

(CORRECTED COPY)

P.L. 2020, CHAPTER 13, *approved March 20, 2020*

Assembly, No. 3854

1 AN ACT concerning testing for coronavirus disease 2019 and
2 amending P.L.2005, c.222.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. (New section) For the duration of the public health
8 emergency declared in connection with the coronavirus disease
9 2019 (COVID-19), all health care facilities licensed pursuant to
10 P.L.1971, c.136 (C.26:2H-1 et seq.) and all clinical laboratories
11 licensed pursuant to the "New Jersey Clinical Laboratory
12 Improvement Act," P.L.1975, c.166 (C.45:9-42.26 et seq.) shall be
13 authorized to collect specimens for the purposes of testing for
14 COVID-19.

15
16 2. Section 9 of P.L.2005, c.222 (C.26:13-9) is amended to read
17 as follows:

18 9. During a state of public health emergency, the commissioner
19 may exercise, for such period as the state of public health
20 emergency exists, the following powers concerning health care and
21 other facilities, property, roads, or public areas:

22 a. Use of property and facilities. To procure, by condemnation
23 or otherwise, subject to the payment of reasonable costs as provided
24 for in sections 24 and 25 of this act, construct, lease, transport,
25 store, maintain, renovate or distribute property and facilities as may
26 be reasonable and necessary to respond to the public health
27 emergency, with the right to take immediate possession thereof.
28 Such property and facilities include, but are not limited to,
29 communication devices, carriers, real estate, food and clothing.
30 This authority shall also include the ability to accept and manage
31 those goods and services donated for the purpose of responding to a
32 public health emergency. The authority provided to the
33 commissioner pursuant to this section shall not affect the existing
34 authority or emergency response of other State agencies.

35 b. Use of health care facilities.

36 (1) To require, subject to the payment of reasonable costs as
37 provided for in sections 24 and 25 of this act, a health care facility
38 to provide services or the use of its facility if such services or use
39 are reasonable and necessary to respond to the public health
40 emergency, as a condition of licensure, authorization or the ability
41 to continue doing business in the State as a health care facility.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 After consultation with the management of the health care facility,
2 the commissioner may determine that the use of the facility may
3 include transferring the management and supervision of the facility
4 to the commissioner for a limited or unlimited period of time, but
5 shall not exceed the duration of the public health emergency. In the
6 event of such a transfer, the commissioner shall use the existing
7 management of the health care facility.

8 (2) Concurrent with or within 24 hours of the transfer of the
9 management and supervision of a health care facility, the
10 commissioner shall provide the facility with a written order
11 notifying the facility of:

- 12 (a) the premises designated for transfer;
- 13 (b) the date and time at which the transfer will commence;
- 14 (c) a statement of the terms and condition of the transfer;
- 15 (d) a statement of the basis upon which the transfer is justified;
- 16 and
- 17 (e) the availability of a hearing to contest the order, as provided
18 in paragraph (3) of this subsection.

19 (3) A health care facility subject to an order to transfer
20 management and supervision to the commissioner pursuant to this
21 section may request a hearing in the Superior Court to contest the
22 order.

23 (a) Upon receiving a request for a hearing, the court shall fix a
24 date for a hearing. The hearing shall be held within 72 hours of
25 receipt of the request by the court, excluding Saturdays, Sundays
26 and legal holidays. The court may proceed in a summary manner.
27 At the hearing, the burden of proof shall be on the commissioner to
28 prove by a preponderance of the evidence that transfer of the
29 management and supervision of the health care facility is reasonable
30 and necessary to respond to the public health emergency and the
31 order issued by the commissioner is warranted to address the need.

32 (b) If, upon a hearing, the court finds that the transfer of the
33 management and supervision of the health care facility is not
34 warranted, the facility shall be released immediately from the
35 transfer order.

36 (c) The manner in which the request for a hearing pursuant to
37 this subsection is filed and acted upon shall be in accordance with
38 the Rules of Court.

39 (4) A health care facility which provides services or the use of
40 its facility or whose management or supervision is transferred to the
41 commissioner pursuant to this subsection shall not be liable for any
42 civil damages as a result of the commissioner's acts or omissions in
43 providing medical care or treatment or any other services related to
44 the public health emergency.

45 (5) For the duration of a state of public health emergency, the
46 commissioner shall confer with the Commissioner of Banking and
47 Insurance to request that the Department of Banking and Insurance
48 waive regulations requiring compliance by a health care provider or

1 health care facility with a managed care plan's administrative
2 protocols, including but not limited to, prior authorization and pre-
3 certification.

4 (6) The commissioner may waive any staffing ratio
5 requirements for any health care facility for the duration of a state
6 of public health emergency.

7 c. Control of property. To inspect, control, restrict, and
8 regulate by rationing and using quotas, prohibitions on shipments,
9 allocation or other means, the use, sale, dispensing, distribution or
10 transportation of food, clothing and other commodities, as may be
11 reasonable and necessary to respond to the public health emergency.

12 d. To identify areas that are or may be dangerous to the public
13 health and to recommend to the Governor and the Attorney General
14 that movement of persons within that area be restricted, if such
15 action is reasonable and necessary to respond to the public health
16 emergency.

17 (cf: P.L.2005, c.222, s.9)

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19 3. This act shall take effect immediately.
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22 STATEMENT

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24 This bill provides that, for the duration of the public health
25 emergency declared in connection with the coronavirus disease
26 2019 (COVID-19), all licensed health care facilities and clinical
27 laboratories will be authorized to collect specimens for the purposes
28 of testing for COVID-19. Nothing in the bill will abrogate the
29 authority of the Commissioner of Health to require a health care
30 facility to provide services or the use of its facility to respond to the
31 public health emergency as authorized under the "Emergency
32 Health Powers Act."

33 The bill expressly authorizes the Commissioner of Health, during
34 a public health emergency, to waive mandatory staffing ratio
35 requirements for health care facilities.
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38 _____
39
40 Authorizes all licensed health care facilities and laboratories to
41 collect specimens to test for coronavirus disease 2019 (COVID-19);
42 allows waiver of staffing ratio requirements.