



NY STATE’S EXECUTIVE ORDER ON REALLOCATING VENTILATORS AND OTHER MEDICAL EQUIPMENT

On April 7, 2020, Governor Cuomo issued Executive Order No. 202.14. Among other things, this Executive Order addresses the State’s reallocation of ventilators and other medical equipment.

In relevant part, the Executive Order states: “I hereby issue the following directives for the period from the date of this Executive Order through May 7, 2020: . . . Any medical equipment (personal protective equipment (PPE), ventilators, respirators, bi-pap, anesthesia, or other necessary equipment or supplies as determined by the Commissioner of Health) that is held in inventory by any entity in the state, or otherwise located in the state shall be reported to DOH. DOH may shift any such items not currently needed, or needed in the short term future by a health care facility, to be transferred to a facility in urgent need of such inventory, for purposes of ensuring New York hospitals, facilities and health care workers have the resources necessary to respond to the COVID-19 pandemic, and distribute them where there is an immediate need.”

We interpret this directive as requiring **any person or entity** in New York State who possesses any of the listed medical equipment – including physicians, ASCs, and health care private practices –to report their possession of such medical equipment to the State Health Department. The Executive Order then gives the Health Department the ability to take possession of and transfer that equipment to any facility in the State that is in “urgent need.” of the equipment. Although vague, it is up to the Health Department to determine what constitutes “urgent need.”

As for just compensation, the Executive Order goes on to state that the “DOH shall either return the inventory as soon as no longer urgently needed and/or, in consultation with the Division of the Budget, ensure compensation is paid for any goods or materials acquired at the rates prevailing in the market at the time of acquisition, and shall promulgate guidance for businesses and individuals seeking payment.”

Finally, the Executive Order provides that there is a financial penalty of up to \$2000 and up to a year in jail for failure to comply. **Further, licensed professionals who fail to comply may be found to have committed professional misconduct.**

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Should you have any questions regarding this Alert, please contact the [Garfunkel Wild attorney](#) with whom you regularly work, or contact us at info@garfunkelwild.com.

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