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Governor Kathy Hochul

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September 27, 2021

No. 4: Declaring a Statewide Disaster Emergency Due to Healthcare Staffing Shortages in the State of New York

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EXECUTIVE ORDER

Declaring a Statewide Disaster Emergency Due to Healthcare Staffing Shortages in the State of New York

WHEREAS, the current staffing shortages in hospital and other healthcare facilities are expected to impact availability of care, threatening public health and safety;

WHEREAS, severe understaffing in hospitals and other healthcare facilities is expected to effect the ability to provide critical care and to adequately serve vulnerable populations;

WHEREAS, there is an immediate and critical need to supplement staffing to assure healthcare facilities can provide care;

NOW, THEREFORE, I, Kathy Hochul, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, do hereby find, pursuant to Section 28 of Article 2-B of the Executive Law, that a disaster is imminent in New York State, for which the affected local governments are unable to respond adequately, and I do hereby declare a Statewide disaster emergency for the entire State of New York. This Executive Order shall be in effect for thirty days from the date of this Executive Order; and

FURTHER, pursuant to Section 29 of Article 2-B of the Executive Law, I direct the implementation of the State Comprehensive Emergency Management Plan and authorize necessary State agencies to take appropriate action to assist local governments and individuals in the protection of public health, welfare, and safety.

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency, I hereby temporarily suspend or modify, for the period from the date of this Executive Order through October 27, 2021 the following:

- Sections 6512 through 6516, and 6524 of the Education Law and Part 60 of Title 8 of the NYCRR, to the extent necessary to allow physicians licensed and in current good standing in any state in the United States to practice medicine in New York State without civil or criminal penalty related to lack of licensure, and to allow physicians licensed and in current good standing in any province or territory of Canada, or any other country as approved by the Department of Health to practice medicine in New York State without civil or criminal penalty related to lack of licensure;
- Section 6502 of the Education Law and Section 59.8 of Title 8 of the NYCRR, to the extent necessary to allow physicians licensed and in current good standing in New York State but not registered in New York State to practice in New York State without civil or criminal penalty related to lack of registration;
- Sections 6512 through 6516, and 6905, 6906 and 6910 of the Education Law and Part 64 of Title 8 of the NYCRR, to the extent necessary to allow registered nurses, licensed practical nurses, and nurse practitioners licensed and in current good standing in any state in the United States to practice in New York State without civil or criminal penalty related to lack of licensure, and to allow registered nurses, licensed practical nurses, and nurse practitioners or a substantially similar title licensed and in current good standing in any province or territory of Canada, or any other country as approved by the Department of Health, to practice in New York State without civil or criminal penalty related to lack of licensure;
- Sections 6512 through 6516, and 6541 of the Education Law and Part 60.8 of Title 8 of the NYCRR, to the extent necessary to allow physician assistants licensed and in current good standing in any state in the United States to practice in New York State without civil or criminal penalty related to lack of licensure, and to allow physician assistants or a substantially similar title licensed and in current good standing in any province or territory of Canada, or any other country as approved by the Department of Health to practice in New York State without civil or criminal penalty related to lack of licensure;

