



# COVID-19 Legal Digest: EO 112 to Expand New Jersey's Capacity to Treat Patients in Light of COVID-19

Client Advisories

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Last week, Governor Murphy signed Executive Order 112, designed to expand New Jersey's capacity to treat patients requiring emergency or urgent care, or other health services in light of the COVID-19 public health emergency. Under the Order, the Governor waived certain statutory licensing requirements and authorized the Division of Consumer Affairs (DCA), and its professional boards, including without limitation the Board of Nursing and the Board of Medical Examiners, to temporarily reactivate the licenses of health care practitioners who retired within the last 5 years, and who desire to assist in the State's efforts. In addition, under the Order, the Boards are authorized to issue a temporary license to any physician who is licensed in good standing in another country if they engaged in the practice of medicine within the past 5 years. And finally, the Governor waived statutory provisions limiting the scope of practice of physician assistants and advance practice nurses, whose practice currently requires at least some degree of physician oversight.

While there has been a wave of individuals volunteering to provide healthcare services to New Jersey residents (the Governor indicated upwards of 8000 volunteers in his April 3, 2020 press conference), the State recognizes that those professionals not currently licensed in New Jersey and those that have been retired are unlikely to have adequate malpractice insurance, if any, covering services provided in New Jersey. Moreover, it is likely that at least some health care practitioners will be required to perform services outside their usual scope of practice. As such, these health care practitioners face daunting potential liability for any actions or omissions taken in treating patients during this emergency. To address this, the Governor conferred immunity from civil liability upon individuals practicing under temporary licenses, certificates, registrations or permits, for any damages alleged to have been sustained as a result of an individual's acts or omissions, undertaken in good faith, whether or not within the scope of the licensee's practice, to the course of providing healthcare services in support of the State's COVID-19 response. Similarly, he conferred immunity to any individual holding a license, registration, and certificate or permit to practice a healthcare profession or occupation, including APNs and PAs, acting

outside their scope of ordinary practice. The immunity conferred to these professionals will not extend to acts or omissions that constitute a crime, actual fraud, actual malice, gross negligence or willful misconduct.

And finally, acknowledging that healthcare facilities will be operating under unprecedented pressures, including with limited supplies, and potentially, in alternative physical locations that are unlikely to meet the stringent physical plant requirements generally imposed on such facilities, the Governor conferred immunity to any healthcare facility, any modular treatment facility, and any other site designated by the Commissioner of the Department of Health for temporary use for the purpose of providing essential services in support of the States COVID-19 response. This explicitly includes hotels and dormitories that are converted into temporary treatment locations. The immunity conferred is limited to the extent that a facility's existing liability insurance policy does not provide coverage or an applicable limit is exceeded. As for individuals, immunity is not extended to acts or omissions that constitute a crime, actual fraud, actual malice, gross negligence or willful misconduct.

Please reach out to your Archer contact or any member of **Archer's COVID-19 Task Force** with any questions you may have.

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