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DEPARTMENT OF HEALTH

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JUDITH M. PERSICILLI, RN, BSN, MA
Commissioner

EXECUTIVE DIRECTIVE NO. 21-012 (Revised)

**Directive for the Resumption of Services in all Long-Term Care Facilities
licensed pursuant to N.J.A.C. 8:43, N.J.A.C. 8:36, N.J.A.C. 8:39, and N.J.A.C. 8:37**

WHEREAS, Coronavirus disease 2019 (“COVID-19”) is a contagious, and at times fatal, respiratory disease caused by the SARS-CoV-2 virus; and

WHEREAS, on March 9, 2020, Governor Philip D. Murphy issued Executive Order No. 103 (2020), 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., in the State of New Jersey for COVID-19; and

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

WHEREAS, on June 4, 2021, Governor Murphy signed Assembly Bill No. 5820 into law as P.L.2021, c.103, and issued Executive Order No. 244, which terminated the Public Health Emergency declared in Executive Order No. 103 (2020); and

WHEREAS, P.L.2021, c.103 sought to enable the State to bring an end to its prior Public Health Emergency while still allowing for an orderly continuation of the Administration’s ability to order certain public health measures relating to COVID-19, including but not limited to vaccine distribution, administration, and management; COVID-19 testing; health resource and personnel allocation; data collection; and implementation of 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, P.L.2021, c.103 explicitly maintained the State of Emergency declared in Executive Order No. 103 (2020), and stated it would in no way diminish, limit, or impair the powers of the Governor to respond to any of the threats presented by COVID-19 pursuant to the Disaster Control Act; and

WHEREAS, in addition to leaving the prior State of Emergency in effect, nothing in P.L.2021, c.103 prevented the Governor from declaring any new public health emergency under the Emergency Health Powers Act, N.J.S.A. 26:13-1 et seq., should the evolving circumstances of COVID-19 require such a declaration; and

WHEREAS, Long Term Care Facilities (LTCFs) have been heavily impacted by COVID-19 and the New Jersey Department of Health (NJDOH) has taken an aggressive approach to detection of and response to the virus in these vulnerable populations; and

WHEREAS, on August 6, 2021, Governor Murphy issued Executive Order No. 252 mandating vaccination of all workers in LTCFs and frequent testing for any unvaccinated staff; and

WHEREAS, on September 10, 2021, the Centers for Medicare and Medicaid Services (CMS) issued LTC Facility Testing Requirements for Medicare- and Medicaid-certified providers and suppliers; and

WHEREAS, on November 4, 2021, CMS issued the Omnibus COVID–19 Health Care Staff Vaccination Interim Final Rule (CMS-3415-IFC) establishing COVID–19 vaccination requirements for staff at Medicare- and Medicaid-certified providers and suppliers; and

WHEREAS, on November 12, 2021, CMS issued revised Visitation Guidance for Nursing Home Visitation – COVID-19 (QSO-20-39-NH), which allows visitation for all residents at all times; and

WHEREAS, on November 24, 2021, NJDOH issued Executive Directive 21-012, which set out the protocols for visitation, admissions, and infection control requirements, among other requirements, for LTCFs as they began to resume services; and

WHEREAS, on January 11, 2022, Governor Murphy issued Executive Order No. 280, declaring the existence of a new Public Health Emergency, pursuant to the Emergency Health Powers Act, N.J.S.A. 26:13-1 et seq., and continuing the State of Emergency declared in Executive Order No. 103 (2020) pursuant to the Disaster Control Act, N.J.S.A. App. A:9-33 et seq., in the State of New Jersey due to the surge of cases and hospitalizations tied to the new variants of COVID-19; and

WHEREAS, on January 11, 2022, Governor Murphy also issued Executive Order No. 281, which extended various Executive Orders and State Agency waivers and directives to ensure that the State continued to have the necessary resources in place to respond to the new variants of COVID-19; and