- Sections 3502 and 3505 of the Public Health Law and Part 89 of Title 10 of the NYCRR to the extent necessary to permit radiologic technologists licensed and in current good standing in any state in the United States to practice in New York State without civil or criminal penalty related to lack of licensure;
- Sections 8502, 8504, 8504-a, 8505, and 8507 of the Education Law and Subpart 79-4 of Title 8 of the NYCRR, to the extent necessary to allow respiratory therapists licensed and in current good standing in any state in the United States to practice in New York State without civil or criminal penalty related to lack of licensure;
- Sections 6512 through 6516 and 8510 of the Education Law and 8 NYCRR Subpart 79-4 to the extent necessary to allow respiratory therapy technicians licensed and in current good standing in any state in the United States to practice in New York State without civil or criminal penalty related to lack of licensure;
- Section 6502 of the Education Law and 8 NYCRR 59.8, to the extent necessary to allow physician's assistants, registered professional nurses, licensed practical nurses, and nurse practitioners licensed and in current good standing in New York State but not registered in New York State to practice in New York State without civil or criminal penalty related to lack of registration, and to allow specialist assistants, respiratory therapists, respiratory therapist technicians, pharmacists, clinical nurse specialists, dentists, dental hygienists, registered dental assistants, midwives, perfusionists, clinical laboratory technologists, cytotechnologists, certified clinical laboratory technicians, certified histological technicians, licensed clinical social workers, licensed master social workers, podiatrists, physical therapists, physical therapist assistants, mental health counselors, marriage and family therapists, creative arts therapists, psychoanalysts and psychologists who have an unencumbered license and are currently in good standing in New York State but not registered in New York State to practice in New York State without civil or criminal penalty related to lack of registration;
- Sections 6951, 6952, 6953 and 6955 of the Education Law, to the extent necessary to allow midwives licensed and in current good standing in any state in the United States, or in any province or territory of Canada, or any other country as approved by the Department of Health to practice in New York State without civil or criminal penalty related to lack of licensure;
- Section 3507 of the Public Health Law and Part 89 of Title 10 of the NYCRR to the extent necessary to permit radiologic technologists licensed and in current good standing in New York State but not registered in New York State to practice in New York State without civil or criminal penalty related to lack of registration;
- Sections 6512 through 6516, 6548 and 6911 of the Education Law and sections 60.11 and 64.8 Title 8 of the NYCRR, to the extent necessary to allow clinical nurse specialists, specialist assistants, and substantially similar titles certified and in current good standing in any state in the United States, or any province or territory of Canada, or any other country as approved by the Department of Health to practice in New York State without civil or criminal penalty related to lack of certification;
- Sections 6512 through 6516, and 7704 of the Education Law and Part 74 of Title 8 of the NYCRR, to the extent necessary to allow licensed master social workers, licensed clinical social workers, and substantially similar titles licensed and in current good standing in any state in the United States, or in any province or territory of Canada, or any other country as approved by the Department of Health to practice in New York State without civil or criminal penalty related to lack of licensure;
- Section 6908 of the Education Law and associated regulations, to the extent necessary to permit graduates of State Education Department registered, licensure qualifying nurse practitioner education programs to be employed to practice nursing in a hospital or nursing home for 180 days immediately following successful completion of a New York State Registered licensure qualifying education program, provided that the graduate files with the State Education Department an application for certification as a nurse practitioner;
- Section 8609 of the Education Law and associated regulations, to the extent necessary to permit graduates of State Education Department registered, licensure qualifying clinical laboratory technology and clinical laboratory technician education programs to be employed to practice for 180 days immediately following successful completion of a New York State Registered licensure qualifying education program, in a clinical laboratory with a valid New York State permit, provided that the graduate files an application for a New York State clinical laboratory practitioner license and limited permit;
- Subdivision 5 of Section 6907 of the Education Law and associated regulation, to the extent necessary to permit graduates of registered professional nurse and licensed practical nurse licensure qualifying education programs registered by the State Education Department to be employed to practice nursing

under the supervision of a registered professional nurse and with the endorsement of the employing hospital or nursing home for 180 days immediately following graduation;

