STATE OF KANSAS

CAPITOL BUILDING, ROOM 241 SOUTH
TOPEKA, KS 66612

PHONE: (785) 296-3232
GOVERNOR.KANSAS.GOV

GOVERNOR LAURA KELLY

EXECUTIVE ORDER NO. 20-69

Requiring COVID-19 testing in certain adult care homes

WHEREAS, securing the health, safety, and economic well-being of residents of the State of Kansas is this Administration's top priority;

WHEREAS, Kansas is facing a crisis – the pandemic and public health emergency of COVID-19— with effects of illness, quarantines, school closures, and temporary closure of businesses resulting in lost wages and financial hardship to Kansas citizens;

WHEREAS, the United States Departments of Health and Human Services declared a public health emergency for COVID-19 beginning January 27, 2020, with now more than 15,040,000 cases of the illness and more than 285,000 deaths as a result of the illness across the United States;

WHEREAS, a State of Disaster Emergency was proclaimed for the State of Kansas on March 12, 2020, and such emergency was extended to September 15, 2020 pursuant to Sec. 5(a) of House Bill 2016 (special session 2020) and has since been extended by the State Finance Council through December 15, 2020;

WHEREAS, as of this date, there have been over 179,803 positive cases of COVID-19 in Kansas, spread among all 105 counties and 1,941 deaths as a result of the illness;

WHEREAS, the health and safety of vulnerable residents residing in adult care homes in Kansas, and the health and safety of the valuable staff that provide direct care and treatment to those residents, have been significantly impacted by COVID-19 infection outbreaks;

WHEREAS, a requirement to test staff and residents living and working in state-licensed adult care homes for COVID-19 is an important and necessary addition to other infection prevention and control (IPC) recommendations aimed at preventing COVID-19 from entering adult care homes, detecting cases quickly, and stopping transmission; swift identification of confirmed COVID-19 cases allows the facility to take immediate action to remove exposure risks to residents and staff who live and work in state-licensed adult care homes; and

WHEREAS, adult care homes subject to federal regulations are subject to COVID-19 testing requirements as set out in QSO-20-38-NH, and this order is intended to subject adult care homes that are exclusively regulated by the state to similar testing requirements.

NOW, THEREFORE, pursuant to the authority vested in me as Governor of the State of Kansas, including the authority granted me by K.S.A. 48-924 and K.S.A. 48-925(b), (c)(1), and (c)(11), in order to address the effects of the spread of COVID-19, I hereby direct and order the following:

1. Adult care homes subject to this order shall include all facilities identified in K.S.A. 39-923(a), ***except*** those facilities that must comply with QSO-20-38-NH issued on August 26, 2020 by the Centers for Medicare & Medicaid Services (CMS), pursuant to 42 CFR 483.80(h), which requires nursing facilities that are federally certified to receive Medicare and Medicaid funding to test all residents and staff for COVID-19 in accordance with guidance established by CMS. This executive order is intended to require testing of staff and residents in all other state-licensed facilities that are classified as adult care homes under K.S.A. 39-923(a)

2. "Adult care homes" or "facility" as used in this order includes any nursing facility, nursing facility for mental health, intermediate care facility for people with intellectual disability, assisted living facility, residential healthcare facility, home plus, boarding care home and adult day care facility; all of which are classifications of adult care homes and are required to be licensed by the secretary for aging and disability services in accordance with K.S.A. 39-923(a);

3. **Testing of Adult Care Home Staff and Residents**

    a. To enhance efforts to keep COVID-19 from entering and spreading through nursing homes, adult care homes are required to test residents and staff with authorized nucleic acid or antigen detection assays based on parameters and a frequency set forth by this executive order.
    b. Adult care homes can meet the testing requirements through the use of rapid point-of-care (POC) diagnostic testing devices or through an arrangement with an offsite laboratory. POC Testing is diagnostic testing that is performed at or near the site of resident care. For a facility to conduct these tests with their own staff and equipment (including POC devices provided by the Department of Health and Human Services), the facility must have a CLIA Certificate of Waiver.
    c. Adult care homes without the ability to conduct COVID-19 POC testing must have arrangements with a laboratory to conduct tests to meet these requirements. Laboratories that can quickly process large numbers of tests with rapid reporting of results (e.g., within 48 hours) must be selected to rapidly inform infection prevention initiatives to prevent and limit transmission. Adult care homes have access to laboratories contracted with the State of Kansas through the "It's Up to Us, Kansas" testing strategy. This access is established through December 30, 2020.
    d. "Adult care home staff" or "facility staff" includes employees, consultants, contractors, volunteers, and caregivers who provide care and services to residents on behalf of theadult care home, and students in the adult care home's nurse aide training

