

## **CMS Announces New Reporting and Testing Requirements for Nursing Homes**

**Nursing homes now required to test staff and offer testing to residents**

### **High-Level Summary**

On August 25, 2020, the Centers for Medicare & Medicaid Services (CMS) [issued](#) an interim final rule with comment period that revises regulations in several areas for long term care facilities and other providers. Importantly, this rule establishes a new requirement for long term care facilities for COVID-19 testing of residents and staff. CMS did not establish a specific frequency or criteria for testing in the rule but listed potential criteria that will be considered and addressed further in guidance.

The regulations are effective immediately upon their publication at the Office of the Federal Register, which has not occurred yet. Most of the new regulations are applicable only for the duration of the COVID-19 public health emergency. CMS is providing a 60-day comment period for public input on these requirements.

Below is high-level summary of the new testing requirements. A more detailed analysis and summary of additional provisions in the rule will follow.

AHCA continues to advocate for access to, and systems to support, reliable testing with rapid results for skilled nursing facility (SNF) residents and staff. We will also continue to advocate that CMS guidance on the implementation of routine testing requirements for nursing homes acknowledges ongoing challenges with access to testing supplies and timely testing results, includes flexibility to implement evolving knowledge about optimal uses of and approaches to testing, and does not penalize providers for factors beyond their control.

### **Summary**

#### **Requirement for SNFs to Test Facility Residents and Staff for COVID-19**

- A requirement to test all staff and residents will be added to infection control regulations at §483.80.
  - This includes volunteers and contractors physically working at the facility (such as hospice) but does not apply to staff working offsite.

- The rule does not require testing of surveyors and ombudsmen but notes that state agencies are responsible for ensuring surveyors are following CDC guidance for infection prevention and refraining or returning to work.
- CMS did not establish a specific frequency or criteria for testing at this point, but indicated that it may include (but is not limited to):
  - Testing frequency;
  - The identification of any facility resident or staff diagnosed with COVID-19 in the facility;
  - The identification of any facility resident or staff with symptoms consistent with COVID-19 or with known or suspected exposure to COVID-19;
  - The criteria for conducting testing of asymptomatic individuals, such as the positivity rate of COVID-19 in a county;
  - The response time for test results; and
  - Other criteria yet established.
  - **Note: CMS specifically stated they are soliciting comments on the criteria for testing frequency.**
- Facilities have flexibility in the manner resident and staff testing can be conducted, as long as it is consistent with nationally recognized standards and meet the response time for test results specified by the secretary.
- **All** completed tests and results must be documented in staff and resident records, as well as documentation for volunteers or contract personnel.
- Facilities must take actions to isolate and cohort staff and residents who test positive, and follow return to work criteria specified by the Secretary. Per CDC guidance, facilities should limit sharing staff between COVID-19 positive and negative residents.
- Residents have right to refuse testing in accordance with §483.10(c)(6) and staff may refuse or have a medical complication that limits the ability to test. Facilities must establish a policy for addressing resident and staff refusals, which may include limiting access to residents and cohorting residents.
- Supply availability and processing of results should be coordinated with state and local health departments or local laboratories. Considerations such as access to adequate testing supplies and arrangements for acquiring testing supplies must be addressed by a facility's infection prevention and control plan. Additionally, the testing plan must include any arrangements that may be necessary to conduct, process, and receive test results prior to the administration of the required tests
- CMS has also included a section on addressing staffing shortages due to the COVID-19 pandemic. In short, CMS states that facilities must:

- Maintain appropriate staffing levels to provide a safe work environment for healthcare personnel (HCP) and safe resident care.
- Assess their staffing needs and the minimum number of staff needed to provide a safe work environment and care for residents, their ability to accommodate or replace staff who are unable to work
- CMS also points to resources facilities should use to manage staffing shortages, including:
  - [The Emergency System for Advance Registration of Volunteer Health Professionals](#)
  - Local healthcare coalition, federal, state and local healthcare partners
  - [CDC Staffing shortages guidelines](#)

### **Requirements for Laboratories to Report SARS-CoV-2 Test Results During the PHE for COVID-19**

SNFs performing POC testing will be required to report on testing in the timeframes and using the format required by CMS. Failure to report timely and accurately can result in CMPs calculated on a daily basis starting at \$1000 for the first day and \$500 for every subsequent day of noncompliance. Amount should not exceed \$10,000 per episode of noncompliance. An episode is defined as per sample not reported.

### **Limits on COVID-19 and Related Testing without an Order and Expansion of Testing Order Authority**

CMS modified previous guidance that allowed for COVID testing to take place without a physician's order without limitation to the number of tests to allowing for only one instance of each type of test to be conducted without a physician or other qualifying practitioner's order. All subsequent tests will require a physician or qualified practitioner order. Tests that occurred prior to this change will not be counted toward the current restrictions.

Please email [COVID19@ahca.org](mailto:COVID19@ahca.org) for any questions.