



*State of New Jersey*  
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JUDITH M. PERSICILLI, RN, BSN, MA  
*Commissioner*

**EXECUTIVE DIRECTIVE NO. 21-011**

**Protocols for COVID-19 Testing and Vaccination Reporting for Covered Settings  
Pursuant to Executive Order Nos. 252, 253, and 264**

**WHEREAS**, on March 9, 2020, Governor Murphy issued Executive Order No. 103, declaring the existence of a Public Health Emergency, pursuant to the Emergency Health Powers Act, N.J.S.A. 26:13-1 et seq., and a State of Emergency, pursuant to the Disaster Control Act, N.J.S.A. App. A:9-33 et seq., throughout the State due to the public health hazard created by Coronavirus disease 2019 (COVID-19); and

**WHEREAS**, the Public Health Emergency was extended multiple times by Governor Murphy pursuant to various Executive Orders; and

**WHEREAS**, the federal government has been working expeditiously to develop, manufacture, and deliver safe and effective COVID-19 vaccines; and

**WHEREAS**, to date, the U.S. Food and Drug Administration has issued Emergency Use Authorizations for three COVID-19 vaccines and full licensure for one of these COVID-19 vaccines; and

**WHEREAS**, to ensure that all individuals who live, work and/or are educated in New Jersey had equitable access to the COVID-19 vaccine, the Department of Health issued Executive Directive No. 20-035, which implemented the State's COVID-19 Vaccination Plan; and

**WHEREAS**, on June 4, 2021 Governor Murphy signed P.L. 2021, c.103 and issued Executive Order No. 244, which among other things, terminated the Public Health Emergency, declared in Executive Order No. 103, but continued the State of Emergency; and

**WHEREAS**, P.L.2021, c.103 explicitly authorizes the Commissioner of Health to issue orders, directives, and waivers related to: (1) vaccination distribution, administration, and management; (2) COVID-19 testing; (3) health resources and personnel allocation; (4) data collection, retention, sharing, and access; (5) coordination of local health departments; and (6) implementation of any applicable recommendations of the Centers for Disease Control and Prevention (CDC) to prevent or limit the transmission of COVID-19, including in specific settings; and

**WHEREAS**, despite the State's extensive progress in combatting COVID-19 and the termination of the Public Health Emergency, COVID-19 remains a threat to New Jersey; and

**WHEREAS**, the CDC has reported that new variants of COVID-19 have been identified in the United States, and that certain variants, particularly the B.1.617.2 (Delta) variant, are more transmissible; and

**WHEREAS**, the CDC has emphasized that vaccination is a critical means to prevent spread of COVID-19 and to avoid infection of those individuals who cannot be vaccinated because their age or medical conditions precludes them from receiving one; and

**WHEREAS**, on July 6, 2021, the U.S. Department of Justice's Office of Legal Counsel issued an opinion concluding that Section 564 of the Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3 does not prohibit public or private entities from imposing vaccination requirements, even when vaccinations are only available pursuant to emergency use authorization; and

**WHEREAS**, requiring workers in certain settings to receive a COVID-19 vaccine or undergo regular testing can help prevent outbreaks and reduce transmission to vulnerable individuals who may be at a higher risk of severe disease; and

**WHEREAS**, on August 2, 2021, Governor Murphy announced that all workers in certain state and private health care facilities as well as high-risk congregate settings will be required to be fully vaccinated against COVID-19 or be subject to COVID-19 testing at minimum one to times per week; and

**WHEREAS**, on August 6, 2021, Governor Murphy issued Executive Order No. 252, setting forth mandatory requirements related to vaccination and testing for certain covered facilities and settings; and

**WHEREAS**, pursuant to Executive Order No. 252, covered health care and high-risk congregate settings must maintain a policy that requires covered workers to either provide adequate proof that they have been fully vaccinated or submit to COVID-19 testing at minimum one to two times weekly. This requirement took effect on September 7, 2021, at which time any covered workers who had not provided adequate proof that they are fully vaccinated were to be prepared to submit to ongoing testing until fully vaccinated; and

