



1. Where can I read a copy of the Emergency Rule that was adopted?

A copy of the rules is located at: <https://publications.tnsosfiles.com/rules/1200/1200-08/1200-08.htm>

2. What type of test is acceptable to meet the baseline testing requirement? What type of test is acceptable to meet the weekly staff testing in nursing homes?

The baseline testing requirement should be a polymerase chain reaction (PCR) test. These are used to diagnose active infection for COVID-19, and usually involve a nasal or oral swab. Any staff member who has a positive U.S. Food and Drug Administration (FDA) approved COVID-19 antibody test is exempted from weekly testing. For ongoing weekly testing, the facility can use any approved a sample collection method (nasopharyngeal, oropharyngeal, etc.) – a nasopharyngeal is not required to be used, but usually provides the most effective sample for testing.

3. Are staff who have past infection (as documented by a past positive PCR test result) exempt from weekly testing?

Yes, those employees with a documented past positive infection are exempt. For persons previously diagnosed with symptomatic COVID-19 who remain asymptomatic after recovery, retesting is not recommended within 3 months after the date of symptom onset for the initial COVID-19 infection.

4. If an employee has a positive antibody test, are they exempt from further testing? Is there a time period for how long that is effective?

Yes, per the emergency rule, any staff member who has a positive U.S. Food and Drug Administration (FDA) approved COVID-19 antibody test is exempted from weekly testing. There is no time limit on the FDA approved antibody test. If they have positive antibodies, they are exempt from testing.

5. Is the state requiring Assisted Care Living Facilities (ACLF) to participate in the National Healthcare Safety Network?

No. However, assisted living facilities have the option to participate, and the TN Department of Health's Healthcare Associated Infections program is available to assist with the enrollment process at hai.health@tn.gov

6. Which facilities are required to test beyond June 30th? How often? Who is required to be tested?

Skilled nursing facilities are required to test staff weekly (every seven days). Ongoing staff testing is not required for Assisted Care Living Facilities (ACLF) or Residential Home for the Aged (RHA) at this time. However, if ACLFs and RHAs have a desire to conduct regular staff testing, they may consult the guidance provided below for specifics on laboratories available, PPE, compliance, and reimbursement.



Guidance for Nursing Homes/SNFs:

https://www.tn.gov/content/dam/tn/health/documents/cedep/novel-coronavirus/Weekly_Test_NH.pdf

Guidance for Assisted Living Facilities and Residential Homes for the Aged:

https://www.tn.gov/content/dam/tn/health/documents/cedep/novel-coronavirus/Weekly_Test_AL.pdf

7. Are contracted employees considered to be staff or staff members?

Tenn. Comp. R. & Regs. 1200-08-06-.06(j)(3) defines “Staff” or “Staff member” means an employee or any individual who contracts with the nursing home to provide resident care. The purpose of the rule is to ensure that reasonable measures are put in place to ensure testing of individuals providing direct care to residents, but the intent was not to require nursing homes to exercise control over the agents of other entities. The phrase “any individual who contracts with the facility to provide resident care” is interpreted to refer to those persons who are serving in the role of a full-time employee of the facility, but are doing so through a contractual relationship, rather than through actually being employed by the nursing home. One example of this includes, but is not limited to, agency staff and therapists.

However, the rule is not interpreted to extend to every individual providing direct care to a resident. A person must be tested every seven days if they are: 1) an employee, or 2) a contractor who is functioning in the capacity of a full-time employee. While the purpose of the rule is to ensure that reasonable measures are put in place to require testing of individuals providing direct care to residents, the intent was not to require nursing homes to exercise control over the agents of other entities, or to be obligated to test another entity’s employees. Therefore, if an individual provides services to residents, but is employed by another entity, they are not within the scope of individuals required to be tested every seven days. This would include, for example, home health agency employees, hospice employees, podiatrists, dentists, x-ray technicians, respiratory therapists, patient transport, EMTs, and contracted housekeeping personnel.

It is strongly recommended that all individuals providing care to nursing home residents are tested regularly, however. A nursing home can require those individuals or their employers to arrange for testing, rather than having the facility do it. To facilitate testing that is as comprehensive as possible, the Department will reimburse the cost of testing of an individual who is contracted with the facility when that testing is done through an approved laboratory provider. The reimbursement process is the same as it is reimbursed for the nursing home. Any individual can also be tested at community testing sites.



8. How should a facility handle the testing of PRN employees?

PRN employees are considered to be employees of the facility. Therefore, the facility is responsible for testing these employees. Each facility should develop a policy and procedure (P&P) regarding the testing of PRN employees which defines a PRN employee and determines a testing schedule of the PRN employee.

