



RON DESANTIS
GOVERNOR

SHEVAUN L. HARRIS
ACTING SECRETARY

November 2, 2020

Mr. Ernest L. Reddick, Program Administrator
Florida Administrative Code and Register Section
The Capital, Room #701
500 South Bronough Street
Tallahassee, FL 32399-0250

Re: Emergency Rule 59AER20-11, Hospital Screening Requirements for Long-Term Care Facility Residents

Dear Mr. Reddick:

Enclosed is the certification package for the above-referenced emergency rule. The certification package includes:

- Certification of Emergency Rule
- Emergency Rule 59AER20-11
- Designation of Rule The Violation of Which is a Minor Violation Certification
- Document Outlining Statements of Facts, Reasons For Finding An Immediate Danger To The Public Health, Safety Or Welfare, and Reason For Concluding That The Procedure Is Fair Under The Circumstances

If you have questions or require additional information regarding this filing please contact Kimberly Stewart at (850) 412-3492.

Sincerely,

Molly McKinstry, Deputy Secretary
Division of Health Quality Assurance

Attachments



CERTIFICATION OF AGENCY FOR HEALTH CARE ADMINISTRATION
EMERGENCY RULE FILED WITH THE
DEPARTMENT OF STATE

I hereby certify that an immediate danger to the public health, safety or welfare requires emergency action and that the attached rule is necessitated by the immediate danger. I further certify that the procedures used in the promulgation of this emergency rule were fair under the circumstances and that the rule otherwise complies with Section 120.54(4), F.S. The adoption of this rule was authorized by the head of the agency and this rule is hereby adopted upon its filing with the Department of State.

Rule No. 59AER20-11

Under the provision of Section 120.54(4)(d), F.S., this rule takes effect upon filing unless a later time and date less than 20 days from filing, is set out below:

Effective Date: November 3, 2020

(month) (day) (year)



Signature, Person Authorized to Certify Rules

ACTING GENERAL COUNSEL

Title

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Number of Pages Certified

59AER20-11 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.;

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

(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) Every hospital must test any long-term care facility resident whose COVID-19 status is unknown using a nucleic acid amplification 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) no more than 48 hours prior to discharging the individual to any long-term care facility. 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.

(4) 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, unless the receiving facility has a dedicated wing, unit, or building with dedicated staff to accept the COVID-19 positive resident. The long-term care facility resident must meet the following criteria for symptom-based strategy prior to discharge:

(a) At least 24 hours have passed since resolution of fever without the use of fever-reducing medications; and

(b) Improvement in respiratory symptoms; and

(c) The minimum number of days set forth below have passed since symptoms first appeared:

1. At least 10 days have passed since symptoms first appeared, unless the patient has severe or critical illness or is severely immunocompromised, or

2. At least 20 days have passed since symptoms first appeared in patients with severe or critical illness or who are severely immunocompromised.

(d) For persons who never developed symptoms, the date of first positive FDA Emergency Use Authorized COVID-19 diagnostic laboratory test should be used in place of the date of symptom onset.

(5) Test-based strategy: a test-based strategy is only required to discontinue isolation and discharge earlier than would occur with a symptom-based strategy. Hospitals are not required to use the test-based strategy if the symptom-based strategy has been met. 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 nucleic acid amplification laboratory test, and the second by either an FDA Emergency Use Authorized COVID-19 nucleic acid amplification laboratory test or an FDA Emergency Use Authorized COVID-19 antigen test.

(6) This rule supersedes emergency rule 59AER20-8.

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

EFFECTIVE DATE: November 3, 2020

DESIGNATION OF RULE THE VIOLATION OF WHICH IS A MINOR VIOLATION

CERTIFICATION

Pursuant to Section 120.695(2)(c)3, Florida Statutes, I certify as agency head, as defined by section 20.05(1)(b), Florida Statutes, that:

All rules covered by this certification are not rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.

The following parts of the rules covered by this certification have been designated as rules the violation of which would be a minor violation pursuant to Section 120.695, F.S.:

Rule No(s).

Rules covered by this certification:

Rule No.: 59AER20-11



Signature of Agency Head

Acting Secretary, Agency for Health Care Administration

Title

AGENCY FOR HEALTH CARE ADMINISTRATION

RULE TITLE:

Hospital Screening Requirements for Long-Term Care Facility Residents

RULE NO:

59AER20-11

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. The CDC 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 9,105,200 total cases and over 229,900 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 807,400 total confirmed cases in Florida as a result of COVID-19 and over 16,780 deaths. Positive cases have occurred in all Florida counties.

On March 1, 2020, in Executive Order number 20-51, Governor Ron DeSantis declared a Public Health Emergency exists in the State of Florida as a result of COVID-19. 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. Risks of COVID-19 exposure nevertheless exist. After being discharged from the hospital to their long-term care facility residences, these individuals may develop COVID-19 symptoms and spread the virus to other residents and staff in the facility that previously had 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 additional 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 an updated symptom-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 and provides additional updated use for the test-based approach.

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 .