



## Nursing Home Weekly: Recap of LeadingAge Updates

September 18, 2020

**Monday 3:30PM Call - Admiral Brett Giroir, MD, Administration testing lead will speak directly to LeadingAge members on the LeadingAge Coronavirus Update Call at 3:30 Eastern on Monday, September 21.** Should we be using antigen testing for surveillance? What's your PCR testing experience lately, looking for shorter turnaround times? How long will you have to wait for BD test kits? If you offer assisted living services and do not have a CLIA waiver, how can you get Abbot BinaxNOW tests? Will home health providers or hospice providers receive Abbott cards? Join the LeadingAge Coronavirus Update Call at 3:30 Eastern on Monday, September 21 to hear answers to these and other questions related to testing. (Note: this is not a session on the CMS Interim Final Rule.) If you aren't already registered for these calls, you can register [here](#).

**Training with BD Experts on Veritor Plus COVID-19 Testing on Friday, September 18 at 3:00 PM Eastern** LeadingAge partnered with BD to host an exclusive training on the BD Veritor System. Nearly 700 members attended this afternoon's exclusive LeadingAge webinar with BD regarding the Veritor testing machines and test kits HHS has procured for nursing homes. BD presenters walked through the mechanics of processing the tests and highlighted training and education resources available on their microsite at [bdveritor.com](http://bdveritor.com). They reviewed test kit contents, batch testing, using the machines for testing for Flu and Strep, and methods for reporting results. The Q & A session was lively and LeadingAge will work with BD to further clarify some ambiguous issues. Read a summary of the webinar [here](#). A recording of the session and a summary will be posted on the LeadingAge website soon.

**Training with Quidel Experts on Sofia COVID-19 Testing on Thursday, September 24 at 3:00 PM Eastern** -LeadingAge is partnering with Quidel to offer a LeadingAge exclusive training on the Quidel Sofia analyzers. Quidel trainers will demonstrate how to use the machine, provide details on batch testing, and answer member questions. Jodi and Janine will be on hand to answer member questions about the CMS Interim Final Rule and other topics. **You can register for the training [here](#).**

**Visitation memo.** After the White House event on the Nursing Home Commission ended, CMS pushed out the promised and foreshadowed revised [Visitation Guidance](#). The memo, effective immediately will allow indoor visitation to begin. Visitation can be conducted through different means based on a facility's structure and residents' needs. The guidance requires screening of all who enter the community, but it does not require testing. Visitation is based on county positivity rates. The memo authorizes the use of CMP funds to help support in-person visits. A maximum of \$3,000 per nursing home may be used for tents and clear dividers. A more detailed article will be posted soon on the LeadingAge website.

**HHS Announced the Nursing Home Incentive Payment Program Details** – LeadingAge has been meeting with HHS as they have evolved their thinking on how to implement the Nursing Home Infection Control Incentive Payment program. It released its final thinking on the CARES Act Provider Relief Fund [website](#) under General Information and Allocation for SNFs and Nursing Homes. Nicole has put together an [article](#) on the details. LeadingAge asked that HHS not use the mortality measure at all but they had already committed to it publicly so we are pleased to see that the infection control measure is more heavily weighted than performance on mortality. Nursing homes will need to pass two key gateways before they are eligible for the funds: 1) their infection rate for non-admission related COVID needs to be less than the county rate; and 2) their mortality rate for non-admission COVID deaths must be less than a national benchmark set by HHS, which has not yet been defined. It is encouraging that when HHS modeled this approach, roughly 75% of nursing homes would qualify for some level of incentive. It will be interesting to see how this program plays out as this is the first time we have had a nursing home incentive program where the timeframes for performance on the measure and distribution of a related incentive payment are so close together. This will be a good test of whether this approach can have a bigger impact on changing provider behavior as HHS hopes is the case. Finally, the “detail” provided today still leaves some gaps related to specific data points and formulas to be used. For example, what CDC data are they using from the counties and how does that compare to the nursing home rates? Will the timeframes be comparable? We will continue to seek answers to these and other questions.

**Infection Commission report released.** The Coronavirus Commission for the Safety and Quality of Nursing Homes released its final [report](#) describing the infection control challenges faced by nursing homes and offering 27 recommendations to address them. The 27 recommendations, each with a series of action steps that can be taken immediately or within the next six months. Notably, most recommendations that involve new spending include some reference to the need for financing to support the action steps. Concurrently, in response to the report, CMS pushed out a [press release](#) and a [comparison](#) of Administration actions and the Commission’s recommendations. The title of the press release summarizes the Administration’s view of how it’s doing: “Independent Nursing Home COVID-19 Commission Findings Validate Unprecedented Federal Response.” [Here’s](#) an article on the White House Commission. Jeannee Parker Martin, President and CEO of LeadingAge California served on the Commission.

