

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS**

**ADMINISTRATIVE ORDER AND NOTICE OF RULE ADOPTION PURSUANT TO
EXECUTIVE ORDER NO. 145 (MURPHY) (MAY 15, 2020); P.L. 2020, c. 18**

HEALTH CARE SERVICES IN OFFICE PRACTICES

**DCA Administrative Order No. 2021-11
Superseding DCA Administrative Order No. 2020-07**

Administrative Order and Temporary Rule Adoption by Kaitlin A. Caruso, Acting Director,
Division of Consumer Affairs

Date: May 6, 2021

Authority: P.L. 2020, c. 18; Executive Order No. 145 (EO 145)

Effective Date: May 6, 2021

Expiration Date: Concurrent with the end of the state of emergency or the public health emergency
declared pursuant to Executive Order No. 103 (EO 103) whichever is later.

* * *

WHEREAS, on March 9, 2020, in EO 103, the facts and circumstances of which are adopted by reference herein, Governor Murphy declared both a public health emergency and a state of emergency throughout the State due to the public health hazard posed by coronavirus disease 2019 (COVID-19); and

WHEREAS, the public health emergency declared in EO 103 has been extended multiple times, most recently by Executive Order No. 235, issued on April 15, 2021, and continues to exist today; and

WHEREAS, on March 19, 2020, Governor Murphy signed into law P.L. 2020, c. 3, which authorized the Director of the Division of Consumer Affairs (Director) in the Department of Law and Public Safety, and the Commissioner of Health (Commissioner), to waive any requirement of state law or regulation as may be necessary to facilitate the provision of health care services using telemedicine and telehealth during the state of public emergency declared in response to COVID-19; and

WHEREAS, on March 23, 2020, through Executive Order No. 109 (EO 109), the facts and circumstances of which are adopted by reference herein, Governor Murphy suspended all medical and dental “elective” surgeries and “elective” invasive procedures on adults, based upon the need

to minimize exposure of health care providers, patients and staff to COVID-19, as well as the need to conserve and manage health care resources essential to combating the spread of the virus; and

WHEREAS, on May 15, 2020, through Executive Order No. 145 (EO 145), the facts and circumstances of which are adopted by reference herein, the Governor, in recognition of the decreasing burden on our health care system from COVID-19, rescinded the suspension of elective surgery and invasive procedures imposed by EO 109, and determined that such procedures could be reasonably resumed subject to limitations and precautions that would not be necessary but for the continued effects of the COVID-19 pandemic; and

WHEREAS, through EO 145, Governor Murphy authorized that policies establishing such limitations and precautions for the resumption of such procedures at licensed health care facilities be issued by the New Jersey Department of Health (NJDOH) in an Executive Directive, and in out-patient settings not licensed by NJDOH, by the Division of Consumer Affairs, in rules or Administrative Orders, and further authorized the issuance of supplemental or amended policies concerning elective surgeries and elective invasive procedures; and

WHEREAS, on April 14, 2020, Governor Murphy signed into law P.L. 2020, c. 18, which permits the Director to issue administrative orders to suspend temporarily any provision of Title 45 of the Revised Statutes or suspend or modify temporarily any rule adopted pursuant to such authority or to adopt temporarily any rule relating to the practice of any profession licensed by a board in the Division, upon concurrence by the Attorney General, after determining that such order is necessary to promote the public welfare and further such other purposes of the state of emergency or public health emergency declared in EO 103; and

WHEREAS, on May 18, 2020, the Director issued Administrative Order 2020-07, establishing enforceable standards for the operation of office-based health care practices, including those at which elective surgeries and elective invasive procedures are performed; and

WHEREAS, on May 19, 2020, the Commissioner issued guidance in the form of a letter to hospitals and a letter to licensed ambulatory surgery centers regarding policies, including limitations and precautions, that were to apply to the provision of elective surgery and elective invasive procedures in those facilities; and

WHEREAS, on June 16, 2020, the Commissioner issued revised guidance to licensed ambulatory surgery centers in the form of Executive Directive, ED No. 20-016, implementing modified COVID-19 testing requirements with respect to patients scheduled to undergo elective surgery or elective invasive procedures at licensed ambulatory surgery centers, which were further modified in revised ED No. 20-016, on June 24, 2020, and then further revised ED No. 20-016, on July 28, 2020; and

WHEREAS, approximately 100 registered surgical practices required to become licensed by NJDOH as ambulatory surgery centers pursuant to P.L. 2009, c. 24 (N.J.S.A. 26:2H-12) have not yet completed the licensure process, but should be required to meet the same standards and adhere to the same limitations and precautions as ambulatory surgery centers for the protection of patients and staff; and

WHEREAS, on August 4, 2020, the Centers for Disease Control and Prevention (CDC) issued updated guidance applicable in dental settings that amended recommended infection control practices in regions with moderate to substantial community transmission of COVID-19; and

