



May 17, 2021

Howard A. Zucker, M.D., J.D.  
Commissioner of Health  
NYS Department of Health  
Corning Tower  
Empire State Plaza  
Albany, NY 12237

Re: COVID Testing of Staff and Reporting Requirements for Long-Term Care Providers

Dear Commissioner Zucker:

I am writing on behalf of LeadingAge New York's non-profit and public long-term/post-acute care provider members to request that the Department follow federal guidance and eliminate serial COVID testing of vaccinated and recently-recovered nursing home and adult care facility (ACF) staff. In addition, we ask that you reduce the volume and frequency of COVID-related data collection through HERDS. Much of these data are either no longer necessary, not needed on a daily basis, or duplicative of data collected by the federal government. At a time when providers are experiencing unprecedented administrative and clinical demands and staffing shortages, it is misguided to impose unnecessary and onerous testing and reporting burdens on them. These testing and reporting requirements divert valuable staff time from resident and patient care.

Nursing homes and ACFs are the only classes of provider in New York State in which personnel are subjected to mandatory routine testing for COVID. Not even hospital staff, who are more likely to be engaged in aerosol-generating procedures, are required to undergo regular COVID testing. Moreover, New York's twice weekly testing requirement for nursing home personnel and once weekly testing requirement for ACF personnel apply to both vaccinated and unvaccinated staff. These requirements far exceed testing guidelines adopted by CDC and CMS for nursing homes. Under CMS and CDC guidance, asymptomatic vaccinated personnel in nursing homes and other health care settings are *not* subject to serial screening tests at all. Twice weekly testing is required only of *unvaccinated* personnel in counties with positivity rates of *greater than 10 percent*. Based on the most recently published data, not a single county in New York State comes close to a positivity rate of greater than 10 percent. New York should reduce the frequency of testing for unvaccinated personnel to align with CDC and CMS requirements.

Fully-vaccinated staff and recently-recovered staff should be exempt from serial testing requirements, consistent with CMS and CDC guidance. Eliminating serial testing for these personnel would create a strong incentive for hesitant staff to accept the vaccine. The weekly testing is extraordinarily uncomfortable for many staff. We've even heard reports of staff who were diagnosed with medical conditions attributed to repeated swabbing. Eliminating serial testing for staff who have recovered from COVID within the past 3 months would align with the scientific research and CMS/CDC guidance, which recognize the likelihood of persistent or

repeated positive results among recently-recovered individuals who are no longer infectious. This would also avoid unnecessary furloughs of recovered staff who continue to test positive even though they are no longer infectious. With widespread staffing shortages at every level, it is important for the State to do what it can to avoid furloughs of staff who are not infectious.

In addition to eliminating serial testing of vaccinated and recently-recovered staff and aligning the frequency of testing of unvaccinated staff with CMS/CDC guidance, the State should reduce the frequency and volume of data it collects from nursing homes, ACFs, certified home health agencies, and hospice programs. Where applicable, the State should rely on similar data that facilities must report to the CDC's NHSN system, instead of imposing similar, but slightly different, state-level reporting requirements.

Currently, nursing homes and ACFs are subject to an overwhelming volume of state-level reporting on COVID-related issues alone. Nursing homes and ACFs submit daily HERDS reports (7 days per week), completing 107 data fields covering:

- Resident COVID cases and residents in isolation;
- Deaths;
- Inventory, burn rates, and expected shipments of 6 different categories of PPE;
- Staff test results, furloughs, new diagnoses, and vaccination status of newly diagnosed staff;
- Residents newly diagnosed and newly placed on isolation;
- Residents newly vaccinated, by dose and site of vaccination;
- Staff newly vaccinated, by dose and site of vaccination;
- Total residents with first dose and total residents with both doses of the vaccine;
- Number of residents who are medically ineligible and number who have declined vaccination;
- Total staff with first dose and total staff with both doses;
- Number of staff who are medically ineligible and number who have declined;
- Number of residents and number of staff who are medically eligible and willing, but have not been vaccinated;
- Number of residents and number of staff who are waiting for a second Pfizer dose;
- Vaccine source(s) and number of doses received since previous day's report.

Dedicated facility leaders have been collecting and submitting the information requested in these surveys daily, 7 days per week, since March 2020. If they are even 15 minutes late, they receive a notice of deficiency from the Department of Health. It is extraordinarily stressful for these busy leaders to set aside all resident care (and family care) responsibilities for several hours, 7 days a week (including on Christmas and Mother's Day) to make sure all of these data are collected and entered accurately and timely. Moreover, it is not at all clear why information such as inventory and burn rates of PPE must be collected daily, given the stability of the current PPE supply.

Not only do facilities have to report daily on the above elements, they must also submit a weekly HERDS report on the number of personnel working and tested, the reason for any variation between the number of tests conducted and expected, the number of personnel engaged in staff swabbing, the location of testing, laboratory partners, when the facility started testing staff, the

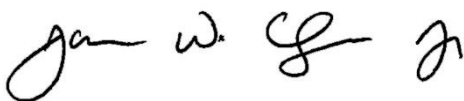
number of test kits received from the state since May 2020, the number of test kits used since May 2020, the number of test kits needed, the amount of PPE in their possession and needed for staff testing, and more.

Similar data to the HERDS reports are also collected through other State and federal systems, although on different schedules. Nursing homes must report weekly to the CDC's NHSN system on COVID cases among residents and staff, PPE need, staffing shortages, and point-of-care test results. As of June 13, the required NHSN reporting will also include vaccination data. If a provider is an enrolled vaccine provider, it must also report to NYSIIS or New York City's CIR, on vaccines administered and inventory. If providers conduct COVID-tests under a limited services laboratory certificate (and many, if not most, do), they must report the results of all of their COVID tests within 24 hours through the ECLRS system or through the NHSN. The extraordinary burdens of reporting and the Department's aggressive response to even minor lapses in meeting deadlines has deterred some providers from conducting on-site COVID tests and enrolling as vaccine providers.

New York State should prioritize resident and patient care over unnecessary and duplicative reporting and staff testing. To the extent feasible, New York should rely on the NHSN data submitted by nursing homes and eliminate any duplicative reporting. It should reconsider its COVID-related data needs and collect only those data that are unduplicated and necessary and at a frequency justified by public health considerations. Moreover, the State should eliminate unnecessary serial testing of fully-vaccinated and recently-recovered staff in order to incentivize vaccine uptake and avoid unnecessary furloughs of non-infectious staff.

Thank you very much for your consideration of these issues. We would be happy to meet with you at your convenience to discuss these issues.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James W. Clyne, Jr.", written in a cursive style.

James W. Clyne, Jr.  
President and CEO

Cc: Beth Garvey  
Valerie Deetz  
Adam Herbst