



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

May 11, 2020

Re: ACF DAL #20-14, NH-20-07

Required COVID-19 Testing for all Nursing
Home and Adult Care Facility Personnel

Dear Nursing Home and Adult Care Facility Operators and Administrators:

On May 10, 2020, Governor Andrew M. Cuomo signed Executive Order (“EO”) 202.30, which requires periodic COVID-19 testing of all personnel in nursing homes and adult care facilities. This DAL explains the requirements of the Executive Order and provides additional direction and guidance on how to implement its requirements.

EO 202.30 requires the operators and administrators of all nursing homes and adult care facilities, including all adult homes, enriched housing programs and assisted living residences, to test or make arrangements for the testing of all personnel, including all employees, contract staff, medical staff, operators and administrators, for COVID-19. Such testing must occur twice per week, pursuant to a plan developed by the facility administrator and filed with the Department no later than 5:00 p.m. on Wednesday, May 13, 2020. Any positive test result shall be reported to the Department by 5:00 p.m. of the day following receipt of such test result. The Department will be issuing further guidance on the submission of such plans and how to report positive test results.

Further, by Friday, May 15, 2020, the operator and the administrator must each provide to the Department of Health with a certification of compliance with EO 202.30 and all other applicable EOs and directives of the Commissioner of Health. This includes, as applicable, and without limitation:

- EO 202.1, directing nursing homes to follow any guidance issued by the Department of Health relating to visitation restrictions;
- EO 202.18, as amended by EO 202.19, requiring notification to family members or next of kin within 24 hours of a resident testing positive or suffering a COVID-19 related death.
- The Directive of the Commissioner of Health issued May 10, 2020, titled “Hospital Discharges and Admissions to Nursing Homes and Adult Care Facilities.”

The certification form is attached.

Where a facility arranges for but does not provide testing for its personnel, the facility must still maintain records demonstrating that it is in compliance with EO 202.30. This may require providing personnel with access to a computer and printer that can be used to print test results and provide such results to the facility. Facilities must maintain records of personnel testing and results for a period of one year. Facilities must ensure that testing, if not provided by the facility, is reasonably accessible for its personnel.

Facilities may wish to avail themselves of the following options to ensuring testing of personnel:

1. Facilities may offer testing to their personnel through their occupational health program.
2. Facilities may direct their personnel to a local drive-through or walk-in testing site.
3. Personnel can call 1-888-364-3065 to inquire about testing, or they can go to <https://coronavirus.health.ny.gov/covid-19-testing#protocol-for-testing>. Facilities must advise personnel to find out how to get documentation of their results, such as through a laboratory portal.
4. Facilities may contract with a third party to offer testing.
5. Facilities may accept documentation of testing conducted by an individual's healthcare provider.

Any personnel who test positive for COVID-19 must remain at home in isolation, in accordance with all guidance and directives of the State Department of Health and, unless inconsistent therewith, those of the Local Health Department. Specifically, pursuant to April 29, 2020 guidance issued by the Commissioner of Health, personnel who test positive for COVID-19 but remain asymptomatic are not eligible to return to work for 14 days from the date of the first positive test. Symptomatic nursing home employees may not return to work until 14 days after the onset of symptoms, provided at least 3 days (72 hours) have passed since resolution of fever without the use of fever-reducing medications and respiratory symptoms are improving. Any personnel who are ordered or directed to remain isolated as a result of a positive test result are entitled to certain benefits including paid sick leave pursuant to Chapter 25 of the laws of 2020. More information is available at <https://paidfamilyleave.ny.gov/COVID19>. Any personnel who refuse to undergo testing for COVID-19 shall not be scheduled for or permitted to work or provide services for the facility, in any capacity, until such testing is performed.

Please be advised that the Commissioner of Health is authorized to suspend or revoke the operating certificate of any nursing home or adult care facility if it is determined that such facility has not complied with EO 202.30, or any regulations or directives issued by the Commissioner of Health, and to appoint a receiver to continue the operations on 24 hours' notice to the current operator. Moreover, any nursing home or adult care facility that does not comply with EO 202.30 shall be subject to a penalty for non-compliance of \$2,000 per violation per day, as if it were a violation of section 12 of the Public Health Law, and any subsequent violation shall be punishable as if it is a violation of section 12-b of the Public Health Law, including a fine for the violation of up to \$10,000.

All administrators are reminded that submitting a certification of compliance, when such certification is not accurate shall be a false statement to a government agency, under Penal Code 210.45, which is a criminal offense.

Thank you for your attention to this important issue affecting residents of nursing homes and adult care facilities in New York State. If you have further questions regarding your obligations as described in this DAL, adult care facilities may contact the Division of Adult Care Facilities and Assisted Living Surveillance via email to covidadultcareinfo@health.ny.gov or telephone to (518) 408-1133, and Nursing Homes may contact the Division of Nursing Homes /IID Surveillance Bureau of Quality Assurance and Surveillance via email to covidnursinghomeinfo@health.ny.gov or (518) 408-1282.

Sincerely,

Heidi L. Hayes, Acting Director
Division of Adult Care Facilities
and Assisted Living Surveillance

Sheila T. McGarvey, RN, BSN, Director
Division of Nursing Homes/IID Surveillance

Administrator/Operator Certification of Compliance

I hereby certify, under penalty of law, including but not limited to Section 210.45 of the Penal Code, that I am the Operator or Administrator of the facility identified below, and that such facility is in compliance with Executive Order No. 202.30, requiring COVID-19 testing of all facility personnel, including all employees, contract staff, medical staff, administrators and operators, pursuant to the plan filed with the Department of Health, as well as all other applicable Executive Orders and directives of the Commissioner of Health. This includes, as applicable, and without limitation:

- EO 202.1, directing nursing homes to follow any guidance issued by the Department of Health relating to visitation restrictions;
- EO 202.18, as amended by EO 202.19, requiring notification to family members or next of kin within 24 hours of a resident testing positive or suffering a COVID-19 related death.
- The Directive of the Commissioner of Health issued May 11, 2020, titled "Hospital Discharges and Admissions to Nursing Homes and Adult Care Facilities."