WHEREAS, on August 28, 2020, the CDC updated its guidance for infection control and prevention practices for routine dental health care delivery during the pandemic and recommended infection control and prevention practices when providing care to suspected or confirmed COVID-19 patients, as well as environmental and administrative controls, including specific PPE for dental health care personnel in areas of moderate to substantial community transmission, and additional guidance on physical distancing and responding to SAR-CoV-2 exposures; and

WHEREAS, on October 24, 2020, through Executive Order 192 (EO 192), in recognition that more residents had returned to in-person work and that the State was experiencing an increase in reported new cases of COVID-19, Governor Murphy established comprehensive standards for ensuring safety in workplaces in all industries across the State, including health care offices, entrusting to the Commissioner of Health and the Commissioner of Labor and Workforce Development, in consultation with licensing and regulatory agencies, the responsibility for the development of a process to address employee complaints concerning deviations from the standards; and

WHEREAS, on December 4, 2020, the CDC issued updated guidance applicable in dental settings that amended recommended infection control practices in regions with moderate to substantial community transmission of COVID-19; and

WHEREAS, on February 10, 2021, the CDC again updated guidance on health care settings related to universal use of personal protective equipment and patient care activities in areas of moderate to substantial transmission and for improving fit of facemasks; and

WHEREAS, while it is necessary to implement standards to mitigate the spread of COVID-19, it is also necessary to recognize the circumstances in which companions are essential to patient care, to assist with mobility, communication or understanding or for the support of a patient receiving pregnancy-related care; and

WHEREAS, public health, safety and welfare will be promoted by establishing standards for the safe provision of in-person office-based health care services, including but not limited to elective surgery and invasive procedures, while mitigating the spread of COVID-19 by minimizing person-to-person interaction, limiting unnecessary exposure for health care practitioners, patients and staff, and ensuring that patients have timely access to health care; and

WHEREAS, to promote public health, safety and welfare, offices at which physicians perform elective surgery and elective invasive procedures should prioritize services in a manner aligned with requirements NJDOH has established for ambulatory surgical centers and reflective of the need for a health care system that can respond to the changing landscape of the fight against COVID-19; and

WHEREAS, changes to AO 2020-07 are warranted to ensure that the standards for the operation of office-based health care practices enforced by the Division are consistent with current CDC guidance, NJDOH Executive Directives and guidance, as well as EO 192 establishing standards for ensuring workplace safety; to ensure that health care practitioners at registered surgical practices consider data available from the COVID-19 Data Dashboard for the State of New Jersey regarding the current capacity of the hospitals to address possible complications that may arise when performing elective surgery or procedures; and to make clear to other health care practitioners the need to continually assess community spread in the region, while balancing the ongoing needs of patients to receive medical care, accompanied by companions as necessary;

NOW, THEREFORE, I, Kaitlin A. Caruso, Acting Director of the Division of Consumer Affairs, by virtue of the authority vested in me by the statutes of this State and EO 145, and upon concurrence by the Attorney General, determine that this ORDER is necessary to promote the public welfare and further such other purposes for which the state of emergency and the public health emergency were declared in EO 103, and hereby ORDER as follows:

A. The following words and terms when used in this rule shall have the following meaning, unless the context indicates otherwise:

“Elective surgeries and elective invasive procedures” are those that can be delayed without undue risk to the current or future health of the patient, as determined by the patient’s treating health care professional.

“Companion” means a person accompanying a patient who is a minor or accompanying a patient receiving health care services in an office, whose presence is needed to provide assistance with mobility, communication, or understanding, or as a support person for pregnancy-related care including but not limited to office-based ultrasound, genetic counseling, miscarriage management, and postpartum exams.

“Compatible symptoms” means fever or chills; cough; shortness of breath or difficulty breathing; fatigue; muscle or body aches; headaches; new loss of taste or smell; sore throat; congestion or runny nose; nausea or vomiting; diarrhea; or such other symptoms of COVID-19 as may be identified by the CDC.

“COVID positive person” means a person confirmed to have or suspected of having COVID who has not yet completed isolation. For additional information refer to: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html> and <https://www.cdc.gov/coronavirus/2019-ncov/community/strategy-discontinue-isolation.html>.

“Exposure” means close contact, defined as being within six feet, for fifteen minutes or more in a 24 hour period in the aggregate, to a known COVID positive person or a person suspected of being COVID positive, without the use of appropriate PPE.

“Health care professionals” shall include licensees of the following boards: New Jersey State Board of Dentistry, State Board of Medical Examiners, New Jersey Board of Nursing, New Jersey State Board of Optometrists, New Jersey State Board of Ophthalmic Dispensers and

Ophthalmic Technicians, State Board of Respiratory Care, Board of Pharmacy, Acupuncture Examining Board, State Board of Chiropractic Examiners, Occupational Therapy Advisory Council, State Board of Physical Therapy Examiners, Orthotics and Prosthetics Board of Examiners, State Board of Polysomnography, Athletic Training Advisory Committee, Audiology and Speech-Language Pathology Advisory Committee.