**Abbott BinaxNow (cards) distribution, invoices and webinar** -Abbott BinaxNOW (cards) tests are already in the mail from Abbott. They have reportedly shipped about 1 million of them to SNF operators and 540,000 to assisted living providers with CLIA waivers (there are about 5,400 of them). Home health providers will be on a future distribution list. HHS has not issued a distribution plan in writing. **Abbott invoices a mistake.** We heard from several assisted living and nursing home members that they received invoices for Abbott BinaxNOW (Abbott cards) tests. We learned from Abbott that these invoices are a mistake. **Do not pay them!** HHS is providing the test cards at no cost.

Abbott conducted a webinar for assisted living communities on Friday, 9.18.20 to train on using the test kits, basics of infection prevention in assisted living. Abbott will post the link to the webinar and is offering training to providers. Read a summary of the webinar [here](#). You can also access the Abbott BinaxNOW training portal [here](#).

**Antigen testing and false positives-** The joint survey that LeadingAge and AHCA conducted to gauge the degree to which false positive test results are occurring with the BD Veritor (and the Quidel Sofia) closed at midnight last night. With over 1,000 respondents (thank you, members who responded), it looks like

the number of false positives, which is the same with BD and Quidel, is about what would be expected with antigen tests, which are 98-99% accurate. The problems came quickly to the fore because: (a) the CMS rule took effect September 2; and (b) the antigen machines were distributed to nursing homes – so there was a lot of testing done. We learned that:

- About 85% of nursing homes in the sample received a BD and 15% a Quidel analyzer.
- About 90,000 tests have been conducted so far with these machines.
- With 98% specificity, 1800 false positives would be expected; that's almost exactly the number reported on our survey, for both machines. The numbers are consistent with large volume testing. Any provider experiencing one or two false positives falls within this expected range.
- There remains concern about providers who report clusters of false positives. BD is investigating these instances. So far, it appears that the providers are conducting the tests correctly. We hope to know more by the end of the week.
- 51% of those with BD analyzers expect to run out of testing supplies within the next 1-2 days, 26% within 3 days, and 25% in more than 3 days; all have been told there will be a wait for additional test kits.
- The wait for Quidel test kits is not as onerous because there are fewer of the machines, thus less demand.

We encourage members to use the antigen machines HHS provided and to maintain a varied testing program, rather than relying on one type of testing (antigen machines and Abbott BinaxNOW cards, PCR). Most important, we are working aggressively with HHS to get written information out to address what to do in the case of false positives, whether from antigen or PCR tests. This includes recommendations for cohorting and isolation; reporting to the state and to the NHSN; not treating a false positive as an outbreak; implications for Provider Relief Fund performance incentive payments. Admiral Brett Giroir, MD, HHS Assistant Secretary for Health will be on the LeadingAge Coronavirus Update Call on Monday, September 21. Members should send questions to Joe ([JFranco@leadingage.org](mailto:JFranco@leadingage.org)) ahead of time if they would like us to try to include them in the interview.

**Information for members on false positives and related testing issues** - LeadingAge posted [this article](#) on false positives (aka discordant test results), with guidance for members.

**State Testing map.** Thank you for your help with the interactive map that shows testing activities and policies in states. We have specifically focused on the requirements for SNF, AL and LPC. The map is listed on our website, here is the link to the map <https://leadingage.org/state-covid-19-testing>. We sent the draft last week for you all to review. Going forward, we request that you please share testing information as it becomes available in your state with Eram at [eabbasi@leadingage.org](mailto:eabbasi@leadingage.org). Since things are changing so rapidly, we plan on updating this at least once a week.

**Proposed Medicaid Fiscal Accountability Regulation (MFAR) Withdrawn** -CMS announced that they [will not move forward with the proposed Medicaid Fiscal Accountability Regulation \(MFAR\)](#). If finalized, MFAR would have jeopardized key nursing home financing policies, including life plan community provider tax exemptions and nursing home supplemental payment programs. LeadingAge strongly opposed the proposal and worked closely with our state partners and members to urge CMS to withdraw MFAR.

**Provider Relief Fund Updates - A reminder - HHS extended the deadline for private-pay only** assisted living and nursing homes to submit their applications to Sept. 21 at close of business, which typically has meant 11:59 p.m. Eastern Time. The only task these providers need to accomplish by the deadline is to submit their tax identification number for validation. Here is an [article](#) on this topic that includes supporting resources for members who are applying as part of this phase.

