

**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**

**HEALTHCARE SERVICES IN OFFICE PRACTICES
DCA Administrative Order No. 2020-07**

Administrative Order and Temporary Rule Adoption by Paul R. Rodríguez, Acting Director,
Division of Consumer Affairs

Date: May 18, 2020

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

Effective Date: May 18, 2020

Expiration Date: Concurrent with the end of the state of emergency or the public health emergency, whichever is later.

* * *

WHEREAS, on March 9, 2020, through Executive Order No. 103 (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 twice extended, through Executive Order No. 119 (2020), signed on April 7, 2020, and through Executive Order No. 138 (2020), signed on May 6, 2020, 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 in the Department of Law and Public Safety, and the Commissioner of Health, 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 21, 2020, through Executive Order No. 107 (EO 107), the facts and circumstances of which are adopted by reference herein, to further protect the health, safety and welfare of New Jersey residents, Governor Murphy ordered all New Jersey residents to remain home or at their place of residence, except in specifically enumerated, limited

circumstances, and implemented social distancing requirements for individuals when in public; and

WHEREAS, the implementation of social distancing strategies in EO 107 was based upon the CDC's recommendation that social distancing prevents community spread of the virus, the premise that limiting unnecessary movement of individuals in and around their communities as well as person-to-person interaction mitigates community spread of the virus, and the ongoing need to take all possible steps to preserve our health care system's capacity to treat those who require emergency or intensive care; 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, defined as those that "can be delayed without undue risk to the current or future health of the patient," and excluding vaccines, 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 March 23, 2020, pursuant to the authority granted to the Director of the Division of Consumer Affairs under P.L. 2020, c. 3, I issued Waiver No. DCA-W-2020-6, which waived certain telehealth and telemedicine requirements set forth at N.J.S.A. 45:1-63(a)(3) pertaining to the establishment of a proper provider/patient relationship and N.J.S.A. 45:1-62(c) relating to the specific technological parameters for the type of communications devices to be used; and

WHEREAS, on April 8, 2020, through Executive Order No. 122, on April 28, 2020, through Executive Order No. 125, and on May 13, 2020, through Executive Order No. 142, the facts and circumstances of which are adopted by reference herein, Governor Murphy required various businesses that are authorized to be open to the public to adopt certain policies to mitigate spread of the virus; and

WHEREAS, through their respective authorities, Commissioner of Health Judith Persichilli and Colonel Patrick J. Callahan, State Director of Emergency Management, also have established requirements for the continued operation of businesses that are authorized to be open to the public, which have included implementing adaptations to the physical space to facilitate social distancing, screenings of employees and individuals, requiring face coverings appropriate to the level of risk, mandating sanitization and limiting person-to-person contact, where feasible; and

WHEREAS, to facilitate the mitigation strategies that have been mandated by Governor Murphy, and in response to P.L.2020, c.3 and Waiver No. DCA-W-2020-6, New Jersey health care practitioners have made greater use of telemedicine and telehealth in an effort to allow New Jersey residents to remain at home and continue social distancing practicing, yet there are health care needs that cannot be met through the use of telemedicine or telehealth, requiring in-person examinations and follow-up, consistent with the required standard of care; and

WHEREAS, the Division has received reports that patients who have non-COVID-19 related medical conditions may now be delaying care or declining to seek care, due to fear of contracting the coronavirus, in circumstances where delays in obtaining care could result in patients suffering severe consequences that could be avoided with appropriate care; and

WHEREAS, the suspension of elective surgeries and invasive procedures in EO 109 was premised on 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, including Personal Protective Equipment (PPE) essential to combating the spread of the virus and assuring that the needs of critically ill patients in acute care health care facilities could be met; and