**WHEREAS**, on August 23, 2021, Governor Murphy announced that all workers in preschool to grade 12 schools will be required to be fully vaccinated against COVID-19 or be subject to COVID-19 testing at minimum one to two times per week; and

**WHEREAS**, on August 23, 2021, Governor Murphy issued Executive Order No. 253, setting forth mandatory requirements related to vaccination and testing for certain school settings; and

**WHEREAS**, pursuant to Executive Order No. 253, all public, private, and parochial preschool programs, and elementary and secondary schools, including charter and renaissance schools must maintain a policy that requires covered workers to either provide adequate proof that they have been fully vaccinated or submit to COVID-19 testing at minimum one to two times weekly. This requirement shall take effect on October 18, 2021, at which time any covered workers that have not provided adequate proof that they are fully vaccinated must submit to ongoing testing until fully vaccinated; and

**WHEREAS**, on September 20, 2021, Governor Murphy announced that all workers in child care centers and other child care facilities will be required to be fully vaccinated against COVID-19 or be subject to COVID-19 testing at minimum one to two times per week; and

**WHEREAS**, on September 20, 2021, Governor Murphy issued Executive Order No. 264, setting forth mandatory requirements related to vaccination and testing for certain child care settings; and

**WHEREAS**, pursuant to Executive Order No. 264, covered workers in covered child care centers and other child care facilities will be required to be fully vaccinated or submit to COVID-19 testing at minimum one to two times weekly. This requirement will take effect on November 1, 2021, at which time any covered workers who have not provided adequate proof that they are fully vaccinated must submit to ongoing testing until fully vaccinated; and

**WHEREAS**, Executive Order Nos. 252, 253, and 264 authorized the Commissioner of Health to issue a directive supplementing the requirements outlined in the Order, including, but not limited to, any requirements for reporting vaccination and testing data to the Department of Health (DOH); and

**WHEREAS**, this Directive is related to vaccine management, COVID-19 testing, and data collection, and is thus consistent with P.L.2021, c.103.

**NOW, THEREFORE, I, JUDITH PERSICILLI**, Commissioner of the Department of Health, hereby order and direct the following:

Section 1: Vaccination and Testing Requirements for Additional Covered Settings

Children’s residential treatment centers, children’s group homes, and children’s psychiatric community homes licensed by the Department of Children and Families must maintain a policy that requires covered workers to either provide adequate proof that they have been fully vaccinated or submit to COVID-19 testing at minimum one to two times weekly until fully vaccinated. This requirement shall take effect on November 17, 2021, at which time any covered workers that have not provided adequate proof that they are fully vaccinated must submit to weekly or twice weekly testing on an ongoing basis until fully vaccinated. These additional covered settings shall comply with the requirements set forth in Executive Order Nos. 252, 253, and 264.

Section 2: Definitions

1. Consistent with Executive Order Nos. 252, 253, and 264 and incorporating additional covered settings listed above, the following definitions apply for the purposes of this Directive:
  - a. “Covered settings” =
    - i. Health care facilities, which shall include acute, pediatric, inpatient rehabilitation, and psychiatric hospitals, including specialty hospitals, and ambulatory surgical centers; long-term care facilities; intermediate care facilities; residential detox, short-term, long-term residential substance abuse disorder treatment facilities, and children’s residential treatment centers; clinic-based settings like ambulatory care, urgent care clinics, dialysis centers, Federally Qualified Health Centers, family planning sites, and Opioid Treatment Programs; community-based healthcare settings including Program of All-inclusive Care for the Elderly, pediatric and adult medical day care programs, and licensed home health agencies and registered health care service firms operating within the State.
    - ii. High-risk congregate settings, which shall include State and county correctional facilities; secure care facilities operated by the Juvenile Justice Commission; licensed community residences for individuals with intellectual and developmental disabilities (“IDD”) and traumatic brain injury (“TBI”); licensed community residences for adults with mental illness; group homes and psychiatric community homes licensed by the Department of Children and Families; and certified day programs for individuals with IDD and TBI.