“Isolation” is the practice of a COVID positive person or other person awaiting COVID-19 test results remaining in his or her residence (home, hotel, dormitory, or other living facility), social distancing within that location, and wearing a mask in that location when social distancing is not possible. A person is considered to have completed isolation:

- 1) For asymptomatic COVID-19 positive persons using a time-based strategy:
 - i. At least 10 days since a COVID-19 positive result while remaining asymptomatic.
 - ii. At least 20 days since a COVID-19 positive result while remaining asymptomatic, for severely immunocompromised individuals.
- 2) For symptomatic COVID-19 positive persons using a symptom-based strategy:
 - i. At least 10 days after the onset of symptoms for individuals who were mild or moderately ill and have shown improvement in symptoms and who have had at least 24 hours pass since their last fever without the use of a fever-reducing medication.
 - ii. At least 20 days after the onset of symptoms for individuals who were critically or severely ill and have shown improvement in symptoms and who have had at least 24 hours pass since their last fever without the use of a fever-reducing medication.
 - iii. At least 20 days after the onset of symptoms for individuals who are severely immunocompromised and have shown improvement in symptoms and who have had at least 24 hours pass since their last fever without the use of a fever-reducing medication.
- 3) For persons with exposure to a COVID positive person, without the appropriate use of PPE: 14 days after exposure.
- 4) For asymptomatic persons, scheduled to have elective surgery or an elective procedure at a registered surgical practice: until the return of a negative test result.

For additional information on appropriate isolation, refer to:
<https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>,
https://www.nj.gov/health/cd/topics/covid2019_healthcare.shtml,
https://www.state.nj.us/health/cd/documents/topics/NCOV/Guidance_for_COVID19_Diagnosed_andor_Exposed_HCP.pdf, and
https://www.nj.gov/health/cd/documents/topics/NCOV/COVID_updated_quarantine_timeframes.pdf

“Office” means a practice setting not licensed by NJDOH, including but not limited to health care professional offices, private practices, clinics, urgent care centers, and community medical centers.

“Screening questions” refers to questions which are to be asked during a telephonic or online consultation and at the time of arrival at the premises for an appointment, to screen clients for symptoms consistent with COVID-19. Such questions must include, at a minimum, the following questions:

i. Within the past 24 hours, have you had any of the following symptoms? (Yes or No)

- Fever or chills
- Cough
- Shortness of breath or difficulty breathing
- Fatigue
- Muscle or body aches
- Headaches
- New loss of taste or smell
- Sore Throat
- Congestion or runny nose
- Nausea or vomiting
- Diarrhea

ii. Within the past 14 days, have you had a known exposure to any individual suspected or confirmed to have COVID-19 or who has traveled to a location after which self-quarantine is recommended? (Yes or No) For staff: You may answer “no” if you are a health care worker whose only exposure to individuals with suspected or confirmed COVID-19 has been in a health care setting in which you were wearing appropriate personal protective equipment.

B. All health care professionals are authorized to provide in-person adult and pediatric health care services in an office, consistent with their scope of practice and the regulations of their respective boards, unless specifically waived during the state of emergency or public health emergency, and shall be required to adopt and comply, and ensure that their staff comply, with policies that include, at a minimum, requirements to:

1. Establish protocols to minimize person-to-person contact in the office, while allowing companions in certain circumstances

a. Utilize telemedicine to the greatest extent possible to treat, order tests for and triage patients. Also utilize telemedicine to include a patient’s companion, if the companion is denied entry after screening questions or a temperature check, or another additional support person, if requested by the patient.

- b. Contact all patients seeking in-person appointments (or the patient's parent or guardian) to: (1) assess whether an in-person visit is necessary; (2) determine the patient's current health and vaccination status; (3) determine whether the patient has had known exposure to COVID-19, or has compatible symptoms, or has tested positive; (4) determine the length of time since the onset of symptoms or from the positive test results; and (5) advise the patient during scheduling of in-person appointments of the face-covering requirement and protocols related to companions, if applicable.
- c. Prioritize the performance of health care services that, if deferred, are most likely to result in patient harm and would most benefit at-risk patients (for example, those with serious underlying health conditions), or were previously cancelled and/or postponed, gradually resuming a full scope of services when it is possible and safe to do so.
- d. Require patients and companions coming to the office for an in-person visit to wear, at a minimum, a well-fitting cloth face covering or face mask(s) covering their mouth and nose while on the premises, except when the services being provided do not allow for the use of a mask, when doing so would inhibit the individual's health, or when the individual is under two years of age. If anyone arrives without a cloth face covering and is not exempt from this requirement, the office must provide the individual with a suitable face covering or decline entry to patients and companions who refuse to comply.
- e. Screen all patients and companions (if applicable) upon arrival, regardless of symptoms, by means of a no-contact temperature check or a thermometer with a disposable cover, and if a patient or companion has a fever over 100.0 degrees: (1) isolate the patient in a separate location or single-patient room immediately upon entry into the office and close the door; or (2) defer care, if appropriate; or (3) as to a companion, advise that the companion may not enter and should wait for the patient outside of the premises and attempt to utilize telemedicine to include a patient's companion. For additional information, refer to: Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID-19) Pandemic at: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html>.
- f. Ask the screening questions of patients and companions entering the premises; if the patient or companion answers "yes" : (1) isolate the patient in a separate location or single-patient room immediately upon entry into the office and close the door; or (2) defer care if appropriate or (3) as to a companion, advise that they may not enter and should wait for the patient outside of the premises and attempt to utilize telemedicine to include a patient's companion. For additional information, refer to: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.
- g. Allow one companion, as defined herein, to accompany the patient. If a person who has accompanied the patient is needed only for transportation to the appointment and not needed to be present as a companion during clinical consultation, that person should wait outside of the premises if feasible.

