

CLIENT ALERT: New DAL on COVID-19 Testing

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On May 11, 2020 the New York State Department of Health issued DAL #20-14 to all Nursing Home and Adult Care Facility Operators and Administrators regarding required COVID-19 testing for all nursing home and adult care facility personnel.

Executive Order (“EO”) 202.30 requires the operators and administrators of all nursing homes and adult care facilities, including all adult homes, enriched housing programs and assisted living residences, to test or make arrangements for the testing of all personnel, including all employees, contract staff, medical staff, operators and administrators, for COVID-19. Such testing must occur twice per week, pursuant to a plan developed by the facility administrator and filed with the Department of Health no later than 5:00 p.m. on Wednesday, May 13, 2020. Any positive test results shall be reported to the Department by 5:00 p.m., of the day following receipt of such test result.

Other key points include:

- A facility that arranges but does not provide testing for its personnel must maintain records demonstrating that it is in compliance with EO 202.30. Facilities must maintain records of personnel testing and results for one year. Facilities must ensure that testing, if not provided by the facility, is reasonably accessible for its personnel.
- Any personnel who test positive for COVID-19 must remain at home in isolation, in accordance with all guidance and directives of the State Department of Health and, unless inconsistent therewith those of the local health department. Pursuant to the Commissioner of Health April 29, 2020 guidance, personnel who test positive for COVID-19, but are asymptomatic are not eligible to return to work for 14 days from the date of the first positive test. Symptomatic personnel may not return to work for 14 days after the onset of symptoms provided 3 days have passed since the resolution of fever without the use of fever reducing medication and respiratory symptoms are improving.

In addition, the DAL requires that by Friday, May 15, 2020 the operator and the administrator must each provide to the Department of Health a certification of compliance with EO 202.30 and all other applicable EOs and directives from the Commissioner of Health.

The Certification of Compliance to be executed by a facility's operator and administrator are certified under penalty of law, including but not limited to Section 210.45 of the Penal Code and could subject the signer to criminal prosecution for making a false statement. Under Penal Code Section 210.45, Making a Punishable False Written Statement, "a person is guilty of making a punishable false statement when he knowingly makes a false statement, which he does not believe to be true, in a written instrument bearing a legally authorized form notice to the effect that false statements made therein are punishable." Making a punishable false written statement is a class A misdemeanor. The DAL specifically reminds administrators "that submitting a certification of compliance, when such certification is not accurate shall be a false statement to a government agency, under Penal Code 210.45, which is a criminal offense."

Any nursing home or adult care facility which does not comply with this Executive Order shall be subject to a penalty for non-compliance of \$2,000 per violation per day, as if it were a violation of section 12 of the public health law, and any subsequent violation shall be punishable as if it is a violation of section 12-b of the public health law, with a penalty of \$10,000 per violation per day.

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., or any other attorney in our health law practice group.