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CERTIFICATE OF EMERGENCY AMENDMENTS

The Department of Public Health, State of Illinois, certifies that the attached hereto is a true and correct copy of:

Heading for the Part: Skilled Nursing and Intermediate Care Facilities Code

Code Citation: 77 Ill. Adm. Code 300

Sections Involved:

300.282

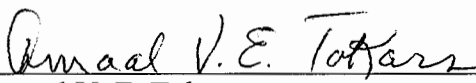
300.698

which was duly amended by emergency action by this Agency.

Reason for Emergency: These emergency amendments are adopted in response to Governor JB Pritzker's Gubernatorial Disaster Proclamations related to COVID-19.

Section 5-45 of the Illinois Administrative Procedure Act [5 ILCS 100/5-45] defines "emergency" as "the existence of any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare." The COVID-19 outbreak in Illinois is a significant public health crisis that warrants these emergency rules.

Statutory Authority: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45]



Amaal V. E. Tokars
Acting Director

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TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIES

PART 300
SKILLED NURSING AND INTERMEDIATE CARE FACILITIES CODE

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AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 1066, effective March 1, 1980, for a maximum of 150 days; adopted at 4 Ill. Reg. 30, p. 311, effective July 28, 1980; emergency amendment at 6 Ill. Reg. 3229, effective March 8, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 6454, effective May 14, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 11631, effective September 14, 1982; amended at 6 Ill. Reg. 14550 and 14554, effective November 8, 1982; amended at 6 Ill. Reg. 14684, effective November 15, 1982; amended at 7 Ill. Reg. 285, effective December 22, 1982; amended at 7 Ill. Reg. 1972, effective January 28, 1983; amended at 7 Ill. Reg. 8579, effective July 11, 1983; amended at 7 Ill. Reg. 15831, effective November 10, 1983; amended at 7 Ill. Reg. 15864, effective November 15, 1983; amended at 7 Ill. Reg. 16992, effective December 14, 1983; amended at 8 Ill. Reg. 15599, 15603, and 15606, effective August 15, 1984; amended at 8 Ill. Reg. 15947, effective August 17, 1984; amended at 8 Ill. Reg. 16999, effective September 5, 1984; codified at 8 Ill. Reg. 19766; amended at 8 Ill. Reg. 24186, effective November 29, 1984; amended at 8 Ill. Reg. 24668, effective December 7, 1984; amended at 8 Ill. Reg. 25102, effective December 14, 1984; amended at 9 Ill. Reg. 132, effective December 26, 1984; amended at 9 Ill. Reg. 4087, effective March 15, 1985; amended at 9 Ill. Reg. 11049, effective July 1, 1985; amended at 11 Ill. Reg. 16927, effective October 1, 1987;

