Maryland
DEPARTMENT OF HEALTH

AMENDED DIRECTIVE AND ORDER REGARDING NURSING HOME MATTERS Pursuant to Executive Orders Nos. 20-06-10-01, 20-04-29-01, and Various Health Care Matters of March 16, 2020

No. MDH 2020-10-27-01

I**,** Robert R. Neall, Secretary of Health, finding it necessary for the prevention and control of 2019 Novel Coronavirus ("SARS-CoV-2" or "2019-NCoV" or "COVID-19"), and for the protection of the health and safety of patients, staff, and other individuals in Maryland, hereby authorize and order the following actions for the prevention and control of this infectious and contagious disease under the Governor's Declaration of Catastrophic Health Emergency.

This Amended Directive and Order replaces and supersedes the Directives and Orders Regarding Nursing Home Matters, dated October 1, July 24, June 19, April 29, April 24, April 9, and April 5, 2020.

1. **Protecting Nursing Home Residents**:

   A. Facilities licensed under Title 19, subtitles 3 and 14 of the Health-General Article and COMAR 10.07.02 ("nursing homes") shall immediately ensure that they are in full compliance with all U.S. Centers for Disease Control and Prevention (CDC), U.S. Centers for Medicare & Medicaid Services (CMS) and the Maryland Department of Health (MDH) guidance related to COVID-19.

   Nursing homes shall check CDC, CMS, and MDH guidance daily to ensure that they are complying with the most current guidance and adjust their policies, procedures, and protocols accordingly.

   B. Facilities shall screen all persons who enter the facility (including volunteers, vendors, and visitors when permitted) for signs and symptoms of COVID-19, including temperature checks. Facilities shall refuse entrance to anyone screening positive for symptoms of COVID-19.

   C. All staff, volunteers, vendors, and visitors when permitted, shall wear the appropriate face covering (e.g., surgical mask, cloth face covering) at all times when they are inside the facility.

   D. To the extent possible, residents should wear face coverings in the following circumstances:

      i. if they leave their rooms or when they are within close proximity (under six feet) of others inside the facility; and

      ii. for any trips outside of a facility (e.g. such as for a medical appointment).

2. **Protecting Nursing Home Staff**: Maryland continues to prioritize nursing homes in the highest category to receive personal protective equipment (PPE) if supplies cannot be obtained through normal medical supply channels.

A. All nursing homes shall use the process established by MDH to request PPE from the State: PPE Request Form. All nursing home staff are required to implement the CDC's Strategies to Optimize the Supply of PPE and Equipment.

B. All personnel who are in close contact with residents of nursing homes shall use appropriate Standard and Transmission-based Precautions, as recommended by MDH and CDC, based on the procedures being performed and the availability of specific forms of PPE. Facilities shall use good faith efforts to maintain adequate supplies of all types of PPE.

C. For use during potential outbreaks, all nursing homes shall stock and maintain a 30 day private stockpile of PPE by November 30, 2020 and shall increase that amount to a 60 day private stockpile of PPE by January 31, 2021. All nursing homes shall report to MDH each week the number of days their stockpile can supply pursuant to Section 3.B. below.

Note: A nursing home need not store PPE supply on site, but it must be reasonably accessible for that facility. Appropriate PPE records shall be furnished upon request to MDH.

Note: The purpose of this private stockpile is to ensure that nursing homes have the capability to respond to outbreak situations and to maintain flexibility prior to state assistance.

Other equipment may be used for the appropriate clinical situations, such as filtering facepiece respirators for aerosol generating procedures; in all other cases, the staff must use a procedure or surgical mask, or the best available equipment as specified in the above CDC's Strategies to Optimize the Supply of PPE and Equipment. If a facemask must be taken off for the purposes of eating or drinking, personnel should ensure they are maintaining appropriate social distances (greater than six feet) from others.

3. **Outbreak Prevention, Testing, Reporting, and Containment:**

A. Emergency Preparedness Plan: Subject to 42 C.F.R. § 483.73 and COMAR 10.07.02.40, each facility shall:

i. Implement its emergency preparedness plan/emergency and disaster plan including notification of families and staff; increase as appropriate its staff coverage, organization and assignment of responsibilities; and track residents displaced due to the COVID-19 outbreak;

ii. Designate and provide the Maryland Department of Health's Office of Health Care Quality with the contact information for its emergency and disaster planning liaison as well as to the local jurisdiction's emergency management office and health department;

iii. Provide the plan and regular weekly updates on the implementation of each facility's plan to the Maryland Department of Health's Office of Health Care Quality; and

iv. Each facility shall register with the Chesapeake Registry and regularly update their personnel needs so that the State may assist with staffing.

