

# State Governors’ “Stay-at-Home” and Prohibition on Elective Procedures Orders

March 26, 2020

**UPDATED: March 31**

*New information has been added for the states of [Alaska](#), [Colorado](#), [Iowa](#), [Kansas](#), [Maryland](#), [Minnesota](#), [Montana](#), [North Carolina](#), [Rhode Island](#) and [Virginia](#).*

Across the U.S., state governors have issued numerous orders in their efforts to slow the spread of the novel coronavirus (COVID-19), with the most important falling into two categories: “stay-at-home” (or “shelter-in-place”) directives; and orders prohibiting elective procedures.

**Stay-at-Home.** These directives are mostly similar in nature across the states, specifying activities that are prohibited and “essential activities” that are allowed while the order is in place. Similarly, the orders identify “non-essential” businesses that must be closed during the order and “essential businesses” that may remain open. All states that have issued these orders have characterized health care as an “essential business” or “essential activity” and allowed for continued in-person operations. Many mayors have issued similar edicts, however, this alert focuses solely on the state level.

**Elective Procedure Orders.** These are also very similar from state-to-state and generally require the cancellation or postponement of surgeries and invasive procedures, except in cases involving life-sustaining treatment, threats to loss of bodily or organ function, or where there is a risk of undue harm to the patient from not performing a procedure. Some states are also asking or requiring providers to consider other factors when determining whether a procedure is elective, including: the recent Centers for Medicare & Medicaid Services (CMS) [recommendations](#) on postponing adult non-essential medical, surgical and dental procedures; the capacity of the health care system based on the number of available hospital beds, the supply of necessary medical equipment and supplies such as person protective equipment (PPE) and ventilators, and staffing availability; and potential post-operative complications and the potential need to transfer a patient from an ambulatory surgery center (ASC) to a hospital. We provided information on the CMS recommendations in a [March 20 alert](#), but as the COVID-19 situation has evolved, states have issued more aggressive orders prohibiting elective procedures whereas the CMS recommendations are currently nonbinding.

**Impact on Healthcare Providers.** Ultimately, whether a procedure is elective is a clinical judgment that must be determined based on the facts and circumstances of each patient's condition and the capacity of the health care system at that time. However, in making these judgments, healthcare providers must take into account any specific factors noted in the applicable state orders prohibiting elective procedures. Further, healthcare providers should ensure they appropriately document that these factors have been taken into consideration when determining which procedures are elective and should be postponed and which procedures are not elective and should go forward.

To date, neither the CMS nor the Centers for Disease Control and Prevention (CDC) nor any state have required that providers retain any specific documentation. However, providers should ensure that they maintain proper

documentation of the risk analysis performed in determining to go forward with a procedure or surgery, including considering the impact on availability of critical resources for other procedures and the applicable state factors.

McGuireWoods has developed and is continuing to develop forms for this purpose and we are happy to address questions and needs on these and related topics in this ever-changing climate.

**Individual State Orders.** We have prepared a succinct state-by-state summary and color-coded map of individual directives and orders that impact healthcare providers and elective procedures. Please click below to expand to view any orders and directives that are applicable to your state. This information is recent as of 12 a.m. ET on March 26, 2020, and will be updated regularly.

