STATE OF NORTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

SECRETARIAL ORDER No. 2
Mandatory Testing for Staff in Nursing Homes

August 7, 2020

Nursing homes are 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 required tremendous work on the part of facility management and frontline staff. The Centers for Disease Control and Prevention ("CDC") recommends routine testing of staff at nursing homes without known or suspected exposure to COVID-19. Based upon the CDC guidance, I have determined that after initial testing of all residents and staff, testing must be required every other week for all staff at nursing homes who have the potential for direct or indirect exposure to patients or infectious materials. If resources allow, nursing homes are encouraged, but not required, to test staff more frequently than every other week.

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 Section 2 of Executive Order No. 152, 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. 152, 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 applies only to nursing homes.

Section I. Mandatory Testing and Reporting.

After nursing homes have completed their initial testing of all residents and staff, the nursing homes shall continue to test all staff who have the potential for direct or indirect exposure to patients or infectious materials at least every other week. Facilities do not need to retest asymptomatic staff that have tested positive in the 3 months prior to the most recent round of testing. The nursing homes shall report their results to DHHS every two weeks in compliance with the DHHS reporting requirements. DHHS will provide nursing homes with additional guidance and instructions for completing the reports and the date to begin submitting the biweekly reports. If new positive cases for COVID-19 are identified, facilities shall immediately report cases to their local health department and follow guidance for additional testing and reporting when one or more cases are detected.

Section II. Funding.

DHHS will be providing CARES Act (P.L. 116-136) funding to nursing homes to pay for the required testing. Nursing homes that fail to substantially comply with these testing and reporting requirements will not be eligible for the payment and will be required to refund payments if testing is not performed in accordance with this Secretarial Order.

Section III. 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 IV. Effective Date.

This Secretarial Order is effective immediately. This Secretarial Order shall remain in effect until September 22, 2020, 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 7th day of August 2020.

Mandy K. Cohen, MD, MPH
Secretary