



## **Executive Order 202.30 - Nursing Home and Adult Care Facility Staff Testing Requirement**

### **FAQ Update – May 19, 2020**

#### **1. Who must be tested?**

All employees, contract staff, per diem staff, medical staff, operators, administrators, and volunteers must be tested. Staff who are working from home, on leave, or otherwise not at the same site as residents, do not need to be tested so long as they remain offsite.

#### **2. How frequently should staff be tested?**

Executive Order No. 202.30 requires all personnel of nursing homes and adult care facilities, including all adult homes, enriched housing programs, and assisted living residences, be tested twice a week.

Staff who work at a facility three days per week or less only need to be tested once a week.

#### **3. Are staff who have had a positive diagnostic test for COVID-19 or a reactive serologic test for IgG against SARS-CoV-2 in the past included in the requirement to be tested twice per week?**

Yes. At this time, staff who have had a positive diagnostic test for COVID-19 or a reactive serologic test for IgG against SARS-CoV-2 are still required to be tested to meet this requirement. However, this requirement may be reconsidered at a later time for previously COVID-19 positive individuals as more is learned about immunity following COVID-19.

#### **4. What is the minimum time interval between the required twice weekly tests?**

The required tests should be conducted at least two days apart.

#### **5. How should testing be conducted for staff who work at multiple facilities?**

Staff working at multiple facilities need to be tested twice per week. Those results may be used to meet the testing requirements at any facility, as long as documentation of the test result is provided to each facility. Each facility must maintain appropriate documentation of the test results.

**6. Do staff who are on vacation need to be tested twice per week?**

No. Staff who are on vacation do not need to be tested during the time period when they are on leave or otherwise not present in the same building as residents, provided that they are promptly tested upon their return to the facility.

**7. Is antibody testing acceptable to fulfill the requirements of the twice weekly testing?**

No, the testing must be diagnostic to detect the SARS-CoV-2 virus (e.g. molecular such as a PCR test, or an antigen test). However, as stated above, this policy may be reconsidered for previously COVID-19 positive individuals as more is learned about immunity following COVID-19.

**8. Can staff work while waiting for test results?**

Yes, if the staff member is asymptomatic and being tested solely for the purpose of meeting the requirements of Executive Order No. 202.30, they may continue work while waiting for test results.

**9. If a staff member has a positive test, should the individual be re-tested at the end of the furlough before returning to work?**

Staff must test negative before returning to work. However, as stated above, this policy may be reconsidered for previously COVID-19 positive individuals as more is learned about immunity following COVID-19.

**10. Can a staff member be compelled to undergo testing?**

No, however, a staff member that refuses testing is considered to have an outdated or incomplete health assessment and shall be prohibited from working for the nursing home or adult care facility until they complete testing.

**11. Who must pay for testing?**

Facilities are required to have in place a plan for testing and may submit claims for insurance coverage per the CARES Act. Facilities must pay if insurance denies coverage, however, the state may facilitate FEMA or other federal reimbursement.

**12. Can an employee's health insurer be billed by the laboratory for the twice weekly testing requirement?**

Yes. These tests are medically necessary and per the CARES Act payable for both in and out of network providers, with no cost sharing. Guidance from DFS to insurance companies is posted [here](#).

**13. What are the requirements for personnel collecting specimens?**

Only clinical staff with appropriate training for specimen collection may do so. More information on specimen collection is available at <https://coronavirus.health.ny.gov/covid-19-testing>.

**14. The HERDS Survey asks for “an ordering physician or physicians for staff.” Does that mean that a physician or nurse practitioner must administer the test?**

No. If the facility intends to conduct sampling for their staff, then the facility must identify an ordering physician, in the same way that an ordering physician is identified for other occupational health measures such as influenza vaccination. The ordering physician does not necessarily need to administer the test. Executive Order 202 made changes to the scope of practice laws concerning the collection of oral (throat) or nasopharyngeal swab specimens from individuals suspected of being infected by COVID-19, for purposes of testing. Clinical staff who have received appropriate training regarding specimen collection may collect such specimens.

**15. Can nurses in adult care facilities be used to collect specimens for testing?**

Executive Order 202 and subsequent amendments to such order made changes to the scope of practice laws concerning the collection of throat or nasopharyngeal swab specimens from individuals suspected of being infected by COVID-19, for purposes of testing. Accordingly, during the course of this emergency, nurses employed by an adult care facility are permitted to collect swab specimens for staff, residents, or anyone else who needs to be tested at the nursing home pursuant to the directive contained in EO 202.30. Additionally, other clinical staff who have received appropriate training regarding specimen collection may collect such specimens. More information relating to specimen collection is available on the Department of Health's website at <https://coronavirus.health.ny.gov/covid-19-testing>.

**16. Which laboratory should nursing homes and adult care facilities use to perform testing?**

Facilities are responsible for establishing relationships with laboratories, including local hospitals or commercial laboratories, to perform the required testing for their employees. The Department of Health has identified a specific lab with capacity for each facility subject to this directive, should the facility choose to take advantage of it, and must make an arrangement with such lab to do effectuate this.

**17. How do facilities obtain collection kits and personal protective equipment for required testing?**

If facilities are unable to obtain supplies needed for the testing requirement through normal distributors, they should request these supplies through their local Office of Emergency Management.

**18. My facility's staff have complained that swabbing is uncomfortable and distressing. How can we make twice weekly swabbing more acceptable to them?**

Swabbing can take place in a variety of ways, depending on the specimen collection method that is validated by the laboratory performing tests for your facility. A common method is a nasopharyngeal (NP) swab, where a thin, flexible swab is inserted far back into the nose to obtain material for testing. If the procedure causes more than mild discomfort, then the swabbing technique should be reviewed. It's also important to ensure that swabs intended specifically for NP swabbing are used; these swabs are thinner and more flexible than swabs intended for other specimen types. Other specimen types depend on the test and laboratory, and these may include a nasal swab (inserted about an inch into the nose) plus an oropharyngeal (OP, throat) swab or just a nasal swab alone or in combination with a saliva sample. Acceptable specimen types should be discussed with your laboratory, as it depends on their typical testing methodology.

**19. Are there SARS-CoV-2 diagnostic tests that can be used at the point of care? Can a nursing home perform these tests?**

At this time, there are three molecular tests and one antigen test that have been approved by the FDA as a waived test and can be used at the point of care. A list of approved tests can be found at <https://www.fda.gov/medical-devices/emergency-situations-medical-devices/emergency-use-authorizations>.

**20. Do tests of nursing home staff outside of the facility meet the testing requirement? For example, a nursing home employee who receives a test from one of the State's drive-thru operations, does that meet the testing requirement?**

Yes. Diagnostic tests of nursing home staff that are performed outside of the facility meet the testing requirement, so long as the employee has the appropriate documentation to provide to the nursing home administrator, such that the administrator can certify compliance.