**For those members who have applied, payments are going out every day and HHS is still approving TINs.** They shouldn't panic if they haven't received a communication yet that their TIN has validated. Once approved, they will receive a DocuSign email with steps for completing the application process. They might want to check their junk mail file just to make sure the email wasn't redirected.

HHS confirmed that there will be a **3<sup>rd</sup> tranche of funds** for "clean up." It is not clear if this will be an application or an automatic distribution yet. More likely, an application process. Once we know more, we will share the information about that process. We also don't know how much money is left in the fund to be distributed but don't expect it to be much. This may be the last round of distributions unless Congress appropriates more in a future Stimulus bill. Private pay members who have not yet applied or accessed Provider Relief Funds can provide their information in the attached Excel file to [Nicole](#) who will provide it to HHS to facilitate the TIN validation process for this 3<sup>rd</sup> tranche.

**CMS Nursing Home Stakeholder meeting set for September 21 from 2:00 – 2:30 Eastern.** You are invited to join CMS Chief Medical Officer, Lee Fleisher, MD and other CMS officials to discuss the recommendations of the Coronavirus Commission for Safety and Quality in Nursing Homes and the Administration's responses to it. Details and links:

**Toll Free Dial-In Number: (833) 614-0820**

**Conference ID: 7883929**

Conference lines are limited, so you are encouraged to join via webcast:

<https://protect2.fireeye.com/url?k=8777ef6c-db23c647-8777de53-0cc47a6d17cc-0bc7372546fd785c&u=https://engage.vevent.com/rt/cms2/index.jsp?seid=2592>

- Press Release: <https://www.cms.gov/newsroom/press-releases/independent-nursing-home-covid-19-commission-findings-validate-unprecedented-federal-response>
- Full Independent Coronavirus Commission for Safety and Quality in Nursing Homes report: <https://edit.cms.gov/files/document/covid-final-nh-commission-report.pdf>
- Trump Administration Response to Commission Findings: <https://edit.cms.gov/files/document/covid-independent-nursing-home-covid-19-federal-response.pdf>
- COVID-19 Guidance and Updates for Nursing Homes during COVID-19: <https://edit.cms.gov/files/document/covid-guidance-and-updates-nursing-homes-during-covid-19.pdf>

**Save the date!** Revised Regulation on COVID-19 Employee Leave. On Tuesday, September 29 at 2:00 Eastern, LeadingAge will offer members an overview of the revised regulation clarifying workers' rights

and employers' responsibilities under the Families First Coronavirus Response Act paid leave provisions. During this virtual update, the following provisions of the revised regulation will be covered:

- Changes to the definition of which employees may be exempted from the paid sick leave and FMLA leave.
- Considerations for when your employees must provide notice, what documentation is expected, and if employees can take leave on an intermittent basis.
- Learn how to determine if an employee is "otherwise available to work", which employees are considered a "health care provider" and which are eligible for paid leave.
- Understand the records you must keep as an employer and how to be reimbursed for leave taken by your employees.

We will share the registration link as soon as we have it; for now, please save the date.

**CMS Flowchart on Payment for COVID-19 Testing.** CMS released a [flowchart and documents](#) today to help make sense of coverage for COVID-19 resident testing. The documents address Medicare, Medicaid, private insurance, and uninsured. They also offer a cheat sheet on additional funding (CARES Act funding and Provider Relief Funds) and info on Medicare coding and billing.

**CDC Testing Resource Guide for Nursing Homes.** CDC created a [testing resource guide](#), compiling links that nursing homes might find useful in navigating the ever-confusing world of COVID testing in nursing homes. Highlights: several links from CDC for conducting testing in nursing homes, a link to CMS info on CLIA reporting requirements, and a link to the FDA FAQs on testing, among many many others. Great resource to have everything in one place!

**Families First Coronavirus Response Act** - The Department of Labor has revised the types of employees who are exempt as "health care providers" for purposes of eligibility for the paid sick leave and Family & Medical Leave Act authorized by Congress in the Families First legislation. While long-term care providers are still able to exclude employees who provide health care and personal care services to residents of nursing homes, assisted living, retirement communities, and to home health patients, other employees who are not directly involved in "patient" (resident) care may not be excluded and are eligible for COVID-19 related leave. We have [updated our FAQs](#) and you can also view the [updated Labor Department FAQs](#). This change goes into effect today, September 16.