9. What type of paperwork or documentation is required to verify testing is occurring?

The facility must document (either electronic or hard copy) receipt from the laboratory and the number of test samples sent. Facilities should keep testing documentation on file for the length of the emergency rule (180 days).

10. Regarding weekly staff testing, does the facility need to keep documentation that they have tested weekly or do they send the documentation to the state?

The facility needs to keep documentation on file for verification of compliance upon state survey or other state request for validation of compliance.

11. We understand we need to report any positive cases, but if all are negative, are there any reporting or documentation requirements?

The facilities should keep testing documentation on file for compliance purposes, but there is not any additional reporting required for negative cases.

12. How should we handle “false positives”?

In the vast majority of cases, public health treats a positive PCR result as the true result. Unless there is evidence that a laboratory has had a known contamination event or that there is a fundamental flaw in their testing platform, TDH counts a positive test as a true positive - even if the person is asymptomatic and/or retested and negative. If a facility believes it has “false positives,” the facility administrator or medical director should contact the laboratory that performed the testing to understand if contamination occurred to cause the false positives. If contamination did occur, the laboratory needs to report the corrected laboratory results to TDH. For persons previously diagnosed with symptomatic COVID-19 who remain asymptomatic after recovery, retesting is not recommended within 3 months after the date of symptom onset for the initial COVID-19 infection.

13. How long do positive cases need to be kept out of work?

Positive healthcare workers, including those who are asymptomatic, can present substantial risks to patients, staff and others in the community if they continue to work. Any healthcare worker who tests positive for COVID-19 should be sent home immediately and isolate for a minimum of 10 days after onset and can be released after afebrile and feeling well (without fever-reducing medication) for at least 24 hours. Asymptomatic cases must be isolated for 10 days after their specimen collection date. Staff who had a past positive test, but have met this time and symptom-based criteria for release from isolation should not be kept out of work



based on additional negative test results. Cases may continue to test positive while no longer infectious.

TDH does not recommend allowing positive staff to work in a facility. This should only be considered under dire circumstances (i.e. unsafe patient care environment due to limited staffing, to fill a very short-term gap while new staff are brought in) and in specific situations (working on a COVID-19 unit). All staff must wear appropriate PPE.

For persons previously diagnosed with symptomatic COVID-19 who remain asymptomatic after recovery, retesting is not recommended within 3 months after the date of symptom onset for the initial COVID-19 infection.

<https://www.tn.gov/content/dam/tn/health/documents/cedep/novel-coronavirus/Isolation-QuarantineRelease.pdf>

14. Is the state of Tennessee paying for all testing, including the ongoing testing required of nursing homes?

Yes. The Tennessee Department of Health is paying for or reimbursing facilities for all of the testing, testing supplies and PPE needed to do the initial testing of all facilities, as well as the weekly testing required of nursing homes beginning no later than June 30th.

15. What is the process to be reimbursed if the facility has paid for the lab testing? Does the facility or laboratory need to seek the reimbursement? Can the laboratory seek direct bill?

To request reimbursement for staff testing:

1. Ensure your facility is registered in Edison (State vendor system) for reimbursement. Contact Covid.Invoices@tn.gov if your facility needs to become a vendor in Edison.
2. Facility administers weekly staff COVID-19 testing with laboratory of choice.
3. Lab processes tests, reports results to facility, and separately invoices facility for the tests of its nursing home patients batched by facility, not corporate entity.
4. Facility submits an invoice "net due in 15 days" to the TN Department of Health (TDH) supported by the invoice from the lab, confirmation of the testing event date, and the confirmation of facility staff tested. Facility sends electronically to: Covid.Invoices@tn.gov.
5. TDH processes the invoice for payment to facility within 15 days.
6. Facility then processes the original invoice from lab for payment with funds received from TDH.

**Please note, several laboratories allow direct billing of the State. The reimbursement mechanism outlined above is preferred, but for facilities working with those labs, direct billing of TDH will be allowed. Facilities utilizing this mechanism must review a copy of the lab invoice and send an attestation to TDH at Covid.Invoices@tn.gov confirming its accuracy. Testing will be reimbursed by the State up to \$100 per test.*



16. Where can my facility administrator or medical director locate a list of laboratories that offer testing and can be reimbursed by the state?

