



Nursing Home Weekly: Recap of LeadingAge Updates

July 31, 2020

Letter to Admiral Giroir on antigen testing machines - Katie sent a [letter](#) outlining our concerns about the new antigen testing machines to Admiral Brett Giroir, the HHS Assistant Secretary for Health and Administration point person for testing. Katie is meeting with him on Monday to discuss these concerns. The most pressing concerns are the need for retesting using PCR tests because of the high rate of false negatives; the cost of supplies; and the fact that many if not most state and local health departments do not accept antigen test results.

More on testing – On a call with CMS LeadingAge pressed CMS on whether or not antigen tests should be used with asymptomatic individuals. On the partnership call with CDC on Monday, CDC and the FDA recommended that antigen tests should be used for symptomatic individuals only, though HHS had previously stated that the testing shipments were meant to help augment testing efforts, including initial baseline testing of all residents and staff. CMS emphasized that this is not policy, and that CMS, CDC, and FDA will be working together to get more details out. Note that this is not an answer as to whether or not these tests should be used to test asymptomatic individuals. Regarding the testing shipments themselves, we are aware that some nursing homes may have received shipments despite having no cases of COVID-19. CMS stated that all nursing homes in the counties identified as hot spots were prioritized to receive the testing instruments and tests, regardless of the COVID status of their buildings. Beyond those hot spots, nursing homes were prioritized based on the NHCN reporting data that we reviewed previously (three or more new cases, one new case when you previously had none, one new case among staff, one resident death, difficulty accessing testing). The question of the lab reporting requirements, and enforcement of these requirements, was brought up but deferred to follow up email correspondence. We will give an update on that as soon as we can. Regarding the announcement that nursing homes in states with 5% or greater positivity rates will be required to test all staff, this will require rulemaking. CMS was unable to give a timeline of when we might expect this rulemaking but said that it is weeks, rather than months. They were unable to provide any additional information on the requirement, due to the rulemaking process.

Links from CDC and HHS on Point of Care testing in nursing homes. Here are links from CDC and HHS surrounding the POC testing.

- CDC laboratory reporting website: <https://www.cdc.gov/coronavirus/2019-ncov/lab/reporting-lab-data.html>
- “Ask on entry” questions: <https://www.cdc.gov/coronavirus/2019-ncov/lab/reporting-lab-data.html#what-to-include>
- HHS laboratory reporting guidance: <https://www.hhs.gov/sites/default/files/covid-19-laboratory-data-reporting-guidance.pdf>

- HHS press release on June 4th: <https://www.hhs.gov/about/news/2020/06/04/hhs-announces-new-laboratory-data-reporting-guidance-for-covid-19-testing.html>
- HHS FAQs: <https://www.hhs.gov/sites/default/files/laboratory-data-reporting-for-covid-19-testing-faqs.pdf>

These tests are authorized for use at the Point of Care (POC), i.e., in patient care settings (such as nursing homes) operating under a CLIA Certificate of Waiver, Certificate of Compliance, or Certificate of Accreditation.

Summary of Senate HEALS provisions of interest to LeadingAge members - On Monday, the Senate offered a seven bill package that makes up the Senate Health, Economic Assistance, Liability Protection and Schools Act (HEALS) proposal. [Here's an article](#) outlining what's in the proposal and key missing pieces for LeadingAge members. **Liability protections in HEALS.** The liability protections we have been working on and waiting for are in HEALS. [Here's an article](#) about them.

CDC guidance on residents who refuse testing – “ Residents, or their medical powers of attorney, have the right to decline testing. Clinical discussions about testing may include alternative specimen collection sources that may be more acceptable to residents than nasopharyngeal swabs (e.g., anterior nares). Providing information about the method of testing and reason for pursuing testing may facilitate discussions with residents and their medical powers of attorney.

If a resident has symptoms consistent with COVID-19, but declines testing, they should remain on Transmission-Based Precautions until they meet the symptom-based criteria for discontinuation.”

Questions about whether nursing homes and adult day may submit data to the new Provider Relief Fund external portal - We've worked hard to explain to the people running the Provider Relief Fund effort that in fact there are nursing homes and adults day providers who do not accept Medicare or Medicaid. Since HHS just clarified this a moment ago, they agreed to have us send them the data on nursing homes and adult day. Again, these MUST be private pay only. No Medicare and no Medicaid. Please have private pay nursing homes and adult day services send Nicole (NFallon@leadingage.org) the following information and she will pass it along to HHS. (Yes, we have been through this before, but we'll have another go at it, again at HHS's invitation. We have to keep trying.)Name of licensed, private pay provider (e.g. nursing home, Adult Day)

- Name of entity that holds the license
- Entity Address
- Provider state license/registration/certification number (some states may not provide a number)
- Corresponding Tax Identification Number (TIN)
- Taxpayer ID Number for the filing company
- Contact information for the person submitting data

New telehealth reports - There were two new telehealth reports issued this week. One from the Better Medicare Alliance's research arm, The Center for Innovation in Medicare Advantage, conducted by ATI Advisory. The [report](#) looked at the role of telehealth and virtual care in meeting the needs of Medicare beneficiaries during the Coronavirus (COVID-19) public health emergency. Findings from this study

suggest there are several opportunities for Congress and CMS to consider as they modernize health care policy in an effort to maximize access to needed and appropriate care

The other came from HHS, through the Assistant Secretary for Planning and Evaluation and looked at data on telehealth utilization in primary care delivery in FFS Medicare during the pandemic. The [report](#) analyzes claims data from January through early June. The report concludes there is evidence that Medicare's new telehealth flexibilities played a critical role in helping to maintain access to primary health care services - when many beneficiaries and providers were concerned with transmission of COVID-19. Future research could examine whether these flexibilities were effective and if telehealth may have improved access to care and health outcomes among underserved beneficiaries

Provider Relief Fund reporting deadlines announced - HHS recently published a document explaining that a reporting system for the Provider Relief Fund will come online on October 1, 2020 and that HHS will release further details about the data collection template and reporting instructions by August 17, The first report will be due by February 15, 2021. The [notice of reporting requirements](#) details the timing of future reporting for recipients of distributions from the Provider Relief Fund. LeadingAge is posting an [article](#) that covers this new information.

COVID-19 Legal Issues -The LeadingAge Knowledge Center continues to add new content to help you navigate the COVID-19 crisis -- including the critical legal issues the pandemic has created. During this week's QuickCast, [COVID-19 Documentation: Actions Communities Should Take Now](#), attorney Sean Fahey focuses on key documentation areas providers should address to minimize risk in the future.

On Thursday, August 6, Daniel Burke and Lyndsey Barnett will review [the latest legal guidance](#) for continuing to operate during COVID-19. Earn 1.0 NAB CEs while covering topics including: employee privacy, PTO best practices, leave-sharing plans, and more. [Register now](#) to reserve your spot on this vital upcoming webinar.

Changes to the daily member call - As the pandemic continues to evolve, we are mindful that your organizational priorities are evolving as well. Beginning on August 3, we are going to deliver our member update calls on Mondays and Wednesdays at 3:30pm ET, and we will continue to post recordings on our website. Content will include legislative, regulatory, and operational information from the policy team, LeadingAge members, and other subject matter experts. We encourage you to continue to let us know what topics you'd like to hear us talk about. [Register here.](#)