



COVID-19 and HIPAA: Disclosures to law enforcement, paramedics, other first responders and public health authorities

Does the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule allow a covered entity to share the name or other identifying information of an individual who has been infected with, or exposed to, the virus SARS-CoV-2, or the disease caused by the virus, Coronavirus Disease 2019 (COVID-19), with law enforcement, paramedics, other first responders, and public health authorities without an individual's authorization?

Yes, the HIPAA Privacy Rule permits a covered entity to disclose the protected health information (PHI) of an individual who has been infected with, or exposed to, COVID-19, with law enforcement, paramedics, other first responders, and public health authorities¹ without the individual's HIPAA authorization, in certain circumstances, including the following²:

- ***When the disclosure is needed to provide treatment.*** For example, HIPAA permits a covered skilled nursing facility to disclose PHI about an individual who has COVID-19 to emergency medical transport personnel who will provide treatment while transporting the individual to a hospital's emergency department. 45 CFR 164.502(a)(1)(ii); 45 CFR 164.506(c)(2).
- ***When such notification is required by law.*** For example, HIPAA permits a covered entity, such as a hospital, to disclose PHI about an individual who tests positive for COVID-19 in accordance with a state law requiring the reporting of confirmed or suspected cases of infectious disease to public health officials. 45 CFR 164.512(a).
- ***To notify a public health authority in order to prevent or control spread of disease.*** For example, HIPAA permits a covered entity to disclose PHI to a public health authority

¹ Under HIPAA, "public health authority" means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate. 45 CFR 164.501 (definition of "public health authority").

² The HIPAA Privacy Rule limitations only apply if the entity or individual that is disclosing protected health information meets the definition of a HIPAA covered entity or business associate. This guidance provides examples of disclosures from certain types of entities, some of which are covered by HIPAA, and others that may not be. While the entities in the examples are covered under HIPAA, the examples are not intended to imply that all public health authorities, 911 call centers, or prison doctors, for example, are covered by HIPAA and are required to comply with the HIPAA Rules.

(such as the Centers for Disease Control and Prevention (CDC), or state, tribal, local, and territorial public health departments) that is authorized by law to collect or receive PHI for the purpose of preventing or controlling disease, injury, or disability, including for public health surveillance, public health investigations, and public health interventions. 45 CFR 164.512(b)(1)(i); *see also* 45 CFR 164.501 (providing the definition of “public health authority”).

- ***When first responders may be at risk of infection.*** A covered entity may disclose PHI to a first responder who may have been exposed to COVID-19, or may otherwise be at risk of contracting or spreading COVID-19, if the covered entity is authorized by law, such as state law, to notify persons as necessary in the conduct of a public health intervention or investigation. For example, HIPAA permits a covered county health department, in accordance with a state law, to disclose PHI to a police officer or other person who may come into contact with a person who tested positive for COVID-19, for purposes of preventing or controlling the spread of COVID-19. 45 CFR 164.512(b)(1)(iv).
- ***When the disclosure of PHI to first responders is necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public.*** A covered entity may disclose PHI to prevent or lessen a serious and imminent threat to a person or the public, when such disclosure is made to someone they believe can prevent or lessen the threat, which may include the target of the threat. For example, HIPAA permits a covered entity, consistent with applicable law and standards of ethical conduct, to disclose PHI about individuals who have tested positive for COVID-19 to fire department personnel, child welfare workers, mental health crisis services personnel, or others charged with protecting the health or safety of the public if the covered entity believes in good faith that the disclosure of the information is necessary to prevent or minimize the threat of imminent exposure to such personnel in the discharge of their duties. 45 CFR 164.512(j)(1).
- ***When responding to a request for PHI by a correctional institution or law enforcement official having lawful custody of an inmate or other individual,*** if the facility or official represents that the PHI is needed for:
 - providing health care to the individual;
 - the health and safety of the individual, other inmates, officers, employees and others present at the correctional institution, or persons responsible for the transporting or transferring of inmates;
 - law enforcement on the premises of the correctional institution; or
 - the administration and maintenance of the safety, security, and good order of the correctional institution.

For example, HIPAA permits a covered entity, such as a physician, located at a prison medical facility to share an inmate’s positive COVID-19 test results with correctional officers at the facility for the health and safety of all people at the facility. 45 CFR 164.512(k)(5).

General Considerations: Except when required by law, or for treatment disclosures, a covered entity must make reasonable efforts to limit the information used or disclosed under any provision listed above to that which is the “minimum necessary” to accomplish the purpose for the disclosure. 45 CFR 164.502(b).

In some cases, more than one provision of the HIPAA Privacy Rule may apply to permit a particular use or disclosure of PHI by a covered entity. The illustrative examples below involve uses and disclosures of PHI that are permitted under 45 CFR 164.512(a), 164.512(b)(1), and/or 164.512(j)(1), depending on the circumstances.

ADDITIONALEXAMPLES:

- **Example:** A covered entity, such as a hospital, may provide a list of the names and addresses of all individuals it knows to have tested positive, or received treatment, for COVID-19 to an EMS dispatch for use on a per-call basis. The EMS dispatch (even if it is a covered entity) would be allowed to use information on the list to inform EMS personnel who are responding to any particular emergency call so that they can take extra precautions or use personal protective equipment (PPE).

Discussion: Under this example, a covered entity should not post the contents of such a list publicly, such as on a website or through distribution to the media. A covered entity under this example also should not distribute compiled lists of individuals to EMS personnel, and instead should disclose only an individual’s information on a per-call basis. Sharing the lists or disclosing the contents publicly would not ordinarily constitute the minimum necessary to accomplish the purpose of the disclosure (*i.e.*, protecting the health and safety of the first responders from infectious disease for each particular call).

