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Administrative Bulletin 20-81

101 CMR 204.00: Rates of Payment to Resident Care Facilities

Effective October 15, 2020

COVID-19 Ongoing Surveillance Testing Requirements for Resident Care Facilities

Background

In light of the state of emergency declared in the Commonwealth due to the 2019 novel coronavirus (COVID-19) outbreak, EOHHS is implementing measures to protect against the spread of COVID-19. Specifically, EOHHS is issuing this administrative bulletin, which supersedes any relevant provisions in Administrative Bulletin 20-73, to align with and incorporate the testing requirements established under the Department of Public Health's *Updates to Long Term Care Surveillance Testing* guidance (DPH LTC Testing Guidance). This administrative bulletin also incorporates the requirements established under the Department of Public Health's *Guidance for Rest Home Surveillance Testing*, initially issued July 14, 2020, and as may be updated from time to time.

To demonstrate compliance with the testing requirements of this administrative bulletin, which incorporates the requirements of the DPH LTC Testing Guidance, a resident care facility must meet the reporting requirements described herein and must comply with any audits or requests for additional documentation with respect to the requirements of this administrative bulletin.

This administrative bulletin is being issued pursuant to 101 CMR 204.09(1)(d) (4). The requirements of this administrative bulletin are effective beginning October 15, 2020.

Payment Provisions

Staff surveillance testing conducted in accordance with this administrative bulletin, which incorporates the requirements of the DPH LTC Testing Guidance, and with 101 CMR 204.09(1): *COVID-19 Staff Testing Add-on Payment*, will be eligible for the COVID-19 staff surveillance testing add-on payments calculated under 101 CMR 204.09(1)(b): *Calculation of Add-on Payments*.

Resident care facilities that fail to comply with the testing and reporting requirements of this administrative bulletin are ineligible for COVID-19 support add-on payments under 101 CMR 204.09 (2): *Certain Add-on Payments for Resident Care Facilities During the COVID-19 Public Health Emergency*.

Staff surveillance testing conducted in accordance with 101 CMR 204.09(1) is eligible for payment beginning October 1, 2020.



Testing Requirements

Resident care facilities must comply with the requirements of the most recent DPH LTC Testing Guidance, which may be updated from time to time in response to further recommendations from DPH, CMS, or the Centers for Disease Control and Prevention (CDC). The DPH LTC Testing Guidance and its requirements are incorporated into this administrative bulletin by reference.

In accordance with the DPH LTC Testing Guidance, each facility must ensure that all staff are tested at least once per month and that a sufficient number of its staff members are tested in each testing period to meet the facility's relevant staff testing threshold.

According to the DPH LTC Testing Guidance, a facility's staff testing threshold is dependent on the COVID-19 positivity rate of the county in which the facility is located, in addition to whether or not the facility has identified any new COVID-19 positive staff or resident cases within the previous 14 days. The COVID-19 positivity rate by county will be posted every Wednesday on the following website: <https://www.mass.gov/info-details/covid-19-response-reporting#covid-19-weekly-public-health-report>.

A facility's testing period must be weekly or biweekly, depending on whether the facility has identified any COVID-19 positive staff or residents within the previous 14 days. The first weekly testing period of this updated surveillance testing regimen will run from Thursday, October 15, 2020, at 7:00 a.m. through Thursday, October 22, 2020, at 6:59 a.m. The first biweekly testing period of this updated surveillance testing regimen will run from Thursday, October 15, 2020, at 7:00 a.m. through Thursday, October 29, 2020, at 6:59 a.m. Notwithstanding the testing periods described here or in the updated DPH LTC Testing Guidance as beginning October 15, 2020, facilities that conduct staff testing during the period of October 1, 2020, through October 14, 2020, are eligible for payment for such testing provided such testing is otherwise conducted in accordance with 101 CMR 204.09(1).

If a facility identifies a COVID-19 positive staff member or resident, it must ensure that all potentially exposed staff and residents are tested, in accordance with the requirements of section B.2 of the DPH LTC Testing Guidance. If a resident who has been exposed or who is showing symptoms consistent with COVID-19 refuses to be tested, the resident must be quarantined until they are no longer a potential vector for the virus, in accordance with the most recent infection control guidance issued by DPH.

