Surge & Flex Coordination System and Minimum PPE Requirement Regulations

The Surge & Flex Coordination System regulation first took effect August 6, 2020. The regulation setting forth Minimum Hospital and Nursing Home PPE requirements was first adopted July 20, 2020. Both regulations were revised and adopted in their current form on July 29, 2021. Both regulations were extended for a 90-day period beginning October 28, 2021. A summary of the emergency regulations appears below. Changes made on July 29, 2021 are indicated in italics.

Surge and Flex System (10 NYCRR 360)

Section 360.1 Administrative Purpose, Application and Scope

- Outlines the state's coordinated approach during COVID-19, and grants the Commissioner authority to implement requirements of the "Surge and Flex Health Care Coordination System."

Section 360.2. Surge and Flex Health Care Coordination System Requirements

(1) Increase Bed Capacity

- Hospitals are required to increase by up to 50% of acute care beds *(changed from up to 100%)*;
- Adds language that capacity increases shall be "incremental and geographically targeted";
- Commissioner has the authority to postpone "up to 100% of non-essential elective procedures" *(changed from "all non-essential elective procedures")*;
- The Department shall establish procedures to approve temporary changes to physical plants to facilitate increased capacity and expedite review of temporary location applications.

(2) Enhanced Staffing Capacity

- Facilities shall establish plans to meet enhanced staffing levels sufficient for the increased bed capacity. The Commissioner may further expand or modify criteria for staffing.

(3) Availability of Supplies and PPE

- Facilities must maintain and actively manage a 60-day supply of PPE appropriate for use during a declared public health emergency *(changed from 90-days)*;
- Commissioner has the authority to redistribute resources from one facility to another;
- Commissioner may determine frequency of data reporting *(removes "at minimum every 24 hours")*;
- Positive test results must be reported immediately; negative test results to be reported as directed by Commissioner *(changed from four times per day)*;
- Commissioner may suspend or restrict visitation.

(4) Statewide Coordination

- DOH shall coordinate discharge, transfer and receiving of patients, and may issue further directives to specify the method and manner of transfer or discharge.
- DOH is authorized to change the level of acuity designation, and make other determinations about services and patient care, including restricting admission or treatment to patients with a particular diagnosis.
- Health care facilities or systems shall report data as directed by DOH, and the Department shall use that data in order to monitor, coordinate, and manage during the emergency *(adds "health systems")*.

Section 360.3. Hospital emergency Surge and Flex Response Plans.

(a)(1) Bed surge plan

- Plan shall explain how the hospital will increase staffed acute care operational beds up to 50% within seven days of disaster emergency declaration *(changed from up to 100%)*;
- The revised regulation adds the following:

  "The plan shall contain scenarios for increases of current staffed acute care operational beds in phased increments, detailing the associated considerations for PPE, staffing, and other supplies and equipment, including whether the hospital can meet those requirements using internal resources and capabilities, as well as intra-system load balancing and postponement of some or all non-essential elective procedures. These plans shall inform the Commissioner's directives, which shall be incremental and geographically tailored at the Statewide, regional, or community level, as dictated by infection rate data."

(a)(2) PPE surge plan

- The plan shall explain how the hospital will increase its supply of PPE appropriate for use in a pandemic to achieve continuous maintenance of its required 60-day supply of PPE *(changed from 90 day)*;
- The revised regulation adds the following:

  "A PPE surge plan may provide for hospital utilization of some, but not all, of the stockpile reserves during a State disaster emergency, provided that within 30 days of the end of the State disaster emergency, the stockpile reserve is fully restored."

(a)(3) Mass casualty plan.

- Shall address receiving and treating mass casualties in the event of a secondary disaster while addressing the continued need for surge capacity for the state disaster emergency declaration.

(a)(4) Staffing plan

- Shall address maintaining staffing levels, conducting appropriate training, instituting overtime protocols, and increase staffing within seven days.

(a)(5) Capital plan

- Shall ensure continuity of operations and access to utilities, equipment, supplies and communications systems. The plan must ensure all required maintenance and peak load testing of its infrastructure.

(b) Plan review/CEO certification

- CEO shall be responsible for ensuring the plan is "reviewed and updated, as necessary, periodically as specified by the Commissioner and shall re-certify that it is able to be implemented and achieved upon each review." *(Changed from every six months)*

(c) Plan submission

- DOH may require submission of the "disaster emergency response plan and history of semi-annual certifications" for review, and may require amendments to the plan as deemed appropriate.

(d) Activation

- In the event of a declared state disaster emergency, hospitals shall execute their plans immediately upon direction of the Commissioner.

(e) Additional requirements

- PPE requirements pursuant to 10 NYCRR 405.11 (g) shall be maintained at all times;

- Non-essential staff capable of working remotely shall be equipped and trained to do so; infrastructure shall be in place to repurpose existing workspaces as needed when activating the Surge and Flex System.

(f) Reporting

- Hospitals or health systems shall periodically *(changed from every 24 hours)* report data requested by the Commissioner including: bed availability, acute care operational bed capacity, patient demographics, deaths, stock and usage rates of PPE and other supplies.

Section 360.4 Clinical laboratory testing

- The Commissioner may prioritize clinical lab testing and prohibit lab tests unless consistent with prioritization by the Commissioner, authorize clinical labs to operate temporary specimen collecting stations, waive permit requirements, establish qualifications to perform lab tests, allow labs to accept specimens without an order, authorize licensed pharmacists to order and administer clinical lab tests;
- Positive test results for communicable diseases shall be reported immediately via the ECLRS, and on a schedule as determined by the Commissioner if negative.

Various sections of 10 NYCRR and 18 NYCRR are amended to add that:

- The Commissioner may suspend or modify regulations during a state disaster emergency.

Hospital PPE Requirements (10 NYCRR 405.11)

Section 405.11 (g)

- Hospitals shall maintain a supply of necessary PPE for at least 60 days by August 31, 2021 (*changed from 90 days; Removes April 13-27, 2020 benchmark);*
- The 60-day stockpile requirement shall be determined as follows for each type of required PPE *(these formulas are added in lieu of the April 13-27 benchmark)*:
  - Single gloves - 15% x the number of staffed beds x 550,
  - Gowns – 15% x the number of staffed beds x 41,
  - Surgical masks - 15% x the number of staffed beds x 21,
  - N95 respirator masks – 15% x the number of staffed beds x 9.6;
- The Commissioner shall have discretion to increase the requirement from 60 days to 90 days where there is a State or local public health emergency;
- Failure to maintain the required supply may result in revocation, limitation, or suspension of the hospital's license. A 14 day grace period shall be provided for a first violation *(adds "limitation" of a hospital's license to actions that may be taken).*