- **Example:** A 911 call center may ask screening questions of all callers, for example, their temperature, or whether they have a cough or difficulty breathing, to identify potential cases of COVID-19. To the extent that the call center may be a HIPAA covered entity, the call center is permitted to inform a police officer being dispatched to the scene of the name, address, and screening results of the persons who may be encountered so that the officer can take extra precautions or use PPE to lessen the officer’s risk of exposure to COVID-19, even if the subject of the dispatch is for a non-medical situation.

Discussion: Under this example, a 911 call center that is a covered entity should only disclose the minimum amount of information that the officer needs to take appropriate precautions to minimize the risk of exposure. Depending on the circumstances, the minimum necessary PHI may include, for example, an individual’s name and the result of the screening.

Covered entities should consult other applicable laws (*e.g.*, state and local statutes and regulations) in their jurisdiction prior to using or making disclosures of individuals' PHI, as such laws may place further restrictions on disclosures that are permitted by HIPAA.

Resources

The CDC's National Institute for Occupational Safety and Health (NIOSH) has published a document that adds COVID-19 to its list of potentially life-threatening infectious diseases to which emergency response employees (EREs) may be exposed while transporting or assisting victims of emergencies, and for which the medical facilities receiving the victims of emergencies would be required by law to notify the EREs of the potential exposure for purposes of the EREs seeking necessary diagnosis or medical treatment. More information is available at https://www.cdc.gov/niosh/docs/2020-119/default.html?deliveryName=USCDC_10_4-DM24118.

Information about HIPAA Privacy and COVID-19 is available at <https://www.hhs.gov/sites/default/files/february-2020-hipaa-and-novel-coronavirus.pdf>.

Information about disclosures of PHI to law enforcement officials is available in OCR's HIPAA Guide for Law Enforcement at https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/special/emergency/final_hipaa_guide_law_enforcement.pdf.

Information about uses and disclosures of PHI for public health is available at <https://www.hhs.gov/hipaa/for-professionals/special-topics/public-health/index.html>.



Rapid Response Staffing in Long-Term Care Facilities

Updated October 30, 2020

The Michigan Department of Health and Human Services will be offering Rapid Response Staffing statewide to assist long-term care facilities who may be experiencing a staffing shortage. Long-term care facilities eligible to participate include nursing homes, assisted living centers, homes for the aged, and adult foster care homes. While staffing resources are available statewide, **please note that MDHHS cannot guarantee that every facility that meets criteria and request staffing resources will receive staffing support due to the high demand for supplemental staffing.**

Rapid Response Staffing Availability:

MDHHS intends to provide short term (120 hours or less) of consecutive staffing assistance to facilities facing staffing shortages when staff is available. Currently, staffing services will be supplied by 22nd Century Technologies, Inc. (TSCTI), ATC Healthcare, and P.I.E. Management.

- Facilities will be able to request of maximum of **5 staff total** per shift with the following restrictions:
 - Facilities will be able to request a maximum of one registered nurse or licensed practical nurse and one social worker per shift.
 - Facilities can fill remaining slots with: certified nursing assistants, resident care assistants, direct care workers, dietary aid, dietary cook, and environmental services staff, for a total of 5 staff members (including a RN and/or social worker, if selected).
- Staffing can provide up to a total of 120 hours (5 days) of staffing coverage.
- Facilities may contact multiple staffing agencies for staff; however, facilities can only receive **5 staff total** per shift from all staffing sources.

Facilities requesting staffing assistance **must demonstrate that they meet the criteria** in [Appendix A](#) by completing a [brief survey](#) within 24 hours after requesting staffing support (please do not complete the survey *before* requesting staff). Staffing resources cannot be requested via the survey. **If a facility fails to meet the criteria or fails to submit the survey within 24 hours of requesting staffing, the facility will be billed by MDHHS for the staffing costs.**

Any questions about Staffing Resources can be sent to MDHHS-LTCStaffing@michigan.gov. Please note, requests for staffing assistance cannot be made via this email address.

To Request Staffing

Step 1: Facility reviews and self-certifies they meet all of the criteria in [Appendix A](#)

Step 2: Facilities contact one of the staffing contractors:

- 22nd Century Technologies, Inc (TSCTI) at **1-800-674-8380**
- ATC Healthcare at **1-800-240-4707** or stateofmichigan@atchealthcare.com
- P.I.E. Management (William Phillips) at **313-967-7871** or skendrick@piemanagement.com

Step 3: Facilities must complete the [survey](#) within 24 hours AFTER requesting staffing resources to verify they have met the criteria. You cannot request staffing resources via this survey.

Please Note: MDHHS cannot guarantee that every facility that meets criteria and request staffing resources will receive staffing support. By requesting staffing supports, facilities agree they have met the required criteria and will complete the survey. Failure to either meet the criteria when requesting staff resources or completing the survey will result in MDHHS invoicing the facility directly for the cost of staffing supports.



Contacting Multiple Rapid Response Staffing Contractors

In some instances, facilities may need to contact multiple staffing agencies for staff; however, facilities can **only receive a total of 5 staff for 5 days from all staffing sources**. Facilities who attempt to circumvent these rules will be subject to recoupment or other consequences.

