



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

LISA J. PINO, M.A., J.D.
Executive Deputy Commissioner

September 15, 2020

Re: DAL NH 20-12
Pandemic Emergency Plan PPE
Storage Requirements during
COVID-19 State of Emergency

Dear Nursing Home Operators and Administrators:

On August 20, 2020, nursing home operators and administrators were advised, via DAL NH 20-09 (“Required Annual Pandemic Emergency Plan for All Nursing Homes”), of the requirement to prepare and make available to the public on the facility’s website, and immediately upon request, a Pandemic Emergency Plan (PEP), pursuant to a recently-enacted statute, Public Health Law (PHL) section 2803(12). Specifically, the statute directs residential health care facilities to include in their PEP a plan “to maintain or contract to have at least a two-month [60-day] supply of personal protective equipment” (emphasis added).

This DAL seeks to clarify the PPE storage requirements under the PEP statute while the State of Disaster Emergency relating to COVID-19 continues.

Effective July 22, 2020, the New York State Department of Health (Department) promulgated emergency regulations at 10 NYCRR 415.19(f), which required residential health care facilities to “possess and maintain a supply of all necessary items of personal protective equipment (PPE) sufficient to protect facility personnel, consistent with federal Centers for Disease Control guidance” (emphasis added). Facilities were required to possess and maintain a 30-day supply of PPE by August 31, 2020. The referenced regulations are available at: https://regs.health.ny.gov/sites/default/files/pdf/emergency_regulations/20-23%20Nursing%20Home%20Personal%20Protective%20Equipment%20%28PPE%29%20Requirements%20Final.pdf.

During a pandemic, the PEP statute generally permits facilities to contract for necessary PPE; such contract arrangements may allow the PPE to be stored at an easily accessible storage unit contracted by the residential health care facility. However, given the ongoing State of Disaster Emergency relating to COVID-19, the PEP statute must be read in conjunction with COVID-19 specific regulations and guidance issued by the Department, including 10 NYCRR 415.19(f). **Therefore, for the duration that these emergency regulations are in effect, facilities must have actual possession of the required PPE.** Facilities are considered to possess PPE in accordance with section 415.19(f) if they store the PPE within the facility OR PPE is stored in a separate storage unit that the facility (or its corporate network) has the right to access as needed and the facility has a sufficient supply of PPE on hand to cover resident needs until such time that the off-site PPE can be accessed. All offsite PPE must be located within New York State.

If the residential health care facility opts to maintain their PPE at an off-site storage unit, the PEP should include an onsite, supply level trigger that once reached, indicates that supplies either must be retrieved from the facility storage site or requested from the facility's central network storage to ensure that minimum supply is maintained onsite.

- For facilities using their own offsite storage unit, the PPE trigger point should factor in the time it would take for retrieval of supplies from the storage site, taking into account factors including, but not limited to, round trip travel time and time needed to load and unload the supplies.
- For facilities using a network/corporate central supply location, the trigger point should factor in sufficient time to cover request processing and approval as well as delivery and loading/unloading of supplies.

Thank you for your continued cooperation throughout the public health emergency. Any questions regarding this correspondence should be forwarded to nursinghomeinfo@health.ny.gov.

Sincerely,

Sheila McGarvey
Director
Division of Nursing Homes and ICF/IID
Surveillance
Center for Health Care Quality and
Surveillance

cc: M. Hennessey
V. Deetz