- iii. School settings, which shall include public, private, and parochial preschool programs, and elementary and secondary schools, including charter and renaissance schools.
- iv. Child care centers, which shall include any facility defined as a child care center pursuant to N.J.S.A. 30:5B-3, including, but not limited to, day care centers, drop-in centers, nighttime centers, recreation centers sponsored and operated by a county or municipal government recreation or park department or agency, day nurseries, nursery and play schools, cooperative child centers, centers for children with special needs, centers serving sick children, infant-toddler programs, school age child care programs, and employer-supported centers.
- v. Other child care facilities, which shall include any facility described in N.J.S.A. 30:5B-3(b)(2), (3), (7), (8), and (11), including, but not limited to, a program operated by a private school which is run solely for educational purposes, centers or special classes operated primarily for religious instruction or for the temporary care of children while persons responsible for such children are attending religious services, programs operated by the board of education of the local public school district, programs such as that located in a bowling alley, health spa, or other facility in which each child attends for a limited time period while the parent is present using the facility, and privately operated infant and preschool programs that are approved by the NJ State Department of Education to provide services exclusively to local school districts for children with disabilities.

b. "Covered workers =

- i. For health care facilities: employees, both full- and part-time, contractors, and other individuals working in covered settings, including individuals providing operational or custodial services or administrative support. This includes unpaid workers, such as routine volunteers or trainees. Covered workers do not include individuals who visit the covered setting only to provide one-time or limited-duration repairs, services, or construction.
- ii. For high-risk congregate settings: employees, both full- and part-time, contractors, and other individuals working in covered settings, including individuals providing operational or custodial services or administrative support. This includes unpaid workers, such as routine volunteers or trainees. Covered workers do not include individuals who visit the covered setting only to provide one-time or limited-duration repairs, services, or construction.

- iii. For school settings: all individuals employed by the covered setting, both full- and part-time, including, but not limited to, administrators, teachers, educational support professionals, individuals providing food, custodial, and administrative support services, substitute teachers, whether employed directly by a covered setting or otherwise contracted, bus drivers, whether employed directly by a covered setting or otherwise contracted, contractors, providers, and any other individuals performing work in covered settings whose job duties require them to make regular visits to such covered settings, including volunteers. Covered workers do not include individuals who visit the covered setting only to provide one-time or limited-duration repairs, services, or construction.
  - iv. For child care centers and other child care facilities: all individuals employed by the covered setting, both full- and part-time, including, but not limited to, administrators, teachers, individuals providing food, custodial, and administrative support services, contractors, providers, and any other individuals performing work in covered settings whose job duties require them to make regular visits to such covered settings, including volunteers. Covered workers do not include individuals who visit the covered setting only to provide one-time or limited-duration repairs, services, or construction.
- c. “Fully vaccinated” = Two weeks or more after the covered worker received the second dose in a two-dose series or two weeks or more after the covered worker received a single-dose vaccine. Individuals will only be considered fully vaccinated when they have received a COVID-19 vaccine that is currently authorized for emergency use by the FDA or the WHO, or that is approved for use by the same.
- i. At this time, as per CDC, those who are recommended to receive a booster dose or a third dose due to an immune compromise are considered fully vaccinated after the second dose of a two-dose mRNA vaccine.
2. For the purposes of COVID-19 vaccination reporting pursuant to this Directive:
- “Medical contraindication to COVID-19 vaccination” = Contraindications as defined by the CDC in the ‘Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Authorized in the United States’ available at: <https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html#Contraindications>.
3. For the purposes of COVID-19 testing reporting pursuant to this Directive:

- a. "Testing" = Antigen or molecular tests that have EUA by the U.S. Food and Drug Administration ("FDA") or are operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services. Self-tests (e.g. home administered-based tests) are acceptable, with the requirement that the covered worker makes the testing results (e.g. positive or negative) available to the covered setting. Antibody tests (also known as a serology test) indicate past infection and are not acceptable tests for the testing requirement.
- b. "Recently recovered from COVID-19" = People who have tested positive for COVID-19 within the past 90 days and recovered. These individuals do not need to get tested following an exposure unless the person develops new symptoms.