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**Decision to allow Administration’s denial of appeals on Temporary Protected Status.** In a 2-1 ruling, a panel of three judges in the California-based 9th U.S. Circuit Court of Appeals reversed a lower court decision that had blocked Trump’s move to phase out so-called Temporary Protected Status (TPS) for people from El Salvador, Haiti, Nicaragua and Sudan. The court held that the Administration’s decision was not subject to review (in effect, people under TPS did not have the right to review or appeal the administration’s decision). The ruling is also expected to affect the status of people from Honduras and Nepal, who filed a separate lawsuit that was suspended last year pending the outcome of the broader case. The decision will likely be appealed to the Supreme Court. People with TPS currently are authorized to work until January 4; there is a wind-down period before they will have to leave. This may affect some staff of aging services provider organizations

**Mark Your Calendars – National Day of Action September 23.** Right now, the coronavirus relief package is stuck in negotiations leaving our members hanging as we wait for much needed relief. Congress will be working on funding the government with a Continuing Resolution next week and there is evidence that they may then leave D.C. without finishing this current coronavirus relief package. This would be devastating as we would likely not see any relief before the election and possibly before the end of the year. We are asking our members to join us next Wednesday, September 23<sup>rd</sup> and contact Congress to pass this bill before leaving D.C. Our goal is to send 5,000 calls and letters to Congress. So please mark your calendars and tomorrow we will provide copy for your newsletters and social media to announce the day of action to your members.

**What’s Your Voting Plan Toolkit released.** This year is a major election year and the COVID1-19 pandemic has changed the way that voters can access the polls this year. LeadingAge has developed a “What’s Your Voting Plan” toolkit that provides an easy to use self-assessment for both aging services providers and individuals to develop a plan to vote for this year’s election. [You can download the toolkit here.](#)

**Guidance on lobbying and election activities.** To follow up on the [What's Your Voting Plan Toolkit, here](#) is a reminder of the election and lobbying issues that members face during the election cycles. Please feel free to share with your members the guidance on Lobbying and Election Activity: Guiding Principles for Nonprofit Providers.

**Civic Action Center.** LeadingAge has also developed an online Civic Action Center that will provide accurate and reliable information about voting and the upcoming election. By visiting [www.leadingage.org/votingplan](http://www.leadingage.org/votingplan) members of the public will be able to:

- Check their status as a registered voter
- Provide tools to register to vote in the voter’s home state
- Give access to the forms and deadlines to request a mail-in (absentee) ballot to be submitted through the mail or dropped off at an election collection point
- Find out the location of their local polling station

Learn about the candidates running for office in the upcoming election

**Act For Older Adults**-LeadingAge will continue advocating for a comprehensive COVID-19 relief package. Yesterday, we sent a [letter to Congressional leaders](#) urging action on a relief package that includes real assistance for older Americans and the care providers working to keep them safe in this pandemic. Along with the letter, we delivered an updated national [Situation Report on Aging Services & COVID-19](#) that reveals an alarming picture of the impact of the virus on older adults across the country, and how nursing homes and other aging services providers are struggling to cope with the worst pandemic in a century. [Read the entire press release](#) and visit our [Driving the Coronavirus Conversation page](#) for the latest releases, statements, and media coverage.

**New QuickCast on Dementia in Daily Living** - The LeadingAge Knowledge Center continues to add new content to help you navigate the COVID-19 crisis. In [Dementia in Daily Living: A Review of Post-COVID Practices](#), Dee Pekruhn provides an overview of post-COVID considerations for supporting people with dementia in assisted living and other settings, including infection control, meals, and visitors. Access this and other related content on the [Learning Hub](#).

**Direct Care Workers Research** - LeadingAge president and CEO Katie Smith Sloan wrote a message to members describing [new research](#) that will help LeadingAge professionalize the role of direct care workers. *“Frontline workers may be receiving kudos on the evening news, but they still lack financial and professional support in the workplace. Frankly, I wonder how we as a nation can deem direct care workers “essential” when so many still view these workers as low-skilled people doing a job we don’t really value and in which we are unwilling to invest.”*  
[Read Katie’s entire message](#) on helping essential workers become valued professionals

**Telehealth Policy report.** The Taskforce on Telehealth Policy, which was convened by NCQA, the Alliance for Connected Care, and the American Telemedicine Association released [their final report](#) today. The Taskforce had three subgroups – 1) Patient Safety and Program Integrity; 2) Data Flow, Care Coordination, and Quality Measures; and 3) Impact on Total Costs. They made recommendations in each of these areas as well as overarching recommendations to Congress. A number of the recommendations align with LeadingAge’s positions though some of our setting specific priorities are not addressed in the report. Slides that accompanied the public release are [here](#).