programs or from affiliated academic institutions. For the purpose of testing "individuals providing services under arrangement and volunteers," adult care homes must prioritize those individuals who are regularly in the facility (e.g., weekly) and have contact with residents or staff. The facility may have a provision under its arrangement with a vendor or volunteer that requires them to be tested from another source (e.g., their employer or on their own). However, the adult care home is still required to obtain documentation that the required testing was completed during the timeframe that corresponds to the facility's testing frequency.

e. Regardless of the frequency of testing being performed or the adult care home's COVID-19 status, the facility must continue to screen all staff (each shift), each resident (daily), and all persons entering the facility, such as vendors, volunteers, and visitors, for signs and symptoms of COVID-19.

4. **Testing of Staff and Residents with COVID-19 Symptoms or Signs**

a. Staff with symptoms or signs of COVID-19 must be tested and are required to be restricted from the adult care home pending the results of COVID-19 testing. If COVID-19 is confirmed, staff must follow KDHE and local health department guidance and mandates for isolation. Staff who do not test positive for COVID-19 but have symptoms shall follow the facility's policies to determine when they can return to work.

b. Residents who have signs or symptoms of COVID-19 must be tested. While test results are pending, residents with signs or symptoms must be placed on transmission-based precautions (TBP) in accordance with KDHE and CDC guidance. Once test results are obtained, the adult care home must take the appropriate actions based on the results.

5. **Testing of Staff and Residents in Response to an Outbreak**

a. An outbreak is defined as a new COVID-19 infection in any healthcare personnel (HCP) or any adult care home-onset COVID-19 infection in a resident that is acquired at the facility. In an outbreak investigation, rapid identification and isolation of new cases is critical in stopping further viral transmission. A resident who is admitted to the adult care home with COVID-19 does not constitute a facility outbreak.

b. Upon identification of a new case of COVID-19 infection in any staff or residents of the adult care home, some type of limited or more expansive facility-wide testing must occur. This testing includes testing all staff and residents, and all staff and residents that tested negative must be retested every 3 days to 7 days until testing identifies no new cases of COVID-19 infection among staff or residents for a period of at least 14 days since the most recent positive result. If an adult care home needs technical assistance on determining the extent of facility-wide testing, the facility should call the KDHE Epidemiology Hotline. KDHE will help the facility identify the

appropriate amount of facility-wide testing through either the KDHE laboratory or other laboratory resources.

6. **Routine Testing of Staff**

   a. Routine testing must be based on the extent of the virus in the community; therefore, facilities are required to use their county positivity rate in the prior week as the trigger for staff testing frequency.
   b. Adult care homes are required to use the COVID-19 county positivity rate reported by the Kansas Department of Health and Environment as the primary information to determine how frequently to conduct routine testing of staff. The minimum testing interval based on the county positivity rates are as follows:

      - Low (<5% positive test result rate) or Green – Once month
      - Medium (5% - 10% positive test result rate) or Yellow – Once a week
      - High (>10% positive test result rate) or Red – Twice a Week

