COVID-19: ADVOCATING FOR NURSING HOME RESIDENTS, PART XI

July 31, 2020
Agenda

I. Introduction and housekeeping
II. Allocation of Testing Equipment for Nursing Homes
III. Update on Nursing Home Staff Reporting
IV. Immunity Update
V. Legislative Update
VI. Q&A/Discussion
Presenters

- Richard Mollot, Long Term Care Community Coalition
- Robyn Grant, Consumer Voice
- Sam Brooks, Consumer Voice
Allocation of Testing Equipment for Nursing Homes

Update on Nursing Home Staff Reporting

Richard Mollot
Long Term Care Community Coalition

www.nursinghome411.org
Allocation of COVID-19 Testing Equipment

Background

- Testing is a major issue in and out of nursing homes (and other residential care settings).
- In order to be useful, testing needs to be...
  1. Available
  2. Accurate
  3. Timely.
- To date, no coronavirus tests have been approved by the FDA. But tests are available under Emergency Use Authorization (EUA) [www.fda.gov](http://www.fda.gov), which means the FDA has not thoroughly vetted these tests to grant full approval. There is limited information on the efficacy (sensitivity and specificity); a low threshold of detection studies are needed to achieve FDA EUA status. Laboratories developing coronavirus tests may begin patient testing while their assays are under FDA review. Additionally, there are tests being marketed to physicians that do not have EUA status.

  - American Academy of Family Physicians (July 28, 2020)
Allocation of COVID-19 Testing Equipment

When?

- July 20, 2020: the federal Centers for Medicare & Medicaid Services (CMS) began shipping testing platforms to the nation’s nursing homes.
- Equipment will be distributed over a 14-week period (therefore ending early October, if CMS complies with schedule).

Who?

- To be eligible, nursing homes must have a current CLIA Certificate of Waiver AND meet certain epidemiological criteria. [CLIA = Clinical Laboratory Improvement Amendments, a 1988 federal law authorizing standards for certain laboratory testing to ensure the accuracy, reliability and timeliness of test results.]
- Tests will be distributed based on epidemiological hotspot data and facilities whose data indicate an elevated risk for COVID-19 transmission.

How many?

- Nursing homes were categorized into five groupings based on their estimated testing needs: Small facilities – 150 tests, 1 instrument; Small-medium facilities – 240-250 tests, 1 instrument; Medium facilities – 325-330 tests, 1 instrument; Large facilities – 600 tests, 1 instrument; Major outlier facilities – 900+ tests, 2 instruments.
Allocation of COVID-19 Testing Equipment

What?
- Type of test: antigen diagnostic.

Antigen diagnostic tests quickly detect fragments of proteins found on or within the virus by testing samples collected from the nasal cavity using swabs.

Negative results should generally be treated as presumptive, do not rule out SARS-CoV-2 infection and should not be used as the sole basis for treatment or patient management decisions, including infection control decisions. If necessary, confirmation with a molecular assay for patient management may be performed.

Negative results should be considered in the context of a patient’s recent exposures, history and the presence of clinical signs and symptoms consistent with COVID-19, and should not be used as the sole basis for treatment or patient management decisions, including infection control decisions.

For further information on the test and distribution, see the FAQ available at:
### Nursing Home Coronavirus Testing Allocations

On July 22, 2020, the Centers for Medicare & Medicaid Services (CMS) announced that it would begin distribution of COVID-19 (coronavirus) testing equipment to nursing homes, beginning with nursing homes in “hot spots.” The file below provides information on what nursing homes have received allocations of testing equipment (Allocation tab) and the counties identified as “hot spots” (Hot Spots tab). The information can be searched and sorted by state, county name, and facility name. We will post any updates to the CMS list every two weeks.

For more information on the program and testing equipment, see CMS’s Frequently Asked Questions: COVID-19 Testing at Skilled Nursing Facilities/Nursing Homes.
Where are the Hotspots?

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www.NursingHome411.org
PBJ Nursing Home Staffing Data Update

What is it?

- Under the 2010 Affordable Care Act (ACA, aka ObamaCare), nursing homes are required to report nursing staff and several other important categories of staffing for every day of the year based on auditable payroll records. [Up until that time, nursing homes only reported staffing once a year, for the two-week period prior to their annual survey.
- From our perspective, this is now the most valuable information available to the public on the quality of care a nursing home is providing.

What’s happened since 2010?

- CMS failed to design and implement a PBJ system until 2015, following pressure from resident advocacy groups, including LTCCC, the Consumer Voice, and the Center for Medicare Advocacy.
- In 2017, CMS had sufficient confidence in the accuracy of the reported data to begin providing it to the public, in quarterly data files that include all of the data for each day of the quarter for each nursing home in compliance with the federal reporting requirements.
- In March 2020, CMS told nursing homes that, due to the pandemic, they no longer had to report PBJ data or MDS data.
- In July, CMS announced that it is resuming the reporting requirement for PBJ data, starting for the 2nd quarter of 2020 (April 1, 2020).
PBJ Nursing Home Staffing Data Update

Why are these developments important?

- As noted earlier, from our perspective these are the most important and reliable data related to the quality of care and safety in a nursing home.
- It is crucial that the public, researchers, and policymakers have the most complete information possible on what went on during the pandemic so that we can understand what factors led to better (and worse) outcomes for residents and to plan better for the future.

