

New Jersey Executive Directive Requires Testing Protocols at Certain Healthcare Facilities

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The New Jersey Department of Health (DOH) has issued an Executive Directive (ED) requiring all licensed long-term care facilities, assisted living residences, comprehensive personal care homes, residential healthcare facilities, and dementia care homes to implement testing and response protocols by May 19, 2020.

Although many facilities likely have already implemented crisis response protocols, the ED mandates the specific contents of any such protocol.

Facilities covered by the ED must review the terms of any such plan to ensure compliance.

Covered Individuals

The ED requires covered facilities to supplement or amend existing protocols to specifically include a COVID-19 testing plan.

Moreover, the plan must apply to all staff, patients, and residents of the facility. The DOH clarifies that the protocols must apply to all employees at the facility, including “direct care workers and non-care workers ... such as administrative, janitorial and kitchen staff[.]”

Accordingly, all employees within a covered facility must be subject to a compliant protocol.

Contents of Protocol, Deadlines, and Reporting

Any protocol, at a minimum, must be consistent with the Centers for Disease Control and Prevention’s (CDC) guidance and include the following:

- Testing procedures and frequency;
- Post-testing protocols for patients (*e.g.*, grouping of residents and separation of COVID-19 positive residents);
- Procedures to obtain staff authorizations for the release of laboratory test results to the covered facility to permit development of prevention strategies and control protocols;
- Work exclusion of staff who test positive for COVID-19 infection, refuse to participate in COVID-19 testing, or refuse to authorize the release of test results to the covered facility;
- 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.

The ED expressly authorizes a facility to permit a staff member with a positive COVID-19 test (symptomatic or asymptomatic) to return to work, subject to CDC and DOH recommendations.

The DOH's specific requirements and deadlines for COVID-19 testing are as follows:

- Baseline molecular testing of staff, residents, and patients by or before May 26, 2020;
- Retesting of individuals who test negative at baseline three to seven days later; and
- Further retesting in accordance with CDC guidance.

Furthermore, the ED requires the facility to submit additional information to the New Jersey Office of Emergency Management (OEM) on the results of the testing. Although the ED does not provide any particular timeframe for reporting, OEM will establish a portal for each facility to submit the following information:

- Testing dates;
- Numbers of staff, residents, and patients who have been tested;
- Aggregate testing results for the staff, resident, and patient populations; and
- Any other information the DOH may further request.

A covered facility must make the information above available to the DOH upon request and the data collected will be made publicly available on the state's [COVID-19 Information Hub](#) website.

Facility Attestations

By May 19, 2020, each covered facility must submit an attestation to the DOH affirming the facility developed a plan in compliance with the ED. Further, by May 26, 2020, the facility must submit an additional attestation to the DOH affirming the facility implemented the plan.

Refusal to Submit to Testing

Facilities must develop protocols to exclude staff who refuse to either submit to COVID-19 tests or authorize the release of COVID-19 tests to the facility. If a patient or resident refuses testing, the ED requires the facility to treat that individual as a "Person Under Investigation." Thereafter, the facility must note the refusal in the patient's chart, notify authorized family members or legal representatives, and check the individual's temperature twice each day. If the patient or resident experiences COVID-19 symptoms or a temperature, the facility must follow the established protocols.

Failure to follow the ED may result in enforcement actions by the state, which may result in the suspension or revocation of licensure. Given the reporting requirements and deadlines, covered facilities should immediately confirm compliance with the ED and include the DOH's reporting obligations in any COVID-19 response protocol.

Jackson Lewis attorneys will continue to monitor developments. Please contact the Jackson Lewis attorney with whom you regularly work if you have questions or need assistance.

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