

# New York State Nursing Home, Adult Care Facility Staff Testing, Certification of COVID-19 Compliance

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New York Governor Andrew Cuomo's Executive Order [No. 202.30](#) (EO 202.30) implements significant changes for nursing homes (NHs) and adult care facilities (ACFs) in the state, including the testing of all personnel for COVID-19 twice a week.

The changes include:

- NHs and ACFs must test or arrange testing all personnel, including all employees, contract staff, medical staff, operators, and administrators, for COVID-19 twice per week. The facility's implementation plan must be filed with the Department of Health (DOH) no later than 5:00 p.m. on May 13, 2020. Reportedly, filing may be done by a survey in the Health Electronic Response Data System application on the Health Commerce System.
- The operator and the administrator of all NHs and ACFs must submit to the DOH a certification of compliance with EO 202.30, all other applicable Executive Orders, and the directives of the Commissioner of Health. This Certification must be filed with the DOH no later than May 15, 2020.
- Any NH/ACF personnel who refuse to be tested will be considered to have outdated or incomplete health assessments and, therefore, be prohibited from providing services within the NH or ACF.
- General hospitals must perform a diagnostic test for COVID-19 and obtain a negative result before discharging a patient to a NH and the NH operator or administrator must certify it is able to properly care for such patient before any discharge from a general hospital to a NH.

## DOH Guidance

The DOH has issued Dear Administrator Letter (DAL) [ACF #20-14 / NH-20-07](#) to provide additional guidance on the testing and certification requirements.

The DAL requires positive test results be reported to the DOH by 5:00 p.m. the day following the receipt of the test results and the personnel must remain at home in accordance with DOH guidelines and those of the Local Health Department (unless the local requirements are inconsistent with DOH guidelines). The current guidelines provide that asymptomatic employees are ineligible to return to work for 14 days from the date of the first positive test, and symptomatic employees may not return to

work until 14 days after the onset of symptoms, provided at least 72 hours have passed since resolution of fever without the use of fever-reducing medications and respiratory symptoms are improving.

The DAL also confirms that a NH/ACF may conduct the testing itself, contract for testing, or direct personnel to community test sites, although if it directs personnel elsewhere, the NH/ACF must implement procedures to obtain the test results to remain in compliance with EO 202.30. The DAL also provides the certification form that must be submitted by May 15<sup>th</sup>.

The DOH's [FAQ #1](#), among other things, clarifies that employees working at NH/ACF three days per week or less need only be tested once per week and that the testing requirement does not apply to home health and hospice agency staff serving patients who reside in a NH/ACF. It also points out that employees who have documentation of a positive diagnostic test for COVID-19 or a positive serologic test for IgG against SARS-CoV-2 are exempt from the testing requirement.

Critically, the FAQ states that NHs/ACFs are responsible for providing testing for their employees, including the costs of testing. While the DOH points out that a NH/ACF may be able to make use of community testing sites operated by the state at no charge, this raises administrative, legal and indirect cost issues that may preclude it being a realistic option.

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