
CLIENT ALERT: Department of Health Announces New Regulations Requiring Increased COVID-19 and Influenza Testing

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On August 31, 2020, the New York State Department of Health (“DOH”) announced new regulations mandating new testing requirements for hospitals, nursing homes, funeral directors, and medical examiners. These new regulations take effect on September 1, 2020.

The DOH indicated that COVID-19 and influenza testing will be required whenever a hospital patient or nursing home resident has a known exposure or symptoms consistent with COVID-19 or influenza.

In addition, testing must also be performed on any hospital patient or nursing home resident where the individual is suspected of having died from such disease, within 48 hours after death, if that individual had not previously received a COVID-19 and influenza test in the 14 days prior to death.

Under the new regulations, hospitals and nursing homes must conduct COVID-19 and influenza testing on any resident who is known to have been exposed to COVID-19 or influenza or has symptoms consistent with COVID-19 or influenza.

Furthermore, hospitals and nursing homes must immediately report deaths to the DOH through the Health Emergency Response Data System (“HERDS”) after receipt of the results of both COVID-19 and influenza tests. Any facility or local health department that lacks the ability to perform testing within the required timeframe can request that the DOH perform the test.

Section **415.33 of 10 NYCRR** has been added to the regulations and reads as follows:

(1) Any resident who is known to have been exposed to COVID-19 or influenza or has symptoms consistent with COVID-19 or influenza shall be tested for both such diseases.

(2) Whenever a person expires while in a nursing home, where in the professional judgment of the nursing home clinician there is a clinical suspicion that COVID-19 or influenza was a cause of death, but no such tests were performed in the 14 days before death, the nursing home shall administer both a COVID-19 and influenza test within 48 hours after death, in accordance with guidance published by the Department. Such tests shall be performed using rapid testing methodologies to the extent available.

The facility shall report the death to the Department immediately after and only upon receipt of both such test results through (HERDS). Notwithstanding the foregoing, no test shall be administered if the next of kin objects to such testing. Should the nursing home lack the ability to perform such testing expeditiously, the nursing home should request assistance from the State Department of Health.

The [healthcare attorneys](#) at Abrams Fensterman, LLP are committed to providing you with the most current and accurate information and guidance during this COVID-19 pandemic. Should you have questions, feel free to contact [Patrick Formato, Esq.](#), [Barbara Stegun Phair, Esq.](#), Frank A. Mazzagatti, Esq., [Jonathan Rogoff, Esq.](#), or any other attorney in our health law practice group.