WHEREAS, the Department of Health’s Executive Directive 21-012 was included in the list of administrative directives extended under Executive Order No. 281; and

WHEREAS, on January 19, 2022, Governor Murphy issued Executive Order No. 283, setting forth mandatory requirements related to COVID-19 vaccinations, including booster doses, for covered health care settings that are subject to the Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule (CMS-3415-IF C) (“CMS rule”) as well as mandatory requirements related to COVID-19 vaccinations, including booster doses, for other health care settings not subject to the CMS rule and other high-risk congregate settings; and

WHEREAS, on February 10, 2022, Governor Murphy issued Executive Order No. 288, which declared that the Public Health Emergency declared in Executive Order No. 280 (2022) continued to exist; and

WHEREAS, through Executive Order No. 288 (2022), Governor Murphy declared all Executive Orders issued and actions taken by any Executive Branch department and agency, in whole or in part in response to the COVID-19 Public Health Emergency, remained in full force and effect; and

WHEREAS, on March 2, 2022, Governor Murphy issued Executive Order No. 290 (2022) amending the timeframes set forth in Executive Order No. 283; and

WHEREAS, on March 4, 2022, Governor Murphy issued Executive Order No. 292 lifting the COVID-19 Public Health Emergency but maintaining the requirements in Executive Order Nos. 283, and 290 under the State of Emergency declared pursuant to the Disaster Control Act; and

WHEREAS, under Executive Order No. 292, the Governor found it critical to continue the Executive Orders and Administrative Orders, Directives, and Waivers issued in response to the COVID-19 Emergency to ensure that an orderly transition to the next phase of the State's COVID-19 recovery was done in a measured and thoughtful manner and, consequently, ordered that all actions taken by any Executive Branch departments and agencies in whole or in part to respond to the Public Health Emergency presented by the COVID-19 outbreak, and extended pursuant to Executive Order No. 281 (2022) and attached in the Appendix thereto, including but not limited to any Administrative Orders, Directives, and Waivers, remained in full force and effect pursuant to the Disaster Control Act, N.J.S.A. App. A:9-33 et seq, until revoked or modified by the department or agency head, or until the State of Emergency is no longer in effect, whichever is sooner; and

WHEREAS, on April 13, 2022, Governor Murphy issued Executive Order No. 294 (2022) clarifying certain vaccination requirements set forth in Executive Order Nos. 283 and 290 (2022); and

WHEREAS, pursuant to Executive Order No. 294 (2022) covered workers in health care settings that are subject to the CMS rule and covered workers in health care settings not subject to the CMS rule and in other high-risk congregate settings are considered "up to date" with their COVID-19 vaccinations if they received their primary COVID-19 vaccination series and the *first* booster dose for which they are eligible as recommended by the CDC; and

WHEREAS, the Department of Health issued revisions to Executive Directive 21-012, dated April 21, 2022; and

WHEREAS, since COVID-19 vaccines have been administered to LTCF residents and staff, and these vaccines have shown to help prevent symptomatic infection, CMS have updated their LTCF visitation guidance in conjunction with updated CDC guidance; and

WHEREAS, CMS and CDC continue to emphasize the importance of maintaining infection prevention practices in LTCFs, given the continued risk of COVID-19 transmission; and

WHEREAS, the Commissioner of the Department of Health has reviewed Executive Directive 21-012 and found that it remains necessary during the current phase of the COVID-19 response, as modified below.

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

This Directive supersedes and replaces Executive Directive 20-025; Executive Directive 20-026; Executive Directive 21-001; Executive Directive 20-017, Executive Directive 21-012, dated April 18, 2022, and the Waiver document entitled "Infection Prevention and Control of COVID-19 in Assisted Living Residences" issued on April 4, 2020. This Executive Directive applies to the following Long-Term Care Facilities: Nursing Homes licensed pursuant to N.J.A.C. 8:39, Assisted

Living Facilities and Comprehensive Personal Care Homes licensed pursuant to N.J.A.C. 8:36, Dementia Care Homes licensed pursuant to N.J.A.C. 8:37, and Residential Health Care Facilities licensed pursuant to N.J.A.C. 8:43. This Executive Directive applies to all individuals who enter the Facility including staff, residents, and visitors. Elements include but are not limited to screening, source control, physical distancing, and SARS-CoV-2 testing. This Directive is not intended to supersede State or federal requirements.

