

LEE A. NORMAN
Secretary of the Kansas Department of Health and Environment
And
State Health Officer

ORDER REQUIRING COVID-19 TESTING IN ADULT CARE HOMES

The Kansas Department of Health and Environment (KDHE) oversees public health in the State of Kansas. The Secretary of the KDHE exercises general supervision of the health of the people of the state and may take action to prevent the introduction of infectious or contagious disease into this state and to prevent the spread of infectious or contagious disease within this state. K.S.A. 65-101(a). K.S.A. 65-128 also authorizes the Secretary of the KDHE to issue orders as may be medically necessary and reasonable to prevent the spread and dissemination of diseases injurious to the public health.

COVID-19 has been recognized as an infectious and contagious disease and a pandemic in the State of Kansas resulting in illnesses, quarantines, school closures and temporary closure of businesses. The health and safety of residents residing in adult care homes in Kansas, and the health and safety of staff that provide direct care and treatment to those residents, have been significantly impacted by COVID-19 infection outbreaks. A requirement to test staff and residents living and working in state-licensed adult care homes for COVID-19 is an important and medically necessary action to prevent COVID-19 from entering these facilities, detecting cases quickly, and stopping transmission of the disease. Rapid identification of COVID-19 cases allows these adult care homes to take immediate action to remove exposure risks to both residents and staff.

Therefore, pursuant to the authority vesting in me pursuant to K.S.A. 65-101 and 65-128, to prevent the introduction of infectious or contagious disease into this state and to prevent the spread of

infectious or contagious disease within this state, I hereby direct and order the testing for COVID-19 in adult care homes under the following requirements:

Scope

1. This order applies to all adult care homes identified in K.S.A. 39-923(a), including any nursing facility, nursing facility for mental health, intermediate care for people with intellectual disability, assisted living facility, residential healthcare facility, home plus, boarding care home and adult day care facility, except those facilities that must comply with QSO-20-38-NH issued on August 26, 2020, and revised on April 7, 2021, by the Centers for Medicare & Medicaid Services (CMS), pursuant to 42 CFR 483.80(h), which requires facilities that are federally certified to receive Medicare and Medicaid funding to test all residents and staff for COVID-19 in accordance with guidance established by CMS.

2. Adult care homes may conduct these tests with their own staff or equipment provided the adult care home has a CLIA Certificate of Waiver; adult care homes without the ability to conduct tests must make arrangements with laboratories that can process COVID-19 test results and report results within 48 hours.

3. "Adult care home staff" or "facility staff" includes employees, consultants, contractors, volunteers, and caregivers who provide care and services to residents on behalf of the adult care home, and students in the adult care home's nurse aide training programs or from affiliated academic institutions. The facility may have a provision under its arrangement with a vendor or volunteer that requires them to be tested from another source (e.g., their employer or on their own). However, the adult care home is still required to obtain documentation that the required testing was completed during the timeframe that corresponds to the facility's testing frequency.

4. Regardless of the frequency of testing being performed or the adult care home's COVID-19 status, the facility must continue to screen all staff (each shift), each resident (daily), and all persons entering the facility, such as vendors, volunteers, and visitors, for signs and symptoms of COVID-19. This Order will have no effect on a facility's visitation policy.

Testing of Staff and Residents with COVID-19 Symptoms or Signs

5. Staff, vaccinated or unvaccinated, with symptoms or signs of COVID-19 must be tested and are required to be restricted from the adult care home pending the results of COVID-19 testing. If COVID-19 is confirmed, staff must follow KDHE and local health department guidance and mandates for isolation and the Centers for Disease Control and Prevention (CDC) guidelines "Criteria for Return to Work for Healthcare Personnel with SARS-CoV2 Infection". Staff who do not test positive for COVID-19 but have symptoms shall follow the facility's policies to determine when they can return to work.

6. Residents, vaccinated or unvaccinated, who have signs or symptoms of COVID-19 must be tested. While test results are pending, residents with signs or symptoms must be placed on transmission-based precautions (TBP) in accordance with KDHE and CDC guidance. Once test

results are obtained, the adult care home must take the appropriate actions based on the results.

Testing of Staff and Residents in Response to an Outbreak

7. An outbreak is defined as a new COVID-19 infection in any healthcare personnel (HCP) or any adult care home-onset COVID-19 infection in a resident that is acquired at the facility. In an outbreak investigation, rapid identification and isolation of new cases is critical in stopping further viral transmission. A resident who is admitted to the adult care home with COVID-19 does not constitute a facility outbreak.

