

Nursing Home Personal Protective Equipment (PPE) Requirements

Effective: 6/24/21 – 8/8/21

Pursuant to the authority vested in the Commissioner of Health by Section 2803 of the Public Health Law, and Executive Order 202, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by amending section 415.19, to be effective upon filing with the Secretary of State, to read as follows:

Section 415.19 is amended by adding a new subdivision (f) as follows:

(f) (i) The facility shall possess and maintain a supply of all necessary items of personal protective equipment (PPE) sufficient to protect facility personnel, consistent with federal Centers for Disease Control guidance, for at least 30 days at rate of usage equal to the average daily rate that PPE was used between April 19, 2020 and April 27, 2020 by August 31, 2020, and for at least 60 days at a rate of usage equal to the average daily rate that PPE was used between April 19, 2020 and April 27, 2020 by September 30, 2020; provided, however, that upon request the Department may grant an extension of the deadline to have such sixty day supply to October 30, 2020, at its sole and exclusive discretion, to meet this requirement where the facility demonstrates, to the Commissioner's satisfaction, that:

(A) the facility's inability to meet this deadline is solely attributable to supply chain issues that are beyond the facility's control and purchasing PPE at market rates would facilitate price gouging by PPE vendors; or

(B) the seven-day rolling average of new COVID-19 infections in New York State remains below one and a half percent (1.5%) of the total seven-day rolling average of COVID-19 tests performed over the same period; and there are ten or less states in the

United States that have a seven-day rolling average of new COVID-19 infections exceeding five thousand cases.

(ii) Failure to possess and maintain such a supply of PPE may result in the revocation or suspension of the facility's license; provided, however, that no such revocation or suspension shall be ordered unless the Department has provided the facility with a fourteen day grace period, solely for a facility's first violation of this section, to achieve compliance with the requirement set forth herein.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Section 2803 of the Public Health Law (PHL) authorizes the promulgation of such regulations as may be necessary to implement the purposes and provisions of PHL Article 28, including the establishment of minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection and promotion of the health of the residents of the State by requiring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost.

Needs and Benefits:

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal. According to Johns Hopkins' Coronavirus Resource Center, as of June 14, 2021, there have been over 176 million cases and over 3.8 million deaths worldwide, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had

existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19.

New York State first identified cases on March 1, 2020 and thereafter became the national epicenter of the outbreak. On March 7, 2020, with widespread transmission rapidly increasing within certain areas of the state, Governor Andrew M. Cuomo issued an Executive Order declaring a state disaster emergency to aid in addressing the threat COVID-19 poses to the health and welfare of New York State residents and visitors.

In order for a nursing home's staff to safely provide care for residents, while ensuring that they themselves do not become infected with COVID-19, or any other communicable disease, it is critically important that personal protective equipment (PPE), including masks, gloves, respirators, face shields and gowns, is readily available and are used. As a result of global PPE shortages at the outset of the State of Emergency, New York State provided nursing homes and other health care facilities with PPE from the State's emergency stockpile from the beginning of the COVID-19 outbreak.

Based on the foregoing, the Department has made the determination that this emergency regulation is necessary to ensure that all nursing homes maintain a 60-day supply of PPE, at rate of usage equal the average daily rate that PPE was used between April 19, 2020 and April 27, 2020, such that sufficient PPE is available in the event of a resurgence of the COVID-19 outbreak.

COSTS:

Costs to Regulated Parties:

The purpose of this regulation is to require nursing homes to maintain adequate stockpiles of PPE. The initial cost nursing homes as they establish stockpiles of PPE will vary depending on the number of staff working at each nursing home. However, nursing homes are statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12). Therefore, this regulation imposes no long-term additional costs to regulated parties.

Costs to Local and State Governments:

This regulation will not impact local or State governments unless they operate a nursing home, in which case costs will be the same as costs for private entities.

Costs to the Department of Health:

This regulation will not result in any additional operational costs to the Department of Health.

