

59AER20-6 Hospital Screening Requirements for Long-Term Care Facility Residents.

(1) Applicability. The requirements of this emergency rule apply to all hospitals licensed under Chapter 395, F.S.

(2) Definitions.

(a) “Long-term care facility” is defined, for purposes of this rule, as any of the following facilities:

1. Nursing Homes, as provided under Chapter 400, F.S.;

2. Group Home Facilities, as provided under Chapter 393, F.S.;

3. Intermediate Care Facilities for the Developmentally Disabled, as provided under Chapter 400, F.S.; and

4. Assisted Living Facilities, as provided under Chapter 429, F.S.

(b) “Long-term care facility resident” is defined, for the purposes of this rule, as any individual in Florida that is considered to be a resident, client, or patient of a long-term care facility or who will imminently become a resident, client, or patient of a long-term care facility upon discharge from a hospital licensed under chapter 395.

(3) Discharge of Long-Term Care Facility Residents from Hospitals.

(a) Every hospital must test any long-term care facility resident whose COVID-19 status is unknown using a RT-PCR molecular assay laboratory test that has been given Emergency Use Authorization from the Food and Drug Administration (“FDA”) for the detection of SARS-CoV-2 (COVID-19) RNA prior to discharging the individual to any long-term care facility.

(b) Hospitals may discharge a long-term care facility resident who is awaiting test results for COVID-19 if the long-term care facility resident has never tested positive for nor been suspected of having COVID-19, as long as the hospital confirms that the long-term care facility is able to isolate the resident while the hospital’s test results are pending and the hospital confirms that the long-term care facility is able to follow Centers for Disease Control and Prevention (“CDC”) infection prevention and control precautions for a person with unknown COVID-19 status.

(c) A long-term care facility resident that has tested positive for COVID-19 or is symptomatic must be isolated by the hospital pursuant to the hospital’s isolation protocols. A hospital is prohibited from discharging any long-term care facility resident that has tested positive for COVID-19 or is exhibiting symptoms consistent with COVID-19 to any long-term care facility until the long-term care facility resident has been cleared for discharge using either a test-based strategy or a symptom-based strategy, unless the receiving facility has a dedicated wing, unit, or building with dedicated staff to accept the COVID-19 positive resident.

1. Symptom-based strategy: under the symptom-based strategy the long-term care facility resident must meet the following criteria:

a. At least 3 days (72 hours) have passed since resolution of fever without the use of fever-reducing medications;

and

b. Improvement in respiratory symptoms; and

c. At least 10 days have passed since symptoms first appeared.

2. Test-based strategy: under the test-based strategy, the long-term care facility resident must have:

a. Resolution of fever without the use of fever-reducing medications;

b. Improvement in respiratory symptoms; and

c. Two consecutive negative test results separated by 24 hours. The first by an FDA Emergency Use Authorized COVID-19 molecular assay RT-PCR test and the second by either an FDA Emergency Use Authorized COVID-19 molecular assay RT-PCR test or an FDA Emergency Use Authorized COVID-19 antigen test.

(4) This rule supersedes emergency rule 59AER20-1.

Rulemaking authority 408.819, 408.821(4), FS Law Implemented 408.819, 408.821(4) FS

AGENCY FOR HEALTH CARE ADMINISTRATION

RULE TITLE:

Hospital Screening Requirements for Long-Term Care Facility Residents

RULE NO:

59AER20-6

STATEMENT OF FACTS AND SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE:

The Novel Coronavirus Disease 2019 (COVID-19) is a severe respiratory illness that can spread among humans through respiratory transmission. According to the Centers for Disease Control and Prevention (CDC), people at risk for serious illness from COVID-19 include older adults and people with serious chronic medical conditions. In late 2019, a new and significant outbreak of COVID-19 emerged in China and the World Health Organization declared COVID-19 a Public Health Emergency of International Concern. The CDC also confirmed instances of community spread of COVID-19 in the United States and has issued extensive written guidance to help control the spread of COVID-19. According to the CDC, at the time of this filing, the United States has over 3,300,000 total cases and over 135,000 total deaths.¹ Older adults are at a higher risk of developing serious complications from COVID-19.² According to the United States Census Bureau, Florida has the largest percentage of residents age 65 and older in the nation. As of the date of this filing, there have been over 291,000 total confirmed cases in Florida as a result of COVID-19 and over 4,400 deaths. There are positive cases in all Florida counties.

On March 1, 2020, Governor Ron DeSantis declared a Public Health Emergency exists in the State of Florida as a result of COVID-19 pursuant to Executive Order number 20-51. On March 7, 2020, the State Surgeon General and State Health Officer declared a Public Health Emergency in the State of Florida as a result of COVID-19. On March 9, 2020, Florida Governor Ron DeSantis declared a state of emergency in Florida.

¹ <http://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>

² <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>

Elders, older adults, and other residents of long-term care facilities are presenting without COVID-19 symptoms and are being treated by hospitals for various non-COVID-19 reasons. However, after being discharged from the hospital to their long-term care facility residences, the individual develops COVID-19 symptoms and spreads the virus to other residents and staff in the facility where previously there were no positive facility cases. Due to the congregate nature of long-term care facilities, the increased risk of transmission of COVID-19 is high. The highly transmissible nature of COVID-19 combined with the congregate nature of the long-term care facility settings and the close and personal contact that many long-term care facility workers have with the patients puts both residents and staff at a high risk of infection.

Medical research shows the highly contagious COVID-19 virus can manifest as asymptomatic in positive individuals and the live coronavirus can shed at high concentrations before symptomatic development resulting in spread of the infection. Ensuring hospitals test all long-term care facility residents before discharge to a long-term care facility is essential to protecting the health, safety and welfare of vulnerable residents who are at the highest risk of serious illness or death from the virus.

This emergency rule establishes criteria based on updated Centers for Disease Control and Prevention (“CDC”) guidelines for discharging long-term care facility residents from hospitals. The rule also implements a symptom-based approach or a test-based approach to confirm long-term care residents are negative for COVID-19 before they are discharged from the hospital to any long-term care facility after testing positive for COVID-19.

Prompt implementation of this rule is necessary to ensure the health, safety and welfare of residents and staff in Florida’s nursing homes, group home facilities, intermediate care facilities, and assisted living facilities.

STATEMENT OF REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES:

The procedure used to adopt this emergency rule is fair as the State of Florida is under a declaration of emergency due to the outbreak of COVID-19. This emergency rule is necessary and fair to ensure the health, safety, and welfare of the facility residents, and provides at least the procedural protection given by other statutes, the State Constitution, or

the United States Constitution; and takes only that action necessary to protect the public interest under the emergency procedure.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Kimberly Stewart, Agency for Health Care Administration, Division of Health Quality Assurance, Bureau of Health Facility Regulation, 2727 Mahan Drive, MS# 28A, Tallahassee, FL 32308, by phone at (850) 412-3492, or email at Kimberly.Stewart@ahca.myflorida.com.