

NEW YORK MANDATES NEW COVID-19 TESTING AND REPORTING REQUIREMENTS FOR SKILLED NURSING AND ADULT CARE FACILITIES

Hodgson Russ Healthcare Alert
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As COVID-19-related hospitalizations decline, New York turns its focus to COVID-19 testing for skilled nursing and adult care facility staff, and for residents returning from hospitalization, in an effort to limit the spread of the virus in the long-term care setting. Executive Order 202.30, issued May 10, 2020, mandates that each skilled nursing and adult care facility develop a plan to implement the new requirements and to certify their compliance. EO 202.30 also prohibits hospitals from discharging patients to nursing homes unless the patient first tests negative. Here is what you need to know about the new requirements.

Testing and Certification Requirements

EO 202.30 mandates twice weekly testing for skilled nursing and adult care facility staff and next-day reporting of positive results. Both the operator and the administrator of all nursing homes and adult care facilities – which includes all adult homes, enriched housing programs and assisted living residences – must:

- test (or make arrangements to test) all personnel –including all employees, contract staff, medical staff, operators and administrators— for COVID-19, twice per week;
- report positive results to the Department of Health (DOH) no later than 5:00 p. m. the day after receiving the results; and
- develop a plan, and file it with DOH no later than **May 13, 2020 at 5:00 p.m.**, to test and report test results to DOH.

In addition, EO 202.30 requires skilled nursing and adult care facilities to certify, no later than **May 15, 2020**, their compliance with EO 202.30 and DOH directives, as well as with all other applicable Executive Orders and DOH directives. DOH is expected to issue guidance implementing the new requirements.

Sanctions for Non-Compliance

EO 202.30 authorizes the imposition of strict sanctions for non-compliance, including:

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- the suspension or revocation of the facility’s operating certificate or the appointment of a receiver on 24 hours’ notice to the operator, with false statements punishable under the Penal Law;
- the imposition of penalties of \$2,000 per violation per day and \$10,000 per violation per day for any subsequent violation.

EO 202.30 also prohibits nursing home or adult care facility operators from allowing any personnel who refuse to be tested for COVID-19 to provide services until such testing is conducted. EO 202.30 is effective through June 9, 2020.

Hospital Transfers to the Skilled Nursing Setting

Additionally, EO 202.30 prohibits a hospital from discharging a patient to a nursing home, unless the nursing home certifies it is properly able to care for the patient and until the hospital first performs a diagnostic test for COVID-19 and obtains a negative result.

For nursing homes, this reflects a shift from an earlier DOH advisory, issued in March 2020, which stated that “[n]o resident shall be denied re-admission or admission to the NH solely based on a confirmed or suspected diagnosis of COVID-19” and nursing homes “are prohibited from requiring a hospitalized resident who is determined medically stable to be tested for COVID-19 prior to admission or readmission.” This may be a welcome shift for many nursing home operators seeking to limit the spread of virus at their facilities, but may upset expectations of others who have invested substantial effort and resources preparing their facilities to receive recovering COVID patients.

For adult care facilities, DOH’s April 7, 2020 Advisory on Hospital Discharges and Admissions to ACFs similarly stated, that “[n]o resident shall be denied re-admission or admission to the ACF solely based on a confirmed or suspected diagnosis of COVID-19” and adult care facilities “are prohibited from requiring a hospitalized resident, who is determined medically stable, to be tested for COVID-19 prior to admission or readmission.” EO 202.30 does not expressly refer to hospital discharges to adult care facilities. Nevertheless, any decision to admit or readmit a resident to an adult care facility would need to take into account the facility’s ability to provide the level of care the resident requires, in accordance with the hospital’s discharge instructions and consistent with the facility’s licensure or certification.

If you have questions about complying with EO 202.30, developing a COVID-19 testing plan or confirming certification with applicable Executive Orders and DOH directives, please contact Jane Bello Burke (518.433.2404), Joshua Feinstein (716.848.1318) or Roopa Chakkapan (716.848.1258).

Please check our Coronavirus Resource Center and our CARES Act page to access information related to both of these rapidly evolving topics.

If you received this alert from a third party or from visiting our website, and would like to be added to our Healthcare alert mailing list or any other mailing list, please visit us at: <https://forms.hodgsonruss.net/sign-up-for-email-and-other-communications..html>.