



Greater Hartford Legal Aid

The Appropriations, Human Services and Public Health Committees
Virtual Listening Session, September 2, 2020
Testimony submitted by Lucy Potter, Attorney, Greater Hartford Legal Aid

DPH Must Issue Clear Guidance for Testing of Nursing Home Staff
that References Community Transmission Rates

My name is Lucy Potter, and I am an attorney with Greater Hartford Legal Aid (GHLA). I have been working with other advocates in recent months to require testing of nursing facility staff to help prevent asymptomatic transmission of COVID-19 in nursing facilities. As members of these committees are aware, Connecticut has had one of the highest incidences of nursing home deaths in the country. Everyone shares a commitment to understanding why this occurred and avoiding a recurrence.

The interim Mathematica report and many news accounts, most recently in Norwich, confirm that a big issue in the cause of this tragedy is the fact that people may be able to transmit the COVID infection before they know they have it. An August 26, 2020 Memorandum from the Center for Medicare and Medicaid Services (CMS) recommends regular routine testing, even with no facility outbreak, along with more frequent testing if there is an outbreak. The benchmarks for frequency of regular testing is linked to the COVID-19 positivity rate in the community, county by county, throughout the country. <https://www.cms.gov/files/document/qso-20-38-nh.pdf>. Once infections within a facility have subsided, staff testing should continue monthly if the COVID-19 rate in that county is < 5%. It should be weekly if the rate is between 5 and 10%. And it should be twice weekly if the rate exceeds that. The guidance helpfully provides a link to an Excel Table listing the transmission rate for every county in the country. The listing of the positivity rate will be updated weekly.

Advocates from the Legal Services Programs met with DPH recently and asked them to issue clear guidance that would specify that testing of nursing home staff is keyed to the community transmission rate. We pointed out that the Governor's Executive order 7UU, required ongoing staff testing, even when there was no transmission within a facility. A subsequent order, 7AAA, retreated from the initial order, allowing testing to stop after 14 days with no new infections in a facility. While DPH saw the danger of asymptomatic spread, and the importance of routine surveillance testing, they would not commit to issuing a policy embodying this important principle and specifically tying testing to community transmission rates. Since that meeting, CMS issued the very clear guidance described above using community transmission rates as the underlying trigger for the frequency of routine testing.

Greater Hartford Legal Aid, Inc.

999 Asylum Avenue, 3Fl. Hartford, CT 06105-2465 • Tel: 860. 541. 5000 • Fax: 860. 541.5050 • www.ghla.org



DPH now favors monthly testing of all staff. It is critical, however that DPH issue state guidance that mirrors the recent CMS guidance, and directs all nursing facilities to test staff with the frequency CMS recommends, depending on the community transmission rate. This might vary from county to county over time. There must be a clear protocol, to be able to respond nimbly as circumstances change around the state. Nursing home residents, their families and staff need assurances that the most recent CMS guidance is being followed to keep them safe. Lives depend on it.