- h. Space appointments to minimize patient-to-patient contact and the number of people in the office at any given time. If feasible, and consistent with social distancing, patients and companions should remain outside or in their cars until they are ready to be seen, or wait in separate rooms to minimize contact with others.
- i. Schedule patients with known exposure to a person with COVID-19 or exhibiting COVID-19 compatible symptoms for the end of the day or in a dedicated room. For additional information, refer to: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html>.
- j. Schedule patients with increased susceptibility to infections or complications from COVID-19 when the fewest patients and staff will be present, and not during times reserved for patients with known exposure or compatible symptoms.
- k. Provide follow-up care using telemedicine to the greatest extent possible consistent with the standard of care.

2. Facilitate social distancing within the office

- a. Install physical barriers and minimize patient contact with staff and other patients in the reception area during triage, check-in and check-out, or arrange intake and waiting areas to maintain six feet or more of distance between individuals wherever possible.
- b. Isolate patients with COVID-19 compatible symptoms in a separate location or single-patient room immediately upon entry into the office, and close the door.
- c. Minimize the number of individuals, notwithstanding companion provisions above, to the extent feasible, in examination and other rooms.
- d. Arrange for contactless patient registration and payment options. For additional information refer to: <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/doctor-visits-medicine.html>. If pens and credit cards are utilized, disinfect them after each use.
- e. Rearrange workspaces, to the extent feasible, to ensure that individuals maintain six feet or more distance from each other wherever possible.
- f. Provide administrative staff their own workspace, if feasible, and provide sufficient supplies and equipment (phones, computers, pens, paper, and medical equipment) to avoid sharing. If items are shared, they must be frequently disinfected.

3. Adopt enhanced protocols for office cleaning and disinfection and maintenance of supplies

- a. Allocate ample time between appointments to allow for appropriate cleaning and disinfection between patients.
- b. Clean items and surfaces prior to applying disinfectant, use an EPA-registered, hospital-grade disinfectant and allow for appropriate contact times as indicated on the product's label. For additional information, refer to List N on the EPA website for EPA-registered disinfectants that have qualified for use against SARS-CoV-2 at: <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2-covid-19>.
- c. Clean and disinfect high-touch areas, including restrooms, toilet and sink knobs, countertops, door knobs, water fountains, and shared medical equipment, routinely and after each use. For additional information, refer to: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control.html>.
- d. Dispose of any medical waste consistent with routine procedures and in conjunction with state and local regulations. For additional information refer to: NJ Department of Environmental Protection Regulatory Compliance at: <https://www.nj.gov/dep/covid19regulatorycompliance/>.
- e. Remove from any waiting area materials (e.g., books, magazines, toys) that are intended to be reused and are difficult to clean and disinfect.
- f. Maintain staffing levels sufficient to perform the above protocols effectively and in a manner that ensures the safety of patients and staff.
- g. Allow all staff to have break time for repeated hand hygiene between patients, throughout the day, and after removing personal protective equipment (PPE).
- h. Provide supplies for regular hand hygiene with soap and water, alcohol-based hand rub with at least 60 to 95% alcohol, or antiseptic hand wash, have staff practice respiratory hygiene/cough etiquette including the proper disposal of tissue and the use of no-touch receptacles with disposable liners in all restrooms and all patient areas.
- i. Ensure that social distancing and face-coverings are maintained among staff to the extent possible, including in breakrooms.
- j. Maintain an adequate supply of PPE including respirators (e.g., N95 masks) when required to protect health care personnel from airborne contaminants such as some infectious agents, which must be used in the context of a comprehensive, written respiratory program that meets the requirements of the Occupational Safety and Health Administration (OSHA) Respiratory Protection standard. The program should include medical evaluations, training, and fit testing, consistent with OSHA's Respiratory

Protection resources. For more information, refer to:
<https://www.osha.gov/SLTC/respiratoryprotection/>.

