



10500 Little Patuxent Parkway
Suite 210
Columbia, MD 21044-3585
(410) 740-9743

Washington DC
(301) 596-5774

Toll Free
(800) 876-AMDA

Fax
(410) 740-4572

www.paltc.org

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Wexford, PA

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Christopher E. Laxton, CAE
Columbia, MD

May 15, 2020

Hon. Andrew Cuomo
Governor of the State of New York
Executive Chamber
State Capitol
Albany NY 12224

Re: Executive Order 202.30 – May 10, 2020

Dear Governor Cuomo,

I read with great concern your above-referenced order requiring all nursing homes and assisted living communities to immediately test all personnel for COVID-19 twice weekly. We all very much appreciate and applaud your attention to the perilous situation faced by nursing homes and assisted living communities in your state, where at least 20% of all COVID-19 deaths have occurred among our most vulnerable residents. I am writing today to request that, in order to ensure a greater possibility of success in the implementation of your order, you work with clinical specialists in post-acute and long-term care medicine, including certified medical directors, in amending the order and/or providing additional guidance.

AMDA – The Society for Post-Acute and Long-Term Care Medicine is the only national medical specialty society representing the community of over 50,000 medical directors, physicians, nurse practitioners, physician assistants, and other practitioners working in the various post-acute and long-term care (PALTC) settings. The Society's 5,500 members work in skilled nursing facilities, long-term care and assisted living communities, CCRCs, home care, hospice, PACE programs, and other settings.

I acknowledge that PALTC staff are the likely principal vector in the transmission and spread of COVID-19 in PALTC settings. However, I respectfully suggest that, as written, your Executive Order presents insurmountable challenges to your New York nursing homes and assisted living communities, which are now scrambling to comply, risking further detriment in the care of their vulnerable residents. I offer suggestions herein for your urgent consideration.

Short deadlines. Our members and colleagues in New York tell us that the imposition of very short deadlines on post-acute and long-term care facilities – of May 13th to submit a plan to the Department of Health for testing all employees, and of May 15th to certify their compliance with this and all other Executive Orders or face fines and other penalties – makes it virtually impossible for facilities to comply despite their best, good-faith efforts to do so.

Our Vision:

A world in which all post-acute and long-term care patients and residents receive the highest-quality, compassionate care for optimum health, function, and quality of life.

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I am also aware that, despite this very short timeframe, nursing homes and assisted living communities are indeed making the attempt to comply. I am very concerned that, in their haste to do this, they may jeopardize the well-being of the residents and patients under their care – in other words, the overly brief deadline risks producing exactly the opposite result of the intent behind your order. I urge you to work with the PALTC stakeholders in New York State to establish deadlines for compliance of all aspects of this order that are achievable.

Staffing capacity during quarantine. We know from national data that when universal PCR testing is implemented in nursing homes, some 25% of staff will test positive and will need to be held under quarantine for 14 days before returning to work. As you may be aware, nursing homes were already struggling with challenges in having adequate levels of staffing before the COVID-19 pandemic. In this time of COVID-19, nursing home staff have been even more burdened with illness.

Further, the executive order anticipates that existing nursing staff will be deployed to administer the PCR tests, and thus be diverted from patient care. Most PALTC nurses will not have been trained in the proper procedure to obtain a viable test result and this training must be done in order to ensure that the test samples and results will be reliable and accurate.

While COVID-19 continues with devastating force, recommendations from the Centers for Disease Control and Prevention (CDC) allow asymptomatic COVID-19 positive employees to return to work seven days following test results if they remain asymptomatic. You have taken a more conservative approach, requiring asymptomatic COVID-19 positive employees to remain in quarantine for a full 14 days. This protocol combined with the testing mandate is likely to devastate the staffing levels in homes and the residents they care for. I request you consider amending your guidance to follow the CDC recommendation.