B. Facility Reporting to Health Department: In addition to all current reporting requirements to state and local health departments, all facilities shall report the following information to the Chesapeake Regional Information System for Our Patients (CRISP).

On a daily basis, each facility report should include at least the following:

i. The census of occupied beds;

ii. Number of residents with positive COVID-19 test results;

iii. Number of residents with suspected COVID-19;

iv. Number of residents with negative COVID-19 test results;

v. Number of deaths, by COVID-19 status;

vi. Number of staff with positive COVID-19 test results;

vii. Number of residents with severe respiratory infection or COVID-19 resulting in hospitalization;

viii. Number of staff with severe respiratory infection or COVID-19 resulting in hospitalization;

ix. Number of residents or staff with new-onset respiratory symptoms that occur within 72 hours of another resident or staff developing respiratory symptoms;

x. On a weekly basis, each facility report should include the number of days their private PPE stockpile can supply; and

xi. Any other information required.

C. Facility Reporting to Residents, Residents' Representatives and Staff: All facilities must provide informational updates on COVID-19 to residents, residents' representatives, and staff by 5 p.m. the next calendar day following the subsequent occurrence of a single confirmed infection of COVID-19, and/or whenever three or more residents or staff with new-onset respiratory symptoms occur within 72 hours.

Updates to residents, residents' representatives, and staff must be provided weekly, or each subsequent time a confirmed infection of COVID-19 is identified, and/or whenever three or more residents or staff with new-onset respiratory symptoms occur within 72 hours.

Facilities shall include information on mitigating actions implemented to prevent or reduce the risk of transmission, including if normal operations in the nursing home will be altered.

The above information must be reported to residents, residents' representatives, and staff in accordance with existing privacy statutes and regulations.

D. Testing:

i. MDH strongly recommends that all staff, volunteers, and vendors who are in the facility regularly, be tested on a weekly basis for COVID-19 using a reverse transcription polymerase chain reaction-type test (PCR Assay) or an approved rapid point of care COVID-19 diagnostic testing device (POC system). Individuals who have previously tested positive for COVID-19 within the timeframe established by CDC and whose positive test results have been documented are exempted.

ii. All staff, volunteers, and vendors who are in the facility regularly, shall be tested as required in the CMS Interim Final Rule, issued on August 26, 2020, (Ref: QSO-20-38-NH) (CMS August 26 Rule).

a. All nursing homes shall test all staff, volunteers, and vendors who are in the facility regularly based on the local jurisdiction's positivity rate (as identified by CMS) in the past week:

1. Testing once a month where the local jurisdiction's positivity rate is below or equal to 5%;

2. Testing once a week where the local jurisdiction's positivity rate is 5%-10%; and

3. Testing twice as week where the local jurisdiction's positivity rate is over 10%.

b. Facilities should monitor their county positivity rate on the CMS website every other week (e.g., first and third Monday of every month) and adjust the frequency of performing staff testing appropriately.

c. Each facility shall be responsible for making appropriate contractual and financial arrangements for the testing of these staff, volunteers, and vendors.

d. Each facility shall establish and maintain COVID-19 testing arrangements with laboratories for PCR Assay-based testing.

iii. Upon positive identification of a resident or staff member with COVID-19, all residents who have not previously tested positive for COVID-19 shall be tested using a PCR assay. Testing of all negative residents must be repeated weekly until there are no PCR assay confirmed positive results among residents and staff for at least 14 days since the most recent positive result.

Note: Admission or readmission of a resident already confirmed to have COVID-19 will not trigger this requirement.

iv. As directed by MDH, a facility shall perform additional COVID-19 testing or permit COVID-19 testing to be administered on residents and staff by MDH, a local health department, or by designated MDH Response Team member(s).

Individuals that refuse testing may be required to go to and remain in places of isolation or quarantine, pursuant to Health Gen. Art. § 18-905(a)(iii).

E. MDH Response Teams

All facilities shall comply with all directives from MDH, local health departments, or MDH-designated response teams for the containment of COVID-19.

4. **Staff Assignments:** Nursing homes shall immediately implement, to the best of their ability, the following personnel practices:

A. Establish a cohort of staff who are assigned to care for known or suspected COVID-19 residents.

B. Designate a room, series of rooms, unit, or floor of the nursing home as a separate observation area where newly admitted and readmitted residents are kept for 14 days on appropriate Standard and Transmission-based Precautions while being observed every shift for signs and symptoms of COVID-19. For additional guidance, please see here.