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amended at 12 Ill. Reg. 1052, effective December 24, 1987; amended at 12 Ill. Reg. 16811, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18477, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 4684, effective March 24, 1989; amended at 13 Ill. Reg. 5134, effective April 1, 1989; amended at 13 Ill. Reg. 20089, effective December 1, 1989; amended at 14 Ill. Reg. 14950, effective October 1, 1990; amended at 15 Ill. Reg. 554, effective January 1, 1991; amended at 16 Ill. Reg. 681, effective January 1, 1992; amended at 16 Ill. Reg. 5977, effective March 27, 1992; amended at 16 Ill. Reg. 17089, effective November 3, 1992; emergency amendment at 17 Ill. Reg. 2420, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 8026, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15106, effective September 3, 1993; amended at 17 Ill. Reg. 16194, effective January 1, 1994; amended at 17 Ill. Reg. 19279, effective October 26, 1993; amended at 17 Ill. Reg. 19604, effective November 4, 1993; amended at 17 Ill. Reg. 21058, effective November 20, 1993; amended at 18 Ill. Reg. 1491, effective January 14, 1994; amended at 18 Ill. Reg. 15868, effective October 15, 1994; amended at 19 Ill. Reg. 11600, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 567, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10142, effective July 15, 1996; amended at 20 Ill. Reg. 12208, effective September 10, 1996; amended at 21 Ill. Reg. 15000, effective November 15, 1997; amended at 22 Ill. Reg. 4094, effective February 13, 1998; amended at 22 Ill. Reg. 7218, effective April 15, 1998; amended at 22 Ill. Reg. 16609, effective September 18, 1998; amended at 23 Ill. Reg. 1103, effective January 15, 1999; amended at 23 Ill. Reg. 8106, effective July 15, 1999; amended at 24 Ill. Reg. 17330, effective November 1, 2000; amended at 25 Ill. Reg. 4911, effective April 1, 2001; amended at 26 Ill. Reg. 3113, effective February 15, 2002; amended at 26 Ill. Reg. 4846, effective April 1, 2002; amended at 26 Ill. Reg. 10523, effective July 1, 2002; emergency amendment at 27 Ill. Reg. 2181, effective February 1, 2003, for a maximum of 150 days; emergency expired June 30, 2003; emergency amendment at 27 Ill. Reg. 5452, effective March 25, 2003, for a maximum of 150 days; emergency expired August 21, 2003; amended at 27 Ill. Reg. 5862, effective April 1, 2003; emergency amendment at 27 Ill. Reg. 14204, effective August 15, 2003, for a maximum of 150 days; emergency expired January 11, 2004; amended at 27 Ill. Reg. 15855, effective September 25, 2003; amended at 27 Ill. Reg. 18105, effective November 15, 2003; expedited correction at 28 Ill. Reg. 3528, effective November 15, 2003; amended at 28 Ill. Reg. 11180, effective July 22, 2004; amended at 28 Ill. Reg. 14623, effective October 20, 2004; amended at 29 Ill. Reg. 876, effective December 22, 2004; emergency amendment at 29 Ill. Reg. 11824, effective July 12, 2005, for a maximum of 150 days; emergency rule modified in response to JCAR Recommendation at 29 Ill. Reg. 15101, effective September 23, 2005, for the remainder of the maximum 150 days; emergency amendment expired December 8, 2005; amended at 29 Ill. Reg. 12852, effective August 2, 2005; amended at 30 Ill. Reg. 1425, effective January 23, 2006; amended at 30 Ill. Reg. 5213, effective March 2, 2006; amended at 31 Ill. Reg. 6044, effective April 3, 2007; amended at 31 Ill. Reg. 8813, effective June 6, 2007; amended at 33 Ill. Reg. 9356, effective June 17, 2009; amended at 34 Ill. Reg. 19182, effective November 23, 2010; amended at 35 Ill. Reg. 3378, effective February 14,

