

# COVID 19 Oversight: An Integral Part of an Effective Corporate Compliance Program

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At RiverSpring Living, we value each older adult as an individual, with unique abilities, goals, and challenges. We know that it's a new age of aging and needs are changing. That's why we seek forward-thinking options and approaches across the full spectrum for older adults.

For over 100 years, we are proud to remain a non-profit organization, guided and inspired by our Jewish heritage, which commits us to meet the evolving needs of people of all faiths in our care. We embrace the importance of self-expression and exploration, and we constantly push the boundaries of what's possible. In doing so, we're helping redefine how we age, one person at a time.

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## Polling Question 1:

Let me get to know you. I am a:

1. Corporate Compliance Officer
2. Administrator
3. Nursing Personnel
4. Corporate Compliance Personnel
5. Other

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## Corporate Compliance Does Not Stand Still

- ◆ The pandemic shows that everything has changed and we need to adapt with it
- ◆ New Rules and regulations we could not even have thought of a year ago
- ◆ Fraud related to COVID 19
- ◆ Below is a link from HHS OIG Enforcement Actions:
  - ◆ [https://oig.hhs.gov/fraud/enforcement/?type=covid-19&utm\\_source=oig-covid-portal&utm\\_medium=oig-cp-eas&utm\\_campaign=cv-response-oig-covid-eas-btn](https://oig.hhs.gov/fraud/enforcement/?type=covid-19&utm_source=oig-covid-portal&utm_medium=oig-cp-eas&utm_campaign=cv-response-oig-covid-eas-btn)

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# Understanding the Importance of COVID 19 Regulations as part of your Corporate Compliance Program on the Federal and State Levels

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## Federal Regulations

September 2, 2020

- ◆ The Centers for Medicare and Medicaid Services (CMS) revised the Infection Control regulations at 42 C.F.R. § 483.30(h) by adding a new requirement that long term care facilities test residents and facility staff, including individuals providing services under arrangement and volunteers (“staff”), for COVID–19. At a minimum, the facility must:
  - ◆ Conduct testing based on parameters set forth by DHHS.
  - ◆ Document that testing was completed and the results of each test.

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## September 2, 2020 cont:

- ◆ Take action to prevent transmission if staff are identified with symptoms or test positive
- ◆ Establish procedures for addressing refusal or inability to be tested; and
- ◆ When necessary, such as in emergencies due to testing supply shortages, contact state and local health departments to assist in testing efforts, such as obtaining testing supplies or processing test results.

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## August 26, 2020

- ◆ CMS issued lengthy guidance for compliance with new Section 483.80(h) and corresponding new tag F886. This includes requirements for:
  - ◆ **Testing of all staff who show symptoms of COVID-19.**
  - ◆ **Facility-wide testing in the event of an “outbreak.”** In case of an outbreak, testing must continue every three to seven days until no new cases are identified among staff or residents for a period of at least 14 days.

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**August 26, 2020 cont:**

- ◆ The regulation was posted prior to September 2, 2020, thus the CMS guidance predates the regulation's effective date. The guidance is available at:
  - ◆ <https://www.cms.gov/files/document/qso-20-38-nh.pdf> (Addresses both testing of staff and residents)
- ◆ "Staff" includes employees, consultants, contractors, volunteers, and caregivers who provide care and services to residents on behalf of the facility, and students in the facility's nurse aide training programs or from affiliated academic institutions.
- ◆ "Outbreak" means a single new COVID infection among staff or a single "nursing home-onset" COVID infection among residents.

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**August 26, 2020 cont:**

- ◆ **Routine testing of all staff based on county positivity rates.** Note that county positivity rates are available at:
  - ◆ <https://data.cms.gov/stories/s/COVID-19-Nursing-Home-Data/bkwz-xpvg>
  - ◆ <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOV>
- ◆ If the county positivity rate increases to a higher level of activity, the facility should begin testing staff at the frequency shown in the table as soon as the criteria for the higher activity are met.

