

STATE OF NEW JERSEY

DEPARTMENT OF HEALTH

NOTICE OF RULE WAIVER/MODIFICATION/SUSPENSION

**PURSUANT TO EXECUTIVE ORDER NO. 103 (MURPHY) (MARCH 9, 2020) AND
SUBSEQUENT EXECUTIVE ORDERS EXTENDING THE COVID-19 STATE OF
EMERGENCY**

**TEMPORARY RULE WAIVER/MODIFICATION OF N.J.A.C. 8:33E-1.4 -
UTILIZATION CRITERIA FOR INVASIVE CARDIAC DIAGNOSTIC FACILITIES,
AND N.J.A.C. 8:33E-2.3 - UTILIZATION OF CARDIAC SURGICAL CENTERS
ADOPTED BY THE COMMISSIONER OF THE DEPARTMENT OF HEALTH.**

Date: March 4, 2021

Authority: N.J.S.A. App. A:9-45 & App. A:9-47; Executive Order No. 103 (Murphy) ("EO 103") and subsequent Executive Orders extending the COVID-19 State of Emergency

Effective Date: March 4, 2021

Expiration Date: Concurrent with the End of Public Health Emergency

This is an emergency adoption of a temporary rule waiver/modification of the minimum volume utilization requirements for invasive cardiac diagnostic facilities, cardiac surgical centers, and physicians practicing at these facilities and centers under N.J.A.C. 8:33E-1.4 and -2.3. Section 6 of EO 103, and subsequent Executive Orders issued in response to the COVID-19 pandemic, authorizes agency heads to waive/suspend/modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Pursuant to that authority, and with the approval of the Governor and in consultation with the State Director of Emergency Management, the Commissioner of the Department of Health is waiving/modifying its rules as follows:

The public health emergency caused invasive cardiac diagnostic facilities, cardiac surgical centers, and physicians working at said facilities to experience reduced patient volumes because of the temporary suspension of elective procedures and due to patient fears of COVID-19 exposure. Because the public health emergency remains ongoing and these facilities and physicians continue to encounter reduced patient volumes, some facilities and physicians will be unable to meet their volume requirements set out in N.J.A.C. 8:33E-1.4 and -2.3. Due to these circumstances beyond the control of these facilities and physicians, it is necessary and appropriate to waive/modify the patient volume requirements in N.J.A.C. 8:33E-1.4 and -2.3.

Pursuant to this temporary rule waiver/modification, the minimum volume requirements for existing invasive cardiac diagnostic facilities, cardiac surgical centers, and physicians practicing at these centers and facilities detailed in N.J.A.C. 8:33E-1.4 and -2.3 are waived for the duration of the COVID-19 Public Health Emergency. Facility utilization requirements are measured by the numbers provided for the last four quarters, based on the facility's licensure anniversary date. Accordingly, the minimum volume utilization requirements for invasive cardiac diagnostic facilities and cardiac surgical centers provided in N.J.A.C. 8:33E-1.4 and -2.3 are waived if at least one quarter of the facility's reporting cycle is covered by the Public Health Emergency. Physician volume utilization requirements are measured on a calendar year basis. The minimum utilization requirements for physicians provided in N.J.A.C. 8:33E- 1.4 and -2.3 are waived for any calendar year in which the Public Health Emergency was in effect for 90 days or more.

After the conclusion of the Public Health Emergency and the time frames set out above, invasive cardiac diagnostic facilities, cardiac surgical centers, and physicians practicing at these facilities and centers will be required to resume complying with the minimum volume utilization requirements set forth in N.J.A.C. 8:33E-1.4 and -2.3.

Any questions concerning this temporary rule waiver/modification should be directed to Jean DeVitto, Executive Director, Certificate of Need and Healthcare Facility Licensure Program, at CNL.InquiryWaiversIssued@doh.nj.gov.

Full Text of the proposed modifications follows (additions indicated in boldface **thus**;
deletions indicated in brackets [thus]):

8:33E-1.4 Utilization criteria for invasive cardiac diagnostic facilities

(a)-(c) (No Change.)

(d) Notwithstanding (a) - (c) above, the minimum volume utilization requirements for invasive cardiac diagnostic facilities and physicians practicing at these facilities are suspended during the COVID-19 Public Health Emergency as follows:

1. The minimum volume utilization requirements for invasive cardiac diagnostic facilities are waived if at least one quarter of the facility's reporting cycle occurred during the Public Health Emergency initially declared in Executive Order No. 103.

2. The minimum volume utilization requirements for physicians are waived for any calendar year in which the Public Health Emergency initially declared in Executive Order No. 103 was in effect for 90 days or more.

8:33E-2.3 Utilization of cardiac surgical centers

(a)-(e) (No Change.)

(f) Notwithstanding (a)-(e) above, the minimum volume utilization requirements for cardiac surgical centers and physicians practicing at the centers are suspended during the COVID-19 Public Health Emergency as follows:

1. The minimum volume utilization requirements for cardiac surgical centers are waived if at least one quarter of the cardiac surgical center's reporting cycle occurred during the Public Health Emergency initially declared in Executive Order No. 103.

2. The minimum volume utilization requirements for physicians are waived for any calendar year in which the Public Health Emergency initially declared in Executive Order No. 103 was in effect for 90 days or more.

I find that waiver/modification of the rules above is necessary because enforcement of the existing rules would be detrimental to the public welfare during this emergency.

3/4/2021

DATE



BY: JUDITH M. PERSICHILLI, RN, BSN, MA
COMMISSIONER DEPARTMENT OF HEALTH

WAIVER CONTROL NUMBER: 21-N.J.A.C. 8:33E-1.4 and N.J.A.C. 8:33E-2.3