



Date: April 30, 2020

To: Administrators of Adult Day Care, Assisted Living, Residential Care, Nursing, and Skilled Nursing Facilities; Specialized Facilities for Individuals with Developmental Disabilities, and Veteran's Centers

From: Gary Cox, JD
Commissioner 
Oklahoma State Department of Health

Subject: **Scope and Authority of Long Term Care Task Forces**

The Department initiated long-term care task forces in each of Oklahoma's nine health districts, and with the Oklahoma and Tulsa County Health Departments. These task forces are comprised of local community health nurses, epidemiologists, infectious disease specialties, and long-term care nurse surveyors. The task forces operate under the powers and duties of the Commissioner of Health at [Title 63 O.S. 1-106\(B\)\(1\)](#) and [Chapter 521](#), Control and Treatment of Communicable Disease, of Title 310 of the Oklahoma Administrative Code . The charge to the task forces under this authority includes making investigations, inquiries and studies concerning the cause of disease; to take measures as deemed necessary by the Commissioner to control/suppress, or prevent the occurrence or spread of any communicable contagious or infectious disease; and to provide for the segregation and isolation of persons having or suspected of having any such disease.

Task force members will perform contact tracing, observe and consult on infection control practices, monitor for appropriate personal protective equipment use (PPE), monitor PPE use rates, and perform and/or assist in testing residents and staff as circumstances warrant and resources permit. The task forces will perform ongoing monitoring over the phone in all facilities with COVID exposure and periodic onsite visits as circumstances warrant. They may also visit facilities without COVID exposure to assess infection control practices. Communication channels were established to expedite sending and receiving information from and between the task force members and facilities. Facilities are commanded to cooperate with their task force in all requests for resident and employee records for the purposes of studying disease transmission and contact tracing, to make reports to the task force as requested, and to report the status of testing for all residents and staff.

Long term care facilities have the authority and a duty to act in coordination with the Department to take actions necessary to protect the health and safety of their residents, clients and participants. The authority to compel individuals and facilities to report exposure or existence of infectious disease, comply with testing, and permit review of records for contact tracing originates out of the law and rules cited. It is clear that this authority to investigate, make inquiries, and/or study the causes of disease and injury, especially disease relating to epidemics, rests within the control of the OSDH Commissioner.

Asymptomatic and pre-symptomatic transmission of the COVID-19 virus has been established as a contributing factor to introduction and community transmission of the virus in long term care facilities. Therefore, the OSDH is authorized and shall require facilities to test their employees and residents for COVID-19. This testing is coordinated through our task forces and they will contact your facility to



arrange testing. Our aim is the earliest possible identification of the presence of the virus in your facilities so that cohorting of COVID positive residents can occur, and thereby minimize the risk of transmission of the virus; and to identify and remove from the care team asymptomatic and pre-symptomatic staff. Cohorting of COVID-19 positive residents and their supporting staff is an identified best practice by the Centers for Disease Control.

If noncompliant, OSDH has the authority, under federal and state law and rules, to take multiples types of immediate actions against a long term care facility that is unwilling to address threats to the health, safety and welfare of their residents.

The Department is grateful for the cooperation of our long-term care partners as we work together to meet the challenge of responding to the COVID-19 virus. If you have questions about PPE supplies contact your Regional Medical Response System Coordinator (attachment 1). Questions about infection control practices, viral testing media or N95 fit testing resources should be directed to your regional task force. If they have not already spoken with you and provided contact information, they can be reached via the Regional Administrative Director or your Oklahoma City and Tulsa task force leads. Those are listed in attachment 2.

Attachment: 1) Regional Medical Response System Coordinators
 2) Long Term Care Regional Task Force Leads

