



April 9, 2020

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Re: Executive Order 202.14

Dear Governor Cuomo:

I write seeking clarification on [Executive Order 202.14](#) for the state taking medical equipment inventory. I do so on behalf of my organization, and more generally on behalf of all New Yorkers, including the many who have voiced concerns over this directive.

These are terrible times that everyone in New York is trying to manage the best they can. But I am concerned that New Yorkers may be reacting in fear to your plans to move medical equipment around the state due to the absence of transparency.

As an initial matter, the Executive Order is vague and overly burdensome. You require every entity (corporation, partnership, association, and person) in New York to report all medical equipment held in inventory or otherwise located in the state to the Department of Health. I assume the Commissioner of Health's guidance regarding what inventory must be reported also will clarify who must report.

The order then allows DOH to shift, i.e. take, "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." The order provides no guidance as to what "not currently needed" or "needed in the short term" means, or who gets to decide.

New Yorkers who use medical facilities that may be subject to inventory shifts may be wary because it's unlikely that scarce personal protective equipment you take can be replaced, and neither you nor

DOH have presented them with accurate or sufficient information regarding your plans.

For example, on Saturday you stated that you intended to use 20 percent of the unused ventilators in the upstate region, totaling 500 ventilators. State commissions in [2007](#) and [2015](#) estimated that 85 percent of a medical center's ventilators are in use by patients at any time outside a pandemic. That translates to 16,666 ventilators upstate. Yet the entire state had only 8,991 in 2015, including 1,750 in a stockpile. Your assumptions do not add up, **but you could bring clarity by providing your calculations to the public.**

The public may also have misgivings regarding your plans for shifting ventilators because they do not have enough information. As a starting point, New Yorkers may want to know how a market rate replacement payment is just compensation for a ventilator you may take when ventilators are so very scarce on the open market. If the state cannot buy a replacement ventilator using its purchasing power, how do you expect a small medical center to get one?

New Yorkers worried about the state taking local ventilators deserve to know how the DOH shift and replace plan is intended to work. **You should provide New Yorkers with the models and projections that justify shifting ventilators and other equipment from one place to another.**

Right now, New Yorkers are hearing that New York City and its nearest suburbs are the epicenter of the COVID-19 outbreak, and that other parts of the state and country will reach their apexes days or weeks after New York City.

Upstate New Yorkers should not be left to speculate whether there's a risk that the state may take ventilators from a location today that do not get returned in time for that place's disease apex. And New York City area residents need to know that ventilators will be available if a second wave of COVID-19 breaks out.

You or DOH should provide data regarding forward-looking region by region ventilator supply and demand, average lengths of patient time on ventilators, and the modeling for the DOH shift and replace program so that New Yorkers may evaluate the facts and assumptions themselves.

To be sure, this pandemic situation is fluid and no predictions can be exact. New Yorkers can understand that. What they cannot understand is information that they do not have. Transparency here is

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essential to maintain the trust and good faith of people scared by an invisible enemy.

They also need assurances DOH is up for the job of taking and replacing valuable medical inventory. The state's track record handling suppliers who want to help in this crisis so far has not been reassuring.

There have been too many stories of suppliers being frustrated in their attempts to get medical equipment and supplies to end users throughout the state.

- Last week, the state missed an opportunity to purchase [\\$1.5 million of N95 masks](#) from China through a Halfmoon company;
- This week, the state missed an opportunity to obtain [22 ventilators from a Niskayuna nursing home](#) because it did not take a new Twitter user seriously; and
- A Washington County company [ready to sew hospital gowns](#) has had trouble getting a response from state officials.

Your executive orders to this point have worked to free up New Yorkers and their fellow Americans to innovate and to pitch in to help sick and endangered fellow citizens in this crisis. People throughout the state are making sacrifices to help keep our medical providers from being overwhelmed.

But this will only be sustainable if everyone is on board. I'm sure the businesses and individuals with medical inventory to spare will continue to do their part voluntarily, and in the best interests of their neighbors. Before being asked to share with the threat of state sanctions, New Yorkers are entitled to transparency so they can see everyone is being treated fairly.

We look forward to your actions on this and will continue to monitor this situation in the coming days and weeks.

Yours truly,



Cameron Macdonald

cc: Melissa DeRosa
Secretary to the Governor
(via electronic mail)