Department of Health

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DATE: April 29, 2020

TO: General Hospitals, Ambulatory Surgery Centers (ASC), Office-Based Surgery (OBS) Practices, and Diagnostic & Treatment Centers (D&TC)

COVID-19 Directive Regarding the Resumption of Elective Outpatient Surgeries and Procedures in General Hospitals in Counties and Facilities Without a Significant Risk of COVID-19 Surge

Please distribute immediately to:
Hospitals, Ambulatory Surgery Centers, Office-Based Surgery Practices, Diagnostic and Treatment Centers

Pursuant to Executive Order 202.10, on March 23, 2020, the Department of Health issued the *COVID-19 Directive to Increase Availability of Beds by a Minimum of 50% And Provide Necessary Staffing and Equipment*. The Directive, among other provisions, required that all general hospitals, ASCs, OBS practices, and D&TCs suspend all non-essential elective surgeries and non-urgent procedures statewide.

In accordance with Executive Order No. 202.25 and supplementing the March 23 Directive, this Directive implements the resumption of elective outpatient surgeries and non-urgent procedures in general hospitals in counties and facilities without a significant risk of COVID-19 surge in accordance with the direction and guidance provided herein. Resumption of elective outpatient surgeries and non-urgent procedures will be re-evaluated in the future for ASCs, OBS practices and D&TCs.

Guidance Pursuant to Directive

Definitions:

For purposes of this Directive, the following definitions shall apply:

"County Hospital Inpatient Capacity" shall mean the total number of staffed beds (including Intensive Care Units/Psychiatric Units, etc.) that are currently available in that county as reported by each general hospital in the April 27, 2020 daily *HERDS COVID-19 Patient and Bed Summary* survey divided by the total number of staffed beds (including ICU, Psych, etc.) in that county reported by each general hospital in the April 27, 2020 daily *HERDS COVID-19 Patient and Bed Summary* survey.

"County Hospital ICU Capacity" shall mean the total number of staffed ICU beds that are currently available in that county as reported by each general hospital in the April 27, 2020 daily *HERDS COVID-19 Patient and Bed Summary* survey divided by the total number of staffed ICU beds in that county reported by each general hospital in the April 27, 2020 daily *HERDS COVID-19 Patient and Bed Summary* survey.

"COVID-19 Hospitalizations in a County" shall mean the total number of COVID-19 patients hospitalized in a county as reported by general hospitals within that county in the daily *HERDS COVID-19 Patient and Bed Summary.*

"Hospital Inpatient Capacity" shall mean the total number of staffed beds (including ICU, Psych, etc.) that are currently available as reported by a general hospital in the April 27, 2020 daily *HERDS COVID-19 Patient and Bed Summary* survey divided by the total number of staffed beds (including ICU, Psych, etc.) reported by a general hospital in the April 27, 2020 daily *HERDS COVID-19 Patient and Bed Summary* survey.

"Hospital ICU Capacity" shall mean the total number of total staffed ICU beds that are currently available as reported by a general hospital in the April 27, 2020 daily *HERDS COVID-19 Patient and Bed Summary* survey divided by the total number of staffed ICU beds reported by a general hospital in the April 27, 2020 daily *HERDS COVID-19 Patient and Bed Summary* survey.

"COVID-19 Hospitalizations" shall mean the total number of COVID-19 patients hospitalized as reported by a general hospital in the daily *HERDS COVID-19 Patient and Bed Summary* survey.

"10-Day Lookback Period for COVID-19 Hospitalizations" shall mean the change in the number of hospitalized COVID-19 patients from April 17, 2020 to April 27, 2020 as reported in the daily *HERDS COVID-19 Patient and Bed Summary* survey.

Eligibility to Resume Non-Essential Elective Surgeries and Non-Urgent Procedures:

General hospitals will be able to resume elective outpatient treatments on April 29, 2020 in accordance with the following methodology:

1. Eligible Counties. In order for a general hospital in a county to be eligible to resume non-essential outpatient elective surgeries and non-urgent procedures, the county in which that hospital is physically located must have an available County Hospital Inpatient Capacity of over 30 percent for the county AND an available County Hospital ICU Capacity of over 30 percent (provided that there are ICU beds operating in the county) AND there must have been a change of fewer than ten (10) Hospitalizations of COVID-19 patients in the 10-Day Lookback Period for COVID-19 Hospitalizations.