   c. The county positivity data table referenced in paragraph 6.b. above is located on the Kansas Department of Health and Environments webpage under Nursing Home Metrics (https://www.coronavirus.kdheks.gov/160/COVID-19-in-Kansas) Facilities may also monitor other factors to understand the level of COVID-19 risk, such as rates of COVID-19-Like Illness, visits to the emergency department or the positivity rate of a county adjacent to the county where the adult care home is located for additional routine testing considerations.
   d. The adult care home shall begin testing all staff at the frequency prescribed in the Routine Testing table based on the county positivity rate reported in the past week. Facilities shall monitor their county positivity rate every week and adjust the frequency of performing staff testing according to the paragraph 6.b. above.
      i. If the county positivity rate increases to a higher level of activity, the facility shall begin testing staff at the frequency shown in the table above as soon as the criteria for the higher activity are met.
      ii. If the county positivity rate decreases to a lower level of activity, the facility shall continue testing staff at the higher frequency level until the county positivity rate has remained at the lower activity level for at least two weeks before reducing testing frequency.
   e. The testing frequency requirement in paragraph 6.b. above represents the minimum testing required. Adult care homes may consider additional factors, such as the positivity rate in an adjacent (i.e., neighboring) county to test at a frequency that is higher than required. For example, if a facility in a county with a low positivity rate has many staff that live in a county with a medium positivity rate, the facility should consider testing based on the higher positivity rate (in scenario described, weekly staff testing would be indicated).

7. **Refusal of Testing**

   a. Adult care homes must have procedures in place to address staff who refuse testing. Procedures must ensure that staff who have signs or symptoms of COVID-19 and refuse testing are prohibited from entering the building until the return to work criteria are met. If outbreak testing has been triggered and a staff member refuses testing, the staff member must be restricted from the building until the procedures for outbreak testing have been completed. The facility must follow its occupational health and local jurisdiction policies with respect to any asymptomatic staff who refuse routine testing.
   b. Residents (or resident representatives) may exercise their right to decline COVID-19 testing in accordance with the requirements under K.A.R. 26-39-103. In discussing testing with residents, staff should use person-centered approaches when explaining the importance of testing for COVID-19. Adult care homes must have procedures in place to address residents who refuse testing.
   c. Procedures must ensure that residents who have signs or symptoms of COVID-19 and refuse testing are placed on TBP until the criteria for discontinuing TBP have been met. If outbreak testing has been triggered and an asymptomatic resident refuses testing, the adult care home must be extremely vigilant, such as through additional monitoring, to ensure the resident maintains appropriate distance from other residents, wears a face covering (unless otherwise determined inappropriate for the resident per the person centered support plan or medical documentation), and practices effective hand hygiene until the procedures for outbreak testing have been completed.
   d. Clinical discussions about testing may include alternative specimen collection sources that may be more acceptable to residents than nasopharyngeal swabs (e.g., anterior nares). Providing information about the method of testing and reason for pursuing testing may facilitate discussions with residents or resident representatives.
   e. If a resident has symptoms consistent with COVID-19 or has been exposed to COVID-19, or if there is a facility outbreak and the resident declines testing, he or she must be placed on or remain on TBP until he or she meets the symptom-based criteria for discontinuation.

8. **Other Testing Considerations**

   a. Individuals who are determined to be potentially infectious must undergo evaluation and remain isolated until they meet criteria for discontinuation of isolation or discontinuation of transmission-based precautions, depending on their circumstances.
   b. For residents or staff who test positive, adult care homes must contact the KDHE epidemiology hotline or the appropriate county health department for contact tracing.
   c. While not required, adult care homes may test residents' visitors to help facilitate visitation while also preventing the spread of COVID-19. Facilities shall prioritize resident and staff testing and have adequate testing supplies to meet required testing, prior to testing resident visitors.

9. **Conducting Testing**

a. Adult care homes required to conduct testing must obtain an order from a physician, physician assistant, nurse practitioner, or clinical nurse specialist in accordance with State law, including scope of practice laws, to provide or obtain laboratory services for a resident, which includes COVID-19 testing. This may be accomplished through the use of physician approved policies (e.g., standing orders), or other means as specified by scope of practice laws and facility policy. KDHE also has created a standing order to access testing in Kansas for people meeting the Person Under Investigation criteria.
b. Rapid POC Testing devices are prescription use tests under the Emergency Use Authorization and must be ordered by a healthcare professional licensed under the applicable state law or a pharmacist under HHS guidance. Accordingly, the adult care home must have an order from a healthcare professional or pharmacist, as previously described, to perform a rapid POC COVID-19 test on an individual.
c. Collecting and handling specimens correctly and safely is imperative to ensure the accuracy of test results and prevent any unnecessary exposures. The specimen shall be collected and, if necessary, stored in accordance with the manufacturer's instructions for use for the test and CDC guidelines.
d. During specimen collection, adult care homes must maintain proper infection control and use recommended personal protective equipment (PPE), which includes an N95 or higher-level respirator (or facemask if a respirator is not available), eye protection, gloves, and a gown, when collecting specimens.

