



JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

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

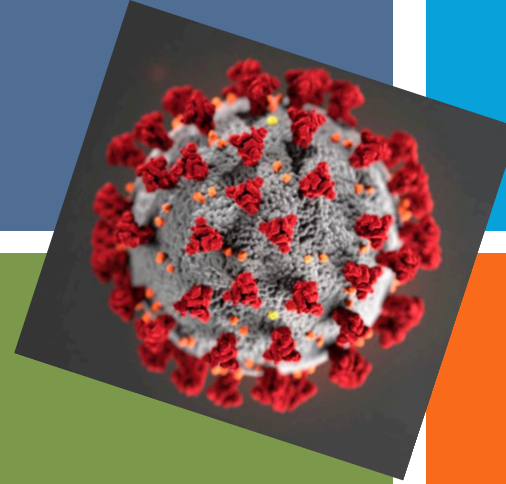
July 31, 2020

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

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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), 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.

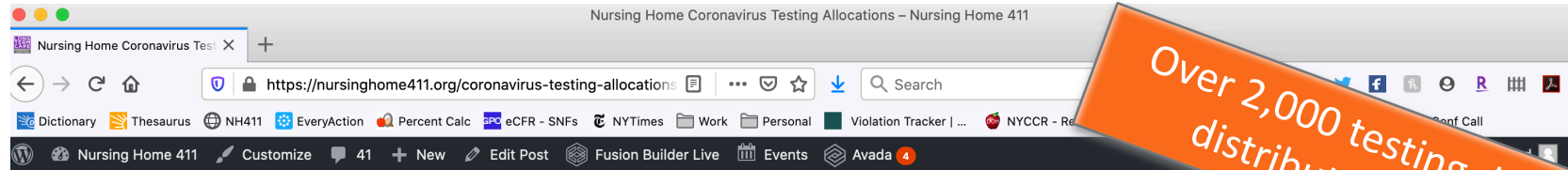
Negative results should generally be treated as presumptive, do not rule out SARS-CoV-2 infection and should not be used as the sole basis for treatment or patient management decisions, including infection control decisions. If necessary, confirmation with a molecular assay for patient management may 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:
<https://data.cms.gov/download/tv7a-xetf/application%2Fpdf>



Who Has Gotten the Tests So Far?



Over 2,000 testing devices distributed to date.



Advancing Quality, Dignity & Justice

- Who We Are >
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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](#).

	B	C	D	E	F	G
1	Provider Name	Provider Address	Provider City	Provider State	Provider Zip Code	Provider County
2	EASTVIEW REHABILITATION & HEALTHCARE CENTER	7755 FOURTH AVENUE SOUTH	BIRMINGHAM	AL	35206	Jefferson
3	PLANTATION MANOR NURSING HOME	6450 OLD TUSCALOOSA HIGHWAY P O BOX 97	MC CALLA	AL	35111	Jefferson
4	CRIMSON HEALTH AND REHAB, LLC	3312 WOODLEY ROAD	MONTGOMERY	AL	36116	Montgomery
5	DIVERSICARE OF MONTGOMERY	2020 NORTH COUNTRY CLUB DRIVE	MONTGOMERY	AL	36106	Montgomery
6	CAREGIVERS OF PLEASANT GROVE, INC	700 FIRST AVENUE	PLEASANT GROVE	AL	35127	Jefferson
7	NORTHWAY HEALTH AND REHABILITATION, LLC	1424 NORTH 25TH STREET	BIRMINGHAM	AL	35234	Jefferson
8	OAK TRACE CARE & REHABILITATION CENTER	325 SELMA ROAD	BESSEMER	AL	35020	Jefferson
9	TERRACE OAKS CARE & REHABILITATION CENTER	4201 BESSEMER SUPER HIGHWAY	BESSEMER	AL	35020	Jefferson
10	FAIR HAVEN	1424 MONTCLAIR ROAD	BIRMINGHAM	AL	35210	Jefferson
11	NORTH HILL NURSING AND REHABILITATION CTR, LLC	200 NORTH PINE HILL ROAD	BIRMINGHAM	AL	35217	Jefferson
12	SOUTH HEALTH AND REHABILITATION, LLC	1220 SOUTH 17TH STREET	BIRMINGHAM	AL	35205	Jefferson
13	CIVIC CENTER HEALTH AND REHABILITATION, LLC	1201 22ND STREET NORTH	BIRMINGHAM	AL	35234	Jefferson
14	OAK KNOLL HEALTH AND REHABILITATION, LLC	824 SIXTH AVENUE WEST	BIRMINGHAM	AL	35204	Jefferson
15	MAGNOLIA RIDGE	420 DEAN DRIVE	GARDENDALE	AL	35071	Jefferson
16	BIRMINGHAM NURSING AND REHABILITATION CENTER EAST	733 MARY VANN LANE	BIRMINGHAM	AL	35215	Jefferson
17	JOHN KNOX MANOR INC I I	4401 NARROW LANE ROAD	MONTGOMERY	AL	36116	Montgomery
18	DIVERSICARE OF RIVERCHASE	2500 RIVERHAVEN DRIVE	BIRMINGHAM	AL	35244	Jefferson
19	ARLINGTON REHABILITATION & HEALTHCARE CENTER	1020 TUSCALOOSA AVENUE, SW	BIRMINGHAM	AL	35211	Jefferson
20	ARBOR SPRINGS HEALTH AND REHAB CENTER, LTD	1910 PEPPERELL PKWY	OPELIKA	AL	36801	Lee
21	DIVERSICARE OF BESSEMER	820 GOLF COURSE ROAD	BESSEMER	AL	35020	Jefferson
22	SELF HEALTH CARE & REHAB CENTER INC	131 EAST CREST ROAD	HUEYTOWN	AL	35023	Jefferson
23	BIRMINGHAM NURSING AND REHABILITATION CTR LLC	1000 DUGAN AVENUE	BIRMINGHAM	AL	35214	Jefferson
24	MONTGOMERY HEALTH AND REHAB, LLC	4490 VIRGINIA LOOP ROAD	MONTGOMERY	AL	36116	Montgomery
25	WEST HILL HEALTH AND REHAB	1028 BESSEMER RD	BIRMINGHAM	AL	35228	Jefferson
26	SOUTH HAVEN HEALTH AND REHABILITATION, LLC	3141 OLD COLUMBIANA ROAD	BIRMINGHAM	AL	35226	Jefferson