2. Eligible Hospitals. A general hospital within an eligible county must also have an available Hospital Inpatient Capacity of over 30 percent AND an available Hospital ICU Capacity of over 30 percent (provided that the hospital operates ICU beds), AND there must have been a change of fewer than ten (10) Hospitalizations of COVID-19 patients at the hospital location in the 10-Day Lookback Period for COVID-19 Hospitalizations.

3. Waiver Process. General hospitals in counties that are ineligible to resume performing non-essential elective surgeries and non-urgent procedures under this Directive may submit to the Department a request for a waiver. Such request should explain in detail: how the lack of such elective surgeries and procedures is resulting in furloughs and other staffing actions; how such elective surgeries and procedures could resume without unduly taxing that hospital's and the county's overall available inpatient bed capacity, and that hospital's or the county's overall ICU capacity; a physical description of the pre-operative, operative and post-operative locations

such surgeries and procedures will take place; and a description of the infectious disease protocols that will be used.

Any hospital granted a waiver by the Department must comply with all components of the Directive.

Requirements for All Eligible General Hospitals Performing Non-Essential Elective Surgeries and Non-Urgent Procedures:

1. General hospitals should establish a prioritization policy committee consisting of surgery, anesthesia and nursing leadership to develop a prioritization strategy appropriate to the immediate patient needs. In determining case prioritization, general hospitals should consider the availability of safe and appropriate post-operative recovery and rehabilitation settings, particularly if the discharge plan includes the need for skilled nursing facility or home care agency services.

2. Hospitals must test all patients receiving outpatient elective surgeries and non-urgent procedures for COVID-19 and patients must test negative for COVID-19 using a molecular assay for detection of SARS-CoV-2 RNA prior to any such surgery or procedure. The test must be administered no more than 3 days prior to the surgery or procedure. Hospitals should counsel patients to do the following for the 14 days before the surgery or procedure:

    a. maintain current social distancing recommendations,
    b. follow other preventative measures such as wearing a cloth face covering in public when social distancing might not be possible,
    c. minimize trips away from the home as much as possible,
    d. inform the healthcare provider performing the surgery or procedure if there is any contact with a suspected or confirmed case of COVID-19 or a person with symptoms consistent with COVID-19, and
    e. inform the healthcare provider of any symptoms consistent with COVID-19 or a positive test result for COVID-19.

3. General hospitals must have adequate PPE and medical surgical supplies appropriate to the number and type of procedures to be performed, including at all stages (pre-operative and post-discharge) of care associated with the procedure and the needs of the patient and health care personnel. Adequate PPE means that a hospital has at least a seven (7) day supply of PPE on hand, and the hospital's supply chain can maintain that level without resorting to contingency or crisis capacity strategies based on the Center for Disease Control's *Strategies to Optimize the Supply of PPE and Equipment*, or requiring distribution of PPE from government emergency stockpiles.

4. Eligible hospitals resuming elective outpatient surgeries and non-urgent procedures must ensure sufficient staffing appropriate to the surgery or procedure, and must take into consideration the time needed to repatriate staff to ambulatory and non-urgent care settings, including the needs of such staff for downtime and emotional support.

5. Prior to resuming non-essential elective surgeries and non-urgent procedures pursuant to this Directive, the Chief Executive Officer or equivalent official of every general hospital shall execute and submit the attached attestation form to covidhospitalsurge@health.ny.gov.

6. General hospitals resuming non-essential elective surgeries and non-urgent procedures should submit the below information to the Department on a monthly basis. Note: The Department will separately issue specific submission instructions and other requirements:

    - Number of non-essential surgeries and non-urgent procedures performed, categorized by the appropriate tier in accordance with the surgery acuity scale in Attachment A
    - Procedure type (e.g., cosmetic, orthopedic, colon/rectal, obstetrics/gynecology, neurological, ophthalmic, oral/maxillofacial, otolaryngological, general surgery, other)
    - Number of procedures requiring admission to an ICU
    - Number of procedures requiring admission to an ICU and intubation
    - Number of procedures requiring the post-operative transfer of a patient to a skilled nursing facility or inpatient rehabilitation

This Directive will be amended after a two-week period to account for new data from the *HERDS COVID-19 Patient and Bed Summary* which may affect eligibility to perform non-elective surgeries and procedures. The Department reserves the right to change the eligibility of a hospital if conditions are such that the hospital can no longer safely perform elective surgeries.

