



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Loockerman St., Dover, DE 19904
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October 30, 2020

Corinna Getchell
Division of Health Care Quality
261 Chapman Road, Suite 200
Newark, DE 19702

RE: DHSS/DHCQ Emergency and Proposed Regulations regarding COVID-19 Testing in Skilled & Immediate Care Nursing Facilities; Assisted Living Facilities and Rest (Residential Facilities [24 DE Reg. 304 & 315 (3201 Nursing Homes and ICF/MRs; 306 & 317 (3225 Assisted Living Facilities and 308 & 320 (3230 Rest Residential Facilities (October 1, 2020)]

Dear Ms. Getchell:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) Emergency and Proposed regulations governing testing for COVID-19 in nursing homes, immediate care nursing facilities, assisted living facilities and rest (residential) facilities. Council understands that the emergency regulations (304, 306 and 308) extend the mandatory testing and other protocols for each type of facility for 60 days, based on the Governor's Emergency Orders. The proposed regulations (315, 317 and 320) are identical to the emergency regulations and allow the public an opportunity to provide comments. Council would like to share the following observations and will group our comments as they all pertain to each of the facility types noted.

First, section 6.11.1.1 suggests but does not compel resident testing upon identification of another resident with symptoms consistent with COVID-19 or if staff have tested positive. The Division of Public Health (DPH) could mandate testing of residents. Shouldn't residents be tested if staff are suspected of COVID rather than waiting for positive test results before testing?

Second, section 6.11.1.2 states that all other testing should be consistent with DPH guidance **during the emergency.** Council feels this should be mandatory language beyond the pandemic. Is it up to the facility to decide whether to follow DPH guidance? Even when COVID-19 is no

longer at pandemic level it will still be a dangerous infectious disease, particularly for residents of these types of facilities. Therefore, it should still be a requirement to test for positive cases until the Centers for Disease Control (CDC) and state health department indicate that there is no remaining threat of transmission.

Third, section 6.11.1.3 states that all testing must be documented in the medical record and section 6.11.1.4 states that all resident results must be reported to DPH. Likewise, section 6.11.2.1 states that all staff, vendors and volunteers must be tested within two weeks of the effective date of the regulation. This language is confusing. Are the facilities being asked to do a new run of testing or keep going with the existing protocol?

Fourth, section 6.11.2.2 states that all new staff, vendors and volunteers who cannot provide proof of a previous positive testing must 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.

Fifth, section 6.11.2.3 states that all staff, vendors and volunteers must be retested consistent with DPH guidelines for the duration of the public health emergency. Council queries what happens after the public health emergency? Should facilities be screening staff, vendors and volunteers for COVID-19 in some fashion on an ongoing basis until the CDC and DPH indicate there is no remaining threat of transmission?

Sixth, section 6.11.2.5 is confusing. It states that facilities must follow the 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. Is this suggesting that facilities can allow staff and others who test positive to continue to care for residents consistent with CDC guidelines? Council understands there was some discussion early in the pandemic about allowing asymptomatic COVID-19 positive staff to continue to work because of shortages. Council would not endorse this practice and asks for clarification on the meaning of this section.

Seventh, section 6.11.2.6 discusses a series of 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. Council notes that this particular regulation provides no particulars or guidance about the parameters or requirements for these policies. For example, would it not make sense to indicate that staff that refuse testing should be suspended from work until they agree and are 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?

Eighth, section 8.3 adds the requirement that facilities include plans to address staff shortages and facility demands as part of their Emergency Preparedness Plan. Council appreciates this requirement.

Thank you for your consideration of our observations and suggestions. We look forward to hearing from you in response to the questions we have. Please contact Wendy Strauss or me if

you have any questions.

Sincerely,

Ann C Fisher

Ann C. Fisher
Chairperson

ACF: kpc

CC: The Honorable Molly Magarik, DHSS
Gabriela Kejner, Office of the Secretary, DHSS