



white paper

# COVID-19 SCREENING REQUIREMENTS

An Update on Testing Laws for Assisted Living  
and Nursing Homes

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### Question:

Has there been any new federal or state employee testing requirements related to COVID-19 screening for assisted living facilities and nursing homes?

### Response & Analysis:

#### FEDERAL

On July 22, 2020, President Trump announced a federal mandate requiring weekly testing of nursing-home staffers in states with high rates of coronavirus infections.<sup>1</sup> The weekly testing requirement would apply to any state where the percentage of overall tests in the community that come back positive is 5% or higher.<sup>2</sup> The new regulation will take effect after the Centers for Medicare and Medicaid Services issues a formal rule.<sup>3</sup>

The Centers for Disease Control and Prevention (CDC) has issued general guidance as to how to respond to coronavirus in nursing homes. Healthcare personnel should be tested using the polymerase chain reaction

test.<sup>4</sup> If testing capacity allows, the facility should implement facility-wide testing policies following the identification of newly identified SARS-CoV-2 infected residents or healthcare personnel.<sup>5</sup>

#### STATES

Prior to the new federal legislation, various states had issued their own guidance in regards to testing in assisted living facilities and nursing homes in the wake of the COVID-19 pandemic. For example, California, Connecticut, Delaware, Florida, Idaho, Iowa, Maryland, Nebraska, New York, Tennessee, Texas, Virginia, Washington, and Wyoming have issued their own laws relating to caretaker facilities reopening and COVID-19 screenings.

#### CALIFORNIA

California requires that all new staff be verified by “a health screening and tested prior to working in the facility...all staff returning from a leave of absence should also be tested.”<sup>6</sup> The Polymerase Chain Reaction test for COVID-19 should be used when

1 Anna Wilde Mathews et al., *Trump Administration to Mandate Covid-19 Tests for Nursing-Home Staff*, WALL ST. J. (July 22, 2020, 10:36 PM), <https://www.wsj.com/articles/trump-administration-to-mandate-covid-19-tests-for-nursing-home-staff-11595471787>.

2 *Id.*

3 *Id.*

4 CTR. FOR DISEASE CONTROL AND PREVENTION, *Responding to Coronavirus (COVID-19) in Nursing Homes* <https://www.cdc.gov/coronavirus/2019-ncov/hcp/nursing-homes-responding.html>, (last updated April 30, 2020). See also CTR. FOR DISEASE CONTROL AND PREVENTION, *Preparing for COVID-19 in Nursing Homes* <https://www.cdc.gov/coronavirus/2019-ncov/hcp/long-term-care.html>, (last updated June 25, 2020).

5 *Id.*

6 CA. DEPT. OF SOCIAL SERVICES., *Updated Guidance on Coronavirus Disease 2019 (Covid-19) Related To the Critical Role of Testing, Modification of Visitation Guidelines, Need for Infection Prevention and Control, and Use of Face Coverings in Adult and Senior Care Facilities*, [http://www.caads.org/pdf/pdf/cdss\\_2020\\_06\\_26\\_pin\\_20\\_23\\_ASC.pdf](http://www.caads.org/pdf/pdf/cdss_2020_06_26_pin_20_23_ASC.pdf).

screening.<sup>7</sup> In a testing facility with no COVID-19 cases, 10% of all staff should be tested every 14 days with different staff members being chosen to test every 14 days.<sup>8</sup> In a testing facility with positive COVID-19 cases, all staff should be retested every 14 days until no new cases are identified in two sequential rounds of testing.<sup>9</sup>

### CONNECTICUT

Connecticut has ordered mandatory testing of all staff and residents at nursing homes, assisted living facilities, and elderly residential communities.<sup>10</sup> All staff of the aforementioned facilities must be tested for COVID-19 weekly for “the duration of the public health and civil preparedness emergency.”<sup>11</sup>

### DELAWARE

In Delaware, all staff, vendors, and volunteers who have not previously tested positive for COVID-19 must receive a baseline COVID-19 test.<sup>12</sup> All new staff, vendors, and volunteers who cannot provide proof of previous positive testing must be tested prior to their start date.<sup>13</sup> Those who test negative must be retested

consistent with Division of Public Health guidance for the duration of the public health emergency.<sup>14</sup>

### FLORIDA

Florida implemented mandatory COVID-19 testing for nursing homes and assisted living facility staff.<sup>15</sup> Facility staff must be tested every two weeks at the facility.<sup>16</sup> No staff is allowed into the facility if they have not been tested for COVID-19.<sup>17</sup> Staff who have already been infected and recovered from COVID-19 do not need to be tested if they can provide medical documentation to the facility.<sup>18</sup>

### IDAHO

Idaho recommends that long-term care facilities use a SARS-CoV-2 polymerase chain reaction test for overall infection prevention and control.<sup>19</sup> The test used should be able to detect SARS-CoV-2 virus with greater than 95% sensitivity, greater than 90% specificity, and with a rapid turn-around time (48 hours).<sup>20</sup> All symptomatic healthcare personnel to facilities should be tested.<sup>21</sup> Testing for staff should be repeated at certain intervals, such as 7 and 14 days, if

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> Gregory B. Hladky et al. *COVID Testing Ordered for All Nursing Assisted Living Center Staff*, WNPR (June 2, 2020), <https://www.wnpr.org/post/covid-testing-ordered-all-nursing-home-assisted-living-center-staff>.