- Section 6524 of the Education Law, section 60.7 of title 8 of NYRR and section paragraph (1) of subdivision (g) 405.4 of title 10 of the NYCRR to the extent necessary to allow any physician who will graduate in 2021 or 2022 from an academic medical program accredited by a medical education accrediting agency for medical education by the Liaison Committee on Medical Education or the American Osteopathic Association, and has been accepted by an Accreditation Council for Graduate Medical Education accredited residency program within or outside of New York State to practice at any institution under the supervision of a licensed physician;
- Sections 6512 through 6516, and 6524 of the Education Law and Part 60 of Title 8 of the NYCRR, to the extent necessary to allow individuals, who graduated from registered or accredited medical programs located in New York State in 2021, to practice medicine in New York State, without the need to obtain a license and without civil or criminal penalty related to lack of licensure, provided that the practice of medicine by such graduates shall in all cases be supervised by a physician licensed and registered to practice medicine in the State of New York;
- Section 212 of the Retirement and Social Security Law, for the purpose of disregarding any income earned during the period of the emergency from the earnings limitation calculated under such section;
- Section 2805-k of the Public Health Law and sections 405.4, 405.5, 405.9, 405.14, 405.19, and 405.22 of Title 10 of the NYCRR, to the extent necessary to allow staff with the necessary professional competency and who are privileged and credentialed to work in a facility in compliance with such section of the Public Health Law and such sections of the NYCRR, or who are privileged and credentialed to work in a facility in another state in compliance with the applicable laws and regulations of that other state, to practice in a facility in New York State;
- Article 30 of the Public Health Law to the extent necessary to allow EMTs and Advanced EMTs to provide emergent and non-emergent services within their scope of practice beyond settings currently authorized, such as hospitals;
- Subdivision d and u of section 800.3 of Title 10 of the NYCRR, to the extent necessary to permit emergency medical service personnel to provide community paramedicine, use alternative destinations, telemedicine to facilitate treatment of patients in place, and such other services as may be approved by the Commissioner of Health;
- Subdivision (7) of Public Health Law section 3001, and subdivision (p) of section 800.3 of Title 10 of the NYCRR, to the extent necessary to allow certified emergency medical technician-paramedics, providing community paramedicine services with prior approval of the Department of Health, to administer vaccinations against influenza and COVID-19 pursuant to a non-patient specific order and under the medical direction of a licensed physician, provided, however, that emergency medical technician-paramedics must first meet conditions set by the Commissioner of Health;
- Section 6951 of the Education Law, and section 79-5.5 of Title 8 of NYCRR, insofar as such provisions limit the practice of midwifery to management of normal pregnancies, child birth and postpartum care as well as primary preventive reproductive health care of essentially healthy women, and newborn evaluation, resuscitation and referral for infants, and insofar as it limits the practice of midwifery to midwives who practice in accordance with collaborative relationships with licensed physicians or hospitals, so that for the purposes of this disaster emergency, midwives may administer vaccinations against influenza and COVID-19 to any patient pursuant to a non-patient specific order at sites overseen or approved by the New York State Department of Health or local health departments, and operated under the medical supervision of licensed physicians, licensed physician assistants, or certified nurse practitioners, provided, however, that a midwife without a certificate issued by the State Education Department for administering immunizing agents, must meet conditions set by the Commissioner of Health;
- Article 139 of the Education Law, Section 576-b of the Public Health Law and Section 58-1.7 of Title 10 of the NYCRR, to the extent necessary to permit registered nurses to order the collection of throat or nasopharyngeal swab specimens from individuals suspected of being infected by COVID-19, for purposes of testing;
- Subdivision 1 of section 6902, Subdivision 4, 5 and 7 of section 6909 of the Education Law, subdivision 6 and 7 of section 6527 of the Education Law, and section 63.9 and 64.7 of Title 8 of the NYCRR, to the extent necessary to permit physicians and certified nurse practitioners to issue a non-patient specific

regimen to nurses or any such other persons authorized by law or by this executive order to (1) collect throat or nasopharyngeal swab specimens from individuals suspected of suffering from a COVID-19 infection, for purposes of testing, or to perform such other tasks as may be necessary to provide care for individuals diagnosed or suspected of suffering from a COVID-19 infection; (2) collect blood specimens for the diagnosis of acute or past COVID-19 disease; (3) administer vaccinations against influenza or COVID-19 pursuant to the most recent recommendations by the Advisory Committee for Immunization Practices (ACIP) and/or an applicable United States Food and Drug Administration approval or Emergency Use Authorization (EUA), subject to any other conditions set forth in this Order, including but not limited to conditions related to training and supervision, where applicable; and (4) where applicable and to the extent necessary, to perform tasks, under the supervision of a nurse, otherwise limited to the scope of practice of a licensed or registered nurse to provide care for individuals ;