WHEREAS, many health care practitioners in out-patient settings heeded the Governor's call to assist in the effort to combat COVID-19 and to donate PPE to the health care facilities, and curtailed the health care services offered in offices and clinics across the state, postponing not only elective surgery and elective procedures, but routine care that preserves, restores and improves the health of New Jersey patients; 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 effective at 5:00 a.m. on Tuesday, May 26, 2020 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 Department of Health in an Executive Directive, not subject to the requirements of the Administrative Procedure Act, and in out-patient settings not licensed by the Department of Health, by the Division of Consumer Affairs, in rules or Administrative Orders, not subject to the requirements of the Administrative Procedure Act; 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, 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, in the continued effort to mitigate the spread of COVID-19 by minimizing person-to-person interaction, limiting unnecessary exposure to COVID-19 for health care practitioners, patients and staff, and ensuring that patients have timely access health care to achieve the best outcomes; and

NOW, THEREFORE, I, Paul R. Rodríguez, 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, in consultation with the Commissioner of the Department of Health, 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 was 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 surgery and 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.

“Healthcare professional” 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.

“In-person medically necessary or therapeutic services” are those which, in the judgment of the health care professional, are needed to treat or restore or improve a patient’s health, and which cannot be reasonably delayed without an adverse medical outcome.

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

B. All healthcare professionals are authorized to provide in-person adult and pediatric medically necessary or therapeutic 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. Avoid person-to-person contact in the office

- a.** Utilize telemedicine to the greatest extent possible to treat, order tests and triage patients.
- b.** Call 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 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 below.

- c. Prioritize services that, if deferred, are most likely to result in patient harm.
- d. Prioritize at-risk populations who would benefit most from those services (for example, those with serious underlying health conditions, those most at risk for complications from delayed care, and those without access to telehealth services).
- e. Require anyone coming to the office for an in-person visit to wear, at a minimum, a cloth face covering, in accordance with CDC recommendations, while on the premises, except here doing so would inhibit the individual's health or the individual is under two years of age. If a visitor arrives without a cloth face covering, at a minimum, and is not exempt from this requirement, the office must either provide the individual with a suitable face covering or decline entry to the individual.
- f. Screen all patients upon arrival, regardless of symptoms, by means of a no-contact temperature check or thermometers with disposable covers, and record the result within the patient chart.
- g. 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 should remain in their cars or outside until they are ready to be seen, or wait in separate rooms to minimize contact with other patients.
- h. Schedule patients with known exposure or compatible symptoms for the end of the day or in a dedicated room.
- i. 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.
- j. 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 in the reception area during triage, check-in and check-out, or arrange the in-take and waiting areas to maintain six feet or more distance between individuals wherever possible.
- b. Isolate patients with symptoms of respiratory illness to a separate location or single-patient room immediately upon entry into the office and close the door.

- c. Restrict companions unless medically necessary to assist with mobility or communication, or if the patient is a minor. All companions are required to undergo the same screening as the patient and to wear, at a minimum, a cloth face covering, except where doing so would inhibit the individual's health.
- d. Minimize the number of individuals in examination and other rooms.
- e. Arrange for contactless patient registration and payment options. Disinfect pens and credit cards after each use in accordance with CDC guidelines, if pens and credit cards are utilized.
- f. Rearrange workspaces, to the extent feasible, to ensure that individuals maintain six feet or more distance between them wherever possible.
- g. Provide administrative staff their own workspace, if feasible, and provide sufficient supplies and equipment (phones, computers, pens, paper, medical equipment) to avoid sharing. If items are shared, they must be frequently disinfected.

3. Adopt enhanced office cleaning and disinfection

- a. Allocate sufficient time between appointments to ensure that there will be ample time for appropriate disinfection between patients.
- b. Follow CDC guidelines and clean and disinfect high-touch areas routinely, and after each use in accordance with CDC guidelines, particularly in areas that are accessible to staff or other individuals, including restroom facilities, toilet and sink knobs, countertops, door knobs, water fountains, and shared medical equipment, consistent with CDC guidance at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control.html>.
- c. Dispose of any medical waste produced, consistent with routine procedures.
- d. Remove from any waiting area materials (books, magazines, toys) that are intended to be reused and are difficult to disinfect.
- e. Maintain staffing levels sufficient to perform the above protocols effectively and in a manner that ensures the safety of patients and staff.
- f. Allow all staff to have break time for repeated hand washing between patients, throughout the day and after removing PPE.
- g. Provide supplies for regular hand washing with non-antimicrobial soap and water, alcohol-based hand rub with at least 60 to 95% alcohol or antiseptic hand wash and have staff practice respiratory hygiene (coughing and sneezing) and proper tissue usage etiquettes, and use no-touch receptacles for disposal.

