



City of Philadelphia

**LAW DEPARTMENT
One Parkway
1515 Arch Street
17th Floor
Philadelphia, PA 19102**

M e m o r a n d u m

TO: Doctor Thomas Farley, Commissioner, Department of Public Health

FROM: Jo Rosenberger Altman, Senior Attorney

DATE: October 14, 2020

SUBJECT: FOURTEENTH SUPPLEMENTAL EMERGENCY REGULATION GOVERNING THE CONTROL AND PREVENTION OF COVID-19 (LONG-TERM CARE FACILITIES)

I have reviewed the Fourteenth Supplemental Emergency Regulation Governing the Control and Prevention of COVID-19, attached hereto. I find the regulation to be legal and in proper form. In accordance with Section 8-407(a) of The Philadelphia Home Rule Charter, you may now forward these regulations to the Department of Records where they will be made available for public inspection.

Consistent with Mayor Kenney's March 11, 2020 Declaration of Extraordinary Circumstance: Suspending the Formal Regulatory Process for Regulations Concerning a Novel Coronavirus, you may promulgate the amendment effective immediately upon delivery to the Department of Records as a temporary regulation, while the remaining procedures and formalities of Section 8-407 are followed to promulgate the amendment.

A handwritten signature in black ink, appearing to read "Jo A".

Jo Rosenberger Altman
Senior Attorney



**FOURTEENTH SUPPLEMENTAL EMERGENCY REGULATION GOVERNING
THE CONTROL AND PREVENTION OF COVID-19
(LONG-TERM CARE FACILITIES)**

WHEREAS, the Pennsylvania Disease Control and Prevention Act of 1955, 1956, April 23, P.L. 1510, 35 P.S. § 52.1 *et seq.*, (the DCPA) and Chapter 6-200 of The Philadelphia Code authorize the Board of Health to establish lists of reportable diseases and conditions, and further provide that the Board and the Department of Public Health are responsible for implementing appropriate disease control and prevention measures in order to limit the spread of disease in an epidemic emergency; and

WHEREAS, Sections 6-205 and 6-206 of The Philadelphia Code provide that the Department of Public Health may by order forbid the congregation of persons when necessary to prevent the further spread of a communicable and quarantinable disease and may take such other measures as are necessary to prevent the spread of such disease; and

WHEREAS, on March 6, 2020, in response to the 2019 novel coronavirus disease, COVID-19, the Governor of Pennsylvania issued a Proclamation of Disaster Emergency; and

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic, or global epidemic; and

WHEREAS, on March 12, 2020, the City's Board of Health by emergency regulation added COVID-19 to the City's list of reportable and quarantinable diseases; and

WHEREAS, beginning on March 17, 2020, the Mayor and the Commissioner of Health as well as the Governor of the Commonwealth of Pennsylvania issued a series of orders ordering certain businesses to close across the City and Commonwealth, respectively, and requiring individuals to remain at home with certain exceptions.

WHEREAS, on March 26, 2020, the Board of Health approved an Emergency Regulation Governing the Control and Prevention of COVID-19 (effective March 27, 2020), which adopted the Mayor and the Health Commissioner's March 22, 2020 Prohibition on Non-Essential Business and expressly authorized the Health Commissioner to issue such additional orders as the Commissioner determines are necessary or appropriate control or prevention measures to limit the spread of COVID-19; and

WHEREAS, on April 15, 2020, the Secretary of Health of the Commonwealth of Pennsylvania issued an Order requiring comprehensive safety measures to be employed in all businesses maintaining physical operations, including standards for cleaning and disinfecting high-touch areas, establishing protocols for businesses exposed to probable or confirmed cases of

COVID-19, limiting the numbers of employees on the premises and ensuring access to protective and sanitary equipment and supplies; and

WHEREAS, on April 8, 2020, the Health Commissioner issued the Emergency Order Concerning Operation of Long-Term Care Facilities and Activities of Residents to Prevent the Spread of COVID-19, which the Board adopted as its “Second Supplemental Emergency Regulation Governing the Control and Prevention of COVID-19,” approved on April 22, 2020; and

WHEREAS, on May 14, 2020, the Board of Health approved the “Fourth Supplemental Emergency Regulation Governing the Control and Prevention of COVID-19 (Delegation of Authority),” which expressly authorized the Health Commissioner to relax the requirements and modify all emergency regulations adopted by the Board for the purpose of governing the control and prevention of COVID-19 that the Health Commissioner determines in good faith are no longer necessary or appropriate control or prevention measures; and

WHEREAS, on May 29, 2020, the Mayor and Health Commissioner issued an “Emergency Order Allowing Limited Reopening of Businesses, Advising Philadelphians That They Are Safer at Home, and Establishing Safety Measures to Prevent the Spread of 2019 Novel Coronavirus (COVID-19);” and

WHEREAS, the Mayor and Health Commissioner, in recognition that cautious reopening with constant review of potential impacts on public health is in the best interests of Philadelphia, have issued a series of Orders gradually easing restrictions with respect to, *inter alia*, outdoor dining, use of pools, personal grooming services, retail businesses, outdoor sports, and other activities; and