- Sections 6521 and 6902 of the Education Law, subdivisions 4, 5, and 7 of section 6909 of the Education Law, subdivisions 6 and 7 of section 6527 of the Education Law, and sections 63.9 and 64.7 of Title 8 of the NYCRR insofar as they limit the execution of medical regimens prescribed by a licensed physicians or other licensed and legally authorized health care providers to registered nurses licensed pursuant to Article 139 of the Education Law, to the extent necessary to permit non-nursing staff, as permitted by law and upon completion of training deemed adequate by the Commissioner of Health, to: (1) collect throat, nasal, or nasopharyngeal swab specimens, as applicable and appropriate, from individuals suspected of being infected by COVID-19 or influenza, for purposes of testing; (2) collect blood specimens for the diagnosis of acute or past COVID-19 disease; (3) administer vaccinations against influenza or COVID-19 pursuant to the most recent recommendations by the Advisory Committee for Immunization Practices (ACIP) and/or an applicable United States Food and Drug Administration approval or Emergency Use Authorization (EUA), subject to any other conditions set forth in this Order, including but not limited to conditions related to training and supervision, where applicable; and (4) where applicable and to the extent necessary, to perform tasks, under the supervision of a nurse, otherwise limited to the scope of practice of a licensed or registered nurse to provide care for individuals;
- Subdivision (b) of section 405.3 of Title 10 of the NYCRR, to the extent necessary to allow general hospitals to use qualified volunteers or personnel affiliated with different general hospitals, subject to the terms and conditions established by the Commissioner of Health;
- Section 400.9 and paragraph 7 of subdivision h of section 405.9 of Title 10 of the NYCRR, to the extent necessary to permit general hospitals and nursing homes licensed pursuant to Article 28 of the Public Health Law that are treating patients during the disaster emergency to discharge, transfer, or receive such patients, as authorized by the Commissioner of Health if necessary due to staffing shortages, provided such facilities take all reasonable measures to protect the health and safety of such patients and residents, including safe transfer and discharge practices, and to comply with the Emergency Medical Treatment and Active Labor Act (42 U.S.C. section 1395dd) and any associated regulations;
- Section 64.7 of Title 8 of the NYCRR to expand nurse-initiated protocols to include electrocardiogram (EKG) for signs and symptoms of acute coronary syndrome, blood glucose for altered mental state, Labs and intravenous lines for potential sepsis and pre-procedure pregnancy testing to expedite evaluation and diagnosis;
- Section 415.15 of Title 10 of the NYCRR to the extent necessary to allow physician visits for nursing home residents to be performed via telemedicine;
- Sections 405.13 and 755.4 of Title 10 of the NYCRR to the extent necessary to permit an advanced practice registered nurse with a doctorate or master's degree specializing in the administration of anesthesia administering anesthesia in a general hospital or free-standing ambulatory surgery center without the supervision of a qualified physician in these health care settings;
- Sections 800.3, 800.8, 800.9, 800.10, 800.12, 800.17, 800.18, 800.23, 800.24, and 800.26 of Title 10 of the NYCRR to the extent necessary to extend all existing emergency medical services provider certifications for one year; to permit the Commissioner of Health to modify the examination or recertification requirements for emergency medical services provider certifications; to suspend or modify, at the discretion of the Commissioner of Health, any requirements for the recertification of previously certified emergency medical services providers; and, at the discretion of the Commissioner of Health, develop a process determined by the Department of Health, to permit any emergency medical services provider certified or licensed by another State to provide emergency medical services within New York state; at the

discretion of the Commissioner of Health, to suspend or modify equipment or vehicle requirements in order to ensure sustainability of EMS operations;

