

## Medical, Dental and Other Healthcare Office Practices May Resume Services During Current State of Emergency by Following Mandatory Policies Set Forth Under Administrative Order No. 2020-07

To provide support to our healthcare clients during this time, the Wilentz Health Law Team has developed a complimentary checklist for resumption of services under the Administrative Order

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On May 18, 2020, Paul R. Rodríguez, Acting Director, Division of Consumer Affairs (DCA), issued [Administrative Order No. 2020-07](#), clarifying the directives outlined in Governor Murphy's May 15<sup>th</sup> [Executive Order No. 145](#) (EO 145) concerning the resumption of elective surgeries and other applicable healthcare operations. EO 145 authorizes the Department of Health (DOH) to establish limitations and precautions for the resumption of procedures at licensed healthcare facilities and authorizes the DCA to establish the policies for outpatient settings not licensed by the DOH. This alert summarizes the DCA guidance and does not apply to licensed facilities; the DOH guidance for licensed facilities will be covered in a separate alert.

The Administrative Order sets forth the requirements for the policies required to be implemented by healthcare professionals who provide services in office settings during the current COVID-19 state of emergency.

The rules are effective concurrent with the end of the state of emergency or the public health emergency, whichever is later.

"Healthcare professional" is defined as 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

### Five Required Policies for Reopening Healthcare Practices During State of Emergency

The Administrative Order authorizes healthcare professionals to provide in-person adult and pediatric medical or therapeutic services in an office, consistent with their scope of practice. They must adopt and comply, and

ensure that their staff comply, with five categories of policies applicable to all practices, that include, at a minimum:

## **1. Policies to 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 if 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. Policies to 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 greater 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. Policies to 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. Adhere to CDC guidelines to clean and disinfect high-touch areas routinely, and after each use, 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. Review the CDC guidance [here](#).
- 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 Personal Protective Equipment (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. Policies to 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 ill, 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, exercising professional judgment regarding the potential for exposure and PPE resource constraints, consistent with CDC guidance available [here](#).
- 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 available [here](#). 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. Policies to Stay Informed About Developments and Obligations and Share Guidance with Patients**

- a. Review guidance provided [here](#), 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.

## **Additional Policies Applicable to Services Which Involve Direct Contact with the Patient's Face, Eyes, or Mouth or Presents a High Risk of Aerosolization**

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, are required to adopt and comply with additional policies that include, at a minimum, requirements to:

- a. 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.
- b. Postpone any elective surgery or procedure for asymptomatic patients if, in the healthcare professional's judgment, a postponement will be unlikely to result in an adverse outcome.
- c. 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.
- d. 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.
- e. Implement additional infection control measures, assuring that all surfaces are disinfected between patients.
- f. **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 [here](#), and should use high volume evacuators and isolation strategies including rubber dams when appropriate to limit exposure to aerosols.
- g. **Eye care professionals** should use a slit lamp "breath" shield/barrier that is as large as possible without interfering with clinical care.

**Practices should review the guidelines in the Administrative Order in their entirety. In addition, it is our understanding that the New Jersey Division of Consumer Affairs will continue to update and modify their guidance and policies based on input from stakeholders and as circumstances evolve in New Jersey. We will continue to monitor the available guidance.**

## **[Wilentz New Jersey Administrative Order No. 2020-07 COVID-19 Practice Policies Checklist](#)**

We recognize that our clients and healthcare professionals throughout New Jersey have been severely impacted by the COVID-19 pandemic. To provide support to our healthcare clients during this time, the Wilentz Health Law Team has developed a comprehensive complimentary checklist to guide professional practices in their resumption of services under the NJ DCA Administrative Order. *The checklist is meant to be used as a tool and not as a substitute for legal advice.*

If you are licensed medical professional in New Jersey with questions about this alert or the Wilentz New Jersey Administrative Order No. 2020-07 COVID-19 Practice Policies Checklist, please contact [Grace Mack](#) or any member of our [Health Law team](#).

### **Attorney**

- Grace D. Mack

## **Practice**

- Health Law