WHEREAS, while daily COVID-19 case counts have fallen significantly from their peak earlier in the year, risk of community spread of COVID-19 remains, necessitating continued vigilance; and

WHEREAS, the Mayor and Health Commissioner have determined that, under applicable safety requirements and guidelines, certain additional activities are within the range of acceptable activities that may resume; and

WHEREAS, on July 20, 2020 and September 3, 2020, the Secretary of Health of the Pennsylvania Department of Health issued detailed guidance for long-term care facilities that apply statewide, and in deference to this guidance, and the current nature of the pandemic in Philadelphia, the Philadelphia Department of Public Health has determined that the control and prevention measures in the Emergency Order Concerning Operation of Long-Term Care Facilities and Activities of Residents to Prevent the Spread of COVID-19 are no longer necessary; and

WHEREAS, to that end, the Health Commissioner issued on September 23, 2020 an “Order Rescinding the Emergency Order Concerning Operation of Long-Term Care Facilities and Activities of Residents to Prevent the Spread of 2019 Novel Coronavirus (COVID-19),” (the “September 23, 2020 Order”) which rescinded certain restrictions and requirements related to long-term care facilities; and

WHEREAS, the Board of Health agrees with these determinations, and recognizes that the situation involving the COVID-19 pandemic is fast moving and often requires changes to control measures both to impose additional measures and to roll back required measures when appropriate; and

WHEREAS, consistent with the foregoing, the Board hereby promulgates the below Fourteenth Supplemental Emergency Regulation Governing the Control and Prevention of COVID-19 (Long-Term Care Facilities) to adopt the September 23, 2020 Order, as a temporary regulation effective upon delivery to the Department of Records, while the remaining procedures and formalities of Section 8-407 are followed to promulgate the amendment as a permanent regulation;

NOW, THEREFORE, the Board of Health hereby adopts the following regulation, effective immediately:

1. This Emergency Regulation supplements the Philadelphia Department of Public Health’s *Regulations Governing the Control of Communicable and Non-communicable Diseases and Conditions* and its other emergency regulations governing the control and prevention of COVID-19.

2. The Board hereby fully adopts the September 23, 2020 “Order Rescinding the Emergency Order Concerning Operation of Long-Term Care Facilities and Activities of Residents to Prevent the Spread of 2019 Novel Coronavirus (COVID-19),” which rescinded certain restrictions and requirements related to long-term care facilities, and which is attached hereto as Attachment A.

3. The Board hereby rescinds its “Second Supplemental Emergency Regulation Governing the Control and Prevention of COVID-19,” which the Board approved on April 22, 2020.

4. This Emergency Regulation shall be effective upon filing with the Department of Records and remain effective until expressly superseded or repealed by the Board at the conclusion of the COVID-19 emergency.

ATTACHMENT A



CITY OF PHILADELPHIA
DEPARTMENT OF PUBLIC HEALTH

ORDER RESCINDING THE

**EMERGENCY ORDER CONCERNING OPERATION OF LONG-TERM CARE
FACILITIES AND ACTIVITIES OF RESIDENTS TO PREVENT THE SPREAD OF
2019 NOVEL CORONAVIRUS (COVID-19)**

WHEREAS, the 2019 novel coronavirus disease, COVID-19, can cause severe disease and death, particularly in older adult and other vulnerable populations; and

WHEREAS, on March 6, 2020, in response to the emerging spread of COVID-19, the Governor of Pennsylvania issued a Proclamation of Disaster Emergency which has been renewed and is still in effect; and

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic, or global epidemic; and

WHEREAS, on March 12, 2020, the City's Board of Health by emergency regulation added COVID-19 to the City's list of reportable and quarantinable diseases; and

WHEREAS, on March 17, 2020, the Mayor and the Health Commissioner jointly issued an Emergency Order prohibiting operation of non-essential businesses to prevent the spread of COVID-19; and

WHEREAS, on March 19, 2020, the Governor and the Secretary of the Pennsylvania Department of Health issued orders requiring all non-life-sustaining businesses to close across the Commonwealth, to help stop the spread of the virus and the Governor and Secretary updated the aforementioned orders and list of life-sustaining and non-life sustaining businesses on March 20, 2020 and multiple times thereafter; and

WHEREAS, on March 22, 2020, the Mayor and the Health Commissioner jointly issued an Emergency Order Temporarily Prohibiting Operation of Non-Essential Businesses and Congregation of Persons to Prevent the Spread of COVID-19, which superseded the Emergency Order issued by the Mayor and Health Commissioner dated March 17, 2020, and which was approved as a regulation of the City by the Board of Health on March 26, 2020, which expressly authorized the Health Commissioner to issue such additional orders as the Commissioner determines are necessary or appropriate to limit the spread of COVID-19; and

