STATE OF NORTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

# SECRETARIAL ORDER No. 4
# Mandatory Testing for Staff in Nursing Homes

## September 21, 2020

Nursing homes remain at risk of experiencing outbreaks of SARS-CoV-2 ("COVID-19") and the residents of these facilities are often in a high-risk category for serious complications from COVID-19. Ensuring the health and safety of residents in nursing homes has been challenging and has required tremendous work on the part of facility management and frontline staff. On August 7, 2020, I issued *Secretarial Order No. 2, Mandatory Testing for Staff in Nursing Homes*, which established testing and reporting requirements consistent with the Centers for Disease Control and Prevention (CDC) guidance.

Recognizing the correlation between community transmissions and facility outbreaks and in an effort to align with recently released federal requirements, I have determined that nursing homes, including nursing home beds in hospital facilities, must now test in accordance with the requirements published by the federal Centers for Medicare & Medicaid Services (CMS) in *QSO-20-38-NH* (the federal requirements) and as established in this Order.

Under N.C. Gen. Stat. §§ 166A-19.30(c) and 166A-19.31(b)(2), the Governor may impose prohibitions and restrictions on the operations of business establishments, along with other places at which people may congregate. Under N.C. Gen. Stat. §§ 166A-19.30(c) and 166A-19.30(b)(5), the Governor may impose prohibitions and restrictions on other activities or conditions which are reasonably necessary to control in order to protect lives during the state of emergency. Under N.C. Gen. Stat. § 166A-19.10(b)(3), the Governor may delegate this authority. In Executive Order No. 165, the Governor delegated to the undersigned the authority to prohibit and restrict activities and operations of long term care facilities, including nursing homes, under N.C. Gen. Stat. §§ 166A-19.30(c) and 166A-19.30(b)(2) and (5).

Based upon the foregoing and pursuant to the authority delegated to me by Governor Cooper in Executive Order No. 165, I find that the following restrictions for nursing homes, a subset of long term care facilities regulated by the Department of Health and Human Services (DHHS), are reasonably necessary to maintain order and protect lives during the State of Emergency and are required to slow the spread of COVID-19. Therefore, I order the following:

This Order replaces Secretarial Order No. 2 and applies only to nursing homes, including nursing home beds in hospital facilities.

### Section I. Mandatory Testing

**Adherence to Screening and Testing Guidelines**
As a general practice, nursing homes need to continue screening and testing residents and staff for COVID-19 as indicated in the CDC's Testing Guidelines for Nursing Homes.

**For Nursing Homes in Which There Is One or More Positive Case(s)**
Consistent with CDC recommendations and aligned with federal requirements, nursing homes with one or more positive case(s) will test residents *and* staff at least weekly. Facilities will continue to test residents and staff at least weekly 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" after which, the facility will resume Routine Staff Testing as described in this Order.

**For Nursing Homes Conducting Routine Staff Testing**
Federal requirements establish Routine Testing Intervals based on the facility's county positivity rate. This Order adopts this federal standard to determine required testing frequency under this Order. Nursing homes shall test all staff who have the potential for direct or indirect exposure to patients with a frequency based on their county's Community COVID-19 Activity Level extracted from Table 2 in *QSO-20-38-NH*, copied below. As noted in *QSO-20-38-NH*, a county's Community COVID-19 Activity level is determined by its county positivity rate. This data are available on the federal webpage, CMS COVID-19 Nursing Home Data, under the COVID-19 Testing section.

**Table 2: Routine Testing Intervals Vary by Community COVID-19 Activity Level**

| Community COVID-19 Activity | County Positivity Rate in the past week | Minimum Testing Frequency |
|---|---|---|
| Low | <5% | Once a month |
| Medium | 5% - 10% | Once a week* |
| High | >10% | Twice a week* |

*This frequency presumes availability of Point of Care testing on-site at the nursing home or where off-site testing turnaround time is <48 hours.

A facility will evaluate and apply its county's positivity rate on a schedule and with a frequency specified in *QSO-20-38-NH*.

Facilities do not need to retest asymptomatic staff that have tested positive in the 3 months prior to the most recent round of testing. If new positive cases for COVID-19 are identified, facilities shall immediately report cases to their local health department and initiate testing of both residents and staff on a schedule consistent with this Order.

**Clarification on Applicable Testing Interval**
If a facility has one or more positive case(s) and is in a county with a High Community COVID-19 Activity level, the nursing home will adhere to the more rigorous testing schedule (twice a week).

## Section II. Mandatory Reporting

DHHS will provide nursing homes with additional guidance and instructions for completing the testing reports required under this Order. Nursing homes shall continue to report all testing activity to DHHS in compliance with the DHHS reporting guidance and instructions.

## Section III. Effect of this Secretarial Order on Federal Requirements

This Order in no way replaces or otherwise abridges a nursing home's responsibilities under the federal requirements cited within this Order.

**Section IV. Funding**

Under Secretarial Order No. 2, DHHS allocated $25M of CARES Act (P.L 116-136) funding to support nursing homes with required staff testing. While subject to funding availability, this resource remains available to fund testing requirements covered under the prior Secretarial Order No. 2, including all staff in combination facilities as defined by DHHS that have assisted living/adult care home licensed beds within the same building as nursing home licensed beds. Nursing home providers are strongly encouraged to seek any additional support needed through the federal Provider Relief Fund or other payment mechanism.

**Section V. Distribution.**

This Secretarial Order shall be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; and (2) distributed to nursing home administrators and to others as necessary to ensure proper implementation of this Secretarial Order.

**Section VI. Effective Date.**

This Secretarial Order is effective immediately. This Secretarial Order shall remain in effect, unless rescinded or replaced with a superseding Secretarial Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Secretarial Order.

Signed this the 21st day of September 2020.

Mandy K. Cohen, MD, MPH
Secretary