



Department of Health

ANDREW M. CUOMO
Governor

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

LISA J. PINO, M.A., J.D.
Executive Deputy Commissioner

November 10, 2020

Re: NH-20-16, Testing and Visitation Requirements
in Red, Orange and Yellow Zones

Dear Nursing Home Operators and Administrators:

On May 10, 2020, Governor Andrew M. Cuomo signed Executive Order (“EO”) 202.30, which required twice weekly COVID-19 testing of all personnel in nursing homes. Given the decline in the number of positive cases in nursing homes, in June this EO was modified to require testing of all personnel once a week. On October 9, 2020, as part of the Cluster Action Initiative, Governor Cuomo issued EO 202.68 which established red, orange and yellow zones and imposed restrictions and limitations within those zones. On November 10, 2020, EO 202.73 amended the nursing home testing requirements to require that nursing homes in red, orange or yellow zones test all personnel as directed by the Commissioner of Health. This DAL requires all nursing homes in red, orange or yellow zones to test or make arrangements to test all personnel twice a week. This DAL also provides additional direction and guidance on how to implement the new EO and provides further clarifications to nursing homes in these regions.

EO 202.73 requires the operators and administrators of all nursing homes 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 in all nursing homes in these zones according to previously filed testing plans, until such time the facility is no longer in a designated red, orange or yellow zone, at which time the facility may revert back to once weekly testing. Each home will have 7 days from the date of the zone designation to be in full compliance with the twice weekly testing. For homes that were previously in designated zones, they will have seven days from the date of this notice to come into compliance. Any positive test result shall be reported to the Department by 1:00 p.m. of the day following receipt of such test results according to existing reporting protocols and mechanisms.

All nursing homes must continue to comply with the requirements of previously issued EOs, guidance and related FAQs. 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 these EOs. 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 free of charge and 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.
6. The Department has limited availability of Abbott rapid antigen tests that it can make available. Please contact us if you have a need for this.

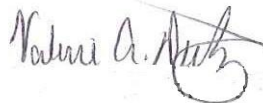
Any personnel who test positive for COVID-19 must remain at home in isolation, in accordance with all guidance and directives of the State Department of Health. Personnel who are ordered or directed to remain isolated as a result of a positive test result are entitled to certain benefits including paid sick leave pursuant to Chapter 25 of the laws of 2020; provided however, pursuant to EO 202.45, New York employees forgo their paid sick leave benefits from New York's COVID-19 paid sick leave law if they engage in non-essential travel to any states other than contiguous states from the time of return to New York until the end of the required period of quarantine or isolation. 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 if it is determined that such facility has not complied with EO 202.30 as amended, 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 that does not comply with EO 202.30 as extended and modified 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.

In addition to these testing requirements, pursuant to the health advisory issued on October 23, 2020, visitation is limited in all congregate settings including nursing homes. This advisory clarifies that as applicable to nursing homes in red and orange zones, visitation is suspended except for in the following instances: compassionate care (i.e. end of life, hospice situations) medically or clinically necessary (i.e. visitor is essential to the care of the patient as determined by the facility and treating provider), and necessary legal representatives.

Thank you for your attention to this important issue affecting residents of nursing homes in New York State. If you have further questions regarding your obligations as described in this DAL, 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,



Deputy Director
Center for Health Care Provider Services and Oversight
Office of Primary Care and Health Systems Management