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Memorandum

TO: Licensees and Administrators of Licensed Long-Term Care Facilities

FROM: Elizabeth D. Kelley, MPH, MBA, Director
Bureau of Health Care Safety and Quality

SUBJECT: Implementation of Order of the Commissioner of Public Health Regarding Control of COVID-19 in Long-Term Care Facilities

DATE: January 27, 2022

The Massachusetts Department of Public Health (Department) continues to work with state, federal, and local partners on the outbreak of Coronavirus Disease 2019 (COVID-19), caused by the virus SARS-CoV-2, and we continue to appreciate the essential role you have in responding to this evolving situation.

This memorandum is to provide guidance to licensed long-term care facilities on the implementation of the Order of the Commissioner of Public Health Regarding Control of COVID-19 in Long-Term Care Facilities, issued on June 14, 2021. This memorandum replaces the guidance issued on January 6, 2022 and provides updates to the minimum length of time DPH may impose an admissions freeze. Facilities are eligible to have the admissions freeze lifted 5 days after the admission freeze was initially imposed for all of the below factors except when the facility fails to comply with applicable testing policies.

Admissions Freeze:

If the Department determines that there is a threat to the health and safety of residents of a long-term care facility due the risk of uncontrolled transmission of COVID-19 within the facility, the facility must take such steps as the Department determines are necessary to mitigate the risk and protect the health and safety of residents and staff, including accepting support and assistance from the Commonwealth.

Following such a determination and upon notice from the Department, the facility must stop accepting new admissions until such time as the conditions at the facility have sufficiently improved and the Department notifies the facility that it may resume new admissions.

Pursuant to the Commissioner's Public Health Order, the Department will base such a determination on the consideration of the following factors:

1. Rate of healthcare-associated COVID-19 within the facility:
The Department will consider this factor to mean that twenty cases in residents at a facility are diagnosed with COVID-19 that is healthcare-associated from the facility in the previous seven days.¹
2. Inadequate staffing: The Department will consider inadequate staffing at a facility to mean there are not enough nursing staff to sufficiently meet the needs of the facility's residents. Inadequate staffing will be evidenced by one of the following: being cited for a staffing related deficiency during a survey; fewer than one licensed nurse assigned to care for 30 residents during each shift averaged over each 24-hour period; or one nurse aide assigned to care for 15 residents during each shift averaged over each 24-hour period.
3. Failure to report a lack of adequate PPE, supplies or staff to the Department: The Department will consider this factor to mean that the facility currently has a lack of adequate PPE, supplies or staff as defined in the above factors, but has failed to appropriately and accurately report to the Department or to the federal government, as required.
4. Failure to comply with applicable testing policies: The Department will consider this factor to mean that a facility has failed to comply with the surveillance testing requirements set forth in Department guidance and MassHealth bulletin for two or more most recent consecutive testing periods. The failure to comply with applicable surveillance testing requirements must be the result of more than one staff person's non-adherence to surveillance testing.
5. Findings of deficiency during a survey: The Department will consider this factor to mean that during any survey, a facility is cited for any infection control-related deficiency at a level F or higher.
6. Any combination of factors which together create an increased risk to residents and staff, including but not limited to:
 - a. An increase in the cases among residents at a facility diagnosed with COVID-19 that is healthcare-associated from the facility.
 - b. A history of poor quality, including for a nursing home a history of scoring below 100 on the Department's Nursing Home Survey Performance Tool, and for rest homes, a history of cited deficiencies on survey;
 - c. The facility is cited for infection control deficiencies at E or lower during any survey;

¹ This factor shall not include individuals admitted to the facility who are diagnosed with COVID-19 at the time of admission, when the facility takes all necessary transmission-based precautions.

- d. The facility has reported to the federal government or directly to the Department for two or more consecutive weeks of not having current or at least a seven-day supply of PPE, including gowns, gloves, facemasks (surgical masks), N95 respirators or alternatives, hand sanitizer, or eye protection;
- e. The hours of care per resident per day (PPD) at the facility is less than a PPD of 3.108 nursing hours or 0.317 registered nurse hours over a seven-day period. Hours of care per resident per day (PPD) shall mean the total number of hours worked by registered nurses, licensed practical nurses, and nursing assistants, including certified nurse aides, nurse aides in training, medication aides and technicians with direct resident care responsibilities for each 24-hour period, divided by the total census of the facility for each day.

Notice to Facility

If, based upon any of the above factors, the Department determines that a facility has not complied with the above obligations and the facility is at risk of uncontrolled transmission of COVID-19, the Department will issue a Notice to the facility ordering it to immediately cease admissions of any new residents.

The Notice will set out the conditions for the admissions freeze, and the conditions that must be met before the admissions freeze is lifted and the facility may resume accepting new residents. The admissions freeze will remain in effect until the Department has determined that the facility has corrected the conditions as specified in the Notice. Facilities will be eligible to have the admissions freeze lifted 5 days after the admission freeze was initially imposed for all of the above factors except when the facility fails to comply with applicable testing policies. Facilities that have an admissions freeze imposed due to failure to comply with applicable testing policies will be eligible to have the admissions freeze lifted upon completion of two testing periods of timely reporting and in compliance with DPH long-term care surveillance requirements, following the imposition of the admissions freeze.

The issuance of a Notice to freeze admissions does not apply to a resident transferred from the facility to a hospital or other healthcare facility. When a long-term care facility resident is transferred from a long-term care facility to a hospital for evaluation of any condition, including but not limited to, COVID-19 care, the facility must accept the resident's return to the facility when the resident no longer requires hospital or other healthcare facility level of care, as long as the facility can provide care appropriate to the resident's needs, with appropriate infection control measures taken.

The Department may require the facility to accept support from Commonwealth sources, such as temporary staffing help, hiring support, infection control technical assistance from the Department, and managerial support through an identified vendor.

Obligations of Long-Term Care Facilities:

Pursuant to the Commissioner's Public Health Order and licensing requirements, all licensed long-term care facilities must cooperate with the Commonwealth's efforts to monitor and respond to the risk of COVID-19 infection in their facilities. Facilities must:

- a. Report to the Department when conditions in their facility create an increased risk of outbreak, including shortages or potential shortages of adequate staff or PPE;
- b. Provide physical access to Department staff and access to any requested information;
- c. Ensure sufficient staffing and appropriate training in infection control procedures for all staff;
- d. Ensure access to adequate PPE and other supplies necessary for infection control at the facility; and
- e. Implement appropriate infection control procedures through the facility.

Licensed long-term care facilities must continue to report PPE shortages to the Centers for Disease Control and Prevention's National Health Surveillance Network (NHSN), if they are a licensed nursing home, or directly to the Department's Complaint Intake Line if they are a licensed rest home.