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 isolate and send them home if they become sick at work.
- c. Record temperatures for all staff members upon arrival and advise staff to go home if the temperature is over 100 degrees.
- d. 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.
- e. Require clinical staff to wear PPE, consistent with the level of risk, using professional judgment regarding the potential for exposure and PPE resource constraints, consistent with CDC guidance at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control.html>.
- f. 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 at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/index.html>. These optimization techniques should not be utilized when performing surgery or invasive procedures, when providing care that presents a greater risk of infection, or when among those with increased susceptibility to infections or complications from COVID-19.
- g. Train staff in the proper techniques for donning and doffing PPE and for disposal or laundering of PPE.
- h. Stagger schedules or implement rotations to reduce the number of people in the office at a given time.
- i. Schedule staff with increased susceptibility to infections or complications from COVID-19 when the fewest patients and staff will be present.

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

- a. Review guidance provided at <https://www.cdc.gov/coronavirus/2019-ncov/> relating to infection control, ambulatory care settings and specific practice fields.
- b. Monitor guidelines and directives issued by the New Jersey Department of Health, professional boards, the CDC and the Occupational Safety and Health Administration (OSHA) on an ongoing basis.
- c. Maintain a log of patients treated to facilitate contact tracing and submit such information if requested to do so by, or on behalf of, the Department of Health or the local board of health.

- d. Report COVID-19 cases and exposures consistent with board rules, if applicable, and N.J.A.C. 8:57, to local boards of health.
- e. Develop a plan to respond to potential surges.

C. Healthcare licensees, including, but not limited to dentists, oral surgeons, pulmonologists otolaryngologists, eye care professionals (collectively, ophthalmologists, optometrists, and opticians) performing elective surgery or elective invasive procedures or offering in-person medically necessary or therapeutic services in an office, which involve direct contact with the patient's face, eyes, or mouth or present a high risk of aerosolization, 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 procedure or routine dental or eye care, if a patient is COVID-19 positive or symptomatic, until at least 10 days after the patient first experienced symptoms and at least 3 days (72 hours) have passed since recovery, defined as resolution of a fever, without use of fever reducing medications.
2. Postpone any elective surgery or procedure for asymptomatic patients if, in the health care professional's judgment, a postponement will be unlikely to result in an adverse outcome.
3. Weigh, and review with the patient, the risks of any elective surgery, invasive procedure or routine dental or eye care if the patient is identified to be at higher risk of contracting COVID-19 or complications (with pre-existing comorbidities) or immunocompromised.
4. Wear PPE, which shall include respiratory protection such as N95 masks, 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 as well as 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.
5. Implement additional infection control measures, assuring that all surfaces are disinfected between patients.
6. Dental professionals, consistent with N.J.A.C. 13:30-8.5, should continue to comply with Occupational Safety and Health Administration (OSHA) regulations and CDC Recommended Infection Control Practices for Dentistry, including guidance found at <https://www.cdc.gov/coronavirus/2019-ncov/dental.settings.html>, and should use high volume evacuators and isolation strategies including rubber dams when appropriate to limit exposure to aerosols.
7. Eye care professionals should use a slit lamp "breath" shield/barrier that is as large as possible without interfering with clinical care.

This order shall take effect immediately and shall remain in effect until the end of the public health emergency and the state of emergency declared 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; provided, however, that elective surgeries and invasive procedures canceled by EO 109 may not resume until 5:00 a.m. on Tuesday, May 26, 2020, in accordance with EO 145.

A handwritten signature in black ink that reads "Paul Rodríguez". The signature is written in a cursive style with a large, stylized "P" and "R".

Date: May 18, 2020

Paul R Rodríguez, Acting Director