Any general hospital that fails to comply with this Directive may be subject to civil penalties and the revocation of operating certificates, licenses or other certifications necessary to continue in operation.

Interpretative Guidance on Surgeries and Procedures that May Still Be Performed Under the March 23, 2020 and April 4, 2020 Directives.

The March 23 and April 4 directives to suspend all non-essential elective surgeries and non-urgent procedures did **not** preclude general hospitals, ASCs, OBSs and D&TCs from performing certain surgeries and procedures related to the diagnosis of cancer (e.g., lumpectomies, biopsies), the treatment of intractable pain, or other diagnostic or treatment services for highly symptomatic patients. The Department considers such surgeries or procedures to be "Tier 3a" as defined by CDC rules for urgent and emergency surgeries and procedures (see Attachment A). Therefore, such surgeries or procedures should **not** be postponed or otherwise delayed, and should be scheduled and performed in accordance with the medical judgment of the treating physician. This interpretative guidance is applicable to all general hospitals, ASCs, OBS practices, and D&TCs in all counties of the State.

Dr. Howard A. Zucker, M.D., J.D.
Commissioner of Health

Attachment A

Tiers	Action	Definition	Locations	Examples
Tier 1a	Postpone surgery/procedure	**Low acuity surgery/healthy patient –** Outpatient surgery Not life-threatening illness	HOPD* DTC** ASC*** OBS**** Hospital with low/no COVID-19 census	-Carpal tunnel release -Colonoscopy for routine screening -Cataracts - Hysteroscopy -Cosmetic surgery
Tier 1b	Postpone surgery/procedure	**Low acuity surgery/unhealthy patient**	HOPD, DTC ASC, OBS, Hospital with low/no COVID-19 census	-Endoscopies -Cosmetic surgery
Tier 2a	Consider postponing surgery/procedure	**Intermediate acuity surgery/healthy patient** Not life threatening but potential for future morbidity and mortality. Requires in-hospital stay	HOPD,DTC ASC, OBS, Hospital with low/no COVID-19 census	-Non urgent spine& ortho: including hip, knee replacement and elective spine surgery -Stable ureteral colic
Tier 2b	Postpone surgery/procedure if possible	**Intermediate acuity surgery/unhealthy patient**	HOPD, DTC ASC, OBS, Hospital with low/no COVID-19 census	Same as above
Tier 3a	Do not postpone	**High acuity surgery/healthy patient**	Hospital ASC, OBS, HOPD, DTC as appropriate to the procedure performed.	-Most cancers -Neurosurgery -Intractable Pain -Highly symptomatic patients
Tier 3b	Do not postpone	**High acuity surgery/unhealthy patient**	Hospital ASC, OBS, HOPD, DTC as appropriate to the procedure performed	-Transplants -Trauma -Cardiac w/ symptoms -Limb threatening vascular surgery -Dialysis Vascular Access

* Hospital Outpatient Department
** Diagnostic and Treatment Center
*** Ambulatory Surgery Center
**** Office-Based Surgery

SIGNATURE ATTESTATION

I, ________________________, as Chief Executive Officer of ________________________, do hereby attest that any resumption of non-essential elective surgeries and non-urgent procedures, pursuant to Executive Order 202.25 is and will remain in compliance with requirements of the Commissioner of Health's Directive titled COVID-19 Directive Regarding the Resumption of Elective Outpatient Surgeries and Procedures in General Hospitals in Counties and Facilities Without a Significant Risk of COVID-19 Surge.

I understand that this document constitutes a legal attestation to a government agency within the meaning of Penal Code § 210.40.

Signature ____________________ Initials ____________

Name ____________________

Credentials ____________________

Date ___________