WHEREAS, on April 8, 2020, the Health Commissioner issued the Emergency Order Concerning Operation of Long-Term Care Facilities and Activities of Residents to Prevent the Spread of COVID-19, which was adopted by the Board of Health by regulation effective April 23, 2020 ; and

WHEREAS, on April 23, 2020, the Governor announced a *Plan for Pennsylvania* that set residents and businesses on a path to recovery from the COVID-19 pandemic while continuing to protect life from the dangers of this deadly virus, which included, *inter alia*, Red, Yellow, and Green Phases of reopening; and

WHEREAS, the Mayor and Health Commissioner determined on May 29, 2020, that Philadelphia could move to the Yellow Phase with additional, Philadelphia-specific restrictions that would apply in addition to restrictions established by the Governor, including limitations on outdoor dining, and executed an Order entitled “Emergency Order Allowing Limited Reopening of Businesses, Advising Philadelphians That They are Safer at Home, and Establishing Safety Measures to Prevent the Spread of 2019 Novel Coronavirus (COVID-19): Yellow Phase of Reopening” (“Yellow Phase Order”) to implement that decision, effective on the date determined by the Governor that the City of Philadelphia should move into the Yellow Phase, expected to be June 5, 2020; and

WHEREAS, on June 4, 2020, the Governor and Secretary of Health’s amended their respective orders for Limited Opening of Businesses, Lifting of Stay at Home Requirements, and Continued Aggressive Mitigation Efforts, to apply to Philadelphia effective June 5th, which generally moved the City into the Yellow Phase pursuant to the Governor’s guidelines; and

WHEREAS, since that time, the Mayor and Health Commissioner, in recognition that cautious reopening with constant review of potential impacts on public health is in the best interests of Philadelphia, have issued a series of Orders gradually easing restrictions with respect to, *inter alia*, use of pools, personal grooming services, retail businesses, outdoor sports and other activities, and outdoor gatherings; and

WHEREAS, although the Governor announced that Philadelphia was authorized to join other southeastern Pennsylvania counties in moving to the Green Phase of reopening on June 26, 2020, the Mayor and Health Commissioner, in consideration of public health data and the noted effects on public health in June and July in states that have hastily reopened, including marked increases of positively identified COVID cases, the City is taking a cautious approach to moving to the Green Phase; and

WHEREAS, Philadelphians are working hard to turn back COVID-19, and they are succeeding. Because of social-distancing actions and the various City Orders protecting the public health, daily COVID-19 case counts have fallen significantly from counts in mid-April and mid-May.

The rate of community spread of COVID-19 in Philadelphia remains high, however, and measures to continue to reduce its spread must be maintained and observed; and

WHEREAS, on June 26, 2020, the Mayor and Health Commissioner issued an order requiring the wearing of masks in many indoor and outdoor situations, and on July 1, 2020, the Governor issued a similar order; and

WHEREAS, on July 3, 2020, the Mayor and Health Commissioner issued an order that moved the City from the Yellow Phase to a Modified Green Phase (“Modified Green Phase Emergency Order”); and

WHEREAS, average daily case counts have been falling through the month of August and into September; and

WHEREAS, the Board of Health has expressly authorized the Health Commissioner to relax the requirements and modify all emergency regulations adopted by the Board for the purpose of governing the control and prevention of COVID-19 that the Health Commissioner determines in good faith are no longer necessary or appropriate control or prevention measures; and

WHEREAS, on July 20, 2020 and September 3, 2020 the Secretary of Health of the Pennsylvania Department of Health issued detailed guidance for long-term care facilities that apply statewide, and in deference to this guidance, and the current nature of the pandemic in Philadelphia, the Philadelphia Department of Health has determined that the control and prevention measures reflected in the Emergency Order Concerning Operation of Long-Term Care Facilities and Activities of Residents to Prevent the Spread of COVID-19 are no longer necessary; and

WHEREAS, Sections 6-205 and 6-206 of The Philadelphia Code and applicable state law provide that the Department of Public Health may by order forbid the congregation of persons when necessary to prevent the further spread of a communicable and quarantinable disease and may take such other measures as are necessary to prevent the spread of such disease; and


NOW, THEREFORE, I, Dr. Thomas A. Farley, Health Commissioner of the City of Philadelphia, in my capacity as head of the Philadelphia Department of Public Health and pursuant to all authority granted under the Philadelphia Home Rule Charter, The Philadelphia Code, the Regulations of the Board of Health of the City of Philadelphia and applicable state law, hereby **ORDER** as follows:

Section 1. Rescinding April 8, 2020 Emergency Order

The April 8, 2020 Emergency Order Concerning Operation of Long-Term Care Facilities and Activities of Residents to Prevent the Spread of COVID-19 is hereby rescinded.

Enforcement of the Second Supplemental Emergency Regulation Governing the Control and Prevention of COVID-19 (Long-Term Care Facilities), which adopted the April 8, 2020 Emergency Order, is likewise suspended until the Board of Health may meet to vote on formally rescinding the regulation.

Date: September 23, 2020



Thomas A. Farley, MD, MPH
Health Commissioner