Bottom Line:

- Unless there is a change in policy, we will never have information on nursing home staffing for January – March 2020.
- Second quarter data will be collected and published, as it normally would, in the fall.
- Nursing homes still have an ongoing holiday from reporting MDS data, such as the extent to which residents are experiencing falls, being given antipsychotic drugs, suffering from cognitive issues, etc.

Final Thoughts: Nursing homes provide home and care to a very vulnerable population. They are not hospital E.R.s or M.A.S.H. units in a war zone. It is completely unacceptable that they have been given a holiday from oversight & accountability for almost five months!
The Fourth COVID Relief Package: HEROES AND HEALS

Robyn Grant
Director of Public Policy & Advocacy
## Personal Protective Equipment (PPE)

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<thead>
<tr>
<th>HEROES ACT</th>
<th>HEALS ACT</th>
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<tbody>
<tr>
<td>Increases production and delivery of PPE through Defense Production Act</td>
<td>Creates tax credits to spur domestic manufacturing of PPE</td>
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<td>Establishes Medical Supplies Response Coordinator</td>
<td>Builds national and state medical stockpiles</td>
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## Testing

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<tr>
<td>Establishes a national system for COVID-19 testing, contact tracing, surveillance, containment and mitigation</td>
<td>Allows the federal government to contract with public and private entities to assist in development and dissemination of diagnostic tests</td>
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<tr>
<td>Provides funding for testing and contact tracing</td>
<td>Enhances diagnostic testing of visitors to, personnel of, and residents of, any facilities in which COVID–19 measures support more frequent testing</td>
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### Strike Teams

**HEROES ACT**

Provides $500 million to States for strike teams to be deployed to facilities within 72 hours of three residents or employees being diagnosed with or suspected of having COVID-19

**HEALS ACT**

Provides $150 million for federal strike teams

Mission may include:
- Performing medical examinations
- Conducting COVID–19 testing
- Assisting facilities with the implementation of infection control practices (such as quarantine, isolation, or disinfection procedures)
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<tr>
<td>Gives pandemic premium (hazard) pay to essential workers</td>
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<td>• $13 over regular pay</td>
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<td>• Paid for out of a $200 billion Heroes’ fund</td>
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<td>Provides emergency paid sick leave and emergency paid family and medical leave time</td>
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<td>Requires OSHA to issue an emergency temporary standard to protect health care and other workers at occupational risk of exposure to COVID-19</td>
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### HEROES ACT

Requires HHS to collect data on COVID-19 in nursing homes
Includes the number of clinical and nonclinical staff providing direct patient care

### HEALS ACT

Requires HHS to provide a list of facilities in which the reported cases of COVID-19 increased during the previous week to the Governor of each State

Requires HHS to publicly report demographic data on Nursing Home Compare
Infection Control Support and Training

**HEROES ACT**
Requires CMS to contract with at least one Quality Improvement Organization to provide infection control support

**HEALS ACT**
Authorizes HHS in consultation with Elder Justice Coordinating Council to:

Develop:
- Online training course
- Training materials
- Training courses on best practices in infection control and prevention
- Support facilities in areas determined to require additional assistance
Also in the HEROES Act

• Televisitation
• Designation as a COVID facility or unit
Safe to Work Act (S.4317)

- Introduced by Sens. Cornyn and McConnell.
- Broad, far reaching bill barring a variety of court claims during the pandemic.
- Designed to shield employers, businesses, schools, hospitals, doctors, nursing homes, and more from liability.
- Little to do with being able to work safely.
  - Likely the opposite.
S. 4317 and Nursing Homes

- All cases will be heard in federal court.
- Reduces statute of limitation on claims to one year.
- Would bar all claims of negligence against facilities for five years.
- Not limited to claims of harm because of COVID-19 infection. All harm, including deaths, will be barred.
- Creates impossibly high evidentiary standards.
S. 4317 and Nursing Homes

• All claims of negligence will be barred.
  • Nursing homes will only need to show that the care that harmed the resident was “impacted” because of the coronavirus
• To prevail, residents and families will have to show willful misconduct or gross negligence.
  • Defined in law as essentially criminal activity.
• Bars all claims for harm caused by lack of PPE and staff, whether caused by facility or not.
• Caps damages. Most nursing home residents/families would get nothing.
S. 4317 Affect on Current Residents/Workers

• Removes last remaining protection.
• Creates new standards of care that allow negligence.
• Will result in further harm and devastation to residents and their families.
• Makes workers less safe.
What Can You Do?

• Call your members of Congress and tell them you oppose the Safe to Work Act and immunity for nursing homes.

• Call the U.S. Capitol Switchboard
  • 202-224-3121 and asked to be connected to your Senators and/or Representatives.
  • https://www.house.gov/representatives/find-your-representative
  • https://www.senate.gov/senators/contact

• Tell them you oppose the Safe to Work Act (S. 4317) and immunity for nursing homes.
Resources

https://theconsumervoice.org/issues/other-issues-and-resources/covid-19
Share Your Story
Tell us about your, or your loved one's, experiences with your long-term care facility during COVID-19.