<sup>11</sup> *Id.*

<sup>12</sup> Assisted Living Facilities § 16 DE Admin. Code 3225 (2020). [https://coronavirus.delaware.gov/wp-content/uploads/sites/177/2020/06/3225-Assisted-Living-Facilities\\_6.1.20.pdf](https://coronavirus.delaware.gov/wp-content/uploads/sites/177/2020/06/3225-Assisted-Living-Facilities_6.1.20.pdf)

<sup>13</sup> *Id.* at 9.

<sup>14</sup> *Id.*

<sup>15</sup> FL. AGENCY FOR HEALTH CARE ADMINISTRATION, *Mandatory COVID-19 Testing for Nursing Homes and Assisted Living Facility Staff Logistics*, [https://ahca.myflorida.com/docs/AHCA\\_E-Blast-Mandatory\\_COVID-19\\_Testing\\_for\\_Nursing\\_Home\\_and\\_Assisted\\_Living\\_Facility\\_Staff\\_Logistics.pdf](https://ahca.myflorida.com/docs/AHCA_E-Blast-Mandatory_COVID-19_Testing_for_Nursing_Home_and_Assisted_Living_Facility_Staff_Logistics.pdf) (last updated June 23, 2020).

<sup>16</sup> *Id.*

<sup>17</sup> FL. AGENCY FOR HEALTH CARE ADMINISTRATION, *Emergency Rule 59AER20-4*, [https://ahca.myflorida.com/docs/59AER20-4\\_Mandatory\\_Testing\\_for\\_Assisted\\_Living\\_Facility\\_Staff.pdf?utm\\_source=iContact&utm\\_medium=email&utm\\_campaign=hqa-alert&utm\\_content=ESS\\_COVID19\\_LTCEmerRule\\_06162020\\_LTCFacs](https://ahca.myflorida.com/docs/59AER20-4_Mandatory_Testing_for_Assisted_Living_Facility_Staff.pdf?utm_source=iContact&utm_medium=email&utm_campaign=hqa-alert&utm_content=ESS_COVID19_LTCEmerRule_06162020_LTCFacs). See also FL. AGENCY FOR HEALTH CARE ADMINISTRATION, *Emergency Rule 59AER20-5*, [https://ahca.myflorida.com/docs/AHCA\\_E-Blast-Mandatory\\_COVID-19\\_Testing\\_for\\_Nursing\\_Home\\_and\\_Assisted\\_Living\\_Facility\\_Staff\\_Logistics.pdf](https://ahca.myflorida.com/docs/AHCA_E-Blast-Mandatory_COVID-19_Testing_for_Nursing_Home_and_Assisted_Living_Facility_Staff_Logistics.pdf).

<sup>18</sup> *Id.*

<sup>19</sup> ID. DEPT. OF HEALTH & WELFARE., *Implementation Guidance for SARS-CoV-2 Testing of Residents and Staff in Long-Term Care Facilities\* in Idaho* (July 8, 2020), [https://coronavirus.idaho.gov/wp-content/uploads/2020/07/Testing-Implementation-Guidance-2020\\_7\\_8-FINAL.pdf](https://coronavirus.idaho.gov/wp-content/uploads/2020/07/Testing-Implementation-Guidance-2020_7_8-FINAL.pdf).

<sup>20</sup> *Id.* at 2.

<sup>21</sup> ID. DEPT. OF HEALTH & WELFARE., *Testing Strategy for Long-Term Care Facilities\* in Idaho* (June 3, 2020), [https://coronavirus.idaho.gov/wp-content/uploads/2020/06/LTCF-Testing-Strategy-FINAL-2020\\_6\\_3.pdf](https://coronavirus.idaho.gov/wp-content/uploads/2020/06/LTCF-Testing-Strategy-FINAL-2020_6_3.pdf)



testing would influence infection control and prevention actions (e.g. moving a resident from a COVID-19 status-unknown unit to a COVID-19 positive unit, discontinuing transmission-based precautions, or assist with staffing decisions).<sup>22</sup> There should be facility-wide testing of all staff in facilities with one or more newly confirmed cases.<sup>23</sup> Personnel should be retested as quickly as possible and retest all previously negative staff at least once weekly or more frequently in settings where community incidence is high, until the testing identifies no new causes of COVID-19 among residents or staff, and it has been 14 days since the most recent positive result.<sup>24</sup>

