



Resumption of In-Office Elective Surgery and Invasive Procedures Settings 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 practices start scheduling and performing elective procedures and surgeries, they should ensure that the practice complies with the directives of the New Jersey Department of Health or the Division of Consumer Affairs, depending on where the procedure will be performed. This article addresses in-office procedures. I will address the requirements for Ambulatory Surgery Centers in a separate article.

On Tuesday, May 19, effective Monday, May 18, the New Jersey Department of Law and Public Safety, Division of Consumer Affairs ("DCA"), issued an Administrative Order and Notice of Rule Adoption Pursuant to Executive Order No. 145 (Murphy) (May 15, 2020), setting forth the limitations and precautions that physicians and dentists must employ to resume performing procedures at their offices. The complete order can be found at <https://www.njconsumeraffairs.gov/COVID19/Documents/DCA-AO-2020-07.pdf>.

A summary of the Order follows below. First, however, it is important to recognize that while the Order deals with resuming elective surgeries and invasive procedures, it makes clear that since the suspension of elective surgeries and invasive procedures, via Executive Order 109, healthcare professionals are authorized to provide "in-person adult and pediatric medically necessary or therapeutic services in an office." In-person medically necessary or therapeutic services are defined as services that "in the judgment of the health care professional, are needed to treat or restore or improve a patient's health, and which cannot be reasonably delayed without an adverse medical outcome." Thus, it appears that procedures that are not medically necessary, and/or procedures that can be delayed without an adverse outcome, should not be scheduled during this time, but should be delayed until further order of either the governor or DCA. DCA has indicated that they will be publishing FAQs, and hopefully this point will be clarified. We will update you as soon as further guidance is released.

Summary of the Order:

For in-office treatment and procedures, medical and dental offices must adopt and comply with the following policies:

1. Minimize contact in the office:

- Physicians, dentists, and optometrists should continue to utilize telehealth whenever



possible.

- When scheduling an in-person appointment, call the patient or their guardian to assess that the in-person appointment is necessary; determine the patient's current health status; determine the patient's exposure to COVID-19 and if they tested positive, as well as the length of time since onset of symptoms or positive test result; and finally, advise them that they will need to wear a face covering.
- Prioritize scheduling patients most likely to suffer adverse outcomes if treatment is delayed further.
- Face covering - the office must require all patients and other visitors to wear cloth face coverings, in accordance with CDC recommendations, unless doing so would inhibit the individual's health or the individual is under the age of two.
 - If the patient or visitor does not have a face covering, the office must provide one. Any individual who refuses to wear a face covering for non-health reasons can be declined entry.
- Screen each patient's temperature, using a no-contact temperature check or thermometer with disposable cover, and document it in their record.
- Space appointments to minimize the number of people in the office, and if feasible and consistent with social distancing, require patients to remain in their cars or outside until they are ready to be seen, or wait in separate rooms to minimize contact with other patients.
- Schedule patients in a manner that minimizes their exposure, such as scheduling patients with known exposure or compatible symptoms at the end of the day, and scheduling high-risk patients during times when the fewest people are in the office.
- Whenever possible, provide follow-up care via telehealth.

2. Social distancing in the office:

- Install physical barriers to minimize patient contact with staff in the reception area during check-in and check-out. Adjust the waiting area to maintain six feet or more for social distancing whenever possible.
- Isolate patients with symptoms of respiratory illness in a separate location or single-patient room immediately upon entry into the office, and close the door.
- Restrict companions unless they are medically necessary to assist with mobility or communication, or if the patient is a minor.
- Arrange for contactless patient registration and payment options; if pens and credit cards are used, they must be disinfected between uses.
- Rearrange workspace so individuals can maintain social distancing, if possible; and if feasible, provide enough supplies and equipment to prevent employees from sharing.

3. Cleaning and Disinfection:

- Ensure there is sufficient time between patients to allow for appropriate disinfection.
- Follow CDC guidelines for cleaning and disinfecting - <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control.html>
- Remove materials from waiting room that are difficult to disinfect, such as books, magazines, and toys.
- Provide supplies for regular hand washing with antimicrobial soap and water, alcohol-based hand rub with at least 60 to 95% alcohol, or antiseptic hand wash, and remind staff to practice respiratory hygiene (coughing and sneezing) and proper tissue usage etiquettes, and use no-touch receptacles for disposal.

4. Staff and Protection:

- If possible, accommodate telework and work-from-home arrangements.
- Require staff to stay home if they are sick.
- Take everyone's temperature and send home anyone with a temperature over 100 degrees.
- All staff, including administrative, must wear a cloth face covering within the office, unless it



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would inhibit their health.

- Clinical staff must wear PPE based on level of risk and CDC guidance - <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control.html>
- Optimize the supply of PPE, if there is a shortage, according to CDC's Strategies to Optimize the Supply of PPE and Equipment - <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/index.html>
 - CANNOT USE THE OPTIMIZATION TECHNIQUE FOR SURGERY OR INVASIVE PROCEDURES, when providing care that presents a greater risk of infection, or when among those with increased susceptibility to infections or complications from COVID-19.
- Train staff in the proper techniques for donning and doffing PPE and for disposal or laundering of PPE.
- Stagger or implement rotation schedules to reduce number of people in the office.

5. Stay Informed:

- Keep up to date with CDC.
- Keep up to date with NJ Department of Health, Professional Boards, and OSHA.
- Keep a log of patients treated, for contact tracing.
- Be prepared to modify your plans and policies in conjunction with surge status.

Additional requirements apply for Elective and Invasive Procedures, and dentists, oral surgeons, pulmonologists, otolaryngologists, and eye care professionals who are offering in-office medically necessary or therapeutic services that involve direct contact with the patient's face, eyes, or mouth, or present a high risk of aerosolization. They must ALSO employ the following policies and procedures:

- a. If patient is COVID-19 positive or symptomatic, defer procedure until at least 10 days after the patient first experiences symptoms, and at least 3 days (72 hours) have passed since recovery.
- b. Postpone any elective surgical or invasive procedures, if postponement will not adversely affect the patient's health.
- c. Review with the patient the risks of any elective surgery, invasive procedure, or routine dental or eye care if the patient is identified to be at higher risk of contracting COVID-19, has complications (with pre-existing comorbidities) or is immunocompromised.
- d. Wear PPE, including respiratory protection, gloves, fluid-resistance gowns, hair covering, and eye protection with solid side shields or face shields, consistent with CDC guidelines.
- e. Implement additional infection control measures, assuring that all surfaces are disinfected between patients.
- f. Dental professionals follow CDC guidelines for dentists, and use high volume evacuators and isolation strategies including rubber dams when appropriate. - <https://www.cdc.gov/coronavirus/2019-ncov/hcp/dental-settings.html>
- g. Eye care professionals should use a slit lamp "breath" shield/barrier that is as large as possible without interfering with clinical care.

Making sure your practice is compliant in every way is essential. We realize that your focus is the delivery of medical and dental care. Ensuring that your practice 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.

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