



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: November 2, 2020

TO: Ms. Corinna Getchell, Director
Division of Health Care Quality

FROM: Terri Hancharick – Chairperson *TH*
State Council for Persons with Disabilities

RE: DHSS/DHCQ Emergency (24 DE Reg. 304, 306 and 308) & Proposed
(24 DE Reg. 315, 317 and 320) Regulations Regarding COVID
Testing in Nursing Homes and ICF/MRs; Assisted Living Facilities
and Rest Residential Facilities (October 1, 2020)

The State Council for Persons with Disabilities (SCPD) has reviewed the Division of Health Care Quality's (DHCQ's) emergency and proposed regulations regarding COVID-19 testing at Skilled and Intermediate Care Nursing Facilities, Assisted Living Facilities and Rest (Residential) Facilities. The emergency regulations were published as 24 DE Reg. 304, 306 and 308, and the proposed regulations were published at 315, 317 and 320 in the October 1, 2020 issue of the Register of Regulations. The emergency regulations appear to renew policies for mandatory testing and other protocols for each type of facility and the proposed regulations offer an opportunity for public input. SCPD has the following observations.

6.11.1.1 suggests, but does not compel, resident testing upon identification of another resident with symptoms consistent with COVID or if staff have tested positive. SCPD believes DHCQ could mandate testing of residents and strongly recommends such testing. In addition, shouldn't they test residents if staff are suspected of COVID and not wait for a positive test?

6.11.1.2 states that all other testing should be consistent with DPH guidance during the emergency. SCPD strongly recommends that this be mandatory language? Is it up to the facility to decide whether to follow DPH guidance? Shouldn't the requirement to test if there are positive cases continue even if the public health emergency is no longer in effect? It is absolutely conceivable that coronavirus will be in existence after the emergency has ended.

6.11.1.3 requires that all testing be documented in the medical record.

6.11.1.4 requires that all resident results be reported to DPH.

6.11.2.1 requires all staff, vendors and volunteers be tested within two weeks of the effective date of the regulation. SCPD believes it makes no sense to keep this language. Are they asking for the facilities to do a new run of testing or keep going with the existing protocol?

6.11.2.2 requires all new staff, vendors and volunteers who cannot provide proof of a previous positive testing be tested prior to their start date. There is no evidence regarding the duration of any immunity that previous infection may create. There is no timeframe for when any prior positive test might have occurred. Therefore, any new staff, vendor or volunteer needs to have a recent (within several days) negative test prior to accessing any facility.

6.11.2.3 requires all staff, vendors and volunteers be retested consistent with DPH guidelines for the duration of the public health emergency. Again, what about after the public health emergency? Facilities should be screening staff, vendors and volunteers for COVID-19 in some fashion on an ongoing basis?

6.11.2.4 requires that facilities must report all staff, vendor and volunteer testing results to DPH.

6.11.2.5 requires that facilities follow recommendations of CDC and DPH regarding provision of care and services for residents by staff vendor or volunteer found to be positive for COVID-19. SCPD is not entirely sure what this means. Is

it suggesting that facilities can allow staff and others who test positive to continue to care for residents consistent with CDC guidelines? There was some discussion early in the pandemic about allowing asymptomatic COVID positive staff to continue to work because of shortages. This section may be more to do with how long staff need to stay off work or get negative testing, although that appears to be addressed in Section 6.11.2.6. SCPD respectfully requests clarification on this issue.

6.11.2.6 includes provisions requiring facilities to amend communicable diseases policies and procedures regarding work exclusion and return to work protocols, staff refusals to test, staff refusals to consent to release of test results, procedures to obtain staff authorizations for obtaining test results, and plans to address staffing shortages and facility demands. SCPD recommends that this section of the regulation provides particulars or guidance about the parameters or requirements for these policies – it currently does not provide such information. For example, wouldn't it make sense to indicate that staff that refuse testing should be suspended from work until they get tested? Without having some degree of specificity and guidelines, this requirement is essentially meaningless. Can facilities each make up their own rules for when a positive employee can return to work?

12.8.3 adds the requirement that facilities include plans to address staff shortages and facility demands as part of their Emergency Preparedness Plan. SCPD endorses this requirement.

SCPD strongly encourages DHCQ to implement the aforementioned recommendations. Regarding outbreaks at long-term care facilities, a Delaware Online October 30th article reports that, “(of) the state’s 704 coronavirus-related deaths, 409 (58%) were residents in such facilities.”

<https://www.delawareonline.com/story/news/coronavirus-in-delaware/2020/10/30/delawares-covid-19-death-count-tops-700-latest-state-update-coronavirus-in-delaware/6089390002/>

Delaware continues to be far worse than the national average in protecting residents in long-term care facilities. An October 30th New York Times article reported that (s)ince the outbreak, the deaths of residents of long-term care facilities swelled to account for almost 40 percent of the country’s 229,600 coronavirus deaths.

<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.nytimes.com%2F2020%2F10%2F30%2Fus%2Fnursing-homes-isolation-virus.html&data=04%7C01%7CKyle.Hodges%40delaware.gov%7Cfec60f17>

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Delaware, in the short-term, must implement mandatory standards to reverse this trend. In addition, it has become evident that living in congregate living facilities is literally dangerous and far more unsafe than living in the community. Therefore, as SCPD has long advocated, more funding is needed now and in the future for home and community-based services.

Thank you for your consideration and please contact the SCPD if you have any questions regarding our observations or recommendations on the proposed regulations.

cc: Dr. Karyl Rattay
Ms. Gabriela Kejner
Ms. Kathryn Evinger
Ms. Laura Waterland, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

24reg 304-315-306-317-308-320 covid testing 10-30-20