

New York and New Jersey Require COVID-19 Staff Testing at Long-Term Care Facilities

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To limit exposure and reduce the spread of COVID-19, New York and New Jersey are requiring long-term care facilities to implement testing for staff.

New York

On May 11, 2020, New York Governor Andrew Cuomo issued [Executive Order 202.30](#) requiring nursing homes and adult care facilities, including all adult homes, enriched housing programs and assisted living residences (“facilities”), to test all staff for COVID-19 twice per week. Staff who refuse to be tested will be deemed to have incomplete health assessment and will be prohibited from providing services until the test has been performed.

By May 13, 2020, facility administrators are to derive a plan to arrange the tests for the staff and file the plan with the Department of Health. Additionally, by May 15, 2020, the order requires all facilities to submit a certificate of compliance with this order, as well as all applicable directives of the Commissioner of Health. Facilities are also required to report any positive test results to notify the Department of Health by 5:00 p.m. of the day following receipt of the results.

Lastly, and significantly, the executive order mandates hospitals to not discharge a patient to a facility unless the facility administrator has certified that it is able to properly care for such patient and the patient has been tested negative for COVID-19. This order is to remain in effect until June 9, 2020.

Any facility that violates this executive order or the directives issued by the Commissioner of Health may have its operative certificate suspended or revoked. Facilities that fail to comply may also be subject to a penalty of \$2,000 per violation per day, with subsequent violations up to \$10,000 per violation per day.

New Jersey

On May 12, 2020, New Jersey’s Health Commissioner signed an [Executive Directive](#) requiring all long-term care facilities, including nursing homes, assisted living residences, comprehensive personal care homes, residential health care facilities, or dementia care homes (“LTC”), to amend their outbreak plans (“Plan”) by May 19, 2020, to provide for COVID-19 baseline testing of all staff

and residents by May 26, 2020. Those who test negative must be retested within three to seven days after the baseline testing. The Directive provides that any further testing, as well as the treatment of staff who test positive, should be in accordance with the CDC's guidelines on [Testing for Coronavirus in Nursing Homes](#).

The Plan must also address:

- Testing procedures and frequency;
- Post-testing protocols for patients such as cohorting of residents/patients and separation of those with laboratory confirmed COVID-19 infection from others;
- Procedures to obtain staff authorizations for release of laboratory test results to the LTC so as to inform infection control and prevention strategies;
- Work exclusion of staff who test positive for COVID-19 infection, refuse to participate in COVID-19 testing, or refuse to authorize release of their testing results to the LTC, until such time as such staff undergoes testing and the results of such testing are disclosed to the LTC;
- Return to work protocols' after home isolation for staff who test positive; and
- Plans to address staffing (including worker absences) and facility demands due to the outbreak.

LTCs are required to submit attestations to the Department of Health by May 19 and May 26 that they are in compliance with requirements in the Directive. Failure to comply with the Directive may result in license suspension or revocation.

In addition to complying with the strict and immediate requirements in the New York Order and New Jersey Directive, facilities must ensure they are confidentially maintaining any test results separate from employee personnel files in compliance with the Americans with Disabilities Act.

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National Law Review, Volume X, Number 136

Source URL: <https://natlawreview.com/article/new-york-and-new-jersey-require-covid-19-staff-testing-long-term-care-facilities>