- Subdivision (15) of section 3001, and sections 800.3, 800.15 and 800.16 of Title 10 of the NYCRR with approval of the Department of Health, to the extent necessary to define “medical control” to also include emergency and non-emergency direction to emergency medical services personnel by a regional or state medical control center and to permit emergency medical services personnel to operate under the advice and direction of a nurse practitioner, physician assistant, or paramedic, provided that such medical professional is providing care under the supervision of a physician and pursuant to a plan approved by the Department of Health;
- Section 3001, 3005-a, 3008, and 3010 of the Public Health Law to the extent necessary to modify the definition of “emergency medical services” to include emergency, non-emergency and low acuity medical assistance only for the purpose of eliminating restrictions on an approved ambulance services or providers operating outside of the primary territory listed on such ambulance service’s operating certificate with prior approval by the Department of Health; to permit the Commissioner of Health to issue provisional emergency medical services provider certifications to qualified individuals with modified certification periods as approved; and to allow emergency medical services to transport patients to locations other than healthcare facilities with prior approval by Department of Health;
- Sections 6502, 6524, 6905, 6906 and 6910 of the education law and Part 59.8 of Title 8 of the NYCRR to the extent necessary to authorize retired physicians, registered professional nurses, licensed practical nurses, and nurse practitioners licensed to practice and in current good standing in New York State, but not currently registered in New York State, to re-register through use of an expedited automatic registration form developed by the state and to waive any registration fee for the triennial registration period for such registrants;
- Paragraph 1 of section 6542 of the Education Law, Paragraph 1 of section 6549 of the Education Law, and Subdivisions (a) and (b) of Section 94.2 of Title 10 of the NYCRR to the extent necessary to permit a physician assistant, and to permit a specialist assistant, to provide medical services appropriate to their education, training and experience without oversight from a supervising physician without civil or criminal penalty related to a lack of oversight by a supervising physician;
- Subdivision (3) of section 6902 of Education Law, and any associated regulations, including, but not limited to, Section 64.5 of Title 10 of the NYCRR, to the extent necessary to permit a nurse practitioner to provide medical services appropriate to their education, training and experience, without a written practice agreement, or collaborative relationship with a physician, without civil or criminal penalty related to a lack of written practice agreement, or collaborative relationship, with a physician;
- Subparagraph (ii) of paragraph (2) of subdivision (g) of 10 N.Y.C.R.R. section 405.4, to the extent necessary to allow graduates of foreign medical schools having at least one year of graduate medical education to provide patient care in hospitals, is modified so as to allow such graduates without licenses to provide patient care in hospitals if they have completed at least one year of graduate medical education;
- Subdivision 4 of section 6909 of the Education Law, subdivision 6 of section 6527 of the Education Law, and section 64.7 of Title 8 of the NYCRR, to the extent necessary to permit physicians and certified nurse practitioners to issue a non-patient specific regimen to nurses or any such other persons authorized by law or by this executive order to collect throat or nasopharyngeal swab specimens from individuals suspected of suffering from a COVID-19 infection, for purposes of testing, or to perform such other tasks as may be necessary to provide care for individuals diagnosed or suspected of suffering from a COVID-19 infection;
- Sections 8602 and 8603 of the Education Law, and section 58-1.5 of Title 10 of the NYCRR, to the extent necessary to permit individuals who meet the federal requirements for high complexity testing to perform testing for the detection of SARS-CoV-2 in specimens collected from individuals suspected of suffering from a COVID-19 infection;
- Article 165 of the Education Law and section 58-1.3 of Title 10 of the NYCRR, to the extent necessary to allow clinical laboratory practitioners to perform testing in a clinical laboratory under remote supervision, provided a supervisor is on-site at least eight hours per week;
- Subdivision 32 of Section 6530 of the Education Law, Paragraph (3) of Subdivision (a) of Section 29.2 of Title 8 of the NYCRR, and Sections 58-1.11, 405.10, and 415.22 of Title 10 of the NYCRR, only to the extent necessary for health care providers to be relieved of recordkeeping requirements, including but not

limited to assigning diagnostic codes or creating or maintaining other records for billing purposes, without civil or criminal penalty imposed by the Department of Health or State Education Department;

- Section 112 of the State Finance Law, to the extent consistent with Article V, Section 1 of the State Constitution, and to the extent necessary to add additional work, sites, and time to State contracts or to award emergency contracts, including but not limited to emergency contracts or leases for relocation and support of State operations under section 3 of the Public Buildings Law; or emergency contracts under Section 9 of the Public Buildings Law; or emergency contracts for professional services under Section 136-a of the State Finance Law; or emergency contracts for commodities, services, and technology under Section 163 of the State Finance Law; or emergency contracts for purchases of commodities, services, and technology through any federal GSA schedules, federal 1122 programs, or other state, regional, local, multi-jurisdictional, or cooperative contract vehicles;
- Section 163 of the State Finance Law and Article 4-C of the Economic Development Law, to the extent necessary to expedite contracting for necessary services, commodities, and technology;
- Section 4903 of the Insurance Law and Section 4903 of the Public Health Law only to the extent necessary to increase availability of healthcare staff, upon certification by the hospital to the health plan, by suspending requirements for preauthorization review for scheduled surgeries in hospital facilities, hospital admissions, hospital outpatient services, home health care services following a hospital admission, and inpatient and outpatient rehabilitation services following a hospital admission; and to suspend concurrent review for inpatient and outpatient hospital services; and to suspend retrospective review for inpatient and outpatient hospital services at in-network hospitals; during the pendency of this Executive Order only; and
- Subsection c of section 4904 of the Insurance Law, paragraph 1 of subsection b of section 4914 of the Insurance Law, subdivision 3 of section 4904 of the Public Health Law, and paragraph a of subdivision 2 of section 4914 of the Public Health Law, to toll statutory timeframes required for hospital submission of an internal appeal and external appeal only to the extent necessary to increase availability of healthcare staff during the pendency of this Executive Order only.

G I V E N under my hand and the Privy Seal of the State in the City of Albany this twenty-seventh day of September in the year two thousand twenty-one.

BY THE GOVERNOR

Secretary to the Governor

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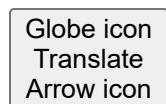
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