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Last-minute rules on assisted living residences upset many Thanksgiving plans

Directive requires negative coronavirus test for residents seeking to return to adult care facility



Brendan J. Lyons

Updated: Nov. 25, 2020 4:39 p.m.





Gov. Andrew M. Cuomo is tested for COVID-19 during his daily coronavirus briefing on May 17, 2020. (Credit: Darren McGee/Office of Gov. Andrew M. Cuomo)

Darren McGee/Office of Gov. Andrew M. Cuomo

ALBANY — A last-minute directive this week from the state health department that requires people in assisted-living facilities to adhere to strict rules if they leave for Thanksgiving or other holiday gatherings has unsettled the plans of many families who said they had to abandon reunions with their loved ones, even for short gatherings.

The rules are also confusing and "stupid," as one woman described them, noting that the requirement for a resident to present a negative COVID-19 test within 24 hours of returning to their living facility would be pointless because someone exposed to coronavirus will often test negative for days after.

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"If you get exposed on Thanksgiving, going back the next day and having a (negative) test isn't going to prove anything" said Jill Knapp, whose 96-year-old

(negative) test isn't going to prove anything," said Jim Knapp, whose 70-year-old mother is a resident of Atria Crossgates in Albany.

Knapp said she had planned to have her mother over for a few hours on Thanksgiving for dessert only, but had to scuttle the visit when she learned of the new rules on Wednesday morning. It would only have been the two of them, she added.

"Why did they wait until the last minute?" Knapp said. "Some of these regulations are just stupid."



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Governor Andrew Cuomo speaks at a press event at Pathways Nursing and Rehabilitation Center on Sunday, April 12, 2020, in Niskayuna, N.Y. The state was returning ventilators that the center had loaned out to help fill the need of ventilators during the pandemic. (Paul Buckowski/Times Union)

Paul Buckowski/Albany Times Union

The rules, which were posted by the state health department late Tuesday morning, also require a resident and a family member to sign an attestation affirming they are aware of the health risks associated with traveling or attending gatherings, and agree to follow rules such as social distancing, wearing masks and reporting any contact with someone who may be infected.

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But the directive indicates the new rules would be in effect for the "holiday season," which some providers and families interpreted as extending into January.

James W. Clyne, Jr., president of LeadingAge New York, a non-profit that represents the interests of nursing homes, assisted living providers and other adult care facilities, sent a letter to Gov. Andrew M. Cuomo and the state health department Wednesday outlining a number of issues with and questions about the new directive.

Clyne noted, for instance, that the rules did not explain what would happen if a resident returned to their living facility and presented a "positive" COVID-19 test. It's unclear whether that person would be turned away — and in some instances

children are picking up their elderly parent or parents from nursing homes or assisted living facilities, and may not have the means to care for them overnight or



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inability to obtain a negative test prior to returning to the facility," Clyne wrote.

"Many nursing home and (adult care facility) leaders spent hours last night calling

families to notify them of the new requirements and managing their anguish and outrage."

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Clyne's letter also pointed out that there are laws and regulations governing admission or the refusal of admission to a nursing home or assisted living facility. If a person tests positive but has nowhere to go, he asked, should the facility call 911 and send them to a hospital?

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"In an ACF (adult care facility), does this guidance supersede ACF regulations, landlord-tenant law, and admission agreements to permit ACFs to bar residents from entering their homes?" Clyne wrote. "In a nursing home, do nursing home regulations permit the facility to bar entry to a resident without completing the 'facility-initiated discharge' notice and appeal process? Is the resident's right to remain in the nursing home pending resolution of the appeal suspended under these circumstances?"

A resident also has a right to refuse being tested for COVID-19, but the health department's directive did not spell out how those situations would be handled.

Clyne also asked the governor's administration whether state Department of Health staff would be available at all hours "over the holiday weekend and throughout the holiday season to help facilities address these emergency situations with families and residents, and if so, what phone number should they call?"

A spokesman for the governor's office referred comment to the state health department.

"While we fully understand the desire to be with loved ones during the holidays

While we fully understand the desire to be with loved ones during the holidays, we also can't ignore the potential COVID-19 exposure risks for nursing home residents leaving and traveling to areas with increasing community spread," said Gary Holmes, a spokesman for the health department. "We're working with facilities and families to offer safe alternatives to celebrate the holidays and supporting all efforts to ensure that if a resident does leave they can safely return in a manner that doesn't put their fellow residents and staff at risk."

Holmes said Wednesday afternoon that the agency was trying to provide answers to the questions raised by administrators in the adult-care industry.

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