

CLIENT ALERT

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MICHIGAN'S NEW COVID-19 REQUIREMENTS FOR LONG-TERM CARE FACILITIES

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On April 15, 2020, Michigan Governor Gretchen Whitmer issued a new Executive Order, No. 2020-50 (the "E.O."), to protect residents and staff of long-term care facilities and to ensure continued access of care. This E.O. applies to nursing homes, homes for the aged, adult foster care facilities, or assisted living facilities. The requirements of the E.O. shall remain in effect until at least May 13, 2020 (the "Emergency Period").

ADMISSION/READMISSION REQUIREMENTS

Long-term care facilities are not permitted to prohibit the admission or readmission of a resident based on COVID-19 testing requirements, unless doing so is consistent with guidance issued by the Michigan Department of Health and Human Services ("MDHHS").¹

When a resident, who had temporary housing outside of the long-term care facility, seeks readmission, the long-term care facility must comply with the following:

1. The long-term care facility must not condition readmission on forfeiture of any right the resident had before the Emergency Period when a resident was hospitalized or on therapeutic leave.
2. If the long-term care facility can meet the medical needs of the resident, has the capacity, and has no other statutory grounds to refuse admission, the long-term care facility must readmit the resident. The Statutory grounds are:
 - a. Medical reasons;
 - b. The patient's welfare; and
 - c. The welfare of other patients or employees;
3. The long-term care facility must comply with guidance issued by MDHHS on returning residents, which include without limitation screening patients for COVID-19 symptoms (e.g., fever, atypical cough, atypical shortness of breath), checking the residents' temperature, and, if necessary, isolating those patients that are symptomatic.

Long-term care facilities with a census below 80% are required to create a dedicated unit, either within the facility or, for long-term care facilities with multiple facilities, designating a dedicated facility, for the care of COVID-19 positive residents. The dedicated unit must have sufficient PPE for staff to care for the patients.

When a COVID-19 positive patient is being discharged from a hospital to a long-term care facility, the hospital must first attempt to discharge the patient to a long-term care facility with a dedicated unit, if there is availability. If there is capacity, the long-term care facility with the dedicated unit must accept the patient. When that is not possible, the patient should be discharged to a regional hub, which is a nursing home designated by MDHHS as dedicated to the temporary and exclusive treatment of COVID-19 infected patients.

If a regional hub is not available, the hospital will transfer the resident to an "alternate care facility," which is a facility designated to provide relief to hospitals exceeding their patient capacity. These alternate facilities are required to accept the resident if capacity allows. These alternate facilities should transfer the resident to an appropriate long-term care facility as soon as capacity exists.

PROTECTIONS FOR RESIDENTS AND EMPLOYEES

While a resident is admitted to a long-term care facility, the facility must adhere to the following guidelines to protect employees and residents:

1. Employees who test positive, or are symptomatic for COVID-19, are not permitted to work, and long-term care facilities are not permitted to discharge, discipline, or otherwise retaliate against those employees for staying home.
2. Cancel all communal dining and internal and external activities during the Emergency Period.
3. Ensure all CDC guidelines for cleaning and disinfecting the facility are complied with.²
4. To the extent possible, provide employees interacting with residents with PPE and hand sanitizer.
5. Inform employees when an affected resident is in the facility no later than 12 hours after identification.
6. Keep accurate and current information about the PPE available, including quantity and type, which must be reported upon MDHHS's request.
7. Report all positive or presumed positive cases of COVID-19 to MDHHS as soon as possible, but no later than 24 hours.³

DISCHARGES AND TRANSFERS OF COVID-19 PATIENTS FROM LONG-TERM CARE FACILITIES

Long-term care facilities are prohibited from evicting or involuntarily discharging residents for non-payment or to otherwise deny access to a resident, except as described in the E.O. Once a resident has been identified as having COVID-19, the long-term care facility must first determine whether the patient is stable or requires hospitalization. Some of the factors to assess for hospitalization include without limitation:

1. Trouble breathing;
2. Persistent pain or pressure in the chest;
3. New confusion or inability to arouse; or
4. Bluish lips or face.

If a patient does not require hospitalization, long-term care facilities must determine whether to transfer a patient. If there is a dedicated unit, the long-term care facility must transfer the resident to that unit. If the long-term care facility does not have a dedicated unit, the resident should be transferred

¹ https://www.michigan.gov/documents/coronavirus/LTC_Guidance_to_Protect_Residents_Final_4-10_686874_7.pdf

² <https://www.cdc.gov/coronavirus/2019-ncov/hcp/long-term-care.html>

³ https://www.michigan.gov/documents/coronavirus/MDHHS_PUI_Form_Fillable_v04.09.2020_686599_7.pdf

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to a regional hub, if one is available and has capacity. If not, the long-term care facility should attempt to transfer the patient to a hospital, or as a last resort to an alternate facility. All transfers should include the patient's advance directives and notifications to the resident's representative. Transfers made under these guidelines are considered to be for the safety of the residents and facility employees.

Dickinson Wright health care attorneys can assist long-term care facilities with ensuring they comply with the requirements of the Executive Order while providing care and treatment to their residents.

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