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2011; amended at 35 Ill. Reg. 11419, effective June 29, 2011; expedited correction at 35 Ill. Reg. 17468, effective June 29, 2011; amended at 36 Ill. Reg. 14090, effective August 30, 2012; amended at 37 Ill. Reg. 2298, effective February 4, 2013; amended at 37 Ill. Reg. 4954, effective March 29, 2013; amended at 38 Ill. Reg. 22851, effective November 21, 2014; amended at 39 Ill. Reg. 5456, effective March 25, 2015; amended at 41 Ill. Reg. 14811, effective November 15, 2017; amended at 43 Ill. Reg. 3536, effective February 28, 2019; emergency amendment at 44 Ill. Reg. 8521, effective May 5, 2020, for a maximum of 150 days; emergency amendment to emergency rule at 44 Ill. Reg. 16264, effective September 15, 2020, for the remainder of the 150 days; emergency rule as amended expired October 1, 2020; emergency amendment at 44 Ill. Reg. 10217, effective May 28, 2020, for a maximum of 150 days; amended by emergency amendment to emergency rule at 44 Ill. Reg. 12931, effective July 14, 2020, for the remainder of the 150 days; emergency rule as amended repealed at 44 Ill. Reg. 17790, effective October 23, 2020; emergency amendment at 44 Ill. Reg. 16894, effective October 2, 2020, for a maximum of 150 days; emergency rule expired February 28, 2021; emergency amendment at 44 Ill. Reg. 18462, effective October 23, 2020, for a maximum of 150 days; emergency rule expired March 21, 2021; emergency amendment at 44 Ill. Reg. 19551, effective December 2, 2020, for a maximum of 150 days; emergency amendment to emergency rule at 45 Ill. Reg. 393, effective December 18, 2020, for the remainder of the 150 days; emergency rule as amended expired April 30, 2021; amended at 45 Ill. Reg. 1134, effective January 8, 2021; emergency amendment at 45 Ill. Reg. 3046, effective March 1, 2021, for a maximum of 150 days; emergency amendment repealed by emergency rulemaking at 45 Ill. Reg. 10087, effective July 25, 2021; emergency amendment at 45 Ill. Reg. 4285, effective March 22, 2021, for a maximum of 150 days; emergency expired August 18, 2021; emergency amendment at 45 Ill. Reg. 6354, effective May 1, 2021, for a maximum of 150 days; emergency expired September 27, 2021; emergency amendment at 45 Ill. Reg. 9498, effective July 8, 2021, for a maximum of 150 days; emergency amendment at 45 Ill. Reg. 10847, effective August 19, 2021, for a maximum of 150 days; emergency amendment to emergency rule at 45 Ill. Reg. 12889, effective September 21, 2021, for the remainder of the 150 days; emergency amendment to emergency rule at 45 Ill. Reg. 15127, effective November 9, 2021, for the remainder of the 150 days; emergency rule as amended expired January 15, 2022; amended at 45 Ill. Reg. 11096, effective August 27, 2021; emergency amendment at 45 Ill. Reg. 11941, effective September 17, 2021, for a maximum of 150 days; emergency amendment to emergency rule at 45 Ill. Reg. 14550, effective November 5, 2021, for the remainder of the 150 days; emergency expired February 13, 2022; emergency amendment at 45 Ill. Reg. 13108, effective September 28, 2021, for a maximum of 150 days; emergency amendment at 45 Ill. Reg. 14003, effective October 22, 2021, for a maximum of 150 days; amended at 45 Ill. Reg. 13953, effective October 25, 2021; emergency amendment at 46 Ill. Reg. 1928, effective January 16, 2022, for a maximum of 150 days; emergency amendment at 46 Ill. Reg. 3243, effective February 14, 2022, for a maximum of 150 days; emergency expired July 13, 2022; emergency amendment at 46 Ill. Reg. 4136, effective February 25, 2022, for a maximum of 150 days; emergency amendment at 46 Ill. Reg. 5554, effective March 21, 2022, for a maximum of 150 days; amended at 46 Ill. Reg. 6033, effective April 1, 2022; amended at 46 Ill. Reg. 10460, effective May 31, 2022; emergency amendment at 46 Ill. Reg. _____,

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effective July 14, 2022, for a maximum of 150 days.

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Section 300.282 Conditions for Assessment of Penalties
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The Department will consider the assessment of a monetary penalty against a facility under the following conditions:

- a) *A licensee who commits a Type "AA" violation as defined in Section 1-128.5 of the Act is automatically issued a conditional license for a period of 6 months to coincide with an acceptable plan of correction and assessed a fine up to \$25,000 per violation. (Section 3-305(1) of the Act)*
- b) *A licensee who commits a Type "A" violation as defined in Section 1-129 of the Act is automatically issued a conditional license for a period of 6 months to coincide with an acceptable plan of correction and assessed a fine of up to \$12,500 per violation. (Section 3-305(1.5) of the Act)*
- c) *A licensee who commits a Type "AA" or Type "A" violation as defined in Section 1-128.5 or 1-129 of the Act which continues beyond the time specified in Section 3-303(a) of the Act, which is cited as a repeat violation, shall have its license revoked and shall be assessed a fine of 3 times the fine computed per resident per day under subsection (a) or (b) of this Section. (Section 3-305(3) of the Act)*
- d) *A licensee who commits a Type "B" violation as defined in Section 1-130 of the Act shall be assessed a fine of up to \$1,100 per violation. (Section 3-305(2) of the Act)*
- e) *A licensee who fails to satisfactorily comply with an accepted plan of correction for a Type "B" violation or an administrative warning issued pursuant to Sections 3-401 through 3-413 of the Act or pursuant to this Part shall be automatically issued a conditional license for a period of not less than 6 months. A second or subsequent acceptable plan of correction shall be filed. A fine shall be assessed in accordance with subsection (d) of this Section when cited for the repeat violation. This fine shall be computed for all days of the violation, including the duration of the first plan of correction compliance time. (Section 3-305(4) of the Act)*
- f) *A licensee who commits 10 or more Type "C" violations, as defined in Section 1-132 of the Act, in a single survey shall be assessed a fine of up to \$250 per violation. A licensee who commits one or more Type "C" violations with a high risk designation shall be assessed a fine of up to \$500 per violation. (Section 3-305(2.5) of the Act)*

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- g) *If an occurrence results in more than one type of violation as defined in the Act (that is, a Type "AA", Type "A", Type "B", or Type "C" violation), the maximum fine that may be assessed for that occurrence is the maximum fine that may be assessed for the most serious type of violation charged. For purposes of the preceding sentence, a Type "AA" violation is the most serious type of violation that may be charged, followed by a Type "A", Type "B", or Type "C" violation, in that order. (Section 3-305(7.5) of the Act)*
- h) *The minimum and maximum fines that may be assessed pursuant to Section 3-305 of the Act and this Section 300.282 shall be twice those otherwise specified for any facility that willfully makes a misstatement of fact to the Department, or willfully fails to make a required notification to the Department, if that misstatement or failure delays the start of a surveyor or impedes a survey. (Section 3-305(8) of the Act)*
- i) *High risk designation. If the Department finds that a facility has violated a provision of this Part that has a high risk designation, or that a facility has violated the same provision of this Part 3 or more times in the previous 12 months, the Department may assess a fine of up to 2 times the maximum fine otherwise allowed. (Section 3-305(9) of the Act)*
- j) For the purposes of calculating certain penalties pursuant to this Section, violations of the following requirements shall have the status of "high risk designation".
- 1) Section 300.615(b)
 - 2) Section 300.615(e)
 - 3) Section 300.615(f)
 - 4) Section 300.615(g)
 - 5) Section 300.625(a)
 - 6) Section 300.625(b)
 - 7) Section 300.625(c)
 - 8) Section 300.625(f)
 - 9) Section 300.625(j)

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- 10) Section 300.625(k)
- 11) Section 300.625(l)
- 12) Section 300.625(n)
- 13) Section 300.625(o)
- 14) Section 300.627(c)
- 15) Section 300.627(d)
- 16) Section 300.627(e)
- 17) Section 300.661
- 18) Section 300.680
- 19) Section 300.686
- 20) Section 300.690
- 21) Section 300.695(b)
- 22) Section 300.696
- 23) Section 300.1210(b)
- 24) Section 300.1210(d)(5)
- 25) Section 300.1210(d)(6)
- 26) Section 300.1230
- 27) Section 300.1240
- 28) Section 300.2900(d)(2)
- 29) Section 300.3100(d)(2)
- 30) Section 300.3240(a)