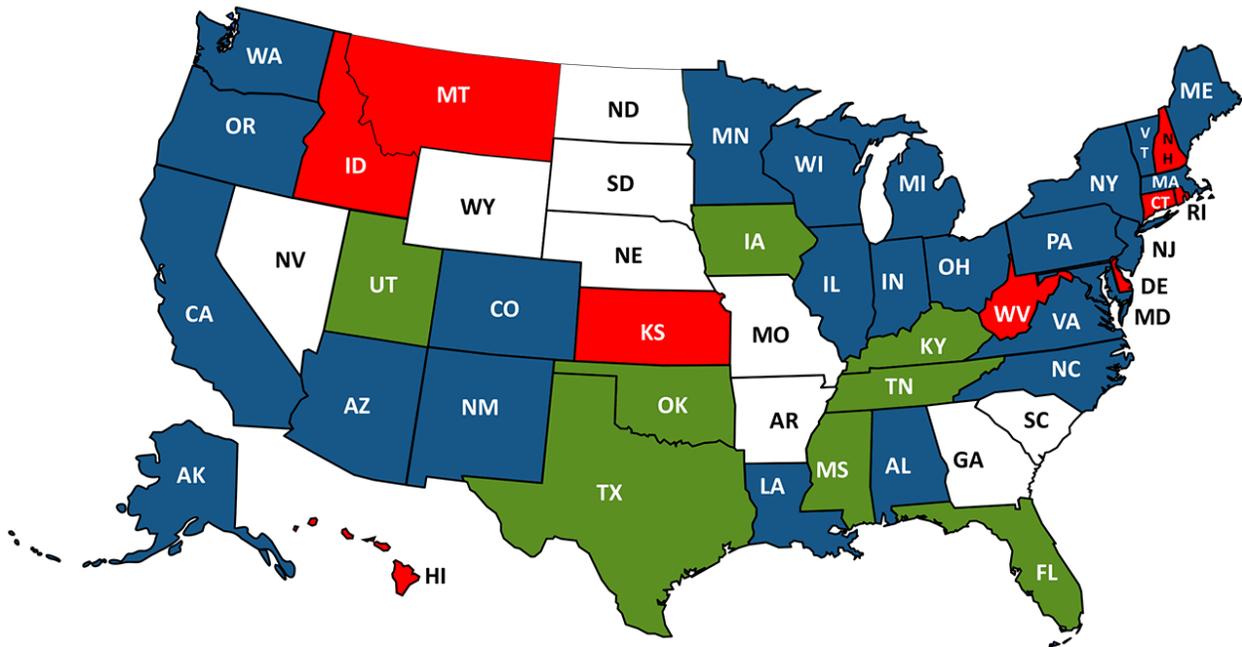
### **General Guidance**

A decision whether a procedure or surgery is elective or should be postponed or canceled under any state directive to do so is a clinical determination that each provider and facility must determine based on the risks and benefits of each case.

In determining whether to proceed with a procedure, providers must take care to heed any executive orders from their states, local governments, or other directives from agencies such as a Department of Health and should consult and consider the CDC and CMS guidelines.

As noted above, while no state nor CMS nor the CDC appears to have yet indicated any specific documentation that must be maintained (recognizing that in all matters related to COVID-19, the situation is fluid and ever-changing), we recommend that providers ensure they maintain proper documentation of the risk analysis performed in determining to forward with a procedure or surgery. McGuireWoods stands ready to assist and has developed and is continuing to develop forms for such purposes.

## Stay-at-Home Orders and Elective Procedure Guidance



Stay-at-Home and Elective Procedure Guidance Issued

Stay-at-Home Order Issued

Elective Procedure Guidance Issued

**Note:** This map is recent as of 12 AM on March 31 for directives currently in effect. It is subject to change.

## North Carolina

**Stay-at-Home.** On March 27, 2020, Gov. Roy Cooper issued [Executive Order No. 121](#), effective March 30, 2020, for a period of 30 days. The order requires all individuals in North Carolina to stay in their homes or residences. Individuals are allowed to travel for essential activities such as receiving medical care, and are allowed to travel to engage in an essential business and operation, which, as with other states, includes healthcare and public health operations.

**Elective Procedures.** The North Carolina Department of Health and Human Services issued a letter on March 20, 2020, requesting that effective March 23, 2020, all hospitals and ASCs suspend all elective and non-urgent surgeries and procedures. These are defined as “any procedure or surgery that if not done within the next four weeks would cause harm to the patient.” The letter also notes that hospitals and ASCs, starting on March 20, 2020, should institute an explicit, real-time review of all non-time-sensitive surgeries and procedure.

## Ohio

**Stay-at-Home.** The director of the Ohio Department of Health (ODH) issued a “stay-at-home” Order” effective 11:59 p.m. on March 23, 2020 through April 6, 2020, unless the director of ODH modifies the order. Under this order, all business and operations in Ohio except essential businesses and operations are ordered to cease all activities except for minimum basic operations. Essential businesses and operations include healthcare and public health options, which in turn is purposely defined broadly to avoid any impacts on the delivery of healthcare and includes, but is not limited to the following: hospitals; clinics; dental offices; pharmacies; public health entities, including those that compile, model, analyze and communicate public health information; pharmaceutical, pharmacy, medical device and equipment, and biotechnology companies (including operations, research and development, manufacture, and supply chain); organizations collecting blood, platelets, plasma, and other necessary

materials; licensed medical marijuana dispensaries and licensed medical marijuana cultivation centers; obstetricians and gynecologists; eye care centers, including those that sell glasses and contact lenses; home healthcare services providers; mental health and substance use providers; other healthcare facilities and suppliers and providers of any related and/or ancillary healthcare services; and entities that transport and dispose of medical materials and remains.

Healthcare and public health options allowed to remain operational also include manufacturers, technicians, logistics, and warehouse operators and distributors of medical equipment, PPE, medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products as well as veterinary care and all healthcare services provided to animals.

**Elective Procedures.** Effective at 5 p.m., March 18, 2020, Gov. Mike DeWine announced that the Ohio Department of Health issued an [order](#) that all “non-essential or elective surgeries and procedures that utilize PPE should not be conducted.” The order defines a non-essential surgery as “a procedure that can be delayed without undue risk to the current or future health of a patient.” The order also provides the following examples of criteria for providers to consider:

- a. Threat to the patient’s life if surgery or procedure is not performed;
- b. Threat of permanent dysfunction of an extremity or organ system;
- c. Risk of metastasis or progression of staging; or
- d. Risk of rapidly worsening to severe symptoms (time sensitive).

