



## Nursing Home Weekly: Recap of LeadingAge Updates

January 7, 2022

**LeadingAge Coronavirus Update Calls.** Having problems parsing CDC quarantine/isolation guidelines for “everyone” versus those for health care workers? You’re not alone. Check out our **Monday, January 10 3:30 PM ET Update call** to hear from Dr. Nimalie Stone of CDC. She will explain the most recent CDC guidance on isolation after a positive test, the December 23 updated [recommendations for healthcare personnel](#) and [strategies for mitigating staffing shortages](#), CDC’s work to promote boosters and other CDC issues. As always, Nimalie will explain things clearly and directly and take caller questions. If you haven’t registered for LeadingAge Update Calls, [you can do so here](#).

**CMS/CDC Nursing Home Stakeholder Call.** Thursday’s CMS/CDC Nursing Home Stakeholder Call reiterated the contagiousness of Omicron (in terms of number of cases) and reviewed the importance of vaccines and booster doses to reduce potential severity of illness and hospitalization/death. CMS also used the opportunity to release some changes to the visitation FAQs (see item #4, below). The point that the new CDC guidance on isolation and quarantine is for the general public, NOT for healthcare providers was repeated, using [this graphic](#) explaining [restrictions for healthcare personnel](#). The questions submitted by stakeholders contained some additional information that might be useful to LeadingAge provider members. Here are some highlights:

**QUESTION: Does the CMS IFR apply to nursing homes but not assisted living providers?**

**ANSWER:** CMS regulations for LTC facilities apply only to certified nursing homes and not assisted living or other residential care facilities. To see if a facility is required to comply with CMS regulations, please view the Medicare.gov Care Compare Website.

**QUESTION: Many facilities are back in outbreak status due to the holidays and Omicron. Is there any guidance that would allow providers to suspend visitation during outbreak investigations?**

**ANSWER:** Visitation must be permitted at all times with very limited rare exceptions...there may be times when an outbreak warrants the health department to intervene. . We expect these situations to be extremely rare and only occur after the facility has been working with the health department to manage and prevent escalation of the outbreak.

**QUESTION: Will you address the specifics of the vaccine exemptions and for those who do have an approved exemption, will they count towards the unvaccinated percent of staff?**

**ANSWER:** “The formula WILL take exemptions into account.” “Surveyors will use a different formula to calculate the facility staff vaccination rate to determine compliance with the 100% staff vaccination rate requirement. This formula will include staff who are vaccinated, staff who have requested and/or been granted exemptions and staff who have a temporary delay in vaccination as recommended by the CDC.” “We expect

the updated survey tools to be posted in the survey resources folder in the coming days.”

**QUESTION: Is active screening of residents and staff required or recommended?**

**ANSWER:** Active screening is not required but nursing homes should have a screening process in place for staff and visitors to ensure those with symptoms do not come in to work or visit.

**QUESTION: Will CDC be changing the definition of “fully vaccinated” to include the booster?**

**ANSWER:** CDC is moving to using the phrase “up to date” but not changing the definition of “fully vaccinated,” which means that the individual had the primary series (one J&J or two mRNA shots). This is consistent with the language used to describe all vaccines.

The recording of the call will be available [here](#) when it is posted (this usually takes a few days). CMS and CDC committed to holding additional nursing home stakeholders every few weeks, until providers have all the information they need.

**Changes to CMS Visitation FAQs.** During the Stakeholder Call, CMS issued some revisions to the Visitation FAQs that were released right before Christmas. The changes are shown in red in the [document](#). As was reiterated on the Stakeholder Call, CMS believes visitation can still occur; “the lack of visitation was traumatic and had a very real physical and psychosocial impact.” Providers were advised to work with their Health Departments to manage outbreaks and reduce risk of transmission. Key changes to the December 23 FAQs include:

- States may instruct nursing homes to take additional measures to make visitation safer, while ensuring visitation can still occur (e.g., requiring visitors to wear masks that fit well and provide better protection).
- Nursing homes should continue to work with their health departments when outbreaks occur and document their discussions and the actions they took to attempt to control the outbreak.
- A new question #10 asks if providers should continue to permit visitation during the Omicron spike; in short, the answer is yes.
- New question #11 asks why residents can choose to have visits when cases are increasing. The answer reiterates that this is a resident right.
- The final new question offers suggestions for how to conduct visits to reduce COVID transmission, such as offering masks, increasing ventilation, cleaning and sanitizing the visitation area after each visit, etc.

**Kronos Ransomware Attack.** Thank you to the members that sent their experience and challenges with the Kronos system and effects of the attack on facility workload. Today, we met with CMS to discuss the ramifications of staffing shortages, memory capacity, ability to restore the files and the manual nature of payroll and how these factors could result in missed or incomplete data submitted to PBJ. CMS stated that they are aware of the challenges and the future workload when Kronos comes back online. They recognize this is an unforeseen event and not a result of any facility action. They are considering the options and will release a solution in the near future, knowing the February submission date is fast approaching.

