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Administrative Bulletin 21-21

101 CMR 204.00: Rates of Payment to Resident Care Facilities

Effective August 12, 2021

COVID-19 Ongoing Surveillance Testing Requirements for Resident Care Facilities

Background

In light of the continued risks of 2019 novel coronavirus (COVID-19) in long-term care facilities, the Executive Office of Health and Human Services (EOHHS) is continuing to implement measures to protect resident care facility staff and residents against the spread of COVID-19. Specifically, EOHHS is issuing this administrative bulletin, which supersedes any relevant provisions in Administrative Bulletins 20-73, 20-81, and 20-90 (available on the [2020 EOHHS Administrative Bulletins](#) page), and 21-09 and 21-13 (available on the [2021 EOHHS Administrative Bulletins](#) page), to align with and incorporate the testing requirements established by the Department of Public Health (DPH), including the [Department of Public Health's Updates to Long-Term Care Surveillance Testing Guidance](#) dated August 4, 2021, the testing components of the [DPH Update to Caring for Long-Term Care Residents During the COVID-19 Emergency](#) (DPH Caring for LTC Residents Guidance), and any subsequent or superseding testing guidance that may be issued by DPH (collectively, 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 and requirements of the Long-Term Care Facility Staff and Resident Roster Reporting to the Center for Health Information and Analysis (CHIA), 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) and 204.09(4). The requirements of this administrative bulletin are effective beginning August 12, 2021.

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 as of October 1, 2020.

Beginning June 3, 2021, the payment used to calculate facilities' monthly add-on payment for surveillance testing is \$60 per test, the market rate for the first quarter of calendar year 2021, as determined by EOHHS in accordance with 101 CMR 204.09(1)(b)2. EOHHS will reevaluate the market rate and update the per test payment amount, as necessary, on a quarterly basis.

Testing Requirements

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

In accordance with the DPH LTC Testing Guidance, resident care facilities must ensure that at least 90% of staff, as defined in the DPH LTC Testing Guidance, are tested every week. This **includes both staff who are fully vaccinated against COVID-19 and those who are not fully vaccinated against COVID-19**. This testing requirement applies regardless of the positivity rate of the county in which the facility is located.

The term "week" means Thursday at 7:00 a.m. through the following Thursday at 6:59 a.m. The start of each week will be the start of a new week-long testing period. Facilities must report all requested information via the CHIA online survey every week.

Additionally, facilities must follow the outbreak testing protocols outlined in the DPH LTC Testing Guidance and specifically the DPH Caring for LTC Residents Guidance or any subsequent or superseding guidance. If a facility identifies a COVID-19-positive staff member or resident, it must ensure that all staff and residents are tested, regardless of vaccination status, in accordance with the DPH LTC Testing Guidance, specifically at the time of this bulletin's publication, as described in section B of the DPH LTC Testing Guidance.

For the purposes of this surveillance testing program, facilities must follow 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 staff testing 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 are required to participate in surveillance COVID-19 testing, as required under 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 (attached).

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. Except in instances where other testing methods are permitted (such as antigen testing through

BinaxNOW) in accordance with the DPH LTC Testing Guidance and specifically the DPH Caring for LTC Residents Guidance or any subsequent or superseding guidance, the test used must be able to detect SARS-CoV-2 virus, with a polymerase chain reaction (PCR) of greater than 95% sensitivity and greater than 90% specificity, within 48 hours of conducting the test, as required in the DPH LTC Testing Guidance. Only such PCR tests for staff will be used to calculate the supplemental payments calculated under 101 CMR 206.10(4)(b): *Calculation of Supplemental Payments*. 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 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 CHIA's online [COVID-19 LTC Surveillance Testing](#) survey, by 12:00 p.m. every Friday. The reporting form will request, and facilities must submit, testing information for testing period, consisting of the week immediately preceding the submission date. **The first submission due in accordance with this bulletin is due Friday, August 20, 2021, and applies to the testing period running from August 12, 2021, through August 19, 2021.** *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 week-long testing period. If a person was tested multiple times in a week, the facility should report the most recent test result.

Specifically, the resident care facility must provide all information requested on the online survey, which may include the following.

1. The number of total staff who worked during each week-long testing period covered by the submission, 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 and were not required to be re-tested under the DPH LTC Guidance;
 - e. were identified as exposed to a staff person or resident who tested positive for COVID-19, and were required to be tested under the DPH LTC Guidance;
 - f. were not tested and have not previously tested positive for COVID-19;
 - g. were tested through a method that was secured, facilitated, or funded by the resident care facility; and
 - h. were tested through a method that was not secured, facilitated, or funded by the resident care facility.
2. All partner providers or entities involved in any of the completed testing secured, facilitated, or funded by the resident care facility.
3. 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.
4. 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).

For the purposes of determining non-compliance triggering the disallowance of payments under 101 CMR 204.09(3): *Disallowance of COVID-19-related Payments*, EOHHS will consider only staff testing threshold compliance and complete and timely reporting compliance. Compliance with testing requirements for residents or staff that have had an exposure or are determined close contacts, and compliance with outbreak testing pursuant to DPH LTC Testing Guidance will not be considered when determining non-compliance triggering the disallowance of further payments. The disallowance of payments in accordance with 101 CMR 204.09(3) is effective for testing periods on and after October 15, 2020.

EOHHS reserves the right to request and review documentation, conduct audits, or use 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 [2021 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 weekly testing period, beginning _____(testing period 1) and _____(testing period 2), in accordance with all applicable requirements of EOHHS Administrative Bulletin 21-21.

The resident care facility completed the required testing for COVID-19 for residents of the resident care facility that were symptomatic or exposed to staff or other residents that were identified as COVID-19 positive during the relevant weekly testing period, beginning _____(testing period 1) and _____(testing period 2), in accordance with all applicable requirements of EOHHS Administrative Bulletin 21-21.

The report accompanying this attestation and submitted to EOHHS via the Center for Health Information and Analysis (CHIA) submissions portal online survey to demonstrate compliance with the requirements of EOHHS Administrative Bulletin 21-21 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 CHIA’s online [COVID-19 LTC Surveillance Testing](https://survey.alchemer.com/s3/6242598/COVID-Surveillance-Testing-v2) survey (<https://survey.alchemer.com/s3/6242598/COVID-Surveillance-Testing-v2>), as well as the accompanying report, by the surveillance testing and reporting deadlines established in EOHHS Administrative Bulletin 21-21.

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.