



## Resumption of Ambulatory Surgery Centers Elective Surgery and Invasive Procedures in New Jersey

*Norris McLaughlin Health Care Article*  
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On Friday, May 15, 2020, Gov. Murphy issued Executive Order 145, allowing physicians and dentists to resume elective surgeries and invasive procedures as of Tuesday, May 26. This is long-awaited news by both patients and doctors. However, before an Ambulatory Surgery Center ("ASC") starts scheduling and performing elective procedures and surgeries, the ASC needs to comply with the directives of the New Jersey Department of Health. This article addresses requirements for Ambulatory Surgery Centers. I addressed the requirements for in-office procedures in a separate article.

On Tuesday, May 19, the New Jersey Department of Health issued Guidance for Ambulatory Surgery Centers to Resume Elective Surgery and Invasive Procedures, setting forth the limitations and precautions that ASCs and physicians must employ to resume performing procedures. The complete guidance can be found at [https://nj.gov/health/legal/covid19/5-19-2020\\_ASCGuidance\\_forResumingElectives.pdf](https://nj.gov/health/legal/covid19/5-19-2020_ASCGuidance_forResumingElectives.pdf)

Please note that ASCs are not allowed to perform procedures on COVID-19 positive cases.

The following is a summary of the guidance for ASCs to resume elective surgeries and invasive procedures.

### Condition to Resume:

- Comply with state and CDC guidelines -- the last 5 pages of the guidance provide a long list of references and resources that the DOH expects the ASCs to know, understand, and follow.
- Implement policies and procedures to screen staff and healthcare professionals, and to remove them when symptomatic for COVID-19.
- Enforce social distancing in the work area and common areas.
- Require face covering for each patient and their support person, except when patient is receiving services that would not allow for the use of face covering.
- Implement a cleaning and disinfecting plan prior to using the facility to serve non-COVID-19 patients.
- Be prepared to modify your plans and policies in conjunction with surge status. (See CDC documents referenced addressing plans for potential future surges.)

### Current or Potential Capacity:

- For the ASC to resume procedures, the hospital with which the ASCs has a transfer agreement must have a downward trajectory, calculated using the average of the three most recent days, in the following categories: (1) Influenza-Like Illness (ILI) or COVID-19-like syndromic cases; (2) COVID-19 infection rates; (3) COVID-19 hospitalizations; (4) COVID-19 emergency room admissions; (5) COVID-19 Intensive Care Unit (ICU), Critical Care and Medical Surgical bed utilization; (6) Ventilator utilization; and (7) Ventilator availability. (With regard to ventilator availability, we believe that is an error and the trajectory would need to be going upwards.)



- The ASC must have sufficient staff who are trained in the use of PPE and infection prevention practices.

#### Prioritization Decisions:

- Prior to resuming services, the ASC must modify their physical layout and flow of care to maintain social distancing.
- An onsite-based governance group must develop a prioritization policy for determining the types of services to be provided, and scheduling of those procedures. They will model capacity based on extended turnover and spacing out of procedures and any pre-/post-procedure appointments.
- In developing the prioritization policy, the following can be considered: (1) Prioritizing previously cancelled and postponed cases; (2) Specialties prioritization; (3) Strategy for allotting daytime "OR/procedural time"; (4) Identification of essential health care professionals and medical device representatives when necessary for procedures; (5) Strategy for increasing "OR/procedural time" availability, such as extended hours or weekends; and (6) Issues associated with increased OR/procedural volume.
- The governance group must also review all cases to ensure consistency and adherence to the prioritization policy.
- ASCs are encouraged to gradually resume a full scope of services when possible and safe to do so.

#### PPE Requirements:

- With regard to PPE, the ASC should have a plan consistent with CDC and DOH recommendations for patients and healthcare professionals. Please note that requirements for healthcare workers who are in direct patient care differ from requirements for those not in direct patient care.
- ASCs must implement policies to account for PPE and must have an adequate supply of PPE, with a minimum of a 7-day supply on hand.
- ASCs must implement staff training on optimization of PPE use according to non-crisis standards of care. Policies for the conservation of PPE should be developed, as should policies for any extended use or reuse of PPE per CDC and DOH recommendations and FDA emergency use authorizations.

#### Staff Requirements:

- Must have sufficient trained staff for the scheduled procedures.
- Use available testing to protect staff and patient safety whenever possible, and implement guidance addressing requirements and frequency for patient and staff testing.

#### Disinfection Protocols:

- Ensure that cleaning and disinfecting supplies are COVID-19 compliant.
- Ensure an adequate supply of hand sanitizer, tissues, and non-touch trash receptacles with disposable liners in all restrooms and patient areas.
- Ensure all equipment is up to date on preventative maintenance and tested before use/reopening.
- Check all supplies for expiration dates.
- Take necessary actions such as removing magazines from waiting areas.
- Confirm/update all preventive infection policies and procedures.

#### Transfer Agreements:

- The ASC must confirm that it has a transfer agreement with an acute healthcare facility partner, and confirm and document before each surgery day that its acute healthcare facility partner has an appropriate number of intensive care unit (ICU) and non-ICU beds to support its potential need for emergent transfers, personal protective equipment (PPE), ventilators, medications, and trained staff to treat all patients. (Recall the three-day downward trajectory requirement.)

#### Patient Screening:

- As stated above, ASCs cannot perform procedures on COVID-19-positive patients. Therefore, each patient must be tested within a maximum of 96 hours before a scheduled procedure with a preoperative COVID-19 RT-PCR test and ensure COVID-19 negative status. Once tested, the patient should be required to self-quarantine until the day of the procedure.
- The patient should also be advised to: (1) social distance and wear a mask in their place of self-quarantine; (2) immediately inform the ASC of any contact with a suspected or confirmed case of COVID-19; (3) immediately inform the ASC of any contact with a person with symptoms consistent with COVID-19; (4) and immediately inform the ASC if the patient develops any symptoms consistent with COVID-19 while in self-quarantine.



- The ASC must implement a process to screen patients for COVID-19-related symptoms prior to scheduled procedures, and to ensure that the patient has worn a mask, social quarantined, and social distanced since testing.
- Scheduling of patients and procedures must be coordinated to promote social distancing, such as minimizing time in the waiting room and staggering appointments.
- Post signs at entrances in appropriate language(s) for signs/symptoms of illness, fever, and precautions.

Visitors - No visitor should be allowed, aside from one adult being able to accompany pediatric patients, patients receiving same day surgery or procedure.

Reporting Metrics – Report, on a daily basis, data required by Executive Order No. 111, including PPE inventory, and report case load on a weekly basis. The reports should be submitted to the portal designated by the New Jersey Office of Emergency Management under Executive Order No. 111 and maintained by the New Jersey Hospital Association.

Making sure your practice and the ASC is compliant in every way is essential. We realize that your focus is the delivery of medical care. Ensuring that your practice and ASC is compliant from a legal point of view is like preventative medicine; it is more effective and usually a lot cheaper! If you need help, please reach out to me at [slros@norris-law.com](mailto:slros@norris-law.com).

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