## IOWA

Iowa requires that all staff are screened for symptoms at the beginning and end of each shift.<sup>25</sup> Additionally, facilities must complete baseline COVID-19 testing for all staff.<sup>26</sup> If there is one or more positive case, all staff should be tested weekly.<sup>27</sup> All staff, including administrative, should be offered testing regardless of contact with residents that have tested positive for COVID-19.<sup>28</sup> If a staff member declines testing, they should be treated as having a positive or unknown COVID-19 status.<sup>29</sup>

## MARYLAND

As a prerequisite to relax restrictions, Maryland nursing homes must conduct baseline COVID-19 testing among all staff.<sup>30</sup> Staff, including volunteers and vendors who are in the facility on a weekly basis, should be tested weekly.<sup>31</sup> Only staff who have not previously tested positive for COVID-19 using a PCR-based assay need to be tested weekly.<sup>32</sup>

## NEBRASKA

The Nebraska Department of Health and Human Services agrees that facilities need to participate in baseline testing of staff.<sup>33</sup> Nebraska guidance states

<sup>22</sup> *Id.* at 3.

<sup>23</sup> *Id.* at 2.

<sup>24</sup> *Id.* at 4.

<sup>25</sup> IA. DEPT. OF INSPECTIONS & APPEALS, *DIA and IDPH COVID-19: LTC Reopening Phases and Testing (plus FAQs)* (June 30, 2020), <https://www.dia.iowa.gov/document/dia-and-idph-covid-19-ltc-reopening-phases-and-testing>.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> MD. DEPT. OF HEALTH, *Maryland Department of Health Guidance for Relaxation of Restrictions Implemented During the COVID-19 Pandemic- Nursing Homes* (June 18, 2020), [https://phpa.health.maryland.gov/Documents/NH%20Relaxation%20of%20Restrictions\\_6.18.2020\\_FINAL.pdf](https://phpa.health.maryland.gov/Documents/NH%20Relaxation%20of%20Restrictions_6.18.2020_FINAL.pdf).

<sup>31</sup> *Id.* at 3.

<sup>32</sup> *Id.*

<sup>33</sup> NE. DEPT. OF HEALTH AND HUMAN SERVICES, *COVID-19 Long Term Care and Assisted Living Facility Baseline Testing Project*, <http://dhhs.ne.gov/Pages/COVID-19-Testing.aspx>



that all staff, including administrative, in a facility should be offered a COVID-19 test.<sup>34</sup> Any worker who is not on regular staff, but frequently provides care or services to the residents in the facility, should also be offered a test.<sup>35</sup> Staff that declines testing should be treated as having a positive result.<sup>36</sup>

### NEW YORK

New York Governor Cuomo signed an executive order which requires periodic COVID-19 testing of all personnel in nursing homes and adult care facilities.<sup>37</sup> All personnel, including all employees, contract staff, medical staff, operators and administrators must be tested for COVID-19 twice a week.<sup>38</sup> Any positive test result must be reported to the Department of Health.<sup>39</sup>

### TENNESSEE

Tennessee calls for routine interval testing of nursing home staff.<sup>40</sup> After a nursing home has completed initial baseline testing, each facility must test all staff members for COVID-19 at least once every seven days.<sup>41</sup> Any staff member who has a positive FDA approved COVID-19 antibody test is exempted from weekly

testing.<sup>42</sup>

### TEXAS

Texas also conducts testing on their assisted living facility staff. After the first positive test of an assisted living facility staff member, all staff must be tested for COVID-19.<sup>43</sup> Staff can refuse testing, but those that refuse should stop working and self-quarantine at home and self-monitor for 14 days unless they have proof of a negative polymerase chain reaction test.<sup>44</sup>

### VIRGINIA

In Virginia, all staff who wish to do so must be able to receive a single baseline test for COVID-19.<sup>45</sup> If it is possible, all staff should be tested.<sup>46</sup> The Virginia Department of Health initiated the VDH Point Prevalence Survey (PPS) project.<sup>47</sup> A PPS entails testing all individuals in a designated area of a facility, whether or not they have symptoms, on one day.<sup>48</sup> The test involves a nasopharyngeal swab.<sup>49</sup> For facilities with a COVID-19 outbreak - at least one confirmed COVID-19 case - PPS should be conducted for all staff and all residents regardless of the presence

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> NY. DEPT. OF HEALTH, *Required COVID-19 Testing for all Nursing Home and Adult Care Facility Personnel*, [https://health.ny.gov/professionals/hospital\\_administrator/letters/2020/docs/da\\_20-14\\_covid\\_required\\_testing.pdf](https://health.ny.gov/professionals/hospital_administrator/letters/2020/docs/da_20-14_covid_required_testing.pdf).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> TN. DEPT. OF HEALTH, *Unified-Command Group Report on COVID-19 Testing, Surveillance, Mitigation, and Resolution in Tennessee's Long Term Care Facilities* (May 27, 2020), <https://www.tn.gov/content/dam/tn/governoroffice-documents/covid-19-assets/LTC-Media-Primer.pdf>.

