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JUDITH M. PERSICHILLI, RN, BSN, MA
Commissioner

EXECUTIVE DIRECTIVE No. 20-013

COVID-19 TESTING AT LICENSED LONG-TERM CARE FACILITIES, ASSISTED LIVING RESIDENCES, COMPREHENSIVE PERSONAL CARE HOMES, RESIDENTIAL HEALTH CARE FACILITIES, AND DEMENTIA CARE HOMES

WHEREAS, Coronavirus disease 2019 ("COVID-19") is a contagious, and at times fatal, respiratory disease that is responsible for the 2019 novel coronavirus outbreak; and

WHEREAS, on January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak a "public health emergency of international concern," which means "an extraordinary event which is determined to constitute a public health risk to other States through the international spread of disease and to potentially require a coordinated international response," and thereafter raised its global risk assessment of COVID-19 from "high" to "very high"; and

WHEREAS, on January 31, 2020, the Secretary of the United States Department of Health and Human Services declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19; and

WHEREAS, on March 9, 2020, Governor Philip D. Murphy issued Executive Order 103, declaring the existence of a Public Health Emergency, pursuant to the Emergency Health Powers Act, N.J.S.A. 26:13-1 et seq., and a State of Emergency, pursuant to the Disaster Control Act, N.J.S.A. App A:9-33 et seq., in the State of New Jersey for COVID-19; and

WHEREAS, the Public Health Emergency was extended by Governor Murphy under Executive Orders 119 and 138; and

WHEREAS, as of May 12, 2020, the State has approximately 140,743 documented cases of COVID-19 and 9,508 deaths related to COVID-19; and

WHEREAS, the Centers for Disease Control and Prevention (CDC) expects that additional cases of COVID-19 will be identified in the coming days, including more cases in the United States, and that person-to-person spread is likely to continue to occur; and

WHEREAS, under the declared Public Health Emergency, the Commissioner of the Department of Health (Commissioner) is empowered, pursuant to N.J.S.A. 26:13-12, to

take all reasonable and necessary measures to prevent the transmission of infectious disease and apply proper controls and treatment for infectious disease; and

WHEREAS, pursuant to N.J.S.A. 26:13-17(a), access to medical information of individuals who have participated in medical testing programs or efforts by the Commissioner shall be limited to those persons having a legitimate need to acquire or use the information to, among other things, provide treatment to individuals and investigate the causes of the transmission; and

WHEREAS, pursuant to N.J.S.A. 26:2H-12.87(b), nursing homes, assisted living residences, comprehensive personal care homes, residential health care facilities, and dementia care homes (collectively, "long-term care facilities" or "LTCs") must have outbreak response plans customized to the facility, based upon national standards, addressing isolation and cohorting of infected and at-risk individuals; notification policies; policies to require ill staff to not present at the facility for work duties; processes for implementing evidence-based outbreak response measures; policies to conduct routine monitoring of residents and staff to quickly identify signs of a communicable disease that could develop into an outbreak; and policies for reporting outbreaks to pubic health officials in accordance with applicable laws and regulations; and

WHEREAS, pursuant to N.J.S.A. 26:2H-12.87(c), long-term care facilities that provide care to ventilator-dependent residents must include in the facility's outbreak response plan written policies to meet staffing, training, and facility demands during an infectious disease outbreak to successfully implement the outbreak response plan; and

WHEREAS, the CDC and the New Jersey Department of Health (DOH) have identified key strategies to address COVID-19 in long-term care facilities and congregate settings, including but not limited to identifying infection early; taking measures to prevent the spread of COVID-19 through asymptomatic, pre-symptomatic, and symptomatic transmission; and dedicating areas of a facility to care for residents with suspected or confirmed COVID-19; and

WHEREAS, given the congregate nature and resident populations typically served in long-term care facilities (e.g., older adults often with underlying chronic medical conditions), the long-term care population are at the highest risk of being affected by COVID-19 and, if infected, are at risk of serious illness; and

WHEREAS, because healthcare providers and support staff are a source of introduction of COVID-19 into long-term care facilities, the CDC and the DOH recommend actively screening every person entering the facilities for fever and symptoms of COVID-19; and

WHEREAS, according to the CDC, and as reflected in the State, experience with outbreaks in long-term care facilities has shown that residents with COVID-19 may not report typical symptoms such as fever or respiratory symptoms and some may not report any symptoms, yet unrecognized asymptomatic and pre-symptomatic infections contribute to transmission in these settings; and

WHEREAS, expansive and extensive testing for COVID-19 is essential not only for mitigating and controlling the spread of the virus but also to determine the occurrence of the spread of the virus in long-term care and residential health care settings and to help inform additional prevention and control efforts; and

WHEREAS, testing of staff for COVID-19 is job-related and consistent with business necessity to ensure safe operations of long-term care and residential health care settings for both staff and residents;

WHEREAS, individuals in the State, especially vulnerable populations such as in long-term care settings and individuals who work with these populations, require testing for COVID-19 in order to limit exposure and control the spread of this contagious disease; and

