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# 2022 New Jersey Revised Statutes

## Title 26 - Health and Vital Statistics

### Section 26:13-9 - Powers of commissioner relative to health care, other facilities, property, roads, public areas.

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#### **26:13-9 Powers of commissioner relative to health care, other facilities, property, roads, public areas.**

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

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

b. Use of health care facilities.

(1) To require, subject to the payment of reasonable costs as provided for in sections 24 and 25 of this act, a health care facility to provide services or the use of its facility if such services or use are reasonable and necessary to respond to the public health emergency, as a condition of licensure, authorization or the ability to continue doing business in the State as a health care facility. After consultation with the management of the health care facility, the commissioner may determine that the use of the facility may include transferring the management and supervision of the facility to the commissioner for a limited or unlimited period of time, but shall not exceed the duration of the public health emergency. In the event of such a transfer, the commissioner shall use the existing management of the health care facility.

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

(a) the premises designated for transfer;

(b) the date and time at which the transfer will commence;

(c) a statement of the terms and condition of the transfer;

(d) a statement of the basis upon which the transfer is justified; and

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

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

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

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

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

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

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

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

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

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

L.2005, c.222, s.9; amended 2020, c.13, s.2.

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