

Home Health Agency and Hospice Fact Sheet: Long-Term Care Facility Testing Plan for Associated Staff COVID-19 Testing

Key Points

- Associated staff of Assisted Living Facilities, Residential Care Facilities, and Skilled Nursing Facilities in Oregon—collectively referred to as Long-Term Care Facilities or LTCFs—are required to undergo periodic COVID-19 testing.
 - As of March 26, 2021, ODHS has updated its policy for testing frequency for Assisted Living and Residential Care providers:
<https://www.oregon.gov/dhs/PROVIDERS-PARTNERS/LICENSING/AdminAlerts/Provider%20Alert%20-%20Update%20on%20COVID-19%20policy%20guidance.pdf>
 - The testing guidance for providers in Skilled Nursing Facilities is governed by CMS and has not changed since August 26, 2020: [CMS QSO-20-38-NF](#)
 - The full text of the state [Plan for Testing Long-Term Care Staff](#) was last updated in November 1, 2020.
- Home Health Agencies and Hospices should work with each LTCF to understand the expectations for COVID-19 testing frequency in that facility.
- Home Health Agencies and Hospices working in multiple facilities should follow the testing frequency of the county/facility.
- Home Health Agencies and Hospices are being asked to establish a system for COVID-19 testing of their staff who are assigned to provide services as associated staff in LTCFs, to document that testing, and to set up a system to communicate that information to LTCFs.
- Each LTCF will be requesting COVID-19 test results, attestations, or vaccine verification to establish that associated staff from Home Health Agencies and Hospices assigned to provide services in the LTCF have met the LTCF's COVID-19 testing requirement or have received the vaccine.

- OHA does not require that LTCF, Home Health Agencies and Hospices require vaccination of staff to serve facilities; however, we strongly recommend vaccination.
- Direct reimbursement to Home Health Agencies and Hospices for LTCF-related COVID testing is not available from the Oregon Health Authority or the Oregon Department of Human Services.

Do Oregon Department of Human Services Rules cover Home Health Agency and Hospice personnel entering Long-Term Care Facilities?

- Home Health Agency and Hospice personnel entering LTCFs to provide direct care to residents are associated staff under Oregon Administrative Rule [411-060-0027 Routine Staff Testing Requirements](#).

What types of Long-Term Care Facilities are federally required to complete COVID-19 testing?

- The federal CMS guidance covers Skilled Nursing Facilities. Oregon is also requiring testing at Assisted Living Facilities and Residential Care Facilities.

What is the role of Long-Term Care Facilities in implementing COVID-19 testing requirements?

- LTCFs are responsible for ensuring residents can access care and for ensuring that all staff including associated staff adhere to COVID-19 testing requirements.
 - LTCFs that do not permit residents to receive necessary healthcare services may face sanctions related to residents' rights to receive appropriate care.
 - LTCFs that do not ensure that associated staff are tested may face sanctions related to infection control requirements.
- LTCFs need to work with associated staff and the agencies that employ associated staff to develop clear expectations for meeting the testing requirements.
 - Expectations should include frequency of routine COVID-19 tests, type of acceptable COVID-19 tests, and documentation.

Are there additional options to facilitate testing?

- To the extent possible, LTCFs are encouraged to have policies that recognize the fact that many Home Health Agencies and Hospices serve multiple LTCFs and will not have the capacity to meet different requirements for each one.

- LTCFs with antigen test devices are encouraged to use these devices to support routine COVID-19 testing for associated staff.
- LTCFs with routine PCR testing capacity are encouraged to make available to support associated staff.
- In addition to test results, LTCFs are encouraged to develop a policy in which they accept an attestation of testing from employers of associated staff (including Home Health Agencies and Hospices) and other LTCFs as verification of completed COVID-19 testing.
- LTCFs should not require duplicate surveillance testing when test results or an attestation are provided.

What information will Home Health Agencies and Hospices need from Long-Term Care Facilities?

- Home Health Agencies and Hospices should contact the LTCFs in which their staff are assigned to provide care to determine:
 - if the LTCF can support testing;
 - the required frequency of testing;
 - the required management system; and
 - the tracking expectations.

How can Home Health Agencies and Hospices acquire COVID-19 tests for staff providing services in Long-Term Care Facilities?

- Home Health Agencies and Hospices may consider entering into an agreement with a COVID-19 testing service or a local hospital or provider to test staff.
 - Private insurance may reimburse COVID-19 testing costs.
- Home Health Agencies and Hospices can contact their [Local Public Health Authority](#) (LPHA) to request COVID-19 testing supplies and resources.
 - Local Public Health Authority supplies and capacity to support routine staff testing varies by county and based on available resources, so LPHA may not be a reliable resource for ongoing testing needs.

For Assisted Living Facilities (ALFs) and Residential Care Facilities (RCFs), are associated staff who have received the COVID-19 vaccine required to be tested at the same frequency as those staff who have not?