- k. Follow normal processes for obtaining PPE, including contacting suppliers listed on the NJ PPE Wholesale Supplier Registry at:
<https://forms.business.nj.gov/ppevendor/list/>, sister facilities, and other providers in the area, and documenting such efforts.

4. Establish rigorous protections for staff

- a. Accommodate telework and work-from-home arrangements to the greatest extent possible, particularly for administrative staff who may be able to work remotely.
- b. Require staff to stay home if they are sick, and advise them to seek testing, medical evaluation and care.
- c. Isolate and then send staff home who become sick at work and advise staff to seek testing and medical evaluation.
- d. Comply with all leave laws. For additional information including rules applicable to leave time for COVID-19 testing and vaccination, refer to the New Jersey Department of Labor guidance at <https://www.nj.gov/labor/worker-protections/earned-sick/covid.shtml#:~:text=Can%20use%20accrued%20Earned%20Sick,illness%2C%20quarantine%2C%20or%20vaccination.>
- e. Advise staff to immediately report, and where possible provide a copy of, any positive COVID test result obtained, regardless of the location at which the testing occurred.
- f. Permit staff who have been confirmed or suspected to have had COVID or had exposure to a COVID positive person to return to work only after completing isolation.
- g. Screen all staff upon arrival each day, by means of a no-contact temperature check or a thermometer with a disposable cover, record the result and advise staff to go home if their temperature is over 100.0 degrees.
- h. Conduct all screenings of and communications with staff in a manner consistent with the confidentiality requirements of the Americans with Disabilities Act, New Jersey Law Against Discrimination, and any other applicable laws; and consistent with any guidance from the Equal Employment Opportunity Commission and the New Jersey Division on Civil Rights, as required by EO 192.
- i. Provide training to all staff to self-monitor for compatible symptoms and to advise if they have known exposure to a COVID positive person when not wearing appropriate PPE.

- j. Direct all administrative staff to wear, at a minimum, a cloth face covering within the office, except where doing so would inhibit the individual's health. For additional information, refer to OSHA's Healthcare Workers and Employers guidance at: <https://www.osha.gov/SLTC/covid-19/healthcare-workers.html> or <https://www.cdc.gov/coronavirus/2019-ncov/hcp/using-ppe.html> and the National Institute for Occupational Safety and Health (NIOSH) Hierarchy of Controls at: <https://www.cdc.gov/niosh/topics/hierarchy/default.html> to determine how to implement feasible and effective control solutions.
- k. Require clinical staff to wear PPE, and provide clinical staff with the requisite PPE at no cost to them, consistent with the level of risk, using professional judgment regarding the potential for exposure and PPE resource constraints. For additional information, refer to: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control.html>.
- l. Train staff in the proper techniques for donning and doffing PPE and for disposal or laundering of PPE (if applicable).
- m. Optimize the supply of PPE, if PPE is in short supply, utilizing techniques as recommended in CDC's Strategies to Optimize the Supply of PPE and Equipment. For additional information, refer to: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/index.html>.
- n. Refrain, and mandate that staff refrain, from performing clinical functions without requisite PPE.
- o. Provide all PPE and other required supplies to staff at no charge pursuant to EO 192.
- p. Stagger schedules or implement rotations to reduce the number of people in the office at a given time.
- q. Schedule staff with increased susceptibility to infections or complications from COVID-19 when the fewest patients and staff will be present.
- r. Notify employees of any known exposure to COVID-19 in the office, consistent with confidentiality requirements in the Americans with Disabilities Act and any other applicable laws, and consistent with the guidance from the Equal Employment Opportunity Commission. For additional information about these requirements refer to <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> and <https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>.
- s. Report to the relevant licensing board any violations of this order and affirmatively protect staff from retaliation based on any efforts made in seeking to follow or enforce compliance with this order.

5. Stay Informed About Developments and Obligations; Share Guidance with Patients

- a. Review and comply with guidance provided at: <https://www.cdc.gov/coronavirus/2019-ncov/> relating to infection control, testing of patients and health care workers, ambulatory care settings and specific practice fields.
- b. Monitor guidelines and directives issued by NJDOH, professional boards, the CDC, the Food and Drug Administration (FDA) and OSHA on an ongoing basis.
- c. Ensure familiarity with data and recommendations specific to vulnerable populations, including for individuals at risk of severe illness and individuals who require extra precautions, recognizing that both staff and patients may fall into such categories. For additional information, refer to: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html>.
- d. Maintain a log of patients treated and staff present in the office to facilitate contact tracing and submit such information if requested to do so by, or on behalf of, NJDOH or the local board of health.
- e. Report COVID-19 cases and exposures consistent with board rules, if applicable, and N.J.A.C. 8:57, to local boards of health.
- f. If the health care professional will seek any payment directly from the patient related to testing, post a display at the point of registration that contains information about free COVID-19 testing including, at a minimum, the location and website or telephone number of at least one location in reasonable proximity at which such free testing is available, in addition to the following link: <https://covid19.nj.gov/faqs/nj-information/testing-and-treatment/where-can-i-get-free-public-covid-19-testing-or-treatment>.
- g. Post displays and/or offer handouts relating to COVID-19 in offices advising of the signs and symptoms of COVID-19, and the importance of social distancing and hand hygiene (washing with soap and water for at least 20 seconds or use of alcohol-based hand rubs), face coverings, and proper respiratory hygiene/cough etiquette, testing, contact tracing, and vaccination. For additional information and sample materials, refer to:
 - i. NJDOH Infographics: https://www.nj.gov/health/cd/topics/covid2019_toolkit.shtml
 - ii. NJDOH Infographic: “COVID-19 Underlying Conditions” <https://www.nj.gov/health/cd/documents/topics/NCOV/COVID-Underlying-Conditions.pdf>