Information Facilities Will Need to Provide Staffing Contractor:

- Job title / Titles
- Total Openings
- Work location
- Shift timings
- Duration for this assignment(s)
- The facility type
- Job Description
- Start Date
- If the staffing need is longer than 5 days (MDHHS will only cover for the first 5 days)
- Any COVID patients in facility

The Requesting Facility must:

- Provide onsite supervision, at all times, while temporary staffing agency employees are working.
- Conduct orientation of temporary staffing agency employees to types of care provided and regulatory oversight requirements that are applicable to duties being assigned.
- Assess and only assign temporary staffing agency employees to duties that meet their specific qualifications and skills.
- Orient temporary staffing agency employees to patient or resident care plans as applicable to duties assigned.
- Provide appropriate PPE as needed to ensure the safety of temporary staffing agency employees.

Appendix A: Long-Term Care Facility Emergency Staffing Criteria

Criteria for Requesting Staffing Support			
Facility Type	Demonstrated Need for Staffing Assistance	Enacted Emergency Protocol for Staffing	Facility Reached Out to a Staffing Agency but No Staff Available (Facility must first reach out to staffing agency that is not 22 nd Century)
Nursing Home	<p>Emergency Clinical Staffing: 40% or more of scheduled nursing care staff (RNs, LPNs, and CNAs) have missed two shifts in a row and the absences are unrelated to a strike or labor dispute.</p> <p># of nursing staff who have missed a shift divided by the total number of nursing staff scheduled for that shift must equal 40% or higher.</p> <p>Emergency Nonclinical Staffing: 40% or more of scheduled administrative or nonclinical staff have missed two shifts in a row and the absences are unrelated to a strike or labor dispute.</p> <p>A Nursing Home that is using Emergency Nonclinical Staffing absences to qualify <u>CANNOT</u> request clinical staff for these positions.</p>	<ul style="list-style-type: none"> If the home shares ownership or operational management with 5 or more nursing homes, have requested backup support from those homes If part of a corporate structure with regional staff, have called upon those employees to provide care and supervision to residents. Have called upon staff in administration (Administrator, Director of Nursing, other department heads) to assist with providing direct care, supervision and non-ADL needs 	<p>Yes, staffing agency did not have staff available</p> <p>No, did not reach out to a staffing agency</p>

<p>Homes for the Aged</p>	<p><i>Emergency Staffing:</i> 40% or more of scheduled staff have missed two shifts in a row and the absences are unrelated to a strike or labor dispute</p> <p># of staff who have missed a shift divided by the total number of staff scheduled for that shift must equal 40% or higher.</p>	<ul style="list-style-type: none"> • If the home shares ownership or operational management with 5 or more homes, have requested backup support from those homes • If part of a corporate structure with regional staff, have called upon those employees to provide care and supervision to residents • If part of a continuing care retirement community, have requested staffing support from other areas of the CCRC operation • Enlisted members of management staff to assist with resident care and supervision where appropriate 	<p>Yes, staffing agency did not have staff available</p> <p>No, did not reach out to a staffing agency</p>
<p>Assisted Living Centers</p>	<p><i>Emergency Staffing:</i> 40% or more of scheduled staff have missed two shifts in a row and the absences are unrelated to a strike or labor dispute</p> <p># of staff who have missed a shift divided by the total number of staff scheduled for that shift must equal 40% or higher.</p>	<ul style="list-style-type: none"> • If the home shares ownership or operational management with 5 or more homes, have requested backup support from those homes • If part of a corporate structure with regional staff, have called upon those employees to provide care and supervision to residents • If part of a continuing care retirement community, have requested staffing support from other areas of the CCRC operation • Enlisted members of management staff to assist with resident care and supervision where appropriate 	<p>Yes, staffing agency did not have staff available</p> <p>No, did not reach out to a staffing agency</p>
<p>Adult Foster Care Home Licensed as Large or Congregate</p>	<p><i>Emergency Staffing:</i> 40% or more of scheduled staff have missed one shift and the absences are unrelated to a strike or labor dispute</p> <p># of staff who have missed a shift divided by the total number of staff scheduled for that shift must equal 40% or higher.</p>	<ul style="list-style-type: none"> • If the home shares ownership or operational management with 3 or more AFC homes, have requested backup support from those homes • If part of a corporate structure with regional staff, have called upon those employees to provide care and supervision to residents. • Enlisted members of management staff to assist with resident care and supervision where appropriate 	<p>Yes, staffing agency did not have staff available</p> <p>No, did not reach out to a staffing agency</p>

<p>Adult Foster Care Home Licensed as Family or Small</p>	<p><i>Emergency Staffing:</i> 40% of scheduled staff have missed one shift or there is reason to believe that staff will not be able to report for the next shift and the absences are unrelated to a strike or labor dispute</p> <p># of staff who have missed a shift divided by the total number of staff scheduled for that shift must equal 40% or higher.</p>	<ul style="list-style-type: none"> • If the home shares ownership or operational management with 3 or more AFC homes, have requested backup support from those homes. 	<p>Yes, staffing agency did not have staff available</p> <p>No, did not reach out to a staffing agency</p>
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Appendix B: Frequently Asked Questions

1. Who is eligible to receive Rapid Response Staffing Resources?

Long-term care facilities (nursing homes, assisted living center, homes for the aged, and adult foster care homes) are eligible to receive emergency staffing resources, if they have met [MDHHS criteria](#), which includes:

- Demonstrated need for staffing, with specific staffing thresholds for each facility type
- Enacted all the steps in the emergency protocol for staffing listed by facility type
- Reached out to other staffing agencies without success of obtaining additional staff

2. How do I access Emergency Staffing Resources if my facility meets all the criteria?

Once a facility has met all of the criteria, contact one of the following staffing agencies:

- 22nd Century Technologies, Inc. (TSCTI) at 800-674-8380
- ATC Healthcare at 1-800-240-4707 or stateofmichigan@atchealthcare.com
- P.I.E. Management (Stacy Kendrick) at 313-967-7871 or skendrick@piemaragement.com

Facilities also **must** submit a [survey](#) certifying they have met [criteria](#) to MDHHS no later than 24 hours after submitting a request to a staffing agency. **Failure to submit the survey or failure to meet the specified criteria will result in the LTC facility being billed for all staffing services provided by the staffing agency.**

3. By requesting staffing, does that guarantee my facility will receive staffing resources?

No, while the staffing contractors will do everything within their ability to find and assign staff to the facility, MDHHS cannot guarantee that every facility that requests staff will be able to receive staffing support. Facilities should still seek alternative options to their immediate staffing needs as MDHHS cannot guarantee staffing availability.

4. When should my facility complete the required [survey](#)?

Facilities should complete the survey within 24 hours **after** receiving staffing resources. **Staffing resources cannot be requested via the survey.** MDHHS uses the surveys to certify that a facility has met all three of the required elements in [Appendix A](#). MDHHS does not pre-certify facilities or review the survey before staffing is requested. Facilities complete the survey to demonstrate they have met all the criteria. Failure to complete the survey and/or meet required criteria will result in MDHHS invoicing the facility directly for the cost of staffing.

5. How much and what types of staffing support will be available?

Facilities should only request the number of staff needed to fill vacant positions. Facilities can request up to 5 staff members, per shift that can include one registered nurse or licensed practical nurse, and one social worker. Facilities can choose the mix of staff that best fits facility needs. In some instances, facilities may need to contact multiple staffing agencies for staff; however, facilities can only receive **5 staff total** per shift from all staffing sources. Facilities who attempt to circumvent these rules will be subject to recoupment or other consequences.

6. What if I need more than 5 staff members?

Facilities requiring more than the five allocated staff members can work with the staffing contracts or another temporary staffing agency to obtain additional staffing. However, the facility will have to pay for any staff support over the initial five covered under Rapid Response Staffing.

7. What are other options if the staffing agencies can't provide staff?

Medefis, an AMN Technology, is providing a portal to connect healthcare facilities with a network of regional and national staffing agencies to supply additional nursing professionals. There is no cost to the healthcare facility to join. Interested facilities can contact Brian Tobin at 402-315-1103 or Brian.Tobin@medefis.com.

8. How many shifts will Rapid Response Staffing cover?

Staffing contractors will provide 120 hours of staffing services.

9. What if I need staffing for longer than 120 hours?

LTC facilities that require longer term staffing than 120 hours, or who do not meet the criteria listed in [Appendix A](#) can contact the staffing contractors or another temporary staffing agency, who may have additional staffing resources available. LTC facilities will be responsible for contracting for services directly with the staffing agency. MDHHS will not pay for these services.

10. What if my facility finds another staffing contractor, will MDHHS pay for that?

No, if a facility is able to access another staffing agency then the facility *does not* meet the criteria for emergency staffing resources. MDHHS is only providing support for emergency staffing needs through 22nd Century Technologies, Inc. (TSCTI), ATC Healthcare, and P.I.E Management to facilities who have been unable to obtain staffing elsewhere.

11. If I am a skilled nursing home and 40% or more of facility non-clinical staff have missed 2 shifts, can I request clinical positions from 22nd Century?

No, a skilled nursing home that is seeking to qualify for staffing resources based on absences of their non-clinical staff **cannot** request clinical staff (RN, LPN, CNA, RCA) to fill open positions. A skilled nursing home would only be able to request non-clinical positions. Available positions that could be utilized include social worker, dietary aide, dietary cook, or environmental services staff.

12. A skilled nursing home is experiencing both staffing shortages in clinical and nonclinical positions. Do I qualify to receive more than 5 staff?

No, facilities are only able to request 5 staff members, total. If a skilled nursing home were to qualify for staffing resources based on clinical and non-clinical staff shortages, the facility is limited to being able to request 5 staff members.

13. A facility is having difficulties filling out the survey documenting that the criteria for staffing was met, who should they contact?

The facility can contact MDHHS at MDHHS-LTCStaffing@michigan.gov. **Please note, staffing requests cannot be emailed to this email address.** If a facility is unable to complete the survey within 24 hours, and contacts the inbox during that window, the facility will not be penalized for failure to submit the survey. This inbox is staffed Monday-Friday 8am-5pm.

14. What type of tasks can the staff from the staffing contractors perform?

Staffing resources will support LTC facilities based on facility and resident need, but will be prepared to assist with activities of daily living (bathing, dressing, transferring, toileting, eating); provide infection prevention assistance; and provide environmental cleaning assistance. If a facility has a specific need or request, they should discuss that with the staffing contractor.

15. Will the staffing contractors conduct licensing and background checks?

Yes, the individuals who will provide staffing support to long-term care facilities will be vetted by staffing contractors including a criminal background check and a licensure check prior to being assigned to a facility. The staffing contracts will have this information available upon facility request.

16. Will staff from staffing contractors undergo TB and COVID-19 screenings?

As part of vetting by the staffing contractors, staff do have to provide a negative TB test results. Currently, COVID-19 testing is not including as part of the vetting process. However, COVID-19 screenings are completed for staffing coming in and out of facilities.

17. Do the staff from the staffing contractors have to comply with the Emergency Order for weekly testing of long-term care facility staff?