Process for COVID-19 Testing Consent in LTC Facilities

1. Contact the facility and explain the Commissioner's command for testing, and discuss the general process and how that process can best be carried out in this specific facility.
2. Explain to the facility that testing of residents and staff will be conducted under the Commissioners authority in the Public Health Code at [Title 63 O.S. 1-106\(B\)\(1\)](#) and [Chapter 521](#), Control and Treatment of Communicable Disease, of Title 310 of the Oklahoma Administrative Code . Asymptomatic and pre-symptomatic transmission of the COVID-19 virus has been established as a contributing factor to introduction and community transmission of the virus in long term care facilities. Therefore, the OSDH is authorized and shall require facilities to test their employees and residents for COVID-19. Testing is coordinated through our task forces and they will contact facilities to arrange testing. Our aim is the earliest possible identification of the presence of the virus in facilities so that cohorting of COVID positive residents can occur, and thereby minimize the risk of transmission of the virus; and to identify and remove from the care team asymptomatic and pre-symptomatic staff. Cohorting of COVID-19 positive residents and their supporting staff is an identified best practice by the Centers for Disease Control.
3. Set dates for sample collection.
4. Advise the facility that they should alert families whether there is or is not evidence of virus transmission in the facility. Provide the draft notice that is an attachment to this guidance. Encourage them to explain that asymptomatic and pre-symptomatic transmission of the COVID-19 virus has been established as a contributing factor to introduction and community transmission of the virus in long term care facilities and therefore, the Commissioner is requiring facilities to test their employees and residents for COVID-19.
5. Identify the number of residents in the facility and staff that work in the facility.
6. Identify the number of residents that cannot produce a saliva/sputum specimen.
7. If a facility declines to allow testing see "[Guidance To Task Force In The Event A Facility, Resident Or Employee Declines COVID-19 Testing.](#)" If a facility declines to allow testing, get the name, position and telephone number of the person refusing on behalf of the facility and provide that information to the OSDH Office of General Counsel . Send this information to OSDH Deputy General Counsel, Kim Heaton, Kim.Heaton@health.ok.gov, and Assistant Deputy Commissioner for Protective Health Services, James Joslin, james@health.ok.gov.

Residents

- Ask facility if they have standing orders for providing tests and procedures for those residents unable to give verbal consent. If so, document and move forward with testing those residents.
- For residents that are able to give verbal consent, document and move forward with testing.
- If the resident is unable to give verbal consent and if the facility does not have standing orders for providing tests and procedures, then have the facility contact the family or power of attorney to obtain consent.



- If the resident or family or power of attorney declines, see "Guidance To Task Force In The Event A Facility, Resident Or Employee Declines COVID-19 Testing."

Staff

- Ask facility for a staff roster that includes name, position, and phone number.
- Arrange times for those staff that are not on duty to appear for sample collection.
- Process staff sample collections and log their samples. Ensure that you are able to identify those staff that have not submitted a sample.
- If questions arise about employees not wanting to be tested, explain that the Equal Employment Opportunity Commission's latest guidance, issued April 23, 2020 makes clear that employers can require employees submit a specimen for COVID-19 testing where it is job-related and consistent with business necessity. See https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm.
- Request the names of those employees declining to submit a specimen and compare those names to those on the staff roster who have not submitted a specimen.
- For those staff identified as not submitting specimens, see "Guidance To Task Force In The Event A Facility, Resident Or Employee Declines COVID-19 Testing."

Statement on COVID-19 Testing in Long Term Care Facilities

Under the Commissioner of Health's authority in the Public Health Code, testing for the COVID-19 virus will be conducted for all residents and staff in this facility. This authority is found in law at Title 63, Section 1-106(B)(1) and in rule at Chapter 521 of Title 310 of the Oklahoma Administrative Code, relating to the Control and Treatment of Communicable Disease.

This testing will help the facility to identify those staff and residents who may have the virus but have no outward signs of sickness. These persons can spread the virus before they become sick. The COVID-19 virus is especially hard on people age 65 and older or those with chronic lung disease, serious heart conditions, have a damaged immune system, are severely obese, have diabetes, chronic kidney disease or liver disease.

Testing is coordinated through our long term care task force nursing staff and they will contact facilities to arrange testing. Our goal is the earliest possible identification of the presence of the virus in facilities so that COVID positive residents can be grouped together for care and the facility can identify staff and procedures for this group in a separate part of building. This reduces the risk of spreading the virus to others. This testing will also aide the facility by identifying staff who have the virus but no sickness so they can be kept away from caring for residents while they recover. The early identification of those residents who have the virus but are not sick, and grouping them together for care, has been established as a best practice by the Centers for Disease Control.