WHEREAS, the CDC and the DOH recommend that facility-wide testing for COVID-19 should be implemented when results will lead to specific infection control and prevention actions *in addition to* existing infection prevention and control measures, including visitor restrictions, cessation of communal dining and group activities, monitoring of all health care providers, facility staff and residents for signs and symptoms of COVID-19, as well as appropriate personal protective equipment; and

WHEREAS, the CDC and the DOH recommend that retesting be implemented to detect those with newly developed infection, inform decisions about when residents with COVID-19 can be moved out of COVID-19 wards and/or when health care providers and facility staff can return to work; and

WHEREAS, I conclude that COVID-19 testing of staff and residents at LTCs is necessary and appropriate to ensure that this vulnerable population is best protected;

NOW, THEREFORE, I, JUDITH PERSICHILLI, Commissioner of the New Jersey Department of Health, pursuant to the powers afforded to me under the Emergency Health Powers Act, hereby ORDER and DIRECT the following:

1. No later than May 19, 2020, all long-term care facilities as defined in N.J.S.A. 26:2H-12.87[1] shall supplement or amend their current disease outbreak plan to include a COVID-19 testing plan (Plan) for all staff and patients/residents. "Staff" to be tested pursuant to this Directive include all direct care workers and non-direct care workers within the LTC (such as administrative, janitorial and kitchen staff).

[1] As defined in N.J.S.A. 26:2H-12.87, long-term care facility means a nursing home, assisted living residence, comprehensive personal care home, residential health care facility, or dementia care home licensed pursuant to P.L. 1971, c. 136 (C.26:2H-1 et seq.).

2. At a minimum, the Plan shall be consistent with currently available CDC and DOH public health guidance and address the following components:

   a. Testing procedures and frequency;
   b. Post-testing protocols for patients such as cohorting of residents/patients and separation of those with laboratory confirmed COVID-19 infection from others;
   c. Procedures to obtain staff authorizations for release of laboratory test results to the LTC so as to inform infection control and prevention strategies;
   d. Work exclusion of staff who test positive for COVID-19 infection, refuse to participate in COVID-19 testing, or refuse to authorize release of their testing results to the LTC, until such time as such staff undergoes testing and the results of such testing are disclosed to the LTC;
   e. Return to work protocols[i] after home isolation for staff who test positive; and
   f. Plans to address staffing (including worker absences) and facility demands due to the outbreak.

3. Testing shall occur as follows:

   a. Baseline molecular testing of staff and residents/patients completed by or before May 26, 2020;
   b. Retesting of individuals who test negative at baseline within 3-7 days after baseline testing; and
   c. Further retesting in accordance with CDC guidance, as amended and supplemented.[ii]

4. If a staff member tests positive for COVID-19 (symptomatic or asymptomatic), the facility may permit them to return to work subject to CDC/DOH recommendations as to timeframes and requirements that are incorporated in its Plan.

5. By May 19, 2020, an authorized representative of each LTC shall submit to DOH an attestation stating that the LTC has developed a Plan in compliance with this Directive.

6. By May 26, 2020, an authorized representative of each LTC shall submit to DOH an attestation stating that the LTC has implemented a Plan in compliance with this Directive.

7. Attestations regarding the Plan shall be submitted by email to LTC.DiseaseOutbreakPlan@doh.nj.gov.

8. In addition, LTCs shall submit the following information in a prescribed format through the portal designated by the Office of Emergency Management ("OEM") in Executive Order No. 111 (Murphy):

    - Testing dates;
    - Numbers of staff and residents/patients that have been tested;
    - Aggregate testing results for the staff and resident/patient populations; and
    - Any other information requested by DOH.

9. Any and all records related to COVID-19 testing protocols and implementation by LTCs pursuant to this Directive shall be made available to DOH, upon request.

10. LTC submission of attestations to DOH and information submitted to OEM regarding COVID-19 testing, as set forth above, will be made publicly available and tracked on the NJ COVID-19 Information Hub website.

11. Failure of LTCs to adhere to this Directive may result in enforcement action as set forth at N.J.A.C. 8:43E-3.1, including license suspension or revocation.

12. If a resident/patient refuses to undergo COVID-19 testing, then the LTC shall treat the individual as a Person Under Investigation, make a notation in the resident's chart, notify any authorized family members or legal representatives of this decision, and continue to check temperature on the resident at least twice per day. Onset of temperature or other symptoms consistent with COVID-19 require immediate cohorting in accordance with the Plan. At any time, the resident may rescind their decision not to be tested.

This Directive shall take effect immediately. The provisions of this Directive shall remain in force and effect for the duration of the public health emergency originally declared in Executive Order No. 103 (2020), and as extended by Executive Orders 119 and 138, unless otherwise amended, superseded, or lifted.

Judith Persichilli

Judith Persichilli, R.N., B.S.N., M.A.
Commissioner

5/12/2020

Date

[i] NJDOH, Guidance for COVID-19 Diagnosed and/or Exposed Healthcare Personnel, available at https://nj.gov/health/cd/documents/topics/NCOV/Guidance_for_COVID19_Diagnosed_andor_Exposed_HCP.pdf.
[ii] CDC, Testing for Coronavirus (COVID-19) in Nursing Homes, available at https://www.cdc.gov/coronavirus/2019-ncov/hcp/nursing-homes-testing.html.