**Treasury Releases Final Rule on State and Local Relief Funds.** Today, the Department of the Treasury issued its final rule on the \$350 billion state and local fiscal recovery funds programs. These funds were provided by Congress to state and local governments by the American Rescue Plan in 2021. States and local governments were allocated the funds in 2021 and have been spending the funds at a brisk pace under the guidelines of a May 2021 interim final rule. The January 6 final rule provides some changes, clarification and flexibilities to the interim final rule. One change provides an expanded set of households and communities that are presumed to be “impacted” and “disproportionately impacted” by the pandemic, thereby allowing recipients to provide responses to a broad set of households and entities without requiring additional analysis. Further, the final rule provides a broader set of uses available for these communities as part of COVID19 public health and economic response, including making affordable housing, childcare, early learning, and services to address learning loss during the pandemic eligible in all impacted communities and making certain community development and neighborhood revitalization activities eligible for disproportionately impacted communities.

The final rule also offers more streamlined options to provide premium pay, by broadening the share of eligible workers who can receive premium pay without a written justification while maintaining a focus on lower-income and frontline workers performing essential work. The interim final rule also clarifies how state and local recipients can identify impacted nonprofits to help with loans or grants to mitigate financial hardship by looking at decreased revenue (e.g., from donations and fees), at increased costs (e.g., uncompensated increases in service need), at capacity to weather financial hardship, and at challenges covering payroll, rent or mortgage, and other operating costs. The final rule also expands the types of communities that can use their funds for affordable housing development. “Treasury has determined that ... the development of affordable housing to increase supply of affordable and high-quality living units are responsive to the needs of impacted populations, not only disproportionately impacted populations. This final rule reflects this clarification and builds on the objectives stated in the interim final rule to improve access to stable, affordable housing, including through interventions that increase the supply of affordable and high-quality living units, improve housing security, and support durable and sustainable homeownership,” the final rule says. The full final rule is [here](#), a summary of the final rule is [here](#).

**Updates to COVID-19 Return to Work and Vaccine Toolkits.** With the CMS and CDC new guidance and updates, the following toolkits, policy and procedures and forms have been updated:

- COVID - 19 Vaccine Employee Policy
- Screening and Monitoring - Return to Work criteria policy and procedure, including new grid from CDC update from 12/23
- Sample LOG for vaccine documentation
- Sample Religious Exemption Form
- Sample Medical Exemption Form

You can find the updates and forms [here](#).

**Dispelling COVID Myths QuickCast.** In this 20-minute QuickCast in the LeadingAge Learning Hub, Dee Pekruhn separates fact from myth when it comes to getting vaccinated, and provides a curated list of resources for building confidence in COVID vaccines. You can access it by clicking [here](#).

**CDC Shortens Booster timing recommendation.** CDC revised its guidance on [Booster Shots](#) today to shorten the time from the last primary dose to the booster for Pfizer-BioNTech. The new interval is five months. It is still six months for Moderna.

**Latest NIC Wave Survey Results:** The latest NIC Survey, [Wave 35](#), reinforces occupancy and staffing shortage trends that members have reported at the end of 2021. Compared to earlier surveys, the pace of move-ins in Independent and Assisted living has slowed, memory support move-ins are stable and nursing home admissions have increased slightly. Eighty-one percent of multi-site organizations reported significant staffing shortages; of those, 45% reported shortages on all properties, and 36% on most properties operated by the organization. In terms of biggest challenges to the organization, the top challenge for survey respondents remained consistently ‘attracting community/caregiving staff,’ at 84%. However, ‘staff turnover’ as a challenge reportedly increased between this survey and the last one; 70% of respondents in this survey as compared to 53% in the last survey. One hundred percent of respondents said that ‘overtime’ is one way they are addressing staff shortages; 77% said they were using ‘agency/ temp staff, and 20% of respondents reported using ‘agency/temp staff’ for 100% of their staff vacancies. Finally, organizations were much less optimistic about when occupancy would return to pre-pandemic levels; 36% now say it will not happen until 2023, the largest increase in this projection over the last 10 Wave surveys.

