

# State of Delaware



Executive Department  
Dover

## **DECLARATION OF A STATE OF EMERGENCY FOR THE STATE OF DELAWARE DUE TO A PUBLIC HEALTH THREAT**

**WHEREAS**, the Centers for Disease Control and Prevention (“CDC”) has determined that the novel coronavirus (“COVID-19”) presents a serious public health threat, and the CDC is expecting a surge of COVID-19 cases in the coming days to weeks being caused by new and highly transmissible variants of the coronavirus such as Delta and Omicron which spread more easily than the original virus; and

**WHEREAS**, in December 2021, Delaware has repeatedly surpassed its daily record number of COVID-19 cases since March 2020, that are caused by these variants; and

**WHEREAS**, the CDC expects that anyone with an Omicron infection can spread the virus to others, even if they are vaccinated or asymptomatic; and

**WHEREAS**, despite administering over one and a half million doses of COVID-19 vaccines to individuals who live, work, and are educated in Delaware, Delaware has experienced an extraordinary surge in recent hospitalizations with some hospitals over 100% inpatient bed capacity amid crippling staffing shortages; and

**WHEREAS**, there is a need to create greater flexibility for our healthcare system to respond to another COVID-19 surge; and

**WHEREAS**, it is critical that individuals and businesses in Delaware continue to follow vaccine, booster, social distancing, masking, and other infection control protocols as recommended by the CDC; and

**WHEREAS**, in the interest of protecting the citizens of this state from a public health threat, the Governor is authorized by law to issue an order reasonably necessary to suspend the provisions of any regulatory statute prescribing the procedures for conducting state business, or the orders, rules, or regulations of any state agency, where strict compliance with such provisions may hinder necessary action in coping with the emergency.

**NOW, THEREFORE, I, JOHN C. CARNEY**, pursuant to Title 20, Chapter 31 of the Delaware Code, to control and prevent the spread of COVID-19 within the State of Delaware, do hereby order that the following provisions shall become effective January 3, 2022 at 5:00 p.m.. E.D.T., and shall continue until terminated as provided under state law:

**A. POWERS OF DELAWARE EMERGENCY MANAGEMENT AGENCY (DEMA) AND DELAWARE DIVISION OF PUBLIC HEALTH (DPH).**

1. The Public Health Authority is authorized to make, amend, and rescind orders, rules and regulations under Title 16 necessary for emergency management purposes.
2. The Public Health Authority is authorized to:
  - i. Suspend all state-required deadlines and timetables for performance of facility and agency licensure activities as the Public Health Authority deems necessary; and
  - ii. Suspend any regulatory requirement found in Title 16 of the Delaware Administrative Code that the Public Health Authority deems an impediment to staffing facilities and agencies during the pendency of the emergency; and

- iii. Suspend any regulatory requirements related to the provision of in-home medical care and personal services under Title 16 of the Delaware Administrative Code as the Public Health Authority deems necessary.
3. The requirement that long term care facilities provide documentation to the Division of Health Care Quality as to the amount of direct care time that was provided in an emergency by a Director of Nursing, Assistant Director of Nursing, or registered nurse assessment coordinator as required in 16 Del. C. § 1161(e) is hereby suspended.
4. Long term care facilities must continue to provide 3.28 hours of direct care per resident per day. However, the staffing ratios required in 16 Del. C. § 1162 are hereby suspended.
5. The requirements in Chapter 93 of Title 16 are hereby suspended for acute care hospitals that seek to increase their bed capacity in order to treat COVID-19 patients, so long as any such hospital obtains approval from the Division of Public Health. Hospitals that wish to increase their bed capacity to treat COVID-19 patients must submit a plan to [OEMS@delaware.gov](mailto:OEMS@delaware.gov). Plans must include a justification for increased beds, and assurances for adequate staffing, maintenance, and safety. Plans may not be implemented until approved by the Division of Public Health. Hospitals that increase bed numbers pursuant to this section must eliminate beds and return to the previously approved number of licensed beds, or seek a Certificate of Public Review, if so ordered by the Division of Public Health or upon the termination of the State of Emergency.
6. The following requirements are waived or modified for members of the Delaware National Guard who complete a Certified Nursing Assistant course after January 1, 2022:
  - i. The requirement in 16 Del. C. §3002A that Certified Nursing Assistant trainees must complete a total of 150 clock hours of training. However, such individuals who

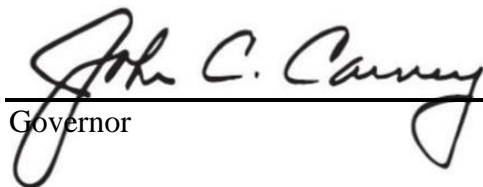
wish to become certified must complete 75 classroom hours and 16 clinical hours before sitting for a certification exam.

- ii. The requirement in 16 Del. C. §3004A that Certified Nursing Assistant trainees must complete a mandatory orientation period is hereby waived.
- iii. In lieu of the requirements in 16 Del. C. § 1141, members of the Delaware National Guard shall provide each facility they work in as a Certified Nursing Assistant a copy of their criminal history report obtained after January 1, 2022. However, no member of the Delaware National Guard may work as a Certified Nursing Assistant in a long-term care facility if they have a conviction deemed disqualifying by the Department of Health and Social Services.
- iv. In lieu of the requirements in 16 Del. C. § 1141, members of the Delaware National Guard shall provide each facility they work in as a Certified Nursing Assistant a copy of a drug screening obtained after January 1, 2022 that meets the requirements established by the Department of Health and Social Services.

**B. MISCELLANEOUS.**

1. This Order and any emergency rules or regulations effected therefrom remain effective until the termination of the State of Emergency, except as may be rescinded, superseded, amended, or revised by additional orders.

APPROVED this 3rd day of January 2022 at 11:30 a.m.

  
Governor