For the purposes of this surveillance testing program, facilities must follow the DPH LTC Testing Guidance when determining if recovered staff or residents who have previously tested positive should be retested for COVID-19.

Requirement for Resident Care Facilities to Facilitate Tests

A resident care facility must secure or facilitate all COVID-19 testing of staff required by this administrative bulletin and must ensure that the testing is conducted at no cost to the staff members who must be tested. Resident care facilities may not require or encourage staff members to obtain testing on their own time or at their own cost. However, staff members may choose to facilitate and obtain their own testing under certain circumstances (such as through their own primary care practitioner or a rapid testing site due to possible COVID-19 exposure or symptoms). In such circumstances, the resident care facility may count those staff members who were tested elsewhere toward the number of total staff tested in any given testing period in which they also worked at the resident care facility, provided that the resident care facility has a copy of the original laboratory report or other documented evidence from the testing laboratory that supports the completion of the reported COVID-19 testing in that testing period, and provided that each individual staff member is counted only once in any given testing period.

Each resident care facility must provide written notice to all staff that: 1) they will be required to participate in surveillance COVID-19 testing, as required under this administrative bulletin and the DPH LTC Testing Guidance; and 2) the facility is prohibited from encouraging, requesting, requiring, or pressuring the staff to obtain such testing on their own time or at their own cost. A high rate of staff tests obtained elsewhere may trigger an audit to ensure that facilities are not pressuring staff to obtain tests elsewhere and have provided adequate notice, as required and as attested to through Appendix A.

Resident care facilities may secure or facilitate testing for its staff using any available method that includes the collection of specimens sufficient for diagnostic testing, the processing of a COVID-19 diagnostic test by an FDA-approved method, and the furnishing of results to all appropriate parties in accordance with DPH and CDC guidance. The test used must be able to detect SARS-CoV-2 virus, with a polymerase chain reaction (PCR) of greater than 95 percent sensitivity and greater than 90 percent specificity, within 48 hours of conducting the test, as required in the DPH LTC Testing Guidance. Resident care facilities may partner or contract with entities including, but not limited to, hospitals, community health centers, ambulance/emergency medical services providers, clinical laboratories, or other entities able to provide COVID-19 testing services. Resident care facilities may, but are not required to, partner with other providers.

Reporting Requirements and Attestation Requirements

Resident care facilities must complete the attestation and reporting requirements of this administrative bulletin, as further described below.

An administrator or other appropriate representative from each resident care facility must submit a signed and scanned copy of the executed attestation, attached to this administrative bulletin as Appendix A, as well as a report, including all of the information described below, using the prescribed reporting form, via [online survey](#), by 12:00 p.m. each Friday after the facility's applicable testing periods. The frequency of such submissions will vary, depending on whether the resident care facility is on a weekly or biweekly testing period. **A login is not required to access the online survey.** With reasonable notice to all resident care facilities, EOHHS may change the format and manner in which resident care facilities are required to submit reporting.

Facilities should report no more than one test result per person per testing period. If a person was tested multiple times in the prior week, the facility should report the most recent test result.

Specifically, the resident care facility must include the following.

1. The number of total staff who worked during the testing period or during the previous week, as applicable, and the number of such staff who
 - a. tested positive for COVID-19;
 - b. tested negative for COVID-19;
 - c. had inconclusive results;
 - d. have previously tested positive for COVID-19;
 - e. were identified as close contacts of a staff person or resident who tested positive for COVID-19
 - f. were not tested and haven't previously tested positive for COVID-19;
 - g. were tested through a method that was secured, facilitated, or funded by the nursing facility; and
 - h. were tested through a method that was not secured, facilitated, or funded by the nursing facility.
2. The number of total residents who were exposed to COVID-19 or that showed COVID-19 symptoms during testing period, as applicable, and the number of such residents who:
 - a. tested positive for COVID-19;
 - b. tested negative for COVID-19; and
 - c. had inconclusive results.
3. The number of total new residents who were admitted during the testing period, as applicable, and the number of such residents who
 - a. are confirmed positive for COVID-19;
 - b. are confirmed negative for COVID-19; and
 - c. are of unknown status.
4. All partner providers or entities involved in any of the completed testing secured, facilitated, or funded by the resident care facility.