Where are the Hotspots?

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Nursing Home Coronavirus Testing Allocations

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State	County	Federal Provider Number
AL	Jefferson	
AL	Lee	
AL	Montgomery	
AR	Washington	
AZ	Maricopa	
AZ	Pima	
CA	Los Angeles	
CA	San Francisco	
CA	San Mateo	
FL	Baker	
FL	Broward	
FL	Clay	
FL	Duval	
FL	Flagler	
FL	Hardee	
FL	Hernando	
FL	Hillsborough	
FL	Lake	
FL	Martin	
FL	Miami-Dade	
FL	Monroe	
FL	Nassau	
FL	Orange	
FL	Osceola	
FL	Palm Beach	
FL	Pasco	
FL	Pinellas	

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 National

CONSUMER VOICE

for Quality Long-Term Care

formerly NCCNHR

The Fourth COVID Relief Package:

HEROES AND HEALS

Robyn Grant

Director of Public Policy & Advocacy

Personal Protective Equipment (PPE)

HEROES ACT	HEALS ACT
Increases production and delivery of PPE through Defense Production Act	Creates tax credits to spur domestic manufacturing of PPE
Establishes Medical Supplies Response Coordinator	Builds national and state medical stockpiles

Testing

HEROES ACT

Establishes a national system for COVID-19 testing, contact tracing, surveillance, containment and mitigation

Provides funding for testing and contact tracing

HEALS ACT

Allows the federal government to contract with public and private entities to assist in development and dissemination of diagnostic tests

Enhances diagnostic testing of visitors to, personnel of, and residents of, any facilities in which COVID-19 measures support more frequent testing

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)

Staffing

HEROES ACT	HEALS ACT
Gives pandemic premium (hazard) pay to essential workers <ul style="list-style-type: none">• \$13 over regular pay• Paid for out of a \$200 billion Heroes' fund	
Provides emergency paid sick leave and emergency paid family and medical leave time	
Requires OSHA to issue an emergency temporary standard to protect health care and other workers at occupational risk of exposure to COVID-19	

Reporting

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

Requires HHS to publicly report demographic data on Nursing Home Compare

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

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>

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Learn About Recent Guidance

COVID-19:
How to Protect Yourself and Your Loved Ones

As the novel coronavirus 2019 (COVID-19) outbreak continues to evolve, it is important for long-term care consumers, family members, Ombudsman programs and other advocates to be informed and take precautions in order to prevent the spread.

[Learn More](#)





Share Your Story

Tell us about your, or your loved one's,
experiences with your long-term care facility
during COVID-19.

www.theconsumervoice.org

QA



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