OASAS Prevention Telepractice Services  
<https://oasas.ny.gov/system/files/documents/2020/03/prevention-telepractice-services.pdf>

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- OASAS Telepractice Waiver  
<https://oasas.ny.gov/system/files/documents/2020/03/letter-of-counsel-covid-19-3.9.2020-002-signed.pdf>
- OASAS Telepractice Waiver Update  
[https://oasas.ny.gov/system/files/documents/2020/03/telepractice\\_waiver-update.pdf](https://oasas.ny.gov/system/files/documents/2020/03/telepractice_waiver-update.pdf)
- OASAS Telepractice Attestation  
<https://oasas.ny.gov/system/files/documents/2020/03/attestation-covid-19.pdf>

## **NYS Department of Education Office of the Professions COVID-19 Information for the Licensed Professions**

<http://www.op.nysed.gov/COVID-19.html>

## **NYS Department of Financial Services**

[https://www.dfs.ny.gov/reports\\_and\\_publications/press\\_releases/pr202003201](https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202003201)

## **New York City**

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### **Mayor De Blasio's Emergency Executive Orders:**

- <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eeo-98.pdf> (declaration of local state of emergency)
- <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eeo-99.pdf> (prohibition of large gatherings or events)
- <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eeo-100.pdf> (various provisions, including suspension of elective procedures at NYC H+H and other NYC hospitals and AMCs)
- <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eeo-101.pdf> (suspension of ride shares)
- <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eeo-102.pdf> (3/20/2020) (numerous provisions especially re businesses to be closed, essential businesses, work from home, public gatherings, and extending/amending prior EOs)

### **NYC Department of Health and Mental Hygiene Coronavirus Information**

<https://www1.nyc.gov/site/doh/health/health-topics/coronavirus.page>

### **NYC Guidance for Schools, Businesses and Facilities**

<https://www1.nyc.gov/site/doh/health/health-topics/coronavirus.page> (mostly non-health-care links, but includes, among others, [Congregate Settings Guidance](#) (March 15), [Nonprofit Business Continuity](#)

# CORONAVIRUS (COVID-19) FEDERAL AND NEW YORK HEALTH CARE – PRIMARY LEGAL SOURCES

[Guidance](#) (March 15), [Letter to Human Service Provider Partners](#) (March 18), [Nonprofit Contract, Budget and Finance Guidance](#) (March 14), [Homeless Shelter Interim Guidance](#) (March 4)

## Other

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### ACGME

**Updated: ACGME Guidance Statement on Coronavirus (COVID-19) and Resident/Fellow Education and Training in the United States**

<https://www.acgme.org/Newsroom/Newsroom-Details/ArticleID/9962/ACGME-Guidance-Statement-on-Coronavirus-COVID-19-and-Resident-Fellow-Education-and-Training-in-the-United-States>

**ACGME Guidance Statement on Coronavirus (COVID-19) and Resident/Fellow Education and Training Considerations**

<https://acgme.org/Newsroom/Newsroom-Details/ArticleID/10068/ACGME-Guidance-Statement-on-Coronavirus-COVID-19-and-Resident-Fellow-Education-and-Training-Considerations>

### The Hastings Center

Ethical Framework for Health Care Institutions and Guidelines for Institutional Ethics Services  
Responding to the Novel Coronavirus Pandemic

<https://www.thehastingscenter.org/ethicalframeworkcovid19/>



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