1. **Overall Guidance:** Long-Term Care Facilities subject to this directive shall take these additional steps to protect the healthcare workforce and residents they serve:
 - a. Comply with all current CDC Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID-19) Pandemic, as amended and supplemented, including Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID-19) Pandemic <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html> and Interim Guidance for Managing Healthcare Personnel with SARS-CoV-2 Infection or Exposure to SARS-CoV-2 <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assesment-hcp.html>.
 - b. Comply with all current CMS requirements, when applicable, as amended and supplemented.
 - c. Comply with state and local public health authority requirements for identification, reporting, and containing communicable diseases and outbreaks.
2. **Visitation:** Long-Term Care Facilities subject to this directive shall abide by the following to allow for the visitation of residents in their homes:
 - a. Visitation shall be allowed for all residents of nursing homes at all times per CMS QSO-20-39-NH, revised September 23, 2022, and accompanying FAQs, revised September 23, 2022, at <https://www.cms.gov/files/document/qso-20-39-nh-revised.pdf> (CMS Guidance), as amended and supplemented, which facilities shall follow along with the supplementation of this Executive Directive.
 - b. Assisted Living Facilities, Comprehensive Personal Care Homes, Dementia Care Homes and Residential Health Care Facilities shall follow the CMS guidance referenced in paragraph (a) above with respect to visitation for all residents, except that the 24/7 visitation requirement is not required for these types of facilities and instead these facilities are required to return to pre-pandemic visitation policies and procedures.
 - c. Facilities shall ensure that visits are conducted as safely as possible in accordance with guidance from the CDC (<https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html>) and from CMS (<https://www.cms.gov/files/document/qso-20-39-nh-revised.pdf>), as amended and supplemented.
3. **Testing:** Long-Term Care Facilities subject to this directive are required to abide by the following testing requirements:
 - a. Facilities shall conduct testing as follows:

- i. All facilities are to conduct testing in accordance with this directive and CDC recommendations, except as provided for in Executive Order No. 252 (2021) published here: <https://nj.gov/infobank/eo/056murphy/pdf/EO-252.pdf>, Executive Order No. 283 (2022) published here: <https://nj.gov/infobank/eo/056murphy/pdf/EO-283.pdf>, Executive Order No. 290 (2022) published here: <https://nj.gov/infobank/eo/056murphy/pdf/EO-290.pdf>, and NJDOH Executive Directive 21-011, <https://nj.gov/health/legal/covid19/VaxTestEDCoveredSettings.pdf>, as amended and supplemented.
- ii. CMS-certified facilities are to follow QSO-20-38-NH and CMS-3415-IFC, and Executive Order Nos. 283 and 290 (2022), as amended and supplemented.

Except in required circumstances as referenced in paragraphs (a) and (b) of this section, facilities shall base their testing frequency on the extent of the virus in the community, and should, therefore, use the CDC Community Transmission rates reported on the [CDC COVID-19 Data Tracker](https://covid.cdc.gov/covid-data-tracker/#countyview?list_select_state=all_states&list_select_county=all_counties&data-type=Risk). https://covid.cdc.gov/covid-data-tracker/#countyview?list_select_state=all_states&list_select_county=all_counties&data-type=Risk. Facilities should follow CDC guidance regarding when repeated testing is applicable in other scenarios.

b. Facilities must test residents and staff as follows:

Testing Trigger	Staff	Residents
Symptomatic individual identified	Staff with signs or symptoms must be tested, regardless of COVID-19 vaccination status.	Residents with signs or symptoms must be tested, regardless of COVID-19 vaccination status.
Newly identified COVID-19 positive staff or resident in a facility that can identify close contacts	Test all staff, regardless of COVID-19 vaccination status, who had a higher-risk exposure with a COVID-19 positive individual.	Test all residents, regardless of COVID-19 vaccination status, who had close contact with a COVID-19 positive individual.
Newly identified COVID-19 positive staff or resident in a facility that is unable to identify close contacts	Test all staff, facility-wide or at a group level, if staff are assigned to a specific location where the new case occurred (e.g. unit, floor, or other specific area(s) of the facility), regardless of COVID-19 vaccination status.	Test all residents, facility-wide or at a group level (e.g. unit, floor, or other specific area(s) of the facility), regardless of COVID-19 vaccination status.
Routine testing	Test all covered workers, in accordance with E.O. 252, E.O. 283, E.O. 290, and NJDOH E.D. 21-011 , if the covered workers (a) have not yet submitted	Not generally recommended.

	proof of full primary series vaccination, (b) have not yet submitted proof of being up to date on COVID-19 vaccination, and/or (c) have requested and received an authorized medical or religious exemption to COVID-19 vaccination.	
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c. Long-Term Care Facilities shall follow CDC guidance, as modified and updated by the CDC, for testing; except where applicable New Jersey Executive Orders and Executive Directives are more restrictive than CDC guidance.

d. This Directive sets forth minimum staff testing requirements. Facilities may elect to perform routine testing of staff beyond the minimum outlined herein.

e. Long-Term Care Facilities Use of Antigen Testing.

i. Antigen testing is a form of viral testing and may be used as an alternative to molecular diagnostic PCR tests subject to the parameters in this section.

ii. Antigen testing may be used to fulfill any testing requirements set forth in this Directive, in accordance with the FDA In Vitro Diagnostics EUAs – Antigen Diagnostic Tests for SARS-CoV-2 (<https://www.fda.gov/medical-devices/coronavirus-disease-2019-covid-19-emergency-use-authorizations-medical-devices/in-vitro-diagnostics-euas-antigen-diagnostic-tests-sars-cov-2>) and the test manufacturer’s instructions for use. If antigen testing is used, please refer to CDC *Overview of Testing for SARS-CoV-2, the virus that causes COVID-19* <https://www.cdc.gov/coronavirus/2019-ncov/hcp/testing-overview.html> for test interpretation and to determine when RT-PCR confirmation testing is necessary.

iii. All facilities that perform COVID-19 point of care (POC) tests, such as antigen tests, in their facilities must possess a federal Clinical Laboratory Improvement Amendment (CLIA) Certificate. Additional information and application instructions for a CLIA Certificate can be found at https://www.nj.gov/health/phel/clinical-lab-imp-services/federal_clia.shtml.

4. **Communication:** Long-Term Care Facilities subject to this directive are required to obtain and share with the department a generic email address, as follows:

a. In order to facilitate communication, which has been hindered by frequently returned emails indicating improper email addresses, delaying the Department’s ability to communicate directly with all LTCFs, the Department mandated that all LTCFs obtain a generic email address. This was first required to be submitted to the Department no later than December 31, 2021. This email account must be monitored and maintained

for continued functionality.