8. Upon identification of a new case of COVID-19 infection in any staff or residents of the adult care home, some type of limited or more expansive facility-wide testing must occur. This testing includes testing all staff and residents, regardless of vaccination status, and all staff and residents that tested negative must be retested every 3 days to 7 days until testing identifies no new cases of COVID-19 infection among staff or residents for a period of at least 14 days since the most recent positive result. If an adult care home needs technical assistance on determining the extent of facility-wide testing, the facility should call the KDHE Epidemiology Hotline. KDHE will help the facility identify the appropriate amount of facility-wide testing through either the KDHE laboratory or other laboratory resources.

Routine Testing of Staff

9. Fully vaccinated staff do not need to be routinely tested. Routine testing of unvaccinated staff must be based on the extent of the virus in the community; therefore, facilities are required to use their county positivity rate in the prior week as the trigger for staff testing frequency.

10. Adult care homes are required to use the COVID-19 county positivity rate reported by the Kansas Department of Health and Environment as the primary information to determine how frequently to conduct routine testing of unvaccinated staff. The minimum testing interval based on the county positivity rates are as follows:

Low (<5% positive test result rate) or Green - Oncemonth

Medium (5% - 10% positive test result rate) or Yellow- Once a week

High (>10% positive test result rate) or Red - Twice a Week

11. The county positivity data table referenced in paragraph 10 above is located on the Kansas Department of Health and Environments webpage under Nursing Home Metrics (<https://www.coronavirus.kdheks.gov/160/COVID-19-in-Kansas>). Facilities may also monitor other factors to understand the level of COVID-19 risk, such as rates of COVID-19-Like Illness, visits to the emergency department or the positivity rate of a county adjacent to the county where the adult care home is located for additional routine testing considerations.

12. The adult care home shall begin testing unvaccinated staff at the frequency prescribed in the Routine Testing table based on the county positivity rate reported in the past week. Facilities

shall monitor their county positivity rate every week and adjust the frequency of performing staff testing according to the paragraph 10 above.

13. If the county positivity rate increases to a higher level of activity, the facility shall begin testing staff at the frequency shown in the table above as soon as the criteria for the higher activity are met.

14. If the county positivity rate decreases to a lower level of activity, the facility shall continue testing staff at the higher frequency level until the county positivity rate has remained at the lower activity level for at least two weeks before reducing testing frequency.

15. The testing frequency requirement in paragraph 10 above represents the minimum testing required. Adult care homes may consider additional factors, such as the positivity rate in an adjacent (i.e., neighboring) county to test at a frequency that is higher than required. For example, if a facility in a county with a low positivity rate has many staff that live in a county with a medium positivity rate, the facility should consider testing based on the higher positivity rate (in scenario described, weekly staff testing would be indicated).

Refusal of Testing

16. Adult care homes must have procedures in place to address staff who refuse testing. Procedures must ensure that staff who have signs or symptoms of COVID-19 and refuse testing are prohibited from entering the building until the return to work criteria are met. If outbreak testing has been triggered and a staff member refuses testing, the staff member must be restricted from the building until the procedures for outbreak testing have been completed. The facility must follow its occupational health and local jurisdiction policies with respect to any asymptomatic staff who refuse routine testing.

17. Residents (or resident representatives) may exercise their right to decline COVID-19 testing in accordance with the requirements under K.A.R. 26-39-103. In discussing testing with residents, staff should use person-centered approaches when explaining the importance of testing for COVID-19. Adult care homes must have procedures in place to address residents who refuse testing.

18. Procedures must ensure that residents who have signs or symptoms of COVID-19 and refuse testing are placed on transmission-based precautions (TBP) until the criteria for discontinuing TBP have been met. If outbreak testing has been triggered and an asymptomatic resident refuses testing, the adult care home must be extremely vigilant, such as through additional monitoring, to ensure the resident maintains appropriate distance from other residents, wears a face covering (unless otherwise determined inappropriate for the resident per the person-centered support plan or medical documentation), and practices effective hand hygiene until the procedures for outbreak testing have been completed.

19. Clinical discussions about testing may include alternative specimen collection sources that may be more acceptable to residents than nasopharyngeal swabs (e.g., anterior nares). Providing information about the method of testing and reason for pursuing testing may facilitate discussions with residents or resident representatives.

20. If a resident has symptoms consistent with COVID-19 or has been exposed to COVID-19, or if there is a facility outbreak and the resident declines testing, he or she must be placed on or remain on TBP until he or she meets the symptom-based criteria for discontinuation.