### Section 3: Vaccination and Testing Documentation

4. Covered settings shall make every effort to inform covered workers about how to get vaccinated against COVID-19.
5. Each covered setting shall maintain documentation related to covered worker COVID-19 vaccination that includes, at a minimum, the following:
  - a. That covered workers who have not submitted proof that they are fully vaccinated were provided education regarding the benefits and potential risks associated with COVID-19 vaccination;
  - b. That covered workers who have not submitted proof that they are fully vaccinated were offered the COVID-19 vaccine or information on obtaining COVID-19 vaccination; and
  - c. That covered workers who have not submitted proof that they are fully vaccinated were offered COVID-19 testing or information on obtaining COVID-19 testing.
6. Each covered worker who is not yet fully vaccinated, and who are not tested through their covered setting, shall provide proof of testing, including results, to their covered setting. This shall occur once or twice weekly until the covered worker is fully vaccinated. This should occur in accordance with the policies of the covered setting and may require authorization of result release.
7. Each covered setting shall have a policy regarding full COVID-19 vaccination of new covered workers (e.g. new employees or new volunteers).

#### Section 4: Vaccination Reporting

8. A report of the immunization status of the covered workers in every covered setting shall be documented and maintained as the covered setting's 'COVID-19 Immunization Status Report' ('status report'). A covered setting's status report(s) shall be submitted to the DOH upon request.
9. Each covered setting (e.g. employer) shall maintain at least the following information within the weekly 'status report':
  - a. Identifying information for the covered setting;
  - b. Total population:
    - i. Number of covered workers;
  - c. Vaccination participation:
    - i. Number of covered workers who are fully vaccinated;
  - d. Testing participation:
    - i. Number of covered workers who are submitting once weekly testing;
    - ii. Number of covered workers who are submitting twice weekly testing;
  - e. Noncompliance:
    - i. Number of covered workers who are not in compliance, meaning are not fully vaccinated, have not submitted once or twice weekly testing each week during the prior week, are not excluded from testing due to recent COVID-19 diagnosis, and may have refused vaccination and testing; and
    - ii. Actions taken by the covered setting to address noncompliance, including whether the covered setting has created a plan of correction and the total number for actions taken, which may include verbal warnings; written warnings; temporary suspension/unpaid leaves; and terminations, and to promote COVID-19 vaccination to those not yet fully vaccinated.

A covered setting may, at the discretion of the covered setting, document in the report the number of covered workers who have not been vaccinated due to a medical contraindication as defined herein. Medical contraindications to COVID-19 vaccination are to be validated by requesting that the covered worker provide a written statement submitted from a physician licensed to practice medicine or osteopathy or an advanced practice nurse (certified

registered nurse practitioner or clinical nurse specialist) in any jurisdiction of the United States indicating that an immunization is medically contraindicated for a specific period of time, and the reason(s) for the medical contraindication, based upon valid medical reasons as enumerated by the CDC as informed by the Advisory Committee on Immunization Practices (ACIP): <https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html#Contraindications>.

10. This report shall be compiled by the Tuesday of each week after the covered setting reviews all appropriate COVID-19 vaccination and testing records for their covered workers and shall include the data for the preceding Tuesday through Monday.
11. The first report shall be compiled on a weekly basis by health facilities, high-risk congregate settings, and school settings starting October 26, 2021 and by child care centers and child care facilities starting November 2, 2021. Children's residential treatment centers, children's group homes, and children's psychiatric community homes licensed by the Department of Children and Families shall compile the status report on a weekly basis starting November 18, 2021.
12. Any and all records related to COVID-19 vaccination and COVID-19 testing collected pursuant to Executive Order Nos. 252, 253, and 264, and this Directive shall be made available to the DOH, upon request.
13. The DOH may update the frequency of submissions by covered settings at any time.
14. If a covered setting does not submit the status report as requested, the covered setting shall be considered delinquent. Delinquencies shall be referred to the Department of Health, Department of Human Services, Department of Law and Public Safety, Department of Education, or Department of Children and Families, as appropriate, based on the length of time delinquent, number of times delinquent, and efforts made toward compliance. The local health department may also be notified of the delinquency.
15. Documentation or other confirmation of vaccination provided by covered workers to the covered setting is medical information about the covered workers and must be kept confidential in accordance with applicable law and regulations.

