



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

LISA J. PINO, M.A., J.D.
Executive Deputy Commissioner

August 20, 2020

Re: DAL NH 20-09 Required Annual
Pandemic Emergency Plan for All
Nursing Homes

Dear Nursing Home Operators and Administrators:

On June 17, 2020, Governor Andrew M. Cuomo signed into Law Chapter 114 of the Laws of 2020 creating a new subdivision 12 to section 2803 of the Public Health Law. The new subdivision requires that each residential health care facility, by September 15, 2020, prepare and make available to the public on the facility's website, and immediately upon request, a Pandemic Emergency Plan (PEP).

This DAL explains the requirements for the PEP outlined in the statute and provides additional direction and guidance on how to implement its requirements. The Department will be issuing further guidance on a recommended form for the PEP. Generally, the PEP must include:

1. A communication plan that:
 - a. Updates authorized family members and guardians of residents infected with the pandemic infectious disease at least once per day and upon a change in the resident's condition;
 - b. Updates all residents and authorized family members and guardians once per week on the number of infections and deaths at the facility;
 - c. A plan to provide all residents with daily access to free remote videoconferencing, or similar communication methods, with authorized family members and guardians; and
 - d. Required communications must be by electronic means or other method selected by each family member or guardian
2. Infection Protection Plans for staff, residents and families, to include:
 - a. A plan for readmission of residents to the facility after hospitalization for the pandemic infectious disease
 - i. Such plan must comply with all other applicable State and federal laws and regulations, including but not limited to 10 NYCRR 415.19, 415.3(i)(3)(iii) and 415.26(i); and 42 CFR 483.15(e).
 - ii. The facility's plan should also consider how to reduce transmission in the event there are only one or a few residents with the pandemic disease in a facility and corresponding plans for cohorting, including:
 1. Use of a part of a unit, dedicated floor, or wing in the facility or a group of rooms at the end of the unit, such as at the end of a hallway;
 2. Discontinue any sharing of a bathroom with residents outside the cohort;

3. Proper identification of the area for residents with the pandemic infectious disease, including demarcating reminders for healthcare personnel; and
4. Procedures for preventing other residents from entering the area.
- iii. Additionally, the plan should consider steps for facility administrators and operators to determine cohorting needs and capabilities on a regular basis, including establishing steps to notify regional Department of Health offices and local departments of health if the facility cannot set up cohort areas or can no longer sustain cohorting efforts.
- b. Having personal protective equipment (PPE) in a two-month (60 day) supply at the facility or by a contract arrangement¹.
 - i. Supply needs are based on facility census, not capacity, and should include considerations of space for storage. To determine supply needs during a pandemic episode, facilities should base such need on DOH existing guidance and regulations; in the absence of such guidance, facilities should consult the [Center for Disease Control and Prevention \(CDC\) PPE burn rate calculator](#).
 - ii. Be cognizant of experience with prior pandemic response and adopt protocols outlined in guidance that are specific to the pathogen and illness circulating at the time of the pandemic, and plan to handle worst case scenarios without implementing shortage or other mitigation efforts.
 - iii. This plan should address all personal protective equipment necessary for both residents and staff in order to continue to provide services and supports to residents, current guidance on various supplies and strategies from the CDC. Supplies to be maintained include, but are not limited to:
 1. N95 respirators
 2. Face shield,
 3. Eye protection
 4. Gowns/isolation gowns,
 5. gloves,
 6. masks, and
 7. Sanitizer and disinfectants in accordance with current EPA Guidance.:
3. Plan for preserving a resident's place at the facility when the resident is hospitalized.
 - a. Such plan must comply with all applicable State and federal laws and regulations, including but not limited to 18 NYCRR 505.9(d)(6) and 42 CFR 483.15(e).
4. Compliance with the PEP
 - a. Failure to comply is a violation of § 2803(12), which may subject the facility to penalties pursuant to PHL § 12 and § 12-b and other enforcement remedies.
5. Format for PEP
 - a. The Department suggests that in developing the PEP document, the facility follow the format for the Emergency Preparedness plan you developed for the CMS Emergency Preparedness Rule. We suggest that the PEP be included as

¹ Please also keep in mind that nursing home operators and administrators must also comply with emergency regulations effective July XX, 2020, setting forth PPE stockpile requirements.

an annex to that plan. A format of an annex will be provided to you. It will be modeled after the templates distributed as part of the 2019 DOH Comprehensive Emergency Management Plan (CEMP) training to nursing homes on developing a PEP. Attached is information for taking an online version of the CEMP training as a refresher; or if you were unable to attend last year's live training sessions.

We will be using the CEMP for purposes of complying with the requirement and a webinar will be scheduled to explain how to incorporate the pandemic emergency plan in the CEMP. Any questions regarding this correspondence should be forwarded to nursinghomeinfo@health.ny.gov.

Thank you for your attention to this important issue affecting residents of nursing homes in New York State.

Sincerely,

Sheila McGarvey

Director
Division of Nursing Homes and ICF/IID
Surveillance
Center for Health Care Quality and
Surveillance