**Updates from CMS Nursing Home Division.** At Tuesday’s “small call” (for national association representatives) on nursing homes, the agenda focused mostly on issues related to the mandate guidance MEMO plus a couple of other things that were raised. Here are the take home messages regarding the vaccine requirement:

- **CMS will not answer questions from the states that are under the injunction.** “The enforcement guidance issued on December 28, 2021 (QSO-22-07 ALL) does not apply to the following states at this time: Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia and Wyoming. State and AO surveyors in these states should not undertake any efforts to implement or enforce the IFC.”
- **CMS expects the non-enjoined states to become compliant.** They reviewed the dates and thresholds. Within 30 days of the December 28 announcement – i.e., by January 27 – 80% of staff should have had at least one dose. By February 27, 90% of staff should be fully vaccinated. Surveyors will not start surveying on this until January 27. If your organization is not at 100% compliance, you must have a plan to get to 100%.
- **CMS is focusing on whether staff got the shot, not the two week waiting period for the staff person to be officially “fully vaccinated.”** For this purpose, fully vaccinated means they had either one J&J or two Pfizer/Moderna shots.
- **When will the matrix be released for surveyors?** There will be clarifications and surveyor matrix for surveyors, probably within the next two weeks.
- **How will exemptions be looked at by surveyors?** Surveyors will ask for a list of exemptions – both approved and pending. We don’t expect there to be a huge number of health

exemptions. Of course, NHSN doesn't take religious exemptions into account. "We don't count exemptions in the survey process." There is a time limit on how long surveyors will look at pending exemptions.

Surveyors will look at NHSN data before the survey and ask for similar information when they arrive on site. Those numbers should be roughly the same. If there's more than a 10% difference, surveyors will look a little deeper. Is there a concern with the data provided by the nursing home? An issue with NHSN reporting? There should not be big differences in the NHSN percentage and the list the nursing home provides.

- **There's still a lot of confusion over the definition of "staff."** Participants in the meeting noted that the denominator could differ depending on the definition of who counts as staff. CMS staff said they are looking into this and will determine the best vehicle to use to clarify the definition.
- **What about new staff?** During the first 30 days of a person's employment, they can start working and caring for residents with one dose. The nursing home is responsible for ensuring the person gets the second dose (if Pfizer or Moderna).

Additional issues discussed:

- **CMS is doing everything to urge that more residents and staff get boosters.** Approximately 61% of residents and 26% of staff have gotten boosters. "You'll be hearing more from HHS on that." It was noted by participants that one big barrier is family members not wanting residents to get a booster because they remember the side effects the person had with the primary series.
- **It's difficult for nursing homes to access treatments.** Each state follows its own process for distributing monoclonal antibodies, remdesivir, and oral treatments. LTC pharmacies have been told they cannot receive these treatments; the supply is limited and there are concerns that all doses won't be used and they'll sit on LTC pharmacy shelves. It is very challenging for providers and individual staff to access the treatments. One participant cited the fact that two states distribute them only through Walmart; it can be difficult for staff to get there and fill out the paperwork to get the oral medication. Various solutions were discussed and CMS staff committed to working on a resolution.

**Senators send letter to Secretary Becerra on testing.** Senator Blunt (R-MO) and Senator Burr (R-NC) sent a letter to Secretary Becerra about testing and how the money allocated for testing in the various COVID relief vehicles is being used. You can find the letter [here](#). We will follow up with both offices to thank them for their efforts and to monitor the Administration's responses.

**Nursing Home Updates.** The December 28 meeting of the [Nursing Home Advisory Group](#) featured a presentation and Q & A with Chris Laxton, CEO of AMDA. The call reviewed policy updates from the [CDC HCP return to work](#), the [FAQ on visitation](#) from CMS and new [December 28th MEMO](#) and [guidance](#) on the IFR vaccine mandate. Over the "holiday break," there were several updates, changes and new guidance for nursing homes. We are analyzing and preparing resource segments for our members this week and next, as more changes and updates are expected. Please tune into upcoming Update Calls for more information and details. Feel free to reach out to Janine ([jfinck-boyle@leadingage.org](mailto:jfinck-boyle@leadingage.org)) with questions or comments.

**HHS Monoclonal Antibodies distributions for this week.** Here is [the table of state by state distribution of Monoclonal Antibodies](#) (mAB) for the week of January 3-9. Reminder that mAB treatment has been found to not be effective for treating Omicron variant cases.

**US Supreme Court Oral Arguments on CMS IFR and OSHA ETS.** Here is the link to the [US Supreme Court webpage](#). There you will find all the briefs that have been filed by the parties involved in the challenges to the CMS IRF and the OSHA Vaccination and Testing ETS. The Supreme Court will hear oral arguments on both cases starting at 10:00 AM ET on Friday, January 7. There is a link on the webpage to listen live to the oral arguments on Friday. We anticipate a decision to be issued relatively soon after the oral arguments and will forward it as soon as it is released

### **More on the CMS Interim Final Rule and OSHA Emergency Temporary Standard**

- **OSHA ETS Enforcement**

As we await for the Supreme Court decision, the [OSHA Vaccination and Testing ETS](#) remains in effect. OSHA will not issue any citations for noncompliance with any ETS requirement until January 10<sup>th</sup> and will not issue any citation for noncompliance with the testing provisions of the ETS until February 9<sup>th</sup> so long as employers are exercising reasonable, good faith efforts to come into compliance with the standard. All providers should be preparing diligently to comply with the OSHA Vaccination and Testing ETS. Moreover, now that the June 2021 Healthcare ETS has expired, the OSHA Vaccination and Testing ETS now applies to *all* providers with 100 or more employees.