Other Testing Considerations

21. Individuals who are determined to be potentially infectious must undergo evaluation and remain isolated until they meet criteria for discontinuation of isolation or discontinuation of transmission-based precautions, depending on their circumstances.

22. For residents or staff who test positive, adult care homes must contact the KDHE epidemiology hotline or the appropriate county health department for contact tracing.

23. While not required, adult care homes may test residents' visitors to help facilitate visitation while also preventing the spread of COVID-19. Facilities shall prioritize resident and staff testing and have adequate testing supplies to meet required testing, prior to testing resident visitors.

Conducting Testing

24. Adult care homes required to conduct testing must obtain an order from a physician, physician assistant, nurse practitioner, or clinical nurse specialist in accordance with State law, including scope of practice laws, to provide or obtain laboratory services for a resident, which includes COVID-19 testing. This may be accomplished through the use of physician approved policies (e.g., standing orders), or other means as specified by scope of practice laws and facility policy.

25. Rapid POC Testing devices are prescription use tests and must be ordered by a healthcare professional licensed under the applicable state law or a pharmacist under HHS guidance. Accordingly, the adult care home must have an order from a healthcare professional or pharmacist, as previously described, to perform a rapid POC COVID-19 test on an individual.

26. Collecting and handling specimens correctly and safely is imperative to ensure the accuracy of test results and prevent any unnecessary exposures. The specimen shall be collected and, if necessary, stored in accordance with the manufacturer's instructions for use for the test and CDC guidelines.

27. During specimen collection, adult care homes must maintain proper infection control and use recommended personal protective equipment (PPE), which includes an N95 or higher-level respirator (or facemask if a respirator is not available), eye protection, gloves, and a gown, when collecting specimens.

Reporting Test Results

28. In order to conduct point of care COVID-19 testing, each adult care home must have a CLIA certificate of waiver that specifically states testing for COVID-19. The adult care home must contact the

KDHE CLIA office to get a waiver or update their waiver before doing any POC testing. Adult care homes conducting tests under a CLIA certificate of waiver are subject to regulations that require laboratories to report data for all testing completed, for each individual tested.

29. For additional information on reporting requirements see: Frequently Asked Questions: COVID-19 Testing at Skilled Nursing Facilities/Nursing Homes CMS Memorandum: Interim Final Rule (IFC), CMS-3401-IFC, Updating Requirements for Reporting of SARS-CoV-2 Test Results by Clinical Laboratory Improvement Amendments of 1988 (CLIA) Laboratories, and Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency.

30. As appropriate to the facility, reporting must satisfy the Kansas public health requirements for reporting infectious disease outbreaks.

Documentation of Testing

31. Adult care homes must document the results of COVID-19 testing. To do so, adult care homes must do the following:

a. For symptomatic residents and staff, document the date(s) and time(s) of the identification of signs or symptoms, when testing was conducted, when results were obtained, and the actions the facility took based on the results.

b. Upon identification of a new COVID-19 case in the facility (i.e., outbreak), document the date the case was identified, the date that all other residents and staff are tested, the dates that staff and residents who tested negative are retested, and the results of all tests. All residents and staff that tested negative are required to be retested until testing identifies no new cases of COVID-19 infection among staff or residents for a period of at least 14 days since the most recent positive result (see section Testing of Staff and Residents in response to an outbreak above).

c. For staff routine testing, document the facility's county positivity rate, the corresponding testing frequency indicated (e.g., every other week), and the date each positivity rate was collected. Also, document the date(s) that testing was performed for all staff, and the results of each test.

d. Document the facility's procedures for addressing residents and staff that refuse testing or are unable to be tested and document any staff or residents who refused or were unable to be tested and how the facility addressed those cases.

e. When necessary, such as in emergencies due to testing supply shortages, document that the facility contacted state and local health departments to assist in testing efforts, such as obtaining testing supplies or processing test results.

f. Adult care homes may document the conducting of tests in a variety of ways, such as a log of county positivity rates, schedules of completed testing, and/or staff and resident records. However, the results of tests must be done in accordance with standards for protected health information. For residents, the facility must document testing results in the medical record. For staff, including individuals providing services under arrangement and volunteers, the facility must document testing results in a secure manner consistent with requirements specified in compliance with K.S.A. 39-938.

This order shall take effect immediately and shall remain in force and effect until otherwise modified, supplemented and/or rescinded.

Lee A. Norman M.D.

Lee A. Norman, M.D., Secretary
Kansas Department of Health and Environment

Dated: June 18, 2021