With some 25% of this already stretched workforce now removed, I cannot in good conscience accept that a nursing home – or any PALTC setting – can under these circumstances continue to provide safe and effective care to its patients and residents. If not addressed appropriately, this could lead to an increased number of hospital admissions from PALTC facilities. In light of this, I urge your office to make available surge staffing to support your New York nursing homes and assisted living communities in being able to continue to provide care during this quarantine period and possibly beyond as the needs of PALTC providers continue.

Testing. While testing is critical, testing all personnel twice a week puts a serious strain on the testing resources available to the 19 million people in New York State. While the goal of testing twice a week is to protect the residents and possibly ease the anxieties of family members, there is no one-size-fits-all solution here, and I believe there may be other options.

Governor Cuomo, you have made an important commitment to the essential workers of your state, demonstrated by the antibody testing you continue to provide. Based on the data you have presented during your daily updates, the antibody tests of the healthcare workers in New York City and Long Island proves that, with the correct use of PPE, direct care staff are protected. (Healthcare workers have been positive for antibodies at 12.2% vs. 19.9% among the general population.)

Instead of completing diagnostic (PCR) testing, another option might be to conduct surveillance testing of all personnel for antibodies. The, employees without antibodies could be tested diagnostically and quarantined as necessary in accordance with the Department of Health guidance. Staff without antibodies could continue to be tested weekly, in addition to the routine screening that is being done at the start of every shift and every 12 hours for individuals working overtime.

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Test availability, lab capacity, and costs. The estimate of the numbers and costs of testing all nursing home, assisted living, and other senior care staff twice a week are staggering. The executive order applies to some 185,000 staff across PALTC settings, or some 370,000 tests every week. I am informed that there are not enough test kits and supplies in the state to meet this level of testing. In addition, I understand that the laboratories that are to be used to process these PCR tests will be overwhelmed by the demand caused by this influx. Finally, I have heard that each PCR test will cost between \$100 and \$175, for an estimated financial burden of over \$55 million every week.

Testing of this quantity could also have unintended consequences, such as possibly delaying the phased reopening plan your staff has worked so hard on, due to lack of testing resources and prolonging test results. This could have wide ranging implications for all citizens of New York State.

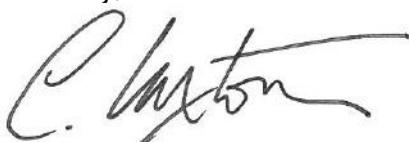
It is clear that these numbers are unsupportable by the nursing home community and other PALTC settings, and by the processing laboratories. Also, while nursing homes have qualified medical directors to order and oversee staff and resident testing, assisted living communities have no such medical oversight role and it is not clear how such testing will be managed. I urge immediate consideration of the State of New York in appropriating funds to support implementation of this executive order, and in doing so consultation with clinical experts and medical specialists from the PALTC interprofessional team.

Engaging PALTC expertise. We are all very grateful for your continuing attention to the many challenges facing our PALTC staff and patient population – the most vulnerable of your citizens during this COVID-19 pandemic. I urge you now to involve those with expertise in the clinical care and management of this patient and resident population, as well as those responsible for the leadership and administration of the nursing homes and assisted living communities in New York State, in future formulation of policy and guidance for the PALTC community.

To that end, our local Chapter – **The New York Medical Directors Association (NYMDA)** – has offered their expert assistance to you in the past and continues to stand ready to work with your public health team in developing and disseminating policy guidance that will help to ensure that PALTC is a safe place to work and to live during the COVID-19 crisis. NYMDA physicians have many years' experience in addressing the many clinical and patient management challenges nursing homes and assisted living communities face and would be an extremely valuable asset to you in your efforts to keep your vulnerable citizens safe. The President of NYMDA, Dr. Jay Slotkin, can be reached at jslotkinmd@optonline.net, or 631-374-4283.

Thank you for your consideration. Please contact me with any questions you may have; I can be reached at claxton@paltc.org, or 708-833-9669.

Sincerely,



Christopher E. Laxton, CAE
Executive Director