No. ODHS issued a provider alert to clarify the following:

Routine surveillance testing of staff is no longer required, effective fourteen (14) days after the second vaccination cycle is completed. This applies only to staff **who have been fully vaccinated**. Routine surveillance testing of staff who have **NOT been fully vaccinated** is still required monthly. Agencies may also require monthly testing for staff who decline to provide vaccine status. Routine surveillance testing requirements for Nursing Facility associated staff have not changed.

Providers must continue testing residents and staff when they exhibit signs and symptoms of COVID-19. When there is a confirmed case of COVID-19, providers must continue to test all staff and residents, regardless of an individual's vaccination status.

For information about HIPAA and confidentiality related to testing requirements, please visit <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>.

The following FAQs are from the Equal Employment Opportunity (EEO) website as of 4/19/21 when this FAQ was published:

K.1. For any COVID-19 vaccine that has been approved or authorized by the Food and Drug Administration (FDA), is the administration of a COVID-19 vaccine to an employee by an employer (or by a third party with whom the employer contracts to administer a vaccine) a “medical examination” for purposes of the ADA? (12/16/20)

No. The vaccination itself is not a medical examination. As the Commission explained in guidance on disability-related inquiries and medical examinations, a medical examination is “a procedure or test usually given by a health care professional or in a medical setting that seeks information about an individual’s physical or mental impairments or health.” Examples include “vision tests; blood, urine, and breath analyses; blood pressure screening and cholesterol testing; and diagnostic procedures, such as x-rays, CAT scans, and MRIs.” If a vaccine is administered to an employee by an employer for protection against contracting COVID-19, the employer is not seeking information about an individual’s impairments or current health status and, therefore, it is not a medical examination.

Although the administration of a vaccination is not a medical examination, pre-screening vaccination questions may implicate the ADA's provision on disability-related inquiries, which are inquiries likely to elicit information about a disability. If the employer administers the vaccine, it must show that such pre-screening questions it asks employees are "job-related and consistent with business necessity."

K.2. According to the CDC, health care providers should ask certain questions before administering a vaccine to ensure that there is no medical reason that would prevent the person from receiving the vaccination. If the employer requires an employee to receive the vaccination from the employer (or a third party with whom the employer contracts to administer a vaccine) and asks these screening questions, are these questions subject to the ADA standards for disability-related inquiries? (12/16/20)

Yes. Pre-vaccination medical screening questions are likely to elicit information about a disability. This means that such questions, if asked by the employer or a contractor on the employer's behalf, are "disability-related" under the ADA. Thus, if the employer requires an employee to receive the vaccination, administered by the employer, the employer must show that these disability-related screening inquiries are "job-related and consistent with business necessity." To meet this standard, an employer would need to have a reasonable belief, based on objective evidence, that an employee who does not answer the questions and, therefore, does not receive a vaccination, will pose a direct threat to the health or safety of her or himself or others. See [Question K.5](#) for a discussion of direct threat.

By contrast, there are two circumstances in which disability-related screening questions can be asked without needing to satisfy the "job-related and consistent with business necessity" requirement. First, if an employer has offered a vaccination to employees on a voluntary basis (i.e. employees choose whether to be vaccinated), the ADA requires that the employee's decision to answer pre-screening, disability-related questions also must be voluntary. [42 U.S.C. 12112\(d\)\(4\)\(B\)](#); [29 C.F.R. 1630.14\(d\)](#). If an employee chooses not to answer these questions, the employer may decline to administer the vaccine but may not retaliate against, intimidate, or threaten the employee for refusing to answer any questions. Second, if an employee receives an employer-required vaccination from a third party that does not have a contract with the employer, such as a pharmacy or other health care provider, the ADA "job-related and consistent with business necessity" restrictions on disability-related inquiries would not apply to the pre-vaccination medical screening questions.

The ADA requires employers to keep any employee medical information obtained in the course of the vaccination program [confidential](#).

K.3. Is asking or requiring an employee to show proof of receipt of a COVID-19 vaccination a disability-related inquiry? (12/16/20)

No. There are many reasons that may explain why an employee has not been vaccinated, which may or may not be disability related. Simply requesting proof of receipt of a COVID-19 vaccination is not likely to elicit information about a disability and, therefore, is not a disability-related inquiry. However, subsequent employer questions, such as asking why an individual did not receive a vaccination, may elicit information about a disability and would be subject to the pertinent ADA standard that they be “job-related and consistent with business necessity.” If an employer requires employees to provide proof that they have received a COVID-19 vaccination from a pharmacy or their own health care provider, the employer may want to warn the employee not to provide any medical information as part of the proof in order to avoid implicating the ADA.

Document accessibility: For individuals with disabilities or individuals who speak a language other than English, OHA can provide information in alternate formats such as translations, large print or braille. Contact the Health Information Center at 1-971-673-2411, 711 TTY or COVID19.LanguageAccess@dhs.ohio.gov.