- iii. NJDOH/NJ Division of Consumer Affairs Infographic: “COVID-19 Antibody Testing” https://www.nj.gov/health/cd/documents/topics/NCOV/COVID-infographic_antibody%20testing.pdf
 - iv. NJDOH: “What is Contact Tracing?” <https://www.nj.gov/health/cd/topics/20200630%20NJ%20COVID-19%20CT%20infographics%20v9.pdf>
 - v. NJDOH: “COVID-19 Vaccine Quick Facts” https://www.state.nj.us/health/cd/documents/topics/NCOV/COVID_vax_quickfacts_infographic.pdf
- h. Make signage and handouts available in languages spoken by patient populations served. For additional information, refer to: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/communication-toolkit.html>.
- i. Monitor indicia of community spread as depicted by the statewide weekly DOH COVID-19 Activity Level Index (CALI) score, or its trajectory over the preceding three weeks, if any, and be prepared to modify provision of clinical services as may be warranted by data suggesting any increase in such spread. The CALI score can be found in the COVID-19 Weekly Activity Report at <https://www.nj.gov/health/cd/statistics/covid/>. For additional information to guide decisions impacting the provision of clinical services, refer to:
- i. CDC Framework for Healthcare Systems Providing Non-COVID-19 Clinical Care During the COVID-19 Pandemic: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/framework-non-COVID-care.html>.
 - ii. CDC Preparedness Tools for Healthcare Professionals and Facilities Responding to COVID-19: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/preparedness-checklists.html>.
 - iii. CDC COVID-19 Surge tool: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/covidsurge.html>.
- C. Health care professionals in office-based practices that are not registered surgical practices, at which health care professionals, including, but not limited to dentists; oral surgeons; pulmonologists; otolaryngologists; and ophthalmologists, optometrists, and opticians (collectively, eye care professionals) perform elective surgery or elective invasive procedures, or offer services in an office that involves direct contact with the patient’s face, eyes, or mouth, or present a high risk of aerosolization, may continue to gradually resume the full scope of services when possible and safe to do so, and shall adopt and comply with, and ensure that their staff comply with, policies, in addition to those set forth in **B.** above, that include, at a minimum, requirements to:

1. Defer any elective surgery or elective procedure, if a patient is COVID-19 positive or has compatible symptoms until the patient has completed isolation. Retesting a patient who has tested positive in the last six weeks is not required or recommended if the patient remains asymptomatic and has completed isolation, unless there is a reasonable suspicion that the patient may be infectious with COVID-19. For additional information, refer to: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html> and <https://www.cdc.gov/coronavirus/2019-ncov/community/strategy-discontinue-isolation.html>.
 2. Give consideration to the level of community spread indicated on the official COVID-19 Data Dashboard for the State of New Jersey found at: <https://covid19.nj.gov/index.html>, and the CDC Framework for Healthcare Systems Providing Non-COVID-19 Clinical Care During the COVID-19 Pandemic found at: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/framework-non-COVID-care.html>, when determining whether to schedule asymptomatic patients for elective surgery or elective invasive procedures involving direct contact with the patient's face, eyes, or mouth or involving a high risk of aerosolization, giving priority to patients who:
 - a. have tested negative for COVID-19 within the preceding six days;
 - b. have completed isolation within the last six weeks after having tested positive for COVID-19; or
 - c. in the health care professional's judgment, could be subject to an adverse medical outcome or harm as a result of a postponement.
 3. Weigh, and review with the patient, the risks of any elective surgery, elective invasive procedure or routine dental or eye care if the patient is at higher risk of contracting COVID-19 or developing complications, or is immunocompromised.
 4. Wear PPE, which shall include respiratory protection such as an NIOSH-approved N95 disposable filtering face piece or higher level respirator, gloves, fluid-resistant gowns, hair covers, eye protection with solid side shields, or face shields, to protect mucous membranes of the eyes, nose, and mouth during aerosol-generating procedures or those likely to generate splashing or spattering of blood or other bodily fluids, as dictated by the procedure to be performed, consistent with guidelines from the CDC. Dental professionals in regions of moderate to substantial community transmission must comply with E. below.
 5. Implement additional infection prevention and control measures to ensure that all surfaces are cleaned and disinfected between patients. Optimize the use of engineering and administrative controls to reduce or eliminate exposures. For additional information, refer to: www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html.
- D. Health care professionals in office-based practices that are registered surgical practices that are required to be licensed by NJDOH as ambulatory surgery centers but have not yet been licensed, may continue to gradually resume the full scope of services when possible and safe

to do so. Such health care professionals shall adopt and comply with, and ensure that their staff comply with, policies, in addition to those set forth in **B.** above, that include, at a minimum, requirements to:

1. Determine whether elective surgeries or elective procedures will be performed, and if so, which ones, only after ensuring that:
 - a. At least one hospital with which the registered surgical practice has a transfer agreement as required by N.J.A.C. 13:35-4A.6 (b)1 is located in a region (as displayed on the COVID-19 Data Dashboard at: https://www.nj.gov/health/cd/topics/covid2019_dashboard.shtml) that has a downward or horizontal trajectory in hospitalizations.
 - b. Statewide data (as displayed on the COVID-19 Data Dashboard at: https://www.nj.gov/health/cd/topics/covid2019_dashboard.shtml) demonstrates a downward or horizontal trajectory in each of the following:
 - i. hospitalizations;
 - ii. intensive care unit (ICU)/critical care utilization;
 - iii. medical/surgical bed utilization; and
 - iv. ventilator use.
2. Defer a patient-specific elective surgery or elective procedure until the patient has completed isolation if:
 - a. The patient is COVID-19 positive, or has compatible symptoms; or
 - b. The patient has had exposure to a known or suspected COVID positive person.

Retesting a patient who has tested positive in the last six weeks is not required or recommended if the patient remains asymptomatic and has completed appropriate isolation, unless there is a reasonable suspicion that the patient may be infectious with COVID-19. For additional information, refer to: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html> and <https://www.cdc.gov/coronavirus/2019-ncov/community/strategy-discontinue-isolation.html>.

3. Determine when and whether to perform elective surgery or procedures guided by the level of community spread indicated on the official COVID-19 Data Dashboard for the State of New Jersey found at: https://www.nj.gov/health/cd/topics/covid2019_dashboard.shtml, and the CDC Framework for Health care Systems Providing Non-COVID-19 Clinical Care During the COVID-19 Pandemic found at: <https://www.cdc.gov/coronavirus/2019->

[ncov/hcp/framework-non-COVID-care.html](https://www.cdc.gov/ncov/hcp/framework-non-COVID-care.html), gradually resuming a full scope of services when it is possible and safe to do so.

4. Prioritize elective surgery or elective invasive procedures for asymptomatic patients where:
 - a. in the health care professional's judgment, postponement could result in an adverse medical outcome or patient harm, or
 - b. the patient is at-risk (for example, those with serious underlying health conditions) and would most benefit, or
 - c. a surgery or invasive procedure was previously canceled and/or postponed.
5. Weigh, and review with the patient, the risks of any elective surgery and elective invasive procedure if the patient is at higher risk of contracting COVID-19 or developing complications, or is immunocompromised.
6. Confirm on a daily basis that at least one of the hospitals with which the registered surgical practice has a transfer agreement has sufficient intensive care and non-intensive care beds to support the potential need for emergent transfers; PPE; ventilators; medications; and trained staff to treat all patients.
7. Test by any specimen collection method (e.g. swab or saliva) and/or review test results for each patient scheduled to undergo elective surgery or an elective invasive procedure within a six-day maximum before a scheduled procedure, which tests are conducted by means of a molecular test (such as a PCR test, (not an antigen or antibody IgG, IgA, IgM, or similar test) that is either approved by the FDA, authorized by the FDA through an Emergency Use Authorization, or approved by the New Jersey Clinical Laboratory Improvement Services as permitted by the FDA, unless the patient had previously tested positive for COVID-19 and completed isolation within the last six weeks. Point of care (POC) molecular tests are acceptable only if they are capable of providing a negative result. Retesting a person who has tested positive in the last six weeks is not required or recommended if the person remains asymptomatic and has completed isolation, unless there is a reasonable suspicion that the patient may be infectious for COVID-19. For more information, refer to: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html> and <https://www.cdc.gov/coronavirus/2019-ncov/community/strategy-discontinue-isolation.html>.
8. If a negative test result is not received by the sixth day after collection, the elective surgery or elective procedure should be either:
 - a. Rescheduled until the test results are received so long as the patient continues to remain in self-quarantine while awaiting the results; or
 - b. Performed but only if, in the exercise of professional judgment, the physician makes a clinical assessment evaluating the risk involved if the patient is COVID positive,

documents in the patient record the rationale for why the test is not necessary and it is appropriate to move forward with the procedure and proceeds in conformance with the infection control precautions set forth in 11. below, presuming the patient to be COVID positive.

