November1, 2022

VIA EMAIL

The Honorable Mary Bassett, MD
Commissioner
New York State Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

RE: Updating HERDS Reporting for Nursing Homes and Adult Care Facilities

Dear Dr. Bassett:

As you know, LeadingAge NY has consistently advocated for a significant reduction in the frequency and length of the daily COVID-19 adult care facility (ACF) and nursing home HERDS report. Unfortunately, through more than two years of this reporting requirement, many questions have been added, but unlike CDC's NHSN reporting, few questions have been eliminated or updated. Even questions that are no longer relevant remain on the survey tool. Based upon a careful review of the survey tool for relevance, redundancy, and usability, and consideration of the nursing home data reported through NHSN, LeadingAge NY recommends an alternative approach to the Department's data gathering, outlined below, that focuses on the critical data points regarding COVID positives, deaths, vaccination status, and workforce needs. In addition, we have prepared the attached detailed analysis of the survey tool, highlighting the areas in which it is obsolete, irrelevant, or unclear. If the Department rejects our alternative approach, it must, at a minimum, update the HERDS survey tool to address these concerns. Otherwise, nursing homes and ACFs will be forced to continue to devote scarce resources to the daily submission of copious data that has very little value. On behalf of our not-for-profit and government-sponsored members, we urge the Department to review the HERDs survey and consider our recommendations.

Nursing Homes

For nursing homes, the state should cease the daily HERDS survey and instead defer to NHSN weekly federal report for nursing home activity among residents and staff, with a few state-specific data reporting requirements noted for both nursing homes and ACFs, below. The NHSN data are available to the Department of Health, as well as to the general public.

The comprehensive NHSN report, which must be submitted at least once a week, tracks positive COVID cases, COVID deaths, vaccination status, PPE Supplies, staffing shortages, and more. Although the substance of the NHSN data collection is generally the same as the DOH HERDS survey, the definitions, specific questions, asked time frames for reporting differ from the DOH survey. As a result, facilities must collect essentially the same information in two different ways. At a time when workforce shortages and other resources are so stretched, it is unacceptable that nursing homes must spend time collecting two very similar, yet different data sets every week.

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Adult Care Facilities

For ACFs, a brief HERDS survey with questions about vaccination status and workforce needs and use of flexibilities under E.O. 4 could be conducted *once a week*. This data is no longer changing significantly daily. Vaccine questions should be updated to reflect the current vaccine environment. Where possible, survey questions should be framed with a yes or no answer, and numbers should be required only if the answer is yes.
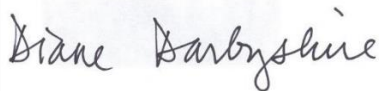
For *both* Nursing Homes and ACFs:

In addition to relying on the NHSN data for nursing homes and requiring a brief weekly survey of vaccination status and workforce for ACFs, we recommend the following state-specific data collection points.

- We understand that the Department may want real-time data regarding COVID positive cases. A simplified report could be created for any new COVID activity at a nursing home or ACF to track transmission. An outbreak survey could collect the essential data points, which should align with what the local epidemiologists or local health departments ask of nursing homes and ACFs when there is an outbreak. Data collected should be shared with the local epidemiologists and local health departments in real time; this would further reduce duplicative efforts and streamline communication. The questionnaire would indicate whether it is a new resident case or staff case within 24 hours of the new diagnosis, as well as the date they test positive. *No report would be required on any day there is no new activity.*
- Deaths associated with COVID could be reported to the state within 24 hours via HERDS or Drupal.

LeadingAge NY and our members understand the importance of data in the pandemic. The data collected must be relevant and meaningful, however. We are painfully aware of the serious workforce shortages that exist throughout healthcare and aging services. These providers need a partner in the Department, to ensure that scarce human resources are being directed to best serve the people they care for. LeadingAge NY remains eager to work with you on this initiative and are happy to discuss further.

Sincerely,

Diane Darbyshire, LCSW
Vice President of Advocacy and Public Policy

Attachment: Review of ACF and NH Daily HERDS Survey Questions

cc: Angela Profeta
      Rebecca Wood
      Rachel Baker
      Kristin Proud
      Jake Wilkinson
      Adam Herbst

Valerie Deetz
Heidi Hayes
Carol Rodat

Review of ACF and NH Daily HERDS Survey Questions

Overall

- There should be a process by which the user can retrieve data regarding their organization or abbreviate the contact information fields. Since the person completing the form is an HCS user, it seems the HCS could connect the person completing the form with the identifying information.