C. Designate a room, series of rooms, unit, or floor of the nursing home to care for residents with known or suspected COVID-19.

D. Pursuant to COMAR 10.07.02.19, nursing homes shall maintain adequate staffing to meet the needs of all residents at all times. In determining whether a nursing home has met this requirement, the Office of Health Care Quality will take into account that a resident who has known or suspected COVID-19 generally requires increased direct bedside care hours each day, above the mandated minimum of 3.0 hours in the current regulations.

Direct bedside care may be provided by a registered nurse, licensed practical nurse, geriatric nursing assistant, certified nursing assistant, dietary aide, physical therapy aide, occupational therapy aide, and other qualified staff.

5. **Daily Resident Evaluation for COVID-19 by Clinical Staff:**

As the clinical status of individuals infected with COVID-19 may change quickly and nursing home residents may have an atypical presentation of the infection, each nursing home resident shall be evaluated daily to check for COVID-19 by the nursing home's clinical staff.

The evaluation shall include vital signs as well as the identification of new or worsening signs or symptoms. CDC symptoms for COVID-19 are located here: https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html

An *atypical* presentation of COVID-19 infection may include: lower temperature (<100.0 F); muscle aches; nausea; vomiting diarrhea; abdominal pain; headache; runny nose; or fatigue.

In addition to the daily evaluation, all interdisciplinary team members shall report findings that might represent a significant change of condition to the charge nurse or staff nurse for further assessment.

All evaluations shall be documented in the resident's medical record. The nursing staff shall timely convey significant findings to a physician, nurse practitioner, or physician assistant for follow up face-to-face in-person or via telehealth. Facility staff shall document telephone calls and medical practitioners shall document face-to-face in-person and telehealth visits in the resident's medical record.

The failure of the licensed or certified nursing home staff to comply with this directive may result in referral of the individual to the appropriate licensing board or the criminal and civil penalties described below.

6. **Right of Return for Previously Ill Residents:** Returning residents to their nursing facility, their home, remains a priority. For nursing home residents admitted or seen at a hospital for COVID-19, the residents shall be allowed to return to the nursing home as long as the facility can follow the approved CDC recommendations for transmission-based precautions. If the residents must temporarily go to other facilities, every effort must be made by the receiving and original nursing homes to transfer the residents back to their original nursing homes as soon as possible.

7. **Office of Health Care Quality:**

   A. **Discharge Assistance:** The Office of Health Care Quality is directed to assist acute care hospitals, if necessary, in discharging patients who require nursing-home level care. Hospital discharge planners who are unable to place a patient may access this service at: mdh.dischargeassist@maryland.gov

   Nursing homes shall cooperate with the Office of Health Care Quality and hospitals in the placement of discharged patients.

   B. **Special Safety and Compliance Officer**: The Special Safety and Compliance Officer, as designated by the Secretary, shall monitor facilities' compliance with the Governor's Executive Order and all Departmental orders and directives. All staff of the Health Department are requested and required to provide immediate assistance in the execution of the Officer's duties. All facilities shall provide information as requested by the Officer in connection to responding to COVID-19 in their facility.

8. **Criteria for Re-Opening of Facilities to Residents and Visitors**

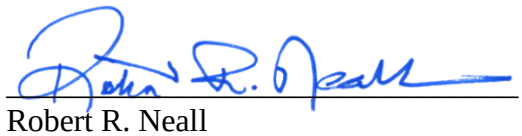
   A. All nursing homes shall follow the Centers for Medicare & Medicaid Services (CMS) guidance on nursing home visitation regarding COVID-19 (QSO-20-39-NH) and any additional MDH guidance. Either MDH or a local health department may direct a facility to a more restrictive set of conditions at any point.

   B. A facility shall communicate regularly with staff, the local ombudsman, residents, and residents' representatives about the facility's reopening plans, and the implementation of the re-opening.

9. **Penalties:** A person who knowingly and willfully fails to comply with this Order and Directive is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding one year or a fine not exceeding $5,000 or both. Persons who violate the Order and Directive also may face administrative sanctions.

10. **Severability**: If any provision of this Directive and Order or its application to any person, entity, or circumstance is held invalid by any court of competent jurisdiction, all other provisions or applications of this Directive and Order shall remain in effect to the extent possible without the invalid provision or application. To achieve this purpose, the provisions of this Directive and Order are severable.

THESE DIRECTIVES AND ORDERS ARE ISSUED UNDER MY HAND THIS 27TH DAY OF OCTOBER 2020 AND ARE EFFECTIVE IMMEDIATELY.



Robert R. Neall
Secretary