



State of New Jersey
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PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

JUDITH M. PERSICILLI, RN., BSN, MA
Commissioner

EXECUTIVE DIRECTIVE NO. 20-008 (Revised)

Requirements for Health Care Facilities Regarding Ventilator Beds

WHEREAS, on March 9, 2020, Governor Philip D. Murphy issued Executive Order 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., in the State of New Jersey for COVID-19; and

WHEREAS, the Department of Health (Department) recognized during this Public Health Emergency that licensed healthcare facilities must be afforded the ability and flexibility to care for and treat all of their patients, including those who may be affected by COVID-19, to ensure they receive appropriate and necessary medical care; and

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

WHEREAS, ventilator beds have been limited to hospitals and long-term care facilities; and

WHEREAS, the addition of ventilator beds in long-term care facilities requires a Certificate of Need pursuant to the requirements of N.J.S.A. 26:2H-8, et seq., N.J.A.C. 8:33, and N.J.A.C. 8:33H; and

WHEREAS, the need to expand the use of ventilator beds both within and outside of long-term care facilities was necessary in the Spring of 2020 due to the pressing need for ventilator beds for those affected by COVID-19; and

WHEREAS, on April 14, 2020, the Department issued Executive Directive 20-008, which permitted healthcare facilities, including long-term care facilities, to add temporary ventilator beds without a Certificate of Need; 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 a such declaration; 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 20-008 was included in the list of administrative directives extended under Executive Order No. 281; 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, because of the progress the State made and the decisive decrease in key statistics, such as the number of hospitalized patients in the State, the number of daily positive COVID-19 cases, spot positivity, the use of ventilators and the rate of transmission, Governor Murphy issued Executive Order No. 292, which lifted the Public Health Emergency declared in Executive Order No. 280 (2022); 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, over the course of the pandemic, the demand for and use of ventilator beds in healthcare facilities, namely long-term care facilities, to treat residents with COVID-19 has diminished.

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

1. The provisions of Executive Directive 20-008 issued on April 14, 2020, permitting healthcare facilities, including long-term care facilities, to add temporary ventilator beds into service without first complying with the requirements of N.J.S.A. 26:2H-8 et seq., and the rules promulgated thereunder, are hereby revoked. Long-term care facilities must resume compliance with the Certificate of Need requirements set out in N.J.S.A. 26:2H-8 et seq., as originally enacted, and N.J.A.C. 8:33 and N.J.A.C. 8:33H, as originally promulgated, to add new ventilator beds into service.
2. Any health care facility, including long-term care facilities, that added temporary ventilator beds into service pursuant to Executive Directive 20-008 issued on April 14, 2020, are to do the following:
 - a. Immediately cease admitting new ventilator-dependent residents to the temporary ventilator beds;
 - b. Immediately remove from service all temporary ventilator beds that are not currently in use by a ventilator-dependent resident;
 - c. Remove from service each temporary ventilator bed that is currently in use by a ventilator-dependent resident when the ventilator-dependent resident no longer requires the use of the ventilator;
 - d. Within thirty days of the date of issuance of this Revised Executive Directive, report to the Department via email at longtermcare@doh.nj.gov the number of temporary ventilator beds that remain in use and, thereafter, report to the Department via email at longtermcare@doh.nj.gov each time a currently occupied temporary ventilator bed is removed from service; and

- e. Maintain appropriate staffing for the temporary ventilator beds that remain in use, as set forth in N.J.A.C. 8:33H-1.6(h), subject to waivers that have already been or may be issued addressing these requirements or limitations of available staff.
3. This revised Executive Directive supersedes Executive Directive 20-008 that was issued on April 14, 2020.

This 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 13, 2022



Judith M. Persichilli, RN, BSN, MA
Commissioner