Note - the recordkeeping provisions of the June Healthcare ETS are still in place and OSHA plans to enforce workplace safety through the OSHA general duty clause so providers need to continue to ensure a safe workplace under OSHA rules. The medical removal benefits, however, are no longer in effect.

- **CMS IFR Enforcement**

On December 28<sup>th</sup>, CMS updated its [guidance](#) and is now moving forward with enforcing the vaccine mandate in the 25 states where there is not an injunction in place. CMS updated the vaccine mandate compliance dates to January 27<sup>th</sup> (phase 1) and February 28<sup>th</sup> (phase 2) respectively, and the guidance contains additional information on how it will be enforced. Also, providers must be prepared to comply with the OSHA Vaccination and Testing ETS – especially those that are in states where an injunction of the CMR IFR rule is currently in place. For those in state where the CMS rule being enforced they need to comply with any OSHA ETS requirements that fall outside of the CMS IFR.

We realize how much of a mess this is for providers currently and hopefully the Supreme Court decision will clarify these issues on January 7 – one way or the other. Here is a [summary](#) that addresses the OSHA Healthcare ETS expiration and another [article](#) that discusses the interplay between the OSHA and CMS rules.

**Information on Provider Relief Fund 2<sup>nd</sup> Reporting Period.** Here is a quick refresher on the basics...the second reporting period covers PRF funds received between July 1 and December 31, 2020. These will



include Phase 2, 3 and some of the Nursing Home Infection Control (NHIC) dollars. Providers can apply eligible coronavirus expenses and lost revenues from January 1, 2020 through December 31, 2021 to these funds but only if they weren't reported previously AND they weren't covered by another funding source or required to be covered by other sources. (e.g. PPP or Medicare, etc.) It should be noted that Nursing Home Infection Control PRF can only be used for infection control expenses and NOT lost revenues. For nursing homes who received these funds will want to divide their expenses into infection control and non-infection control expenses first, in order to maximize the use of these NHIC payments.

Providers have until March 31, 2022 to submit their second period report. However, they should begin compiling their information now. Anyone who has been through this already will tell you that it isn't easy and you don't want to leave it to the last minute. LeadingAge encourages providers to start by reviewing the available resources for reporting on the HRSA website prior to and while working on their reports. Here are some highlights of these resources:

- [PRF Reporting Portal](#) - This is where new reporters will register and where everyone will submit their data for their second report. HRSA includes a number of key resources for reporting at the bottom of this page.
- For those who haven't reported previously, your first step will be to register and the [PRF Portal Registration Manual](#) would be worth reviewing before you start. This information will likely be covered in the Jan 12 HRSA webinar on reporting for new reports.
- Once you begin to work your way through the reporting process, you will want the [PRF Portal – Reporting User's Guide](#) – This was updated on December 30, 2021 to reflect changes to the process and portal. It includes tips so you don't lose data and provides definitions of what information they are looking for in each section While you do not need to complete the entire report in one sitting, it is a good idea to pull together your information before you sit down. HRSA has put together a worksheet to help with this process. It has been updated and now includes tabs for documenting your infection control expenses for NHIC funds. They are called [portal worksheets](#). A link to the worksheets can be found on the [HRSA reporting resources page](#).
- Finally, it doesn't hurt to keep the PDF of the [PRF FAQ document](#) handy for questions as you move your way through your report.

This will be the first time reporting for assisted living, private pay nursing homes and Medicaid providers like HCBS who didn't receive their first PRF payments until Phase 2 or 3. For nursing homes, this will be the first report where they are required to report on the infection control expenses they covered with the Nursing Home Infection Control distributions and related quality incentive payments. HRSA will host a webinar on [January 12](#) at 3:00 PM ET for providers new to the reporting process and a second webinar on [January 13](#) at 3:00 PM ET for providers who have prior experience reporting. There are some new features in the reporting portal so even experienced providers will likely benefit from attending.

Providers must register to attend the free technical assistance webinars and as part of registration can submit the questions they have about the reporting process. Updated reporting resources and details including information on registering for the webinars can be found [here](#). We will be providing highlights of resources and webinars, and FAQs related to the second reporting period on our Member Coronavirus calls on Mondays and Wednesdays at 3:30 PM ET leading up to the March 31 submission deadline.