Introductory Census Questions

- *1. What is the total number of residents physically in your facility today?*
    It is unclear why this question is necessary. If it is not necessary, it should be deleted.

- *3. What is the total number of residents physically in your facility today with presumed positive COVID-19 as determined by a physician?*
    With testing being as available as it is, it would be a rare circumstance that someone would not be able to get confirmation on a presumption. We question if this continues to be relevant. If not, it should be deleted.

Facility Employees

- *1c. What is the number of employees whose SARS-CoV-2 test results were inconclusive?*
    Does this continue to be a meaningful question? Again, given advances in testing and expanded availability, it seems this would be rare and quickly resolved.
- *1d. What is the number of employees whose SARS-CoV-2 test results were deemed indeterminate?*
    Does this continue to be a meaningful question? Again, given advances in testing and expanded availability, it seems this would be rare and quickly resolved.
- *2. What is the number of employees who have refused COVID-19 testing and are unable to work?*
    The staff testing requirement for ACF employees was eliminated on July 1, 2021, and thus the question should be deleted for the ACF survey. Additionally, with the changes in NH staff testing requirements, this is no longer relevant for that survey and should also be deleted.
- *3a. Of the number of employees newly diagnosed with COVID-19 yesterday between 12:00am and 11:59pm, how many have received at least one dose of vaccine?*
    3b. Of the number of employees newly diagnosed with COVID-19 yesterday between 12:00am and 11:59pm and have received at least one dose of vaccine, how many were fully vaccinated?
    It is known that people can get COVID, even when fully vaccinated and boosted. Additionally, with the vaccine mandate, all staff (except those with a medical exemption) will have at least one dose to begin working. We question the usefulness of this data at this point and recommend both questions be deleted.

Residents Diagnosed

- *1a. Of the number of residents newly diagnosed with COVID-19 yesterday between 12:00am and 11:59pm, how many have received at least one dose of vaccine?*
    1b. Of the number of residents newly diagnosed with COVID-19 yesterday between 12:00am and 11:59pm and have received at least one dose of vaccine, how many were fully vaccinated?

It is known that people can get COVID, even when fully vaccinated and boosted. We question the usefulness of this data at this point and recommend both questions be deleted.

COVID-19 Vaccination

Residents

- *1b. Of the total number of residents that received a vaccination yesterday, how many received their first dose, on-site?*
  1c. Of the total number of residents that received a vaccination yesterday, how many received their first dose, off site?
  1e. Of the total number of residents that received a vaccination yesterday, how many received their second dose, on-site?
  1f. Of the total number of residents that received a vaccination yesterday, how many received their second dose, off site?
  1h. Of the total number of residents that received a vaccination yesterday, how many received their additional or booster dose, onsite?
  1i. Of the total number of residents that received a vaccination yesterday, how many received their additional or booster dose, off site?
  > With the widespread availability of vaccine at this point, does it matter whether the person received the vaccine on-site or off-site? These questions should be deleted.

Residents-Booster

- *1g. Of the total number of residents that received a vaccination yesterday, how many received their additional or booster dose? 1h and 1i above also ask about the booster.*
  > At this point in the pandemic, is it critical to understand how many residents received the booster on a particular day? Why can't this data be collected on a more periodic basis, such as monthly?

Staff

- *2b. Of the total number of staff that received a vaccination yesterday, how many received their first dose, on-site?*
  2c. Of the total number of staff that received a vaccination yesterday, how many received their first dose, submitted off site?
  2d. Of the total number of staff that received a vaccination yesterday, how many received their second dose?
  2e. Of the total number of staff that received a vaccination yesterday, how many received their second dose, on-site?
  2f. Of the total number of staff that received a vaccination yesterday, how many received their second dose, off site?
  > With the widespread availability of vaccine at this point, does it matter whether the person received the vaccine on site or off site? These questions should be deleted.

- *4a. As of today, what is the total number of inhouse residents who have received their complete vaccine series and have received an additional or booster dose of vaccine?*
  > These questions do not distinguish which booster. Thus, the way the data is being collected is variable and therefore not meaningful and therefore should be deleted or clarified.

Staff-Booster

- *2g. Of the total number of staff that received a vaccination yesterday, how many received an additional or booster dose?*
  2h. Of the total number of staff that received a vaccination yesterday, how many received an additional or booster dose, onsite?
  2i. Of the total number of staff that received a vaccination yesterday, how many received an additional or booster dose, off site?