Paperwork:

This regulation imposes no addition paperwork.

Local Government Mandates:

Nursing homes operated by local governments will be affected and will be subject to the same requirements as any other nursing home licensed under PHL Article 28.

Duplication:

These regulations do not duplicate any State or Federal rules.

Alternatives:

The Department believes that promulgation of this regulation is the most effective means of ensuring that nursing homes have adequate stockpiles of PPE necessary to protect nursing home staff from communicable diseases, compared to any alternate course of action.

Federal Standards:

No federal standards apply to stockpiling of such equipment at nursing homes.

Compliance Schedule:

The regulations will become effective upon filing with the Department of State. These regulations are expected to be proposed for permanent adoption at the next meeting of the Public Health and Health Planning Council following the termination of the COVID-19 emergency.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

This regulation will not impact local governments or small businesses unless they operate a nursing home. To date, 79 nursing homes in New York qualify as small businesses given that they employ less than 100 staff.

Compliance Requirements:

These regulations require all nursing homes to purchase and maintain adequate stockpiles of PPE, including but not limited to masks, respirators, face shields and gowns.

Professional Services:

It is not expected that any professional services will be needed to comply with this rule.

Compliance Costs:

The purpose of this regulation is to require nursing homes to maintain adequate stockpiles of PPE. The initial cost to nursing homes as they establish stockpiles of PPE will vary depending on the number of staff working at each facility. However, nursing homes are statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12). Therefore, this regulation imposes no long-term additional costs to regulated parties.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

As these regulations require nursing homes to maintain stockpiles of PPE, consistent with the directive in Public Health Law section 2803(12) for nursing homes to maintain or contract to have at least a two-month supply of PPE, any adverse impacts are expected to be minimal.

Small Business and Local Government Participation:

Due to the emergent nature of COVID-19, small business and local governments were not consulted.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

Although this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), “rural area” means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as “counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population ‘rural areas’ means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.”

The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010:

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties of have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon the United States

Census estimated county populations for 2010:

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

Licensed nursing homes are located in these identified rural areas.

Reporting, recordkeeping, and other compliance requirements; and professional services:

These regulations require all nursing homes, including those in rural areas, to purchase and maintain adequate stockpiles of PPE, including but not limited to masks, respirators, face shields and gowns.

Compliance Costs:

The purpose of this regulation is to require nursing homes to maintain adequate stockpiles of PPE. The initial cost to nursing homes as they establish stockpiles of PPE will vary depending on the number of staff working at each facility. However, nursing homes are statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12). Therefore, this regulation imposes no long-term additional costs to regulated parties.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

As these regulations simply require nursing homes to maintain stockpiles of PPE, which is consistent with the directive in Public Health Law section 2803(12) for nursing homes to maintain or contract to have at least a two-month supply of PPE, any adverse impacts are expected to be minimal.

Rural Area Participation:

Due to the emergent nature of COVID-19, parties representing rural areas were not consulted.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

A Job Impact Statement for these regulations is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

EMERGENCY JUSTIFICATION

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal. According to Johns Hopkins' Coronavirus Resource Center, as of June 14, 2021, there have been over 176 million cases and over 3.8 million deaths worldwide, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

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In order for nursing home staff to safely provide care for residents, while ensuring that they themselves do not become infected with COVID-19, or any other communicable disease, it

is critically important that personal protective equipment (PPE), including masks, gloves, respirators, face shields and gowns, is readily available and are used. As a result of global PPE shortages, New York State provided nursing homes and other health care facilities with PPE from the State's emergency stockpile from the beginning of the COVID-19 outbreak.

Based on the foregoing, the Department has made the determination that this emergency regulation is necessary to ensure that all nursing homes acquire and maintain a 60-day supply of PPE, at rate of usage equal the average daily rate that PPE was used between April 19, 2020 and April 27, 2020, such that sufficient PPE is available in the event of a continuation or resurgence of the COVID-19 outbreak.