Guidance To Task Force In The Event A Facility, Resident Or Employee Declines COVID-19 Testing Revised May 19, 2020

This guidance is being provided to task forces to assist them with determining the appropriate actions to take in the event employees or residents of long term care facilities refuse to be tested for COVID-19. Asymptomatic and pre-symptomatic transmission of the COVID-19 Virus has been established as a contributing factor to introduction and community transmission of the COVID-19 virus in long term care facilities. For the purpose of controlling, suppressing, or preventing the occurrence or spread of COVID-19 virus in long term care facilities, OSDH is authorized and will require long term care facilities to test their employees and residents for COVID-19 virus. In addition, the facility may, as a condition of employment, require the employee to cooperate with OSDH for testing as a condition of their continued employment. This may be allowed by the facility's own policy for vaccination and infectious disease control.

This testing will be coordinated through OSDH task forces, and they will communicate with their assigned facilities to arrange the testing of staff and residents. The goal of this testing is the earliest possible identification of the presence of the virus in long term facilities, to minimize the risk of transmission of the virus, and to identify and remove asymptomatic and pre-symptomatic staff working in the facilities.

Facility Declines/Refuses To Comply

If any long term care facilities refuse to allow their employees and residents to be tested for COVID-19, OSDH has the authority, under federal and state law and rules, to take multiples types of immediate actions against non-compliant long term care facilities that are unwilling to address threats to the health, safety and welfare of their residents. If a facility declines to allow testing, get the name, position and telephone number of the person refusing on behalf of the facility and provide that information to the OSDH Office of General Counsel . Send this information to OSDH Deputy General Counsel, Kim Heaton, Kim.Heaton@health.ok.gov, and Assistant Deputy Commissioner for Protective Health Services, James Joslin, james@health.ok.gov.

Residents Or Employees Of Long Term Care Facilities Decline/Refuse To Comply

If residents or employees of long term care facilities decline/refuse to comply with testing for COVID-19, then the following steps should be taken:

1) Employees/staff who decline/refuse to comply with directives to be tested for COVID-19:

Employees/staff of a long term care facility who decline/refuse to be tested for COVID-19 must be removed from the work schedule until such time as they consent to testing.

If a facility is noncompliant with directives of OSDH to remove from the work schedule those employees or staff who decline/refuse to be tested for COVID-19, OSDH has the authority, under federal and state law and rules, to take multiples types of immediate actions against a long term care facility that is unwilling to address threats to the health, safety and welfare of their residents.

2) Residents who decline/refuse to comply with directives to be tested for COVID-19:

If a resident declines/refuses to be tested for COVID-19, the investigator first needs to confirm the resident has the ability to make their own medical decisions, or if a third party holds this power. If a third party holds the power, then the COVID task force will have to work with the third party and facility to evaluate for testing or quarantine for 14 days. If the resident makes his/her own medical decisions, then the long term care facility and COVID task force will evaluate for quarantine of the resident for 14 days to prevent transmission of the COVID-19 virus by residents who may have been exposed and are asymptomatic or pre-symptomatic. In most instances, a formal Quarantine Order should not be necessary and a facility will respect the resident's declination and quarantine the resident in their room consistent with CDC guidelines.

For residents unable to communicate and displaying resistance to testing, sample collection will not proceed.

- a. If necessary, a Quarantine Order, signed by the Commissioner of Health, should be executed by staff of the facility, submitted to legal staff at the State Department of Health for the Commissioner's signature and filing, and immediately delivered to the facility and the resident who has declined/refused testing.
- b. After receipt of the Quarantine Order, the facility and resident who has declined/refused testing must immediately comply with the Order.
- c. Any information or evidence that the facility or the resident is not complying with the Quarantine Order should immediately be reported to the OSDH Legal Division, who will take immediate action to obtain an Emergency Order in the District Court where the long term care facility is located.
- d. An Emergency Order may order the non-compliant person into quarantine, or order the person who is non-compliant with quarantine to submit to examination.
- e. As authorized by federal and state law and rules, OSDH will take immediate action against any long term care facility that fails/refuses to cooperate with and/or enforce the quarantine of a resident in their facility as ordered by OSDH. OSDH will take immediate action against a long term care facility that is unwilling to address threats to the health, safety and welfare of their residents.