<sup>41</sup> *Id.* at 2.

<sup>42</sup> *Id.*

<sup>43</sup> TX. DEPT. OF HEALTH AND HUMAN SERVICES, *COVID-19 Response for Assisted Living Facilities (July 14, 2020)*, <https://hhs.texas.gov/sites/default/files/documents/doing-business-with-hhs/provider-portal/long-term-care/covid-response-plan-alf.pdf>

<sup>44</sup> *Id.* at 15.

<sup>45</sup> VIRGINIA DEPT. OF HEALTH, *Planning for Point Prevalence Surveys in Long-Term Care Facilities*, (April 2020). <https://www.vdh.virginia.gov/content/uploads/sites/182/2020/04/PPS-Guidance-for-LTCF-Congregated-Settings-FINAL-4-28-2020.pdf>. See also VIRGINIA DEPT. OF HEALTH, *VDH COVID-19 Interim Guidance for Long Term Care Facilities*, [https://www.vdh.virginia.gov/content/uploads/sites/182/2020/05/VDH\\_COVID\\_19\\_LTC\\_Facility\\_Guidance\\_Update\\_05012020.pdf](https://www.vdh.virginia.gov/content/uploads/sites/182/2020/05/VDH_COVID_19_LTC_Facility_Guidance_Update_05012020.pdf) (last updated June 19, 2020). and VIRGINIA DEPT. OF SOCIAL SERVICES, *ALF Recommendations for Reopening* (June 23, 2020), [https://www.dss.virginia.gov/files/division/licensing/alf/intro\\_page/current\\_providers/notices/alf\\_recommendations\\_for\\_reopening.pdf](https://www.dss.virginia.gov/files/division/licensing/alf/intro_page/current_providers/notices/alf_recommendations_for_reopening.pdf).

<sup>46</sup> VIRGINIA DEPT. OF SOCIAL SERVICES *supra* note 6 at 2.

<sup>47</sup> VA. DEPT. OF HEALTH, *supra* note 6 at 1.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 3.

of symptoms.<sup>50</sup> Facilities without any reported COVID-19 cases should take a random sample of 20% of residents and staff to be tested. <sup>51</sup>If all the results are negative, retest the same group after 7 days or select another 20% sample.<sup>52</sup> If any positives are detected, a facility-wide PPS should be conducted.<sup>53</sup>

### WASHINGTON

Washington enforces comprehensive testing of long-term care facility staff. All staff must be tested for COVID-19, unless they can provide medical justification for declining testing from a licensed healthcare provider.<sup>54</sup> Staff includes any employee, contractor, volunteer, or other personnel who provides health care, personal care, administrative, clerical, dietary, environmental, or any kind of services in the facility.<sup>55</sup>

### WYOMING

Wyoming is conducting surveillance testing in nursing homes and assisted living facilities as well. Facilities without active cases or outbreaks will test 20% of staff and residents every two weeks.<sup>56</sup> Facilities with active cases or outbreaks will test 100% of staff and residents every week until it is determined that transmission has not or is no longer occurring.<sup>57</sup>

### Takeaway for Employers:

Overall, it is recommended that assisted facilities and nursing homes enforce and adapt to any federal and/or state issued guidance relating to the coronavirus pandemic. This guidance appears to be changing very often, so constant monitoring of the changes is highly recommended. If there is no issued regulations in a given state, it is generally recommended to follow the CDC issued guidance. ■■■

<sup>50</sup> *Id.* at 2.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> WA. DEPT. OF HEALTH, *COVID-19 Testing of Residents and Staff of Nursing Homes and Assisted Living Facilities with Memory Care Units* (May 28, 2020), <https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/SecretaryHealthOrder20-02LTCFTesting.pdf>

<sup>55</sup> *Id.*

<sup>56</sup> WY. DEPT. OF HEALTH, *State Health Advisory Updated Guidance for Coronavirus Disease 2019 (COVID-19)* (June 22, 2020), [https://health.wyo.gov/wp-content/uploads/2020/06/Coronavirus\\_Disease\\_2019\\_HAN\\_11\\_6.22.20.pdf](https://health.wyo.gov/wp-content/uploads/2020/06/Coronavirus_Disease_2019_HAN_11_6.22.20.pdf)

<sup>57</sup> *Id.* at 10.