Yes, in some situations. Rapid Response Staffing is only available for a maximum of 120 hours. If long-term care facilities are completing their routine, weekly testing of staff during the period that the staffing contractors are providing staffing support, then the staffing contractor's staff should be tested. If the staffing contractors' staff are no longer in the building when weekly testing occurs, they do not have to be tested as part of the facility.

18. A facility is experiencing a strike or labor dispute, can we request Rapid Response Staffing?

No, facilities experiencing a staffing shortage due to a strike or labor dispute do not meet criteria for Staffing Resources, as defined in [Appendix A](#). If a facility requests Staffing Resources for a labor dispute or strike, the facility may be subject to recoupment or other consequences. Facilities can independently request staffing support from temporary staffing agencies in these circumstances. The facility will be solely responsible for entering into an agreement with staffing contractor and paying for staffing resources. **MDHHS will not pay for services.**

19. If facility is experiencing a COVID-19 outbreak amongst staff and/or residents in an LTC facility can I request Emergency Staffing resources?

Yes, if the facility has met the required [MDHHS criteria](#). A COVID-19 outbreak alone does not qualify a facility for staffing resources. Additionally, as noted above, the staffing contractors cannot guarantee staff to every facility that requests support.



STATE OF MICHIGAN

DEPARTMENT OF HEALTH AND HUMAN SERVICES

LANSING

GRETCHEN WHITMER
GOVERNOR

ROBERT GORDON
DIRECTOR

MEMORANDUM

Date: October 28, 2020

To: Skilled Nursing Facilities (SNFs), Homes for the Aged (HFAs), and Adult Foster Cares (AFCs)

From: Michigan Department of Health and Human Services (MDHHS)

Subject: Implementation of Required COVID-19 Testing

Executive Summary

- Given the significant risk of COVID-19 outbreaks in long-term care facilities and the higher likelihood of severe health outcomes from COVID-19 among the elderly, it is imperative that facilities provide routine testing to identify infections quickly and contain spread.
- Michigan has also been experiencing a rise in cases in recent weeks, increasing the risk of COVID-19 spread in long-term care facilities and increasing the need for testing.
- MDHHS has issued an epidemic order requiring COVID-19 diagnostic testing in skilled nursing facilities (SNFs), homes for the aged (HFAs), and adult foster cares (AFCs) licensed to care for 13 individuals or more as follows:
 - Initial testing of all residents and staff¹;
 - Testing any resident or staff member with symptoms of COVID-19 or suspected exposure;
 - Weekly testing of all residents and staff in facilities with any positive cases among residents or staff, until 14 days after the last new positive;
 - Weekly testing of all staff in counties of risk levels A through E on the [MI Safe Start Map](#);
 - Testing of all new or returning residents during intake unless tested in the 72 hours prior to intake;
 - Testing of all newly hired staff on their start date or in the 72 hours prior to start date.
- Asymptomatic individuals who have recovered from COVID-19 in the past 3 months are exempted from this testing.

¹ Facilities may utilize baseline or initial testing that they have already conducted previously during the pandemic to fulfill this requirement.

- SNFs must begin this testing immediately, and HFAs must begin as soon as practicable and not later than November 18.
- AFCs serving 13 individuals or more must begin testing as soon as practicable and no later than November 24 for testing individuals with symptoms or exposure, weekly testing in facilities with positives, and testing of new residents or staff. AFCs must begin initial testing of all residents and staff, as well as weekly staff testing, by December 2.
 - However, AFCs must test any resident leaving the facility to spend the Thanksgiving holiday in a residential home or for an overnight stay in the community prior to that resident's departure and upon return to the facility.
- SNFs must comply with both these requirements and requirements from the federal Centers for Medicare and Medicaid Services (CMS). Interactions between these requirements are detailed in this memorandum.
- Facilities should note that an October 21 MDHHS Epidemic Order "Requirements in residential care facilities" also requires testing of visitors to residential care facilities that have an MDHHS-required resident and staff testing regimen; [see visitation order for specific requirements](#). Visitor testing is required in SNFs effective October 26, in HFAs effective November 18, and in AFCs licensed to serve 13 or more individuals effective November 24.
- To help implement these testing requirements, MDHHS will be directly shipping antigen testing supplies to SNFs, HFAs, and AFCs affected by this order.
 - MDHHS is also establishing a system for refilling antigen supplies and shipping a small set of supplies for confirmatory PCR tests to each facility, as described below.
 - Facilities have other options for conducting testing as well, such as conducting their own testing or contracting with a medical provider.
- MDHHS is offering to reimburse testing expenses not covered by insurance.

Testing Basics

When used in this memorandum and in MDHHS testing guidance generally, "testing" refers to diagnostic testing, which identifies current COVID-19 infections. There are two primary types:

1. Molecular tests that detect the virus's genetic material (including tests referred to as "PCR tests," after the type of technology used, a polymerase chain reaction). These tests tend to have the highest sensitivity and specificity, meaning that they tend to be accurate and usually do not need to be repeated.
2. Antigen tests that detect proteins on the surface of the virus. Antigen tests offer rapid availability of results and often point of care testing but have lower sensitivity than molecular tests. As such, it is important to follow clinical protocols for using antigen tests and, where needed, confirming results.

MDHHS will be shipping antigen tests to all facilities affected by this order. [MDHHS guidance on antigen testing](#) provides details on protocols and requirements to use these tests. Facilities should review this guidance very carefully.

“Testing” does not include tests that are non-diagnostic, including serology, antibody, or other blood tests. These tests identify antibodies in the blood, which may tell if a person had a past infection of COVID-19.