By May 15, 2020, all ACF certifications must be emailed to covidadultcareinfo@health.ny.gov and all nursing home certifications must be emailed to covidnursinghomeinfo@health.ny.gov.

Signature: _____

Date: _____

Name (Printed): _____

Circle one: Administrator/Operator

Facility Name and Address: _____

DATE: May 11, 2020
TO: Hospital Discharge Planners, Directors of Nursing, Nursing Home Administrators, and Adult Care Facility Administrators
FROM: New York State Department of Health

Directive:
**Hospital Discharges and Admissions
to Nursing Homes and Adult Care Facilities**

Please distribute immediately to:
**Hospital Discharge Planners, Directors of Nursing, Nursing Home
Administrators, and Adult Care Facility Administrators**

This Directive supplements the prior Department of Health Advisory concerning hospital discharges to nursing homes (NHs) and adult care facilities (ACFs), as well as the DAL sent on April 29, 2020.

As was clearly stated in the April 29, 2020 DAL, Public Health Law and regulations require that all residents receive the care they need. Specifically, pursuant to state law and regulations NHs and ACFs must only accept and retain those residents for whom the facility can provide adequate care.

With respect to COVID-19, state and federal rules and regulations require that NHs adhere to appropriate safety measures including, but not limited to:

- Restricting visitation at all nursing homes and adult care facilities, except for imminent end-of-life situations.
- Requiring personal protective equipment (PPE) for staff at all nursing homes and adult care facilities, including surgical-grade facemasks, gloves, gowns, and eye protection (e.g., goggles or face shield) when interacting with COVID-19 suspected or confirmed residents. Staff must wear at least a facemask during interactions with all residents.
- Requiring all staff to be checked for COVID-19 symptoms (e.g., fever, cough, difficulty breathing, or other respiratory symptoms), including temperature checks upon the start of each shift and every 12 hours while on duty.
- Requiring facilities to notify all residents and their family members within 24 hours if any resident tests positive for COVID-19 or any resident suffers a COVID-19 related death.
- Having protocols to separate residents into cohorts of positive, negative, and unknown as well as separate staffing teams to deal with COVID-positive residents and non-positive residents. In order to effectuate this policy, nursing home facilities should transfer residents within a facility, to another long-term care facility, or to another non-certified location if they are unable to successfully separate outpatients in individual facilities.

Hospital discharge planning staff, NHs, and ACFs should carefully review this guidance with all staff directly involved in resident admission, transfer, and discharge. Residents are deemed appropriate for return upon a determination by the hospital physician or designee that the resident is medically stable for return.

To this end, hospital discharge planners **must** confirm to the facility to which the patient is being discharged (whether NH or ACF), by telephone, that the resident is medically stable for discharge. Comprehensive discharge instructions must be provided by the hospital prior to the transport of a resident to the NH or ACF, and all discharge planning requirements must be followed.

In accordance with 10 NYCRR 415.26, NHs must only accept and retain those residents for whom the facility can provide adequate care. ACFs have an obligation to provide care to residents and ensure their life, health, safety and welfare are protected, pursuant to Social Services Law § 461-c(2-a) and 18 NYCRR 487.7 and 488.7. **Therefore, no hospital shall discharge a patient to a NH or ACF unless the facility administrator has first certified that they are able to provide that patient with adequate care. In addition, hospitals must test any patient who may be discharged to a NH or ACF for COVID-19, using a molecular test for SARS-Cov-2 RNA. No hospital shall discharge a patient who has been diagnosed with COVID-19 to a NH or ACF, until that patient has received one negative test result using such testing method.**

If a NH or ACF is not able to provide adequate care to a resident at any time during that resident's stay, the NH or ACF must call their respective regional office of the Department of Health to provide necessary information and assist with any relocation needs, including but not limited to assistance with arranging transportation to an alternate facility that can provide adequate care for the resident.

However, with the exception of patients of hospitals who have not yet tested negative, a NH or ACF cannot deny admission of a resident based solely on a resident's COVID-19 diagnosis.

In the event a patient is stable and appropriate for discharge, and the NH or ACF is unable to certify that they can provide adequate care, a hospital may, in the event the capacity is necessary for more acute patients, choose to call their respective regional office of the Department of Health to arrange discharge and transportation to an alternate facility that can provide adequate care for the resident.

There are facilities available for COVID-19 positive patients that require skilled nursing. These facilities are available around the state, and providers should contact the Department of Health to identify the appropriate setting.

Information for healthcare providers on topics related to COVID-19 is readily available on the Department of Health public website at <https://coronavirus.health.ny.gov/information-healthcare-providers>. As always, standard precautions must be maintained, and environmental cleaning made a priority, during this time of pandemic infection.

Additionally, all NH and ACF administrators are required to certify to the Department of Health no later than Friday, 5:00 p.m. on May 15, 2020 that the administrator understands and is in compliance with this directive and will continue to adhere to all directives issued by the Department of Health or the Commissioner of Health as appropriate.

Such certification, and any future certification relative to patient care for any individual discharged is made pursuant to section 210.45 of the Penal Code and is punishable as a criminal offense.

Thank you for your ongoing support and cooperation in responding to COVID-19 concern.