

## CMS Issues New Reporting and Testing Requirements for Nursing Homes – 08/27/2020

Last week, CMS [issued an interim final rule](#) which establishes a new requirement for long term care facilities for COVID-19 testing of residents and staff. These regulations are effective immediately. You can read [here](#) a more detailed analysis and summary of additional provisions in the rule.

In conjunction with the interim final rule, CMS issued two QSO memos on staff testing and CLIA requirements. [QSO Memo 20-38-NH](#) outlines how to comply with the new interim final rule requiring COVID-19 testing of staff. AHCA has provided a [detailed summary](#) of the QSO 20-38-NH memo.

AHCA held a member-only webinar last Friday to discuss in-depth the new CMS testing requirements. Please click [here](#) to view the slides. These are significant testing requirements and you need to begin preparing immediately. Please check your county's positivity rate today AND next week (it is updated on Mondays) and make plans accordingly. Provided below are some of the key points of these new requirements.

### TYPE OF TESTING AND FREQUENCY

For the testing requirements, either PCR or antigen can be used but antibody tests are not permitted. Facilities will be required to conduct three types of testing:

- **Symptomatic Testing:** Test any staff or residents who have signs or symptoms of COVID-19 (facility must continue screening all staff, residents and other visitors).
- **Outbreak Testing:** Test all staff and residents in response to an outbreak (defined as any single new infection in staff or any nursing home onset infection in a resident) and continue to test all staff and residents that tested negative every 3-7 days until no news cases for at least 14 days since the most recent positive result.
- **Routine Testing:** Test all staff based on the extent of the virus in the community using CMS' published county positivity rate in the prior week as the trigger for staff testing frequency. CMS will publish reports of COVID-19 county-level positivity rates [here](#), where the information can be found under the "COVID-19 Testing" paragraph.

Community COVID-19 Activity	County Positivity Rate in the past week	Minimum Testing Frequency
Low	<5%	Once a month
Medium	5% -10%	Once a week*
High	>10%	Twice a week*

\*This frequency presumes availability of Point of Care testing on-site at the nursing home or where off-site testing turnaround time is less than 48 hours.

Facilities should monitor and adjust testing frequency based on the county positivity rate. Facilities should check the county positivity rates on the 1<sup>st</sup> and 3<sup>rd</sup> of every month. According to AHCA, the county positivity rates should be updated every two weeks on Mondays.

**IMPORTANT** - The routine testing requirement goes into effect on September 2 and the frequency will depend on your county's positivity rate. If it is above 10%, you will need to start the bi-weekly testing within 3-4 days after September 2. If your county is in the 5-10% range, you will need to begin the once a week testing by September 9. And finally, if your county is below 5%, then you need to do the once a month testing by October 2.

Routine testing of asymptomatic residents is not recommended unless prompted by a change in circumstances, such as the identification of a confirmed COVID-19 case in the facility. For individuals who test positive for COVID-19, repeat testing is not recommended. Staff and residents who have recovered from COVID-19 and are asymptomatic