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Contact: Stephen Hanse, 518-312-9777

New York State Health Facilities Association Calls on Governor Cuomo to Revise Nursing Home and Assisted Living Testing & Visitation Policies

Albany, New York — Stephen Hanse, President and CEO of the New York State Health Facilities Association and the New York State Center for Assisted Living (NYSHFA|NYSCAL), a statewide association representing over 425 nursing homes and assisted living facilities throughout New York delivered the attached letter to Governor Cuomo today calling on the State to revise its current policies concerning nursing home and assisted living COVID-19 staff testing and resident visitation restrictions.

NYSHFA|NYSCAL is calling on New York to implement CMS' new COVID-19 testing requirements that were issued on August 26th in place of the State's current one-size fits all mandate that all staff be tested once a week.

CMS's new testing requirements would apply to both staff and residents and are based on the positivity rate of the COVID-19 virus in the respective county where a healthcare facility is located. Under its new rule, CMS is requiring testing once a month for facilities in counties with less than a 5% infection rate; once a week for facilities in counties with a positivity rate between 5% and 10%; and twice a week for facilities in counties with a positivity rate of over 10%.

Additionally, NYSHFA|NYSCAL is calling on the State to reduce its current 28-day in person visitation restriction to allow for family visitation in long term care facilities after 14 days of no new COVID-19 cases. A recent survey by NYSHFA|NYSCAL showed that 77% of providers statewide were unable to open for in-person visitation under the State's 28-day restriction.

"Nursing homes and assisted living providers throughout New York have made incredible strides in eradicating COVID-19 from their facilities and the State's policies must be revised to reflect this success," stated Hanse. "The State's current policy must be replaced with CMS's rule in order to both focus testing where it is needed most and alleviate the State's unfunded mandate that is imposing unsustainable financial constraints on providers," added Hanse.

"It is critical that the State move from its out-of-date 28-day restriction to a 14-day policy for visitation throughout New York. It has been since early March of this year that a majority of our residents have been unable to receive visitors in person as a consequence of the COVID-19 pandemic. Moving from a 28-day restriction to a 14-day policy is essential for the health and well being of our residents and their families and loved ones," stated Hanse.

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August 28, 2020

Governor Andrew M. Cuomo
Executive Chamber
NYS Capital
Albany, N.Y. 12224

Dear Governor Cuomo:

On behalf of the New York State Health Facilities Association and the New York State Center for Assisted Living (“NYSHFA|NYSCAL”), a statewide organization representing over 425 skilled nursing and assisted living providers responsible for providing care for over 70,000 women, men and children throughout New York, we respectfully request the State to revise its current policies concerning nursing home and assisted living COVID-19 staff testing and resident visitation restrictions to safeguard the health and well-being of our residents and ensure the continued provision of necessary long term care services throughout New York.

NYSHFA|NYSCAL is grateful for your commitment to skilled nursing and assisted living residents and the women and men who provide essential care in these health care settings. Through your leadership, New York has made significant strides in combatting the COVID-19 pandemic as is evidenced by New York’s low infection rates allowing for the reopening of almost all businesses throughout the State.

COVID-19 Staff Testing

On August 26, 2020, CMS issued an interim final rule concerning long-term care facility testing requirements. In its interim final rule, CMS established new COVID-19 testing requirements based on the positivity rate of the virus in the respective county where a healthcare facility is located. Specifically, CMS set forth specific COVID-19 testing intervals based on the following criteria:

Community COVID-19 Activity	County Positivity Rate in the past week	Minimum Testing Frequency
Low	<5%	Once a month
Medium	5% - 10%	Once a week*
High	>10%	Twice a week*

*This frequency presumes availability of Point of Care testing on-site at the nursing home or where off-site testing turnaround time is <48 hours.

NYSHFA|NYSCAL respectfully requests that New York implement CMS’s targeted testing rules in place of the State’s current broad once a week staff testing requirement. The CMS approach of county-based positivity rate testing will pinpoint testing in communities where it is needed most while continuing to safeguard the health and safety of skilled nursing and assisted living residents and staff.

Moreover, the new CMS testing frequency requirements will help alleviate the unsustainable costs associated with the State’s unfunded mandate that providers test every employee once a week regardless of the prevalence of COVID-19 in the community or healthcare facility. Currently, health insurers are refusing to pay for the State’s staff testing requirement which costs providers approximately \$100 per test. It is also

important to note that these unreimbursed testing costs are in addition to ever-increasing staff and PPE costs providers are struggling to keep up with in the face of record low occupancy rates throughout the State.

Visitation

NYSHFA/NYSCAL is also requesting that the State amend its current limitation of family visitation in long-term care so additional residents can see their loved ones in-person. Specifically, we are requesting that the State allow family visitation in long term care facilities after 14 days of no new COVID-19 cases. This sensible change in the State's visitation restrictions will align with the NYS DOH return to work after 14 days quarantine as set forth in the NYS DOH *Criteria for Return to Work for Healthcare Personnel with Confirmed or Suspected COVID-19*. NYSHFA|NYSCAL strongly believes that this amendment will significantly increase the number of facilities that will be able to open for visitation in a socially distanced, safe and secure manner.

CMS guidelines recommend limiting family visitation for 28 days without any new cases in phases one or two. All counties in New York are currently in phase four and the need for in-person visitation has never been greater. In light of the fact that the vast majority of long-term care residents have not seen their loved ones in-person since early March and New York's rate of positive COVID-19 tests has been below 1 percent for 19 straight days, there has never been a more opportune time to revise the State's visitation restrictions.

In mid-July 2020, NYSHFA|NYSCAL conducted a statewide survey of long-term care providers to better understand the barriers to opening their facilities for limited family visitation. The survey identified 77% of providers would be unable to open for visitation under the State's current 28-day policy. For example, an urban facility with over 700 staff members recently experienced just a few positive tests. Consequently, all residents were prohibited from experiencing in-person visitation to the detriment of both their physical, social and mental well-being. With many employees, facilities such as these may not be able to open for visitation for quite some time given the fact that even one positive test will foreclose all in-person visitation opportunities for nursing home and assisted living residents.

Moreover, the State's current 28-day restriction has the unintended consequence of preventing individuals from receiving the necessary care they need. Many individuals and their families do not want to enter long-term care facilities if they are not going to be able to have in-person visits with their loved ones for an extended, unknown period of time. The State's 28-day restriction is not just difficult for residents and families but directly impacts access to necessary care.

Given the foregoing, NYSHFA|NYSCAL respectfully requests the State to revise its current policies concerning nursing home and assisted living COVID-19 staff testing and resident visitation restrictions to safeguard the health and well-being of our residents and ensure the continued provision of necessary long-term care services throughout New York.

Thank you for your consideration and we look forward to continuing to work together on behalf of New York's skilled nursing and assisted living residents and providers.

Sincerely,



Stephen B. Hanse, Esq.
President & CEO

cc: Dr. Howard Zucker, Commissioner, NYS Department of Health
Dr. Richard Becker, Deputy Secretary of Health