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- 31) Section 300.3240(d)
- 32) Section 300.3240(e)
- 33) Section 300.698
- k) *If a licensee has paid a civil monetary penalty imposed pursuant to the Medicare and Medicaid Certification Program for the equivalent federal violation giving rise to a fine under Section 3-305 of the Act and this Section 300.282, or provides the Department with a copy of a letter to the Centers for Medicare and Medicaid Services (CMMS) of its binding intent to waive its right to a federal hearing to contest a civil monetary penalty for the equivalent federal violation, the Department shall offset the fine by the amount of the civil monetary penalty. The offset may not reduce the fine by more than 75% of the original fine, however. (Section 3-305(10) of the Act) The meaning of "equivalent federal violation" shall be determined by the Department. Upon request by the Department, the facility shall provide proof to the Department of the federal civil monetary penalty when the payment is due.*
- l) *When the Department finds that a provision of Article II has been violated with regard to a particular resident, the Department shall issue an order requiring the facility to reimburse the resident for injuries incurred, or \$100, whichever is greater. In the case of a violation involving any action other than theft of money belonging to a resident, reimbursement shall be ordered only if a provision of Article II has been violated with regard to that or any other resident of the facility within the 2 years immediately preceding the violation in question. (Section 3-305(6) of the Act)*

(Source: Emergency amendment at 46 Ill. Reg. _____, effective July 14, 2022, for a maximum of 150 days)

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**Section 300.698 COVID-19 Vaccination of Facility Staff
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- a) For the purposes of this Section:
- 1) "Staff" or "staff person" means any person who is employed by, volunteers for, or is contracted to provide services for a facility, or is employed by an entity that is contracted to provide services to a facility and is in close contact (fewer than 6 feet) with other persons in the facility for more than 15 minutes at least once a week on a regular basis as determined by the facility. The term "staff" or "staff person" does not include any person who is present at the facility for only a short period of time and whose moments of close physical proximity to others on-site are fleeting (e.g., contractors making deliveries to a site where they remain physically distanced from others or briefly entering a site to pick up a shipment).
 - 2) "COVID-19 vaccine" means a vaccine for COVID-19 that has been authorized for emergency use, licensed, or otherwise approved by the U.S. Food and Drug Administration (FDA).
 - 3) An individual is "up to date on COVID-19 vaccinations" when they have received all CDC-recommended COVID-19 vaccines, including any booster dose(s) when eligible.
 - 4) An individual is "not up to date" when they have not received all CDC-recommended COVID-19 vaccines, including any booster dose(s) when eligible.
- b) Each facility shall require all staff to be up to date on COVID-19 vaccinations or be tested in a manner consistent with the requirements of subsection (c) until they are up to date on COVID-19 vaccinations.
- 1) Each facility shall require staff who are up to date on COVID-19 vaccinations to submit proof of all COVID-19 vaccinations. Proof of vaccination may be met by providing to the facility one of the following:
 - A) A Centers for Disease Control and Prevention (CDC) COVID-19 vaccination record card or photo of the card;
 - B) Documentation of vaccination from a health care provider or electronic health record; or

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- C) State immunization records.
- 2) Each facility shall make available opportunities for staff to be up to date on COVID-19 vaccinations, either directly at the facility or indirectly, such as through an arrangement with a pharmacy partner, local health department, or other appropriate health entity.
- 3) Each facility shall exempt individual staff members from the COVID-19 vaccination requirements if:
 - A) Vaccination is medically contraindicated, including any individual staff member who is entitled to an accommodation under the Americans with Disabilities Act or any other law applicable to a disability-related reasonable accommodation; or
 - B) Vaccination would require the individual staff member to violate or forgo a sincerely held religious belief, practice, or observance.
- 4) Staff that fall within the exemption in subsection (b)(3) shall undergo the testing requirements set forth in subsection (c).
- 5) Facilities may adopt more stringent policies requiring all staff to be vaccinated. Nothing in the Section supersedes or modifies the date such policies are designated by the facility to take effect.
- 6) Facilities certified by the Centers for Medicare & Medicaid Services (CMMS) shall maintain compliance with all applicable CMMS regulations and guidance including but not limited to requirements in 42 CFR 483.80.
- c) Each facility shall require its staff who are not up to date against COVID-19 to undergo testing for COVID-19 once per week if the level of COVID-19 community transmission is moderate and twice per week if the level of COVID-19 community transmission is substantial or high, with twice weekly tests administered at least three days apart. No testing is required for facilities in counties where community transmission levels are low. COVID-19 community transmission levels shall be determined based on the CDC COVID Data Tracker available at: <https://covid.cdc.gov/covid-data-tracker>. Staff who are not up to date against COVID-19 and not tested as required by this subsection shall not be permitted to enter or work at the facility.