Options for Conducting COVID-19 Testing

SNFs, HFAs, and AFCs have several options for conducting required testing.

1) State assistance: antigen testing

To help implement these testing requirements, MDHHS will be directly shipping antigen testing supplies to SNFs, HFAs, and AFCs affected by this order.

The federal government has provided antigen testing supplies to some SNFs and HFAs already, based on which communities have substantial COVID-19 spread and which facilities have a CLIA waiver. These supplies can be used to complete required testing. MDHHS is able to provide or refill some types of antigen supplies, specifically Becton Dickinson (BD) and Abbott BinaxNOW.

For SNFs that received BD machines and test kits, MDHHS plans to ship additional BD testing supplies to the facility.

For all other SNFs, HFAs, and AFCs², MDHHS plans to ship Abbott BinaxNOW testing supplies to the facility.

[MDHHS guidance on antigen testing](#) provides details on protocols and requirements to use these tests, including:

- Who can order the test
- Who can conduct the test
- Training for staff to conduct the test
- Protocols for using the test
- When a PCR confirmatory test is needed, and
- How to report results

Facilities should review [MDHHS guidance on antigen testing](#) very carefully. It includes additional steps that a facility must take to use the testing supplies provided, including obtaining a CLIA waiver. Facilities may not use the antigen testing supplies provided before completing these steps.

² Including SNFs that received Quidel antigen tests, SNFs and HFAs that received Abbott BinaxNOW tests, and SNFs, HFAs, and AFCs that did not receive any antigen tests from the federal government.

Note that MDHHS has already shipped BinaxNOW test supplies to some SNFs that did not originally receive any antigen tests from the federal government, in order to facilitate compliance with visitation testing requirements. These facilities will not be receiving additional kits.

To receive a CLIA waiver, facilities should complete the [CLIA waiver application](#) and submit it to LARA-BCHS-DHHS-COW-TESTING-APPLICATION@michigan.gov. No specific credentials are required to obtain a CLIA waiver. The site performing the testing must follow the guidelines specified under the waiver.

In some cases, antigen test results should be confirmed by a PCR test; MDHHS antigen testing guidance provides [flowcharts showing when test results should be confirmed](#) with PCR for patients [with symptoms](#) or [without symptoms](#). MDHHS will be shipping each facility affected by this order a small set of PCR testing supplies to keep on hand and use when antigen tests need to be confirmed. Directions and training on using these kits will be provided with them; these supplies can be used by non-medical staff who have completed training.

Facilities seeking refills of antigen supplies, PCR supplies, or other types of testing assistance should complete [the state's testing assistance request template](#).

When appropriate and feasible, facilities may consider utilizing [community-based test sites](#) as another resource for PCR confirmatory tests.

2) Creating a facility-managed testing program

As an alternative to using state-provided antigen tests, facilities may choose to develop their own testing programs to fulfill testing requirements. This could entail using existing facility medical staff, or contracting with an external health care provider, to collect patient samples and contracting with a laboratory to process samples.

MDHHS maintains a [list of laboratories](#) with COVID-19 testing capabilities and the capacity to accept samples from new medical providers or congregate care facilities. Facilities can reach out to any of these laboratories using the contact information provided. Note that laboratories typically provide the supplies needed to collect and transport a patient sample back to the laboratory for processing, so contracting with a laboratory should cover both sample collection supplies and processing of the sample.

In this scenario, many testing costs can be billed to insurance. MDHHS provides reimbursement for testing costs not covered by insurance.

Reimbursement Basics

Testing of patients with Medicaid and Medicare Part B is fully covered when in line with the state's public health recommendations. However, testing of patients with commercial insurance is often only covered for symptomatic individuals, close contacts of positive cases, or cases where a physician has deemed testing medically necessary.

In order to address this gap, MDHHS has developed a process to reimburse for costs not otherwise covered by insurance or the state. Reimbursement will be processed through SIGMA, the state's accounting system. Facilities must be registered in SIGMA to receive reimbursement and may [access SIGMA here](#) or [register a new account here](#).

For facilities using state-provided antigen kits, MDHHS will reimburse for the specimen collection done by the facility for staff and residents regardless of payor source at \$22.07 a test.

SNFs: Please see [MDHHS' Financial Guidance for SNFs](#) for reimbursement guidelines. To seek reimbursement, when applicable, SNFs should complete the [Long Term Care COVID-19 testing reimbursement form](#) and submit it to MDHHS at MDHHS-SNF-Testing-Financial@michigan.gov.

HFAs and AFCs: Please see [MDHHS' Financial Guidance for HFAs & AFCs](#) for reimbursement guidelines. To seek reimbursement, when applicable, HFAs and AFCs should complete the [Long Term Care COVID-19 testing reimbursement form](#) and submit it to MDHHS at MDHHS-HFA-COVID-PAYMENT@michigan.gov.

Additional Testing Requirements for Skilled Nursing Facilities

Federal CMS has also issued testing requirements for nursing homes. Nursing homes must comply with both state and federal requirements. In practice, this means that:

- SNFs in counties of risk levels A through E on the [MI Safe Start Map](#) must test all staff weekly under the MDHHS order, even if federal requirements would only require monthly testing in the county where the facility is located.
- SNFs in counties with percent positivity over 10 percent, as indicated in [CMS data](#), must test staff twice per week in order to meet federal requirements. These nursing homes will meet and surpass the minimum level of testing required by the state.
- SNFs in counties with the risk level of low on the [MI Safe Start Map](#) do not need to conduct weekly staff testing under the state order. SNFs in these counties should conduct staff testing in accordance with federal requirements only.