  > Some staff are obtaining booster shots in the community given the widespread availability. Staff don't always remember to report this immediately, and thus the "yesterday" timeframe is not always completely accurate. At this point in the pandemic, is it critical to understand how many residents received the booster on a particular day? Why can't this data be collected on a more periodic basis, such as monthly?

  > Lastly, with the widespread availability of vaccine at this point, does it matter whether the person received the vaccine on site or off site? Questions 2h and 2i should be deleted.

All Facility Staff

- *8g. Of the total number of facility staff, how may are currently furloughed due to a positive COVID-19 test or due to exposure?*
  9g. Of the total number of individuals employed by or used by your facility with "Hands On" patient/resident care responsibilities, how many are currently furloughed due to a positive COVID-19 test or due to exposure?

  > While we see this as an important data point from the perspective of overall staffing and workforce issues, we question whether the State is using the data collected. If it is not used by the State for to help direct resources or inform policy decisions, it should be deleted.

- *8h. Of the total number of facility staff what is the total number of in-house staff who are medically eligible to receive an additional or booster dose of vaccine and are willing to receive it, but have not yet received the additional or booster dose of the vaccine?*
  8i. Of the total number of facility staff what is the total number of in-house staff who are medically eligible to receive an additional or booster dose of vaccine and have received the additional or booster dose of the vaccine?

  > The booster questions do not distinguish among the various boosters that have been offered. Thus, the way the data is being collected is variable and not meaningful. It should be deleted or modified.

- *9c. Of the total number of individuals employed by or used by your facility with "Hands On" patient/resident care responsibilities, how many are medically eligible for COVID vaccine and are declining vaccination?*

  > Given that people providing hands on care must get vaccinated, unless they have a medical exemption, this question does not make sense and should be deleted.

- *9h. Of the total number of individuals employed by or used by your facility with "Hands On" patient/resident care responsibilities, what is the total number of inhouse staff who are medically eligible to receive an additional or booster dose of vaccine and are willing to receive it, but have not yet received the additional or booster dose of the vaccine?*

9i. Of the total number of individuals employed by or used by your facility with "Hands On" patient/resident care responsibilities, what is the total number of inhouse staff who are medically eligible to receive an additional or booster dose of vaccine and have received the additional or booster dose of the vaccine?

> The booster questions do not distinguish among the various boosters that have been offered. Thus, the way the data is being collected is variable and not meaningful. It should be deleted or modified.

Workforce Reduction

- *1. Total reduction in workforce since 9/27 as of today?*
  > There are multiple questions with a reference date of 9/27. It does not clarify 9/27/21 or 9/27/22. While workforce continues to be an issue, it is no longer related to a specific point in time connected to the vaccination mandate. Moreover, any data collected since 9/27/2022 will be of limited validity, since there will be variations in interpretation and reporting. This question should be deleted.
- *1a. Total number of employees terminated as a result of being unvaccinated without an exemption as of today*
  1b. Total number of employee resignations and retirements due to unwillingness to get vaccinated as of today
  1c. Total number of employees on unpaid leave/furlough as a result of being unvaccinated without an exemption who are NOT willing to get first dose as of today
  1d. Total number of employees on unpaid leave/furlough as a result of being unvaccinated without an exemption and who are awaiting first dose as of today
  > Given that vaccination has been a requirement for some time, this question no longer makes sense. Newly employed people must comply with the conditions of employment. These questions should be deleted.

Executive Order No. 4

- *Have you attempted to add additional employees since 9/27 through utilization of the flexibility provided by Executive Order (EO) No. 4 (Declaring a Statewide Disaster Emergency Due to Healthcare Staffing Shortages in the State of New York)?*
  How many NEW direct care/patient facing employees have joined your facility since 9/27 due to EO 4 flexibilities (e.g. out of state/country, out of retirement workers)?
  > The question does not clarify 9/27/21 or 9/27/22. This question should be updated; the information is important in determining the ongoing need for workforce flexibilities.
  > *How many FTEs dedicated to insurance administrative functions (e.g. prior authorization, utilization review) are now performing direct care / patient facing functions due to the insurance-related EO 4 suspensions?*
  > We presume this question relates to the suspension of various insurance requirements in the EO, which were eliminated in August. So, this question is no longer relevant and should be deleted.