- i. All LTCFs shall assign at least four staff members access to this facility-specific, generic email account.
 - ii. This email address must not be correlated to an administrator's name or anyone else by name.
 - iii. EVERY generic email account must include the facility's license number. Some examples include: Lakelenape134567@company.org or Mapleshade765431@company.org. This generic email address should not be changed.
- b. Send all generic email addresses to the Office of LTC Resiliency at OLTCR@njlincs.net.
5. **Infection Prevention:** Long-Term Care Facilities subject to this directive are required to follow Core Practices for Infection Prevention and Control, as follows:
- a. Core infection prevention and control practices must be in place at all times. Maintaining core infection prevention and control practices is key to preventing and containing outbreaks and is crucial in ensuring the delivery of quality, safe care. In addition to the requirements in N.J.A.C. 8:39-20, the following practices shall remain in place, even as long-term care facilities resume normal activities:
 - i. Review the CDC's Infection Control Guidelines & Guidance Library for Infection Control at <https://www.cdc.gov/infectioncontrol/guidelines/index.html>, as amended and supplemented, and implement any guidance applicable to the facility.
 - ii. The facility's designated individual(s) with training in infection prevention and control shall assess the facility's Infection Prevention and Control (IPC) program by establishing or reviewing the infection control plan, annual infection prevention and control program risk assessment, and conducting internal quality improvement audits. Additional information is available at the NJDOH Healthcare Associated Infections page at <https://www.nj.gov/health/cd/topics/hai.shtml>.
 - b. Facilities shall maintain a Respiratory Protection Program (RPP) that complies with the Occupational Safety and Health Administration (OSHA) respiratory protection standards for employees. The program must include medical evaluations, training, and fit testing. Refer to OSHA's RPP page at: <https://www.osha.gov/respiratory-protection>. This requirement does not modify or otherwise affect a facility's existing obligations under federal law to comply at all times with all applicable requirements of OSHA's respiratory protection standards found at 29 C.F.R. § 1910.134.
 - i. Facilities may contract with a consultant or vendor to fulfill the requirements of this section.

c. Facilities shall have a plan in place to safely manage residents. This includes but is not limited to managing new admissions, readmissions, exposed residents, and SARS-CoV-2 positive residents.

d. Facilities shall take appropriate action on laboratory results including, but not limited to, the below:

- i. Sending facility: COVID-19 diagnostic test results must be provided (in addition to other pertinent clinical information) to the receiving facilities for any transferred residents upon receipt of lab results.
- ii. Receiving facility: Upon identification of a case of COVID-19 in a resident who was recently admitted (within 14 days), the receiving facility must provide these results back to the sending facility to allow for the appropriate response and investigation.

6. **Reporting:** Long-Term Care Facilities subject to this directive are required to report to the National Healthcare Safety Network Long Term Care Facility module as follows:

a. All long-term care facilities are required to report information to the National Healthcare Safety Network (NHSN) Long-Term Care Facility COVID-19 Module: <https://www.cdc.gov/nhsn/ltc/covid19/index.html>, as required pursuant to guidance issued by CDC <https://www.cdc.gov/nhsn/pdfs/covid19/lcfc/cms-covid19-req-508.pdf>, as amended and supplemented. Facilities may choose to submit multiple times per week.

b. All long-term care facilities are subject to Executive Directive 21-011 regarding reporting of covered worker COVID-19 vaccination. In addition, all long-term facilities shall make information about resident COVID-19 vaccination participation for all authorized doses available to the Department upon request.

This Revised Directive shall take effect immediately. The provisions of this Directive shall remain in full force and effect until revoked or modified by the Department of Health, or until the State of Emergency is no longer in effect, whichever is sooner.

Dated: December 22, 2022



Judith M. Persichilli, RN, BSN, MA
Commissioner

Resources

CDC Infection Control Guidance for Healthcare Professionals about Coronavirus (COVID-19)
<https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control.html>

CMS Policy and Memos to States and Regions (QSOs)
<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Policy-and-Memos-to-States-and-Regions>

NJDOH Revised Executive Order 20-013 (Testing in Post-Acute Settings)
https://www.nj.gov/health/legal/covid19/05-20-2020_ExecutiveDirectiveNo20-013_LTC_planCOVID19testing_revised.pdf

NJDOH COVID-19, Communicable Disease Manual Chapter
https://www.nj.gov/health/cd/documents/topics/NCOV/NCOV_chapter.pdf

NJDOH COVID-19: Information for Healthcare Professionals
https://www.nj.gov/health/cd/topics/covid2019_healthcare.shtml

Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID-19) Pandemic
<https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html>