



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Loockerman St., Dover, DE 19904
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October 29, 2021

Corinna Getchell
Division of Health Care Quality
3 Mill Road, Suite 308
Wilmington, DE 19806

RE: 25 DE Reg. 319-357 DHSS/DHCQ Emergency Regulations regarding COVID-19 Requirements (October 1, 2021)

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 Orders in reference to the development of a comprehensive infection control and prevention program to protect Delaware citizens from COVID-19. Council understands that these emergency orders build on the emergency regulations published in the July 2021 Delaware Register of Regulations (25 DE Reg. 6-37) and would like to share the following observations.

These emergency regulations apply to the following:

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- § 3210 Nursing Homes Admitting Pediatric Residents (25 DE Reg. 319)
- § 3301 Group Home Facilities for Persons with AIDS (25 DE Reg. 321)
- § 3305 Group Homes for Persons with Mental Illness (25 DE Reg. 324)
- § 3310 Neighborhood Homes for I / DD (25 DE Reg. 326)
- § 3315 Family Care Homes (25 DE Reg. 328)
- § 3320 Intensive Behavioral Support and Educational Residence (25 DE Reg. 330)
- § 3330 Regulations Governing Dialysis Centers (25 DE Reg. 333)
- § 3335 Office-Based Surgery (25 DE Reg. 335)
- § 3340 Free Standing Emergency Departments (25 DE Reg. 337)
- § 3345 Personal Assistance Services Agencies (25 DE Reg. 339)
- § 4402 Regulations for Adult Day Care Facilities (25 DE Reg. 341)
- § 4403 Free Standing Birthing Centers (25 DE Reg. 343)
- § 4405 Free Standing Surgical Centers (25 DE Reg. 346)
- § 4406 Home Health Agencies--Aide Only (Licensure) (25 DE Reg. 348)
- § 4407 Hospital Standards (Construction, Maintenance, and Operation) (25 DE Reg. 350)
- § 4409 Prescribed Pediatric Extended Care Centers (PPECC) (25 DE Reg. 352)
- § 4410 Skilled Home Health Agencies (Licensure) (25 DE Reg. 354)
- § 4468 Delivery of Hospice Services (25 DE Reg. 357)

The emergency regulations propose the following specific requirements related to COVID-19:

1. Before their start date, all new staff, vendors and volunteers must be tested in accordance with Delaware Division of Public Health (DPH) Guidance.
2. All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with DPH guidance.
3. The licensee must follow recommendations of the Centers for Disease Control and Prevention (CDC) and DPH regarding the provision of care or services to residents by staff, vendor, or volunteer found to be positive for COVID-19 in an infectious stage.

Furthermore, the emergency orders require that licensees amend their policies and procedures to include:

1. Work exclusion and return to work protocols for staff tested positive for COVID-19.
2. Staff refusals to participate in COVID-19 testing;
3. Staff refusals to authorize release of testing results or vaccination status to the licensee.
4. Procedures to obtain staff authorizations for release of laboratory test results to the licensee to inform infection control and prevention strategies; and
5. Plans to address staffing shortages and licensee demands should a COVID-19 outbreak occur.

Lastly, the emergency orders require that staff in the impacted health care settings either provide evidence of COVID-19 vaccination or undergo regular testing to prevent the transmission of COVID-19. Although employees will have the choice between getting vaccinated or getting tested, DHSS is urging employers to encourage employees to be vaccinated. Federal guidance allows employers to require vaccinations as long as employers comply with the reasonable accommodations requirements under the Americans with Disabilities Act (ADA), the Civil Rights Act of 1964, and “other Equal Employment Opportunity considerations.”

Council appreciates all of the steps that DHSS is taking in order to protect Delawareans from COVID-19. Our only recommendation would be that DHSS revise the proposed emergency regulations to require staff vaccinations for all impacted health care facilities based on the guidance from the federal government noting that any requirements should be subject to exemptions provided under federal laws, such as the ADA.

Thank you for your consideration of our observations. We look forward to hearing from you in response to the questions we have. Please contact Pam Weir or me if you have any questions.

Sincerely,

Ann C Fisher

Ann C. Fisher
Chairperson

ACF: kpc

CC: The Honorable Molly Magarik, DHSS
Sarah Noonan Davis, Deputy Secretary for Special Populations, Strategic Planning and Innovation, DHSS