5. Confirmation that the resident care facility has provided notice to all staff that, at a minimum, informed them that they may be required to receive COVID-19 testing and that the facility may not encourage, request, require, or pressure staff to obtain testing at their own cost or on their own time.
6. Confirmation that the resident care facility has tested all staff at least once per month.
7. Confirmation that, if the resident care facility was testing only a portion of its staff, the staff tested were chosen from a representative sample of the staff.
8. Such other information as required and requested by EOHHS through the online survey submission tool.

Resident care facilities that have not received complete test results by the relevant reporting deadline must still submit the report by the reporting deadline, report as pending any test results that they are still waiting to receive, and resubmit the report with the required testing results through the online survey within two business days of receipt of the completed results.

Disallowance of Payment

All information included in the reports is subject to verification and audit by EOHHS. If EOHHS determines that a resident care facility has made false or misleading representations through the submissions required by this administrative bulletin, EOHHS may, in accordance with 101 CMR 204.09(3): *Disallowance of COVID-19-Related Payments*, recoup any payments made under 101 CMR 204.09(1), if it determines that payments were made for tests that did not occur or could not be verified, and under 101 CMR 204.09(2), if the facility is found to be out of compliance with the requirements of this administrative bulletin. The disallowance of payments in accordance with 101 CMR 204.09(3) are effective for testing periods beginning on and after October 15, 2020.

EOHHS reserves the right to request and review documentation, conduct audits, or utilize any information available to it to determine if a facility is in compliance with its submissions under this administrative bulletin.

EOHHS Website

This administrative bulletin is available on the [EOHHS Administrative Bulletins web page](#).

To receive email alerts when EOHHS issues new regulatory actions, sign up at the [EOHHS regulatory email notifications web page](#).

Questions

If you have questions about the information in this administrative bulletin, please email your inquiry to CHIANursingFacilityData@massmail.state.ma.us.

Appendix A

Resident Care Facility Attestation to COVID-19 Testing Policies

I, _____, hereby certify under the pains and penalties of perjury that I am the administrator or other duly authorized officer or representative of _____, located at _____, (hereinafter “resident care facility”) and that the information provided in this attestation is a true and accurate representation of the COVID-19 testing procedure implemented and COVID-19 testing results at such resident care facility.

Specifically, I represent and warrant that:

The resident care facility completed the required testing for COVID-19 for the resident care facility’s staff that worked during the relevant testing period, beginning _____, in accordance with all applicable requirements of *EOHHS Administrative Bulletin 20-XX*.

The resident care facility completed the required testing for COVID-19 for residents of the resident care facility that were symptomatic or close contacts of staff or other residents that were identified as COVID-19 positive during the relevant testing period, beginning _____, in accordance with all applicable requirements of *EOHHS Administrative Bulletin 20-XX*.

The report accompanying this attestation and submitted to EOHHS via the Center for Health Information and Analysis (CHIA) submissions portal to demonstrate compliance with the requirements of *EOHHS Administrative Bulletin 20-XX* are complete and accurate.

Under the pains and penalties of perjury, I hereby certify that the above information is true and correct.

Printed Name: _____

Title: _____

Signature: _____

Date: _____

Please submit a scanned copy of the executed attestation via the CHIA [online survey tool](https://www.surveygizmo.com/s3/5678159/covid-nf-surveillance) (<https://www.surveygizmo.com/s3/5678159/covid-nf-surveillance>), as well as the accompanying report, by the baseline testing and weekly reporting deadlines established in *EOHHS Administrative Bulletin 20-XX*.

The resident care facility should maintain the original executed copy of each submitted attestation, along with the accompanying documentation, receipts, invoices, and report, in its files.