10. **Reporting Test Results**

a. In order to conduct point of care COVID-19 testing, each adult care home must have a CLIA certificate of waiver that specifically states testing for COVID-19. They need to contact the KDHE CLIA office to get a waiver or update their waiver before doing any POC testing. Adult care homes conducting tests under a CLIA certificate of waiver are subject to regulations that require laboratories to report data for all testing completed, for each individual tested.
b. For additional information on reporting requirements see: Frequently Asked Questions: COVID-19 Testing at Skilled Nursing Facilities/Nursing Homes CMS Memorandum: Interim Final Rule (IFC), CMS-3401-IFC, Updating Requirements for Reporting of SARS-CoV-2 Test Results by Clinical Laboratory Improvement Amendments of 1988 (CLIA) Laboratories, and Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency
c. In addition to reporting in accordance with CLIA requirements, adult care homes must continue to report COVID-19 information to the CDC's National Healthcare Safety Network (NHSN), in accordance with 42 CFR § 483.80(g)(1)–(2). As

appropriate to the facility, reporting must satisfy the Kansas public health requirements for reporting infectious disease outbreaks.

11. **Documentation of Testing**

    a. Adult care homes must document the results of COVID-19 testing. To do so, adult care homes must do the following:
        i. For symptomatic residents and staff, document the date(s) and time(s) of the identification of signs or symptoms, when testing was conducted, when results were obtained, and the actions the facility took based on the results.
        ii. Upon identification of a new COVID-19 case in the facility (i.e., outbreak), document the date the case was identified, the date that all other residents and staff are tested, the dates that staff and residents who tested negative are retested, and the results of all tests. All residents and staff that tested negative are required to be retested until testing identifies no new cases of COVID-19 infection among staff or residents for a period of at least 14 days since the most recent positive result (see section Testing of Staff and Residents in response to an outbreak above).
        iii. For staff routine testing, document the facility's county positivity rate, the corresponding testing frequency indicated (e.g., every other week), and the date each positivity rate was collected. Also, document the date(s) that testing was performed for all staff, and the results of each test.
        iv. Document the facility's procedures for addressing residents and staff that refuse testing or are unable to be tested and document any staff or residents who refused or were unable to be tested and how the facility addressed those cases.
        v. When necessary, such as in emergencies due to testing supply shortages, document that the facility contacted state and local health departments to assist in testing efforts, such as obtaining testing supplies or processing test results.
    b. Adult care homes may document the conducting of tests in a variety of ways, such as a log of county positivity rates, schedules of completed testing, and/or staff and resident records. However, the results of tests must be done in accordance with standards for protected health information. For residents, the facility must document testing results in the medical record. For staff, including individuals providing services under arrangement and volunteers, the facility must document testing results in a secure manner consistent with requirements specified in compliance with K.S.A. 39-938.

12. This order should be read in conjunction with other executive orders responding to the COVID-19 pandemic that are still in effect and supersedes any contrary provisions of previous orders.

This document shall be filed with the Secretary of State as Executive Order No. 20-69. It shall become effective on Monday, December 14, 2020, and remain in force until rescinded or until the statewide State of Disaster Emergency extended by House Bill 2016 enacted during the June 2020 special session relating to COVID-19—and later extended by the State Finance Council—expires, whichever is earlier.

THE GOVERNOR'S OFFICE

BY THE GOVERNOR _____

DATED 12.9.2020

FILED
DEC 09 2020
SCOTT SCHWAB
SECRETARY OF STATE

Scott Schwab
Secretary of State

Bryan A. Cosby
Assistant Secretary of State