The rules required the Tennessee Department of Health to post a list of approved laboratories. The list is posted at: <https://www.tn.gov/content/dam/tn/health/healthprofboards/COVID-19-Vendors-Registered.pdf>

17. What is the process for a laboratory being listed, if it is not currently on the list?

The laboratory must be licensed in Tennessee and registered as a vendor with the State of Tennessee in Edison and be included on the FDA's list of laboratories with authorized tests under the current EUA (<https://www.fda.gov/medical-devices/emergency-situations-medical-devices/emergency-use-authorizations>). To inquire and receive information, please email Covid.Invoices@tn.gov.

18. Will personal protective equipment (PPE) be supplied for on ongoing testing in nursing homes?

A facility can request PPE for testing purposes via the Tennessee Emergency Management Agency's (TEMA) Survey123 at <https://arcg.is/1LiCCP>

19. On an integrated, shared services CCRC campus, who is to be tested – only direct care staff in our nursing home/healthcare center or all employees campus-wide as occurred for the baseline testing?

Anyone meeting the definition of "staff" within the rule who will be inside a licensed facility should be included in testing, including ongoing weekly testing as required by the rule.

20. Will there be any requirements to test residents on a regular basis? The Centers for Medicare and Medicaid Services (CMS) mentions testing residents weekly if facilities have a resident test positive, will this be part of the state requirement?

For nursing homes, State rule 1200-08-06-.06 (5) informs the following: Once a nursing home has completed initial testing, each facility shall test all staff members for COVID-19 at least once every seven (7) days beginning the later of June 30, 2020 or the date the facility completes initial testing. However, if any residents experience COVID19 related symptoms after baseline testing occurs, the resident should be promptly tested and contact the local health department.



21. We understand that employees can refuse, but if so what is the consequence, if any, to both the employee and the employer?

Employees who are not tested pose a risk to the residents and other staff members. However, it is the facility's responsibility to ensure residents are safe and appropriate precautions are taken to prevent transmission of infections. Facility policy will dictate how residents will be protected from potential infection by staff and/or resident refusing to be tested. Matters regarding employee refusal and ongoing employment will be handled by human resources or the appropriate department for each facility.

22. What if staff member was on vacation when the facility had its initial testing? What if a staff member is absent from the facility during the time weekly testing is being done?

The employee should be tested every seven (7) days that the individual works. If an employee misses a weekly testing date, they should be tested before returning to work. An employee returning from vacation should be tested upon return from vacation or as soon as practicable

PRIOR TO returning to work. While the test result is pending, the employee may resume work, provided that they wear the appropriate PPE, undergo temperature testing, and answer screening questions. Should the employee who has returned from vacation refuse to be tested, there needs to be a signed attestation of refusal by the employee.

23. What are acceptable exceptions to testing?

There are no exceptions to the weekly testing requirement.

24. What happens if a high percentage of staff refuses the test?

Staff (and residents) has the right to refuse testing. Employees who do not receive weekly testing, are considered to be at-risk for transmitting COVID-19 to other staff and residents. Each facility shall document the staff or resident's refusal by having the individual sign documentation created by the facility indicating that they have refused testing. It is the facility's responsibility to ensure that appropriate policies and procedures (P&P) are in place and ensure appropriate staffing levels are maintained.

25. The rules states "each facility shall document the staff or resident's refusal by having the individual sign documentation created by the facility indicating that they have refused testing". Is there any other language around this topic that has been developed?

Each facility should have policy and procedures (P&P) addressing refusal e.g. not being able to work in the community for a prescribed period of time. A facility's P&P should govern their process and should be vetted through their human resource and/or legal departments.



26. What occurs if a nursing home facility refuses to comply and not participate with the required weekly testing?

The facility would be cited for not being in compliance with the state emergency rule if they do not conduct staff testing weekly (every seven days).

27. What if the facility does not have results back prior to the next round of testing?

If the facility can provide proof that samples have been sent to a laboratory, but the results have yet to arrive, there would not be a compliance issue. We recommend that each facility, when deciding which laboratory to use, inquire about turnaround times for samples and ensure that results will be available within seven (7) days of specimen receipt. Even if test results are not received from a previous week, each facility should ensure that employees proceed with testing for the current week.

28. What if the nursing home cannot identify a testing vendor with sufficient capacity to do the testing, or they have problems with their vendor cancelling testing, etc.?

If a facility is cited for non-compliance and the reason for not testing was out of its control, the rule provides that it shall be a defense to any disciplinary action taken that a facility is unable to identify a COVID-19 testing laboratory, or that total statewide testing capacity is insufficient to accommodate the anticipated number of tests required by these rules.