



State of New Jersey
DEPARTMENT OF HEALTH

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JUDITH M. PERSICHILLI, RN, BSN, MA
Commissioner

March 28, 2020

TO: Administrators of Long-Term Care Facilities Licensed pursuant to
N.J.A.C. 8:39

FROM: Judith M. Persichilli, R.N., B.S.N., M.A.
Commissioner

SUBJECT: Temporary Waivers during Coronavirus Disease 2019 (COVID-19) State
of Emergency

On March 9, 2020 Governor Philip D. Murphy issued Executive Order No. 103, declaring a Public Health Emergency in New Jersey as a result of the COVID-19 pandemic. In doing so, Governor Murphy authorized and empowered the executive head of any agency or instrumentality of the State government with authority to promulgate rules to waive, suspend, or modify any existing rule, where the enforcement of which would be detrimental to the public welfare during this emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary for the duration of Public Health Emergency.

In response to staffing issues in Long Term Care Facilities that have occurred due to the pandemic, the Department of Health (Department) is issuing the following waivers as set forth below:

1. Registered Medical Technicians and Certified Home Health Aides

N.J.A.C. 8:39-43. Certification of nurse aides in long-term care facilities.

In order to increase the number of direct care staff available to long-term care facilities, the Department is waiving the requirements of this subchapter for registered medical technicians (RMT) and Certified Home Health Aides (HHA) and is permitting RMTs and HHAs to function in the role of CNAs in long-term care facilities. Facilities are expected to provide staff a basic orientation addressing fire safety, infection control, and abuse prior to allowing them to perform any duties in the facility as well as maintain relevant supervision requirements for RMTs and HHAs functioning as nurse aides.

2. Staffing levels

N.J.A.C. 8:39-25.2 Mandatory nurse staffing amounts and availability.

Be advised that the nurse staffing standards found at N.J.A.C. 8:39-25.2 are waived. Although the nurse staffing standards are waived critical care requirements shall still be provided. Facilities are to document attempts to meet the staffing standards. Facilities are expected to maintain relevant supervision requirements for nurse aides.

3. Pre-employment Requirements

N.J.A.C. 8:39-19.5. Mandatory staff qualifications; health history and evaluations.

The requirements of this rule are waived except that facilities shall still screen prospective employees by having them complete the required health history. Potential employees that meet any of the following are excluded from employment:

- i. Exhibit signs or symptoms of a respiratory infection, such as fever (evidenced by a temperature check of the staff member or medical professional taken by the facility), cough, shortness of breath, or sore throat; or
- ii. In the last 14 days, has had contact with someone with a confirmed diagnosis of COVID- 19, or under investigation for COVID-19, or are ill with respiratory illness; or
- iii. In the last 14 days, has traveled internationally to a country with sustained community transmission. For updated information on affected countries visit: <https://www.cdc.gov/coronavirus/2019-ncov/travelers/index.html>.

N.J.A.C. 8:39-9.3 Mandatory policies and procedures for staff.

The requirements of N.J.A.C. 8:39-9.3(b) requiring the listed actions to be taken prior to employment are waived. Although the requirements are waived facilities are expected to meet these standards post-employment.

4. Discharge Planning Requirements

N.J.A.C. 8:39-5.4 Discharges.

The requirements of this rule are waived; however, the facility shall ensure that the resident is discharged to a safe location with appropriate care directions.

Please be advised affected Long-Term Care facilities are required to provide a written report to the Department detailing which, if any, of the above actions were implemented, the duration of the implementation, and any adverse outcomes attributable to the actions within forty-five (45) days of the termination of the Public Health Emergency. This waiver is effective only during the period of Public Health Emergency declared by

Governor Philip D. Murphy in Executive Order No. 103 issued on March 9, 2020. Once the Public Health Emergency is mitigated, Long Term Care Facilities will be required to return to operate in accordance with all licensure standards.

Please remember to maintain contact with your local and/or County Office of Emergency Management and your regional Medical Coordination Center during a State of Emergency. If you have any questions concerning this matter, please contact Ms. Jean DeVitto, Executive Director, Certificate of Need and Healthcare Facility Licensure Program at jean.devitto@doh.nj.gov.



Judith Persichilli, R.N., B.S.N., M.A.
Commissioner

cc: Marcela Maziarz, Deputy Commissioner
Maria Christensen, Assistant Commissioner
Jean DeVitto, Executive Director