The order also includes directs providers to eliminate all non-essential individuals from surgery/procedure rooms and patient care areas to preserve PPE.

## Pennsylvania

**Stay-at-Home.** Gov. Tom Wolf issued an [order](#) on March 20, 2020, ordering the closure of all non-life-sustaining business close effective as of 12:01 a.m. on March 21, 2020. The governor’s office also provided [a list of businesses](#) that may continue physical operations that allows healthcare and social assistance services such as physician and practitioner offices, ambulatory surgery centers, home health agencies, nursing homes and hospitals to continue to operate, but specifically noted that all elective procedures are prohibited.

**Elective Procedures.** The Pennsylvania Department of Health also issued [Guidance on Ambulatory Surgical Facilities' Responses to COVID-19](#) regarding elective procedures that is instructive. The guidance notes that ASCs “may not perform any elective surgeries or procedures unless the surgery or procedures are life-sustaining measures relating to a progressive disease, such as cancer, vascular disease or organ failure.” The Department of Health also notes that ASCs must consult [CMS guidelines](#) on elective surgery and procedures prior to making a cancellation decision. The Department of Health’s guidance and CMS guidelines, read together, indicate that allowable procedures include such life-sustaining measures that are procedures or interventions likely to be necessary to sustain the life of a patient with a progressive disease (similar to Pennsylvania’s definitions of life-sustaining treatment in the context of an advance directive), preserve organ function, and avoid future serious harm (but, note that the CMS guidelines urge ASCs to consider postponing intermediate surgeries for otherwise healthy patients whose condition is not currently life-threatening but has the potential for future morbidity).

## Tennessee

**Stay-at-Home.** Tennessee does not appear to have issued a stay-at-home order.

**Elective Procedures.** Gov. Bill Lee issued [Executive Order No. 18](#), effective March 24, 2020 through April 13, 2020, prohibiting both dental and medical non-essential procedures. The order specifies that dental service providers must not perform any non-emergency dental or oral procedures. Non-emergency procedures including hygiene visits, cosmetic procedures, and other elective procedures. Further, the order does state that emergency procedures with acute dental needs may still be performed, which includes treatment for pain, swelling, trauma, or an abscess.

Regarding medical procedures, the governor's order directs that all hospitals and outpatient surgical facilities shall not perform non-essential procedures, "which includes any medical procedure that is not necessary to address a medical emergency or to preserve the health and safety of a patient, as determined by a licensed medical provider." These facilities are directed to postpone, "at a minimum, joint replacement, bariatric surgery, and cosmetic surgery, except for emergency or trauma-related surgery where postponement would significantly impact the health, safety, or welfare of the patient." Further, the order provides examples of procedures that do not have to be postponed, such as, "surgeries related to advanced cardiovascular disease (including coronary artery disease, heart failure, and arrhythmias) that would prolong life; oncological testing, treatment, and related procedures; pregnancy-related visits and procedures, including labor and delivery; organ transplantation; procedures related to dialysis; and emergency or trauma-related procedures where postponement would significantly impact the health, safety, and welfare of the patient."

## Virginia

**Stay-at-Home.** Gov. Ralph Northam issued [Executive Order No. 55](#), effective March 30, 2020, through June 10, 2020, ordering all individuals in Virginia to remain in their homes or places of residence. The order, along with a prior order

issued by Northam, allows individuals to travel to receive medical care and to work in critical areas, which include healthcare.

**Elective Procedures.** Gov. Northam and the Virginia state health commissioner issued [Order of Public Emergency Two](#), on March 25, 2020, prohibiting all inpatient and outpatient surgical hospitals, freestanding endoscopy centers, physicians' offices, and dental, orthodontic, and endodontic offices in Virginia from performing procedures and surgeries that require PPE, which if delayed, are not anticipated to cause harm to the patient by negatively affecting the patient's health outcomes, or leading to disability or death." The order does not affect or include outpatient visits in hospital-based clinics. Further, the governor's order does not affect or apply to "the full suite of family planning services and procedures nor to treatment for patients with emergency or urgent needs." All of the above listed facilities and providers may perform a procedure "that if delayed or canceled would result in the patient's condition worsening." ASCs are also urged to work with local inpatient hospitals to assist with any needs.

## Georgia and South Carolina

**Georgia** and **South Carolina** have not developed any specific "Stay at Home" orders or guidelines for elective surgery, but we recommend QDP providers follow the Quality Council guidance communicated previously.

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