## Section 5: Testing Frequency

16. Covered settings may execute a contract or enter into an agreement with a laboratory or other vendor for prioritization of test results and to ensure testing capacity for repeat covered setting-wide testing. Covered settings may also refer their covered workers to off-site or at-home testing with requirement that the covered worker makes testing results (e.g. positive or negative) available to the covered setting.
17. Covered settings should base their testing frequency on the extent of the virus in the community, and should, therefore, use the regional positivity rate reported in the COVID-19 Activity Level Index (CALI) Weekly Report: <https://www.nj.gov/health/cd/statistics/covid/>, in the prior week as follows:

<b>Regional CALI Level</b>	<b>Regional Percent Positivity Rate in the Past Week</b>	<b>Minimum Testing Frequency</b>
Low (green)	<3%	Once a week
Moderate (yellow)	3-10%	Once a week
High/Very High (red)	>10%	Twice a week

18. Covered settings should monitor their regional CALI level every week and adjust the frequency of covered worker testing according to the table above.
- If the regional CALI level increases to a higher level of activity, the facility should begin requiring not fully vaccinated covered workers to be tested at the frequency shown in the table above as soon as the criteria for the higher activity are met.
  - If the regional CALI level decreases to a lower level of activity, the covered setting should continue requiring not fully vaccinated covered workers to be tested at the higher frequency level until the county positivity rate has remained at the lower activity level for at least two weeks before reducing testing frequency.
19. If a covered worker sought testing off-site and is unable to receive the test result within 48 hours due to community testing supply shortages, limited access, or inability of laboratories to process tests within 48 hours, the covered worker must submit to the covered setting documentation that the worker submitted to the required testing.
20. Any covered worker (a) who is not yet fully vaccinated and (b) who has tested positive for COVID-19 in the prior 90 days is not recommended to submit to COVID-19 testing if the person remains asymptomatic and has completed

appropriate isolation, but is recommended to be vaccinated as soon as possible after acute illness and discontinued isolation. See CDC guidance:

- c. “Interim Guidance on Ending Isolation and Precautions for Adults with COVID-19”: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/duration-isolation.html>
- d. “Ending Home Isolation for Persons with COVID-19 Not in Healthcare Settings:” <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html>

## Section 6: Testing Reporting

- 21. All testing result reporting required by this Directive is in addition to conventional reporting of testing results. Specifically, the aggregate reporting does not replace the requirement that testing administrators report individual COVID-19 test results (positive and negative) to public health authorities.
- 22. A report of the testing participation of the covered workers in every covered setting shall be made using the ‘COVID-19 Immunization Status Report’ (status report) explained in Section 2 above.
- 23. In addition, each school setting shall complete the Surveillance for Influenza and COVID-19 (SIC) Module in the Communicable Disease Reporting and Surveillance System (CDRSS), which is available at: <https://cdrs.doh.state.nj.us/>.
- 24. As part of the SIC Module, each school building in the school setting shall submit the information outlined in the “Surveillance for Influenza and COVID-19 (SIC) Module: User Guide for Schools” (available at: <https://cdrs.doh.state.nj.us/>) in a prescribed format through the designated portal.
- 25. This report shall be submitted after the school setting reviews all appropriate COVID-19 vaccination and testing records for their covered workers.
- 26. School settings shall be required to submit the SIC Module report on a weekly basis starting October 26, 2021 and by 5:00 p.m. on Wednesday of each week thereafter.
- 27. School settings not submitting the SIC Module on a weekly basis shall be considered delinquent. Delinquencies may be referred to the Department of Education or the Department of Law and Public Safety, or both, as appropriate, based on the length of time delinquent, number of times delinquent, and efforts

made toward compliance. The local health department may also be notified of the delinquency.

This Order shall take effect immediately. The provisions of this Directive shall remain in force and effect in accordance with P.L.2021, c.103, unless otherwise modified, supplemented, and/or rescinded.



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

October 7, 2021

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Date