



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

December 3, 2021

DHDTC DAL 21-12

Dear Hospital Chief Executive Officer:

COVID-19 Executive Order to limit non-essential elective procedures for in-hospitals or systems with limited capacity

New York is now experiencing COVID-19 transmission at rates the State has not seen since April 2021, and the rate of new COVID-19 hospital admissions has been increasing over the past month to over 300 new admissions a day. In consideration of this emergent risk and the capacity constraints in certain New York regions / facilities last winter, pursuant to Executive Order #11 and 10 NYCRR Part 360 (Surge and Flex), the State is pursuing a coordinated, collaborative approach to ensure hospital capacity meets regional needs while maintaining the long-term resiliency of the State's healthcare infrastructure.

The framework herein details when facilities must, upon DOH review and determination, limit non-essential elective procedures and/or implement other actions to coordinate services as determined by DOH to ensure New York State ("NYS") health systems and hospitals ("Impacted Facilities") can address potential capacity constraints.

This framework will be effective immediately. Determinations will be issued to facilities by December 6th, to apply to procedures scheduled to occur on or after December 9th.

Note, this does not apply to single specialty facilities (e.g., cancer treatment facility), non-hospital owned ambulatory surgery centers, office-based surgery practices, or free-standing diagnostic and treatment centers.

Assessment

The assessment below will be used on a weekly basis to determine the Impacted Facilities List.

1. High risk regional assessment (defined as "High Risk Regions"):

- Low current regional capacity: Staffed acute bed occupancy rate for the region at [90%] or higher (based on the previous 7-day average); **OR**
- Decreasing current regional capacity: Staffed acute bed occupancy rate for the region at [85-90%] (based on the previous 7-day average) **AND** New COVID-19 hospital admission rate for the region (previous 7-day average per 100,000 population) is greater than [4.0].

If criteria is met in #1, then the facility-level risk assessment will be completed.

2. Facility-level risk assessment:

- Low current facility capacity: Staffed acute bed occupancy rate for the facility at [90%] or higher (based on the previous 7-day average).



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

Notwithstanding criteria defined in #1 or #2, DOH retains the discretion to add, remove, or change restrictions or thresholds for regions or facilities, accounting for transmission rates, hospitalization rates, and other public health considerations upon reasonable notice as determined by DOH.

DOH retains the discretion to require any facility to limit non-essential elective procedures and/or implement other actions to coordinate services, as determined by DOH as necessary to protect public health.

Relevant types of procedures

Impacted Facilities may be required to limit non-essential elective procedures both within the hospital and at hospital-owned ambulatory surgery centers, depending upon the qualifying criteria below.

Subject to the exceptions listed below, the extent of impacted procedures will vary based on the DOH determination, and the following qualifying criteria:

1. An Impacted Facility must defer all non-essential elective in-patient and out-patient procedures that are completed within the hospital.
2. An Impacted Facility with occupancy of [95% or higher] (based on the previous 7-day average) must also defer non-essential elective ambulatory procedures.

The following procedures are considered essential and **not** covered under this DAL:

- Cancer, including diagnostic procedure of suspected cancer
- Neurosurgery
- Intractable Pain
- Highly symptomatic patients
- Transplants
- Trauma
- Cardiac with symptoms
- Limb threatening vascular procedures
- Dialysis Vascular Access
- Patients that are at a clinically high risk of harm if their procedures are not completed

Operationalization of the policy

1. Monitoring / compliance:
 - All facilities will be monitored and required to continue submitting capacity and occupancy data through HERDS daily.
 - DOH will determine Impacted Facilities weekly; these facilities must defer non-essential elective procedures in accordance with DOH determination for [at least 2 weeks].
 - i. This framework will be effective [Friday] December 3rd. The first round of determinations will be issued to facilities by [Monday] December 6th, to apply to procedures scheduled to occur on or after [Thursday] December 9th.



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

- ii. Beginning the week of [Monday] December 13th, [Wednesday] data will be reviewed by DOH on [Thursday] and Impacted Facilities will be notified on [Friday]; procedure limitations will take affect the following [Thursday].
2. Regional coordination for High Risk Regions:
 - All hospitals (regardless of whether they meet the criteria of Impacted Facility) should participate in regional coordination calls. Upon weekly assessment, DOH will notify regions of any changes in their risk level.
 - All hospitals should implement load balancing within their system provided they do not transfer patients outside of their systems for the sole purpose of meeting the capacity threshold (although transfers out of trauma hospitals for the purpose of reducing ICU occupancy are permitted).
 - All hospitals should accept safe transfers in accordance with usual practices, unless as directed by DOH.
3. Exceptions and DOH discretion
 - Criteria for determining High Risk Regions and Impacted Facilities are subject to change and will be reviewed on an ongoing basis by DOH; any updates will go into effect by the next reporting cycle.

Please forward any questions regarding this advisory to hospinfo@health.ny.gov.

Sincerely,

Stephanie Shulman, DrPH, MS
Director, Division of Hospitals and Diagnostic &
Treatment Centers