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- 1) The COVID-19 test shall either have Emergency Use Authorization by the FDA or be operated pursuant to the Laboratory Developed Test requirements of the U.S. Centers for Medicare and Medicaid Services.
 - 2) Testing for staff who are not up to date on COVID-19 vaccinations shall be conducted on-site at the facility, or the facility must obtain proof or confirmation from the staff member of a negative test result obtained elsewhere.
 - 3) A laboratory RT-PCR test is the preferred test for COVID-19 infection; however, point-of-care (POC) antigen testing is acceptable. For a facility to conduct these tests with their own staff and equipment, the facility shall have, at a minimum, a Clinical Laboratory Improvement Amendments (CLIA) Certificate of Waiver.
 - 4) If a staff person tests positive for COVID-19, the facility shall exclude the staff person from the facility, and the staff person shall be subject to all applicable isolation and quarantine rules and facility policies.
 - 5) In the event COVID-19 RT-PCR or POC antigen testing is not available, staff may use at-home or self-tests if the tests are observed and verified by a health care provider, and reportable as required in subsection (g).
 - 6) Staff who are not up to date on COVID-19 vaccinations may be permitted to enter or work at the facility while they are waiting to receive the results of their most recent test.
- d) Each facility shall ensure that all individuals who administer the COVID-19 vaccines on site for staff pursuant to this Section are qualified and trained to administer the vaccine in accordance with all applicable federal and State laws and rules.
 - e) Each facility shall post conspicuous signage throughout the facility notifying staff that the facility makes available opportunities for staff to be up to date on COVID-19 vaccinations. The signs shall be on 8.5 by 11-inch white paper, with text in Calibri (body) font and 26-point type in black letters.
 - f) Each facility shall provide its unvaccinated staff a minimum of 90 minutes of clear and accurate instruction covering vaccine education, effectiveness, benefits, risks, common reactions, hesitancy, and misinformation. Records of training shall be made available to the Department upon request. Examples of Department-

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approved training and educational resources include those offered for health care professionals by the:

- 1) Illinois Department of Public Health WebEx webinar recording: Vaccine Protection: Caring Communities Working Together available at: <https://illinois.webex.com/illinois/lsr.php?RCID=45ae739d9a0b1c34e884c1608fef2fd9>;
 - 2) CDC, available at <https://www2.cdc.gov/vaccines/ed/covid19/>; and
 - 3) Immunization Action Coalition (IAC), available at <https://www.immunize.org/covid-19/>.
- g) Each facility shall maintain a record of staff who are up to date on COVID-19 vaccinations, not up to date on COVID-19 vaccinations, and unvaccinated with an exemption pursuant to subsection (b)(3), and test results required per subsection (c). Facilities that are not required to report COVID-19 aggregate vaccination and testing data into the National Healthcare Safety Network (NHSN) shall report this data to the Department weekly utilizing the online form available at <https://app.smartsheet.com/b/form/fa2d7abfb102490b9d2622a2ba490744>.
- h) The facility shall maintain documentation in each staff person's confidential medical file, in accordance with federal and State privacy laws, regarding COVID-19 vaccinations and tests, including the following:
- 1) Proof of vaccination for the staff person;
 - 2) The results of COVID-19 tests for each staff person; and
 - 3) Written exemption from the vaccination.
- i) Nothing in this emergency amendment prohibits any facility from implementing vaccination or testing requirements for staff, residents, and visitors that exceed the requirements of this Section.
- j) Failure to comply with any of the requirements set forth in this Section creates a substantial probability of risk of death or serious mental or physical harm and shall result in a Type "A" violation as defined in Section 300.274(b)(2). Violations of the requirements of this Section shall have the status of "high risk designation."

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