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**August 26, 2020 cont:**

For routine staff testing:

- ◆ Must document the facility's county positivity rate
- ◆ The corresponding testing frequency indicated (e.g., every other week)
- ◆ The date each positivity rate was collected
- ◆ Document the date(s) that testing was performed for all staff, and the results of each test

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**August 26, 2020 cont:**

- ◆ Document the facility's procedures for addressing residents and staff that refuse testing or are unable to be tested, and document any staff or residents who refused or were unable to be tested and how the facility addressed those cases.
- ◆ Document, when necessary, such as in emergencies due to testing supply shortages, document that the facility contacted state and local health departments to assist in testing efforts, such as obtaining testing supplies or processing test results.

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## New York State Requirements

**As of February 1, 2021**

The Department of Health (DOH) directed nursing homes to increase the frequency of staff testing to twice a week.

Obligated to test or arrange for the testing of all personnel, including all employees, per diem staff, contract staff, medical staff, operators, administrators, and volunteers.

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## New York State Requirements cont.:

A failure to comply with the testing requirements may be subject to a penalty of **\$2,000 per violation per day or up to \$10,000 for subsequent violations** for any subsequent violations pursuant to Public Health Law section 12-b. Additionally, DOH may suspend or revoke such facilities' operating certificate, and appoint a receiver to continue operations on 24 hours' notice.

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## Resources: Executives Orders Relating to COVID-19

- ◆ The Governor of New York issued 101 EO's (as of 04/06/2021) suspending or modifying existing laws and regulations and directing certain actions.
  - ◆ <https://www.governor.ny.gov/executiveorders>
- ◆ Some of the provisions include the following:
  - Penalties for non-compliance, including suspension, revocation, and appointment of receiver
  - Health Emergency Response Data System (HERDS) reporting requirements
  - Family notification requirements
  - Prohibition of the use of personnel refusing to test for COVID-19

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## Resources: NYS DOH Health Advisories

- ◆ <https://coronavirus.health.ny.gov/information-healthcare-providers>
  - ◆ Visitation Guidance for Skilled Nursing Facilities (SNFs) and Adult Care Facilities (ACFs)
  - ◆ Protocols for Return to Work Following COVID-19 Exposure or Infection
  - ◆ Nursing Home and ACF Staff Testing Requirements
  - ◆ COVID-19 Cases in SNFs and ACFs
  - ◆ Travel Advisory Guidance
  - ◆ Medicaid Billing Guidance
  - ◆ And others . . .

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## Understand the Need for Oversight and Testing Requirements, Implementation, and Documentation.

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## What should you have in place?

- ◆ COVID 19 Staff testing policy and procedures.
- ◆ Education of COVID 19 testing policy to employees and vendors
- ◆ A COVID 19 staff testing manual which should include:
  - An executive summary signed by your executive officer
  - An overview of your operation
  - The facility's organization and assignment of Responsibilities
  - Information and Specimen Collection
  - How results are disseminated to staff
  - Cleaning of your testing center
  - Who maintains personnel files

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## Visitation is Now Allowed in Long Term Care Facilities

- ❖ Another layer to ensure your facility is in compliance.
- ❖ Know your Department of Health regulations on family visiting.
- ❖ Are you going to offer testing to visitors?
  - ❖ If so, who will be responsible to conduct the tests and oversee the documentation?
- ❖ Separate log of visitors coming to facility with name and contact information.
- ❖ Ensure personnel asking questions identifies if an employee or visitor.

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## Importance of Educating Board of Trustees and Staff on Facility's COVID Oversight and Compliance

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## Your board of trustees needs to be informed of the various compliance areas you are reviewing

- Educate your board on federal and your state regulations.
- Enhance awareness of HHS OIG monitoring and Enforcement related to COVID 19.
- Sharing policies and procedures with your board. Get their feedback.
- Ensure they are informed of your testing protocols and how you are ensuring compliance with federal and state laws.
- Educate on how you report personnel testing to your federal and state agencies.

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COVID 19 testing and statistic management needs to be part of your annual work plan:

- Monthly audits of number of personnel testing
- Tracking positive and negative results
- Tracking personnel non-compliance and your oversight
- How are you educating personnel on their responsibilities for testing

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## Polling Question 2:

Corporate Compliance:

1. Operates on regulations provided by the Federal and State Governments.
2. Is changeable based upon circumstances.
3. Is an art form
4. Is socially driven by dynamic and adaptable professionals
5. All of the above

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## Questions?

Thank You!

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