

# ASSEMBLY, No. 3854

## STATE OF NEW JERSEY

### 219th LEGISLATURE

INTRODUCED MARCH 16, 2020

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**Senator DECLAN J. O'SCANLON, JR.**

**District 13 (Monmouth)**

**Co-Sponsored by:**

**Assemblywomen DiMaso, Timberlake, Jasey, Assemblymen Zwicker, Giblin, Mejia, Assemblywomen Reynolds-Jackson, Jimenez, Downey, McKnight, Assemblyman Freiman and Senator Stack**

**SYNOPSIS**

Authorizes all licensed health care facilities and laboratories to collect specimens to test for coronavirus disease 2019 (COVID-19); allows waiver of staffing ratio requirements.

**CURRENT VERSION OF TEXT**

As introduced.

(Sponsorship Updated As Of: 3/19/2020)

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.  
42 After consultation with the management of the health care facility,  
43 the commissioner may determine that the use of the facility may  
44 include transferring the management and supervision of the facility  
45 to the commissioner for a limited or unlimited period of time, but

**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 shall not exceed the duration of the public health emergency. In the  
2 event of such a transfer, the commissioner shall use the existing  
3 management of the health care facility.

4 (2) Concurrent with or within 24 hours of the transfer of the  
5 management and supervision of a health care facility, the  
6 commissioner shall provide the facility with a written order  
7 notifying the facility of:

- 8 (a) the premises designated for transfer;
- 9 (b) the date and time at which the transfer will commence;
- 10 (c) a statement of the terms and condition of the transfer;
- 11 (d) a statement of the basis upon which the transfer is justified;
- 12 and

13 (e) the availability of a hearing to contest the order, as provided  
14 in paragraph (3) of this subsection.

15 (3) A health care facility subject to an order to transfer  
16 management and supervision to the commissioner pursuant to this  
17 section may request a hearing in the Superior Court to contest the  
18 order.

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

28 (b) If, upon a hearing, the court finds that the transfer of the  
29 management and supervision of the health care facility is not  
30 warranted, the facility shall be released immediately from the  
31 transfer order.

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

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

41 (5) For the duration of a state of public health emergency, the  
42 commissioner shall confer with the Commissioner of Banking and  
43 Insurance to request that the Department of Banking and Insurance  
44 waive regulations requiring compliance by a health care provider or  
45 health care facility with a managed care plan's administrative  
46 protocols, including but not limited to, prior authorization and pre-  
47 certification.

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

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

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

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

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16       3. This act shall take effect immediately.

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#### STATEMENT

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21       This bill provides that, for the duration of the public health  
22 emergency declared in connection with the coronavirus disease  
23 2019 (COVID-19), all licensed health care facilities and clinical  
24 laboratories will be authorized to collect specimens for the purposes  
25 of testing for COVID-19. Nothing in the bill will abrogate the  
26 authority of the Commissioner of Health to require a health care  
27 facility to provide services or the use of its facility to respond to the  
28 public health emergency as authorized under the “Emergency  
29 Health Powers Act.”

30       The bill expressly authorizes the Commissioner of Health, during  
31 a public health emergency, to waive mandatory staffing ratio  
32 requirements for health care facilities.