For more information on testing, refer to:

https://www.nj.gov/health/cd/topics/covid2019_healthcare.shtml, including NJDOH COVID-19 Testing Guidance and 4-28-20 letter from the NJDOH Public Health and Environmental Laboratories located at:

https://www.nj.gov/health/phel/documents/CLIS_Doc/COVID-19%20Test%20Results%20Interpretation%20Guidance.pdf.

9. Counsel patients to remain in self-quarantine following testing, up through the day of the surgery or procedure and to immediately inform the office if they develop compatible symptoms while in self-quarantine or have had close contact with a COVID positive person or any person with compatible symptoms.
10. Confirm with the patient before performing the elective surgery or elective procedure that self-quarantine has been completed up through the date of the scheduled procedure.
11. Institute enhanced infection control measures when proceeding with surgery or procedures in the absence of a timely negative test result. Additional measures include:
 - a. Ensure that no one enters the vacated procedure room until enough time has elapsed for sufficient air exchanges to remove potentially infectious particles, as determined by the nature of the procedure performed, the type of PPE the person entering the room is wearing, and the exchange rate of the room. For additional information on clearance rates under differing ventilation conditions, refer to: <https://www.cdc.gov/infectioncontrol/guidelines/environmental/appendix/air.html#table1>. With respect to aerosol generating procedures, follow CDC guidelines, including administrative and engineering controls, and use of appropriate PPE. For more information, refer to: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-faq.html>.
 - b. Perform cleaning and surface disinfection only after the time for air exchanges has elapsed, before the next use of the room, using EPA-registered, hospital-grade disinfectant for appropriate contact times as indicated on the product's label. For additional information, refer to List N on the EPA website for EPA-registered disinfectants that have qualified for use against SARS-CoV-2 that are COVID-19 compatible at: <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2-covid-19>.
12. Use available testing to protect staff and patients whenever possible and screen staff upon arrival in accordance with guidance issued by the Centers for Medicare and Medicaid Services as set forth at: <https://www.cms.gov/files/document/covid-flexibility-reopen-essential-non-covid-services.pdf>.

13. Ensure availability of all supplies required for planned procedures (e.g., anesthesia drugs, procedure-related medications, sutures, disposable and non-disposable surgical instruments).
 14. Maintain an adequate supply of PPE, with a minimum seven-day supply on hand, or such quantity as may be subsequently required for Ambulatory Surgery Centers pursuant to an executive directive issued by the Commissioner.
 15. Nothing in this Order shall be construed to limit access to the full range of family planning services and procedures, consistent with Executive Order No. 109, or to require COVID-19 testing for such services.
 16. For additional information, refer to:
 - a. <https://www.asahq.org/about-asa/newsroom/news-releases/2020/04/joint-statement-on-elective-surgery-after-covid-19-pandemic>
 - b. [https://www.journalacs.org/article/S1072-7515\(20\)30317-3/pdf](https://www.journalacs.org/article/S1072-7515(20)30317-3/pdf)
 - c. <https://www.facs.org/media/press-releases/2020/covid-scoring-system0414>
- E. Dental professionals, consistent with N.J.A.C. 13:30-8.5, should continue to comply with OSHA regulations and CDC Recommended Infection Control Practices for Dentistry, including guidance found at: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/dental-settings.html>. In addition, dental professionals shall adopt and comply with, and ensure their staff comply with policies in addition to those set forth in B. and C. above that include, at a minimum, requirements to:
1. Avoid aerosol generating procedures whenever possible, including those involving the use of high-speed dental hand pieces, air/water syringe, and ultrasonic scalers.
 2. Use four-handed dentistry, high evacuation suction, and dental dams to minimize droplet and aerosol splatter, if aerosol generating procedures are necessary for dental care.
 3. Wear a surgical mask or use a respirator, eye protection (goggles or a face shield that covers the front and sides of the face), a gown or protective clothing, and gloves consistent with the level of risk during procedures likely to generate splashing or splattering of blood or other bodily fluids.
 4. Utilize a N95 respirator or a respirator that offers an equivalent or higher level of protection during aerosol generating procedures, in regions with moderate to substantial community transmission of COVID-19.
 5. Add eye protection without gaps to face masks to ensure eyes, nose, and mouth are all protected from respiratory secretions during patient care encounters, including those where

splashes and sprays are not anticipated, in regions with moderate to substantial community transmission of COVID-19.

6. Have patients use a pre-procedural mouth rinse to reduce level of oral microorganisms in aerosol and splatter that may be generated during dental procedures.
- F. Eye care professionals should use a slit lamp “breath” shield/barrier that is as large as possible without interfering with clinical care.
- G. This Order hereby supersedes DCA Administrative Order No. 2020-07.

This Order shall take effect immediately and shall remain in effect until the end of the state of emergency or public health emergency declared by the Governor in EO 103, whichever is later, unless expressly revoked or superseded by a subsequent Administrative Order issued by the Director of the Division of Consumer Affairs.



Date: May 6, 2021

Kaitlin A. Caruso, Acting Director