

**STATE OF NEW JERSEY**  
**DEPARTMENT OF HEALTH**  
**NOTICE OF RULE WAIVER/MODIFICATION/SUSPENSION**  
**PURSUANT TO EXECUTIVE ORDER NO. 103 (MURPHY)(MARCH 9, 2020)**  
**AND EXECUTIVE ORDER 119 (MURPHY) (APRIL 7, 2020)**  
**COVID-19 STATE OF EMERGENCY**

Temporary Rule **WAIVER/MODIFICATION OF N.J.A.C. 8:43A-24.7(c)-(d) – DIALYSIS STAFFING, adopted by THE COMMISSIONER OF THE DEPARTMENT OF HEALTH**

Date: **April 17, 2020**

Authority: Emergency Health Powers Act, N.J.S.A. 26:13-1 to -31; N.J.S.A. App.A:9-45 & App. A:9-47; Executive Order No. 103 (Murphy)(“EO 103”); Executive Order No. 119 (Murphy)(“EO 119”)

Effective Date: **April 17, 2020**

Expiration Date: Concurrent with end of EO 103

This is an emergency adoption of a temporary rule waiver of N.J.A.C. 8:43A-24.7(c) and (d), which sets forth the staffing requirements for outpatient renal dialysis providers. Section 6 of EO 103, 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 the Emergency Health Powers Act, N.J.S.A. 26:13-1 to -31, 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 its rules as follows:

Due to the public health emergency precipitated by the outbreak of COVID-19, outpatient dialysis providers are experiencing staffing shortages that are inhibiting their ability to maintain the staff-to-patient ratios required under Department’s rules. Staff of outpatient dialysis facilities are unable to report for work because they have fallen ill with COVID-19 or require time off from work to care for children who are not attending school, among other reasons. Consequently, outpatient dialysis providers are struggling to meet staffing requirements during this emergency.

Under N.J.A.C. 8:43A-24.7(c), which sets forth staffing requirements for outpatient renal dialysis provided by an ambulatory care facility, facilities are required to have at least one registered nurse on duty for the first nine patients receiving dialysis services on the premises and an additional registered nurse on duty for each additional nine patients, or any portion thereof. Subsection (d) further requires facilities to have at least one registered nurse (RN), licensed practical nurse (LPN), or trained patient care technician on duty for every three patients receiving dialysis services.

In response to the staffing issues caused by the COVID-19 pandemic, it is necessary and appropriate to relax the staff-to-patient ratio requirements set forth in the Department’s rules. Pursuant to this rule waiver/modification, outpatient dialysis providers shall instead be required to adhere to the

Centers for Medicare & Medicaid Services (CMS) rules for dialysis staffing during the public health emergency. Under CMS rules, an outpatient dialysis provider must have an adequate number of qualified personnel present whenever patients are undergoing dialysis so that the patient-to-staff ratio is appropriate to the level of dialysis care given and meets the needs of patients; the registered nurse, social worker and dietitian members of the provider's interdisciplinary team must be available to meet individual patient clinical needs; and a registered nurse, who is responsible for the nursing care provided, must be present in the facility at all times that in-center dialysis patients are being treated. Under this rule waiver/modification, outpatient dialysis providers must develop and adhere to a staffing plan that is consistent with CMS rules.

Ambulatory care facilities providing outpatient dialysis services that take action under the terms of N.J.A.C. 8:43A-24.7 shall provide a written report to the Department detailing the extent to which the facility implemented the terms of this waiver by indicating the new staffing plan and any adverse outcomes attributable to the new staffing plan. Ambulatory care facilities may implement the terms of this waiver as necessary until the conclusion of the Public Health Emergency declared by Governor Philip D. Murphy in Executive Order Nos. 103 and 119. Upon the conclusion of the Public Health Emergency, any facility that has implemented the terms of this waiver will have forty-five (45) days within which to resume operating in accordance with the staffing requirements set forth in N.J.A.C. 8:43A-24.7.

Full Text of the modified rule follows, with additional terms and conditions indicated in boldface:

#### **8:43A-24.7 Dialysis staffing**

...

(c) At least one registered nurse shall be on duty for the first nine patients receiving dialysis services on the premises and an additional registered nurse shall be on duty for each additional nine patients, or any portion thereof.

(d) At least one registered nurse, licensed practical nurse, or trained patient care technician shall be on duty for every three patients receiving dialysis services.

**(e) Notwithstanding the above provisions, during the period of the COVID-19 Public Health Emergency, ambulatory care facilities providing outpatient dialysis services shall comply with the staff requirements set forth in 42 C.F.R. 494.180(b). Specifically, the facilities shall develop and adhere to a staffing plan that is consistent with the following:**

**Standard: Adequate number of qualified and trained staff. The governing body or designated person responsible must ensure that—**


**(1) An adequate number of qualified personnel are present whenever patients are undergoing dialysis so that the patient/staff ratio is appropriate to the level of dialysis care given and meets the needs of patients; and the registered nurse, social worker and dietitian members of the interdisciplinary team are available to meet patient clinical needs;**

**(2) A registered nurse, who is responsible for the nursing care provided, is present in the facility at all times that in-center dialysis patients are being treated.**

**In the event that CMS issues new superseding guidance for these regulations, the new guidance issued by CMS shall be followed.**

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

4/17/2020  
DATE

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