Refusals of Testing

Facilities must receive patient consent, or consent from a resident's medical power of attorney, for all testing conducted and residents must have the option to refuse testing if they choose. Facilities should develop a procedure for addressing residents who decline or are unable to be tested, as well as a procedure for how staff who refuse a test without medical justification and documentation will not have contact with residents. If a resident's medical power of attorney consents to the testing, but the resident refuses to have a sample collected, facilities should treat this as a declination to be tested and follow the procedure developed.

[MDHHS guidance](#) provides additional information on testing refusals in SNFs. MDHHS has also issued guidance on "[COVID-19 Testing Guidelines for Individuals who may be Sensitive to Testing or have Decision-Making Challenges](#)."

Questions

Please see the MDHHS [FAQ for SNFs](#) for responses to many questions. This FAQ contains information that may be helpful to HFAs and AFCs as well.

Remaining questions can be directed to MDHHS-MSA-COVID19@michigan.gov.

Behavioral Health & Developmental Disabilities Administration

Quality Management & Planning Division

NOTE: OHSS is not available for individuals residing in licensed settings. Payment of OHSS may not be made directly or indirectly to responsible relatives (i.e., spouses or parents of minor children) or a legal guardian.

To be eligible for OHSS, an individual must:

- be Medicaid eligible;
- be enrolled in one of the following waiver programs: CWP, HSW, or SEDW;
- be living in a community-based setting (not in a hospital, Intermediate Care Facility for Individuals with Intellectual Disabilities or ICF/IID, nursing facility, licensed foster care, correctional facility or child caring institution); and
- require supervision overnight to ensure and maintain the health and safety of an individual living independently.

The need for OHSS must be reviewed and established through the person-centered planning process with the beneficiary's specific needs identified that outline health and safety concerns and a history of behavior or action that have placed the beneficiary at risk of obtaining or maintaining their independent living arrangement. Each provider of OHSS services will ensure the provision of, or provide as its minimum responsibility, overnight supervision activities appropriate to the beneficiary's needs to achieve or maintain independent living, health, welfare, and safety.

Coverage

For purposes of this service, "overnight" includes the hours between 8:00 p.m. and 8:00 a.m. The purpose of OHSS is to enhance individual safety and independence with a provider supervising the health and welfare of a beneficiary overnight. OHSS is defined as the need for a provider to be present to oversee and be ready to respond to a beneficiary's unscheduled needs if they occur during the overnight hours when they are typically asleep.

OHSS services are generally furnished on a regularly scheduled basis, for multiple days per week, or as specified in the Individual Plan of Service (IPOS), encompassing both health and safety support services needed for the individual to reside successfully in their home and community-based settings.

OHSS may be appropriate when:

- Service is necessary to safeguard against injury, hazard, or accident.
- A beneficiary has an evaluation that includes medical necessity that determines the need for OHSS and will allow an individual to remain at home safely after all other available preventive interventions/appropriate assistive technology, environmental modifications and specialty supplies and equipment (i.e., Lifeline, Personal Emergency Response System [PERS], electronic devices, etc.) have been

Behavioral Health & Developmental Disabilities Administration

Quality Management & Planning Division

- undertaken to ensure the least intrusive and cost-effective intervention is implemented.
- A beneficiary requires supervision to prevent or mitigate mental health or disability related behaviors that may impact the beneficiary's overall health and welfare during the night.
- A beneficiary is non-self-directing (i.e., struggles to initiate and problem solve issues that may intermittently come up during the night or when they are typically asleep), confused or whose physical functioning overnight is such that they are unable to respond appropriately in a non-medical emergency (i.e., fire, weather-related events, utility failure, etc.).
- A beneficiary has a mental health condition that causes inconsistency in, or an inability to regulate, sleep patterns.
- A beneficiary has a documented history of a behavior or action that supports the need to have a provider on-site for supported assistance with incidental care activities that may be needed during the night that cannot be pre-planned or scheduled.
- A beneficiary requires overnight supervision in order to maintain living arrangements in the most integrated setting appropriate for their needs.

The following exceptions apply for OHSS:

- OHSS does not include friendly visiting or other social activities.
- OHSS is not available when the need is caused by a medical condition and the form of supervision required is medical in nature (i.e., nursing facility level of care, wound care, sleep apnea, overnight suctioning, end-stage hospice care, etc.) or in anticipation of a medical emergency (i.e., uncontrolled seizures, serious impairment to bodily functions, etc.).
- OHSS is not intended to supplant other medical or crisis emergency services to address acute injury or illness that poses an immediate risk to a person's life.
- OHSS is not available to prevent, address, treat, or control significantly challenging anti-social or severely aggressive individualized behavior.
- OHSS is not available for an individual whom is anxious about being alone at night without a mental health or disability related behavior(s) that indicates a medical need for overnight supports.
- OHSS is not intended to compensate or supplant services for the relief of the primary caregiver or legal guardian living in the same home or to replace a parent's obligations and parental rights of minor children living in a family home
- OHSS is not an alternative to inpatient psychiatric treatment or other appropriate levels of care to meet the beneficiary's needs and is not available to prevent potential suicide or other self-harm behaviors.

Coordination of Services and Care

The service normally involves the co-provision of several services through a provider in order to achieve the purpose of the service. OHSS services typically fall into this category of “round-the-clock” by the nature and institutional level of care required for HCBS Waiver participants. OHSS is intended to supplement other HCBS (i.e., Community Living Supports [CLS], respite, etc.) that are provided to the beneficiary as

part of a comprehensive array of specialized waiver or developmental disabilities services (i.e., supports coordination, peer-delivered, etc.).

If a beneficiary is receiving CLS or respite supports and also demonstrates the need for OHSS, the IPOS must document coordination of services to ensure the scope, nature of supervision and/or provider differ from the other community support services to prevent issues of duplicative services. OHSS is complementary of the other habilitative services but typically does not comprise the entirety of the supports a beneficiary may need to obtain or maintain their independence in their community. OHSS services are enhanced services that are in addition to or concurrent with other waiver services, as outlined in the IPOS, and allow for the provision of supervision to ensure the health and safety of an individual overnight.

Provider Services

Providers have the responsibility for the health, welfare, and safety of the beneficiary overnight and must have the ability to intervene on behalf of the beneficiary. This assistance may take the form of observation and minor redirection of the beneficiary to perform tasks that will enable the beneficiary to maintain their overnight health and sleep safety.

Providers may perform minor redirection and/or prompting that are incidental to the care and supervision of the beneficiary over the course of the night such as:

- The ability to intervene on behalf of the beneficiary supervision of overnight activities and the responsibility for the health, welfare, and safety of the beneficiary.
- Provide the level of supervision needed to ensure a beneficiary’s safety along with the actions required if a beneficiary’s health or welfare are at risk.
- Safeguard the individualized supports needed overnight appropriate to the beneficiary's needs.
- Common issues, which include fire and evacuation ability, ability to respond independently to health needs during the night, and safety awareness.



BHIF

Behavioral Health Independent Facilitation

What is Behavioral Health Independent Facilitation?

BHIF is a program based on "person-centered planning." It uses an impartial, third-party mediator to guide the planning process in collaboration with an individual receiving behavioral health services. BHIF is a creative, adaptable process that honors the individual's preferences, choices, and abilities.

The independent facilitator actively explores both the full range of resources immediately available to the individual and resources that are or may be made available in the broader community.

What is Independent Facilitation?

An Independent Facilitator is someone chosen by the individual to serve as their guide throughout the process of planning for behavioral services and support. The facilitator is not part of any system that provides health services, and therefore has no financial interest in the outcome of the process.

An Independent Facilitator:

- Ensures fewer disruptions, conflicts, and crises during the planning process
- Shares the responsibility of resource allocation and decision-making with unbiased information on available services, community resources, and options.
- Helps build, repair, and maintain trust in relationships



**24-hour Crisis Line:
(800) 284-8288**

Joni Bibler
jbibler@sedrs.org
Authorization code H0032



What is SEDRS?

Southeastern Dispute Resolution Services (SEDRS) is a non-profit organization providing a wide range of mediation services, including **General Civil Mediation, Peer to Peer mediation, Elder Care mediation, Restorative Conferencing, Peace Circles, Non-Verbal Communication, and Non Violent Crisis Intervention.**

SEDRS also offers dynamic, interactive **training programs for mediators.** Learn practical skills, and employ immediate, hands-on experience with SEDRS training while applying the principles of successful mediation.

For more information
on training or services,
visit
www.SEDRS.org

Two Factor Authentication (2FA)

The below will show users how to set up their account for two factor authentication (2FA).

Users using authentication app:

1. Install Microsoft Authenticator application from your phone's application store. This application is free to download and use.



2. Once the app is on your phone, go to the LEO login screen and enter your user ID and password.
3. You will receive the following screen after entering your password with instructions for how to set-up your phone.

Google Authenticator

⚠ This system requires 2-factor authentication to login. Please follow the below instructions to continue.

How it works

By enabling 2-factor authentication, your account will be protected with both your password and your phone. Each time you login from a different computer or after a period of 4 hours, you will be prompted to enter a verification code provided via the Authenticator App which will need to be entered before accessing the system.

Set up Authenticator

- Download the Authenticator App
 - If you have an **Android** device, you can get the app from the [Play Store](#) , or
 - If you have an **iPhone**, you can get the app from the [App Store](#)
- In the App select **Set up account**
- Choose **Scan barcode**
- Using your phone's camera, point to the below **QR code** in order to register the 2-factor code to the App

Having trouble scanning the below code?

If you are unable to scan the below code for any reason, click the below **Unable to scan?** link to manually enter the code into the Authenticator App.

- Scan the barcode using the authenticator app and your camera's phone. Click next.



- You will be prompted to enter a code (token) to authenticate.
- Enter the 6-digit code that appears on the Authenticator app.

⚠ This system requires 2-factor authentication to login. Please follow the below instructions to continue.

Finalize Authenticator Setup
 Enter the 6-digit code you see in the app and click 'Authenticate' to complete the setup.

Code:

- Click Authenticate and you will receive the following confirmation screen. Click Continue.
- You will now be logged into LEO. When you login to LEO in the future (every 4 hours after initial authentication), you'll be asked to enter a 6-digit code from the Authenticator app after you enter your LEO password. Type the code when prompted to complete your login. This will happen every 4 hours for logging into LEO.


Users using authentication (physical) token:

- Display the LEO login screen and enter your user ID and password.
- Enter the 6-digit code that appears on the authentication token when the power button is pressed.

Token:



LEO screen:

 **This system requires 2-factor authentication to login. Please follow the below instructions to continue.**

Finalize Authenticator Setup

Enter the 6-digit code you see in the app and click 'Authenticate' to complete the setup.

Code:

3. Click Authenticate.
4. You will now be logged into LEO. When you login to LEO in the future (every 4 hours after initial authentication), you'll be asked to enter a 6-digit code from the authentication token after you enter your LEO password. Type the code when prompted to complete your login.