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Memorandum

TO: Licensees and Administrators of Licensed Long-Term Care Facilities

FROM: Elizabeth D. Kelley, MPH, MBA, Director
Bureau of Health Care Safety and Quality

SUBJECT: Declaration of Jeopardy for Outbreaks or Clusters in Long-Term Care Facilities

DATE: November 18, 2022

The Department of Public Health (DPH) recently revised the long-term care regulations, 105 CMR 153.000, *Licensure Procedure and Suitability Requirements for Long-Term Care Facilities*, to expressly permit the Commissioner of the DPH to order an immediate limit on new admissions to a long-term care facility if the Commissioner determines that jeopardy exists at the facility. The regulation broadly defines “jeopardy” as any situation or condition that presents an imminent threat to the health or safety of long-term care residents. While jeopardy is broadly defined, the revised regulation expressly states that an uncontrolled “outbreak or cluster” as defined in 105 CMR 300.020, constitutes jeopardy for purposes of ordering an immediate limit on new admissions.

DPH may declare jeopardy in any situation or condition where there is an imminent threat to the health or safety of long-term care residents. This memorandum is specific only to one type of jeopardy situation - when jeopardy is declared due to an outbreak or cluster in a long-term care facility.

This memorandum provides guidance to licensed long-term care facilities on limits on new admissions when jeopardy is declared due to an uncontrolled outbreak or cluster and DPH issues an immediate limit on new admissions.

Outbreak or Cluster

An “outbreak or cluster” is defined by 105 CMR 300.020 as:

the occurrence in a ...facility...of cases of an illness clearly in excess of the number of cases usually expected. The number of cases indicating an outbreak or cluster will vary according to the infectious agent or the site conditions/hazards, size and type of population exposed, previous experience or lack of exposure to the disease, and time and place of occurrence. Outbreaks or clusters are therefore identified by significant increases in the usual frequency of the disease in the same area, among the specified population, at the same season of the year.

DPH is providing notice to long-term care facilities of when DPH may declare jeopardy for COVID-19 and influenza outbreaks or clusters resulting in an order to immediately limit admissions at the facility.

- For purposes of COVID-19, the Department will consider an “outbreak or cluster” of COVID-19 to mean that 20 percent of residents at a facility are diagnosed with COVID-19 that is healthcare-associated from the facility in the previous seven days.¹
- For purposes of influenza, the Department will consider an “outbreak or cluster” of influenza to mean that 20 percent of residents at a facility are diagnosed with influenza that is healthcare-associated from the facility in the previous seven days.²

DPH may declare jeopardy for any outbreak or cluster of an illness or disease other than COVID-19 and influenza that meets the definition in 105 CMR 300.020.

Admissions Freeze and Notice to Facility

If, based upon the above, the Department determines that the facility is at risk of an uncontrolled outbreak or cluster, the Department will issue a Notice to the facility ordering it to immediately cease admissions of any new residents.

The Notice will set out the conditions for the admissions freeze, and the conditions that must be met before the admissions freeze is lifted and the facility may resume accepting new residents. The admissions freeze will remain in effect until the Department has determined that the facility has corrected the conditions as specified in the Notice. Facilities will be eligible to have the admissions freeze lifted 5 days after the admission freeze was initially imposed.

The issuance of a Notice to freeze admissions does not apply to a resident transferred from the facility to a hospital or other healthcare facility. When a long-term care facility resident is transferred from a long-term care facility to a hospital for evaluation of any condition, including but not limited to, COVID-19 care, the facility must accept the resident’s return to the facility when the resident no longer requires hospital or other healthcare facility level of care, as long as the facility can provide care appropriate to the resident’s needs, with appropriate infection control measures taken.

¹ This shall not include individuals admitted to the facility who are diagnosed with COVID-19 at the time of admission, when the facility takes all necessary transmission-based precautions.

² This shall not include individuals admitted to the facility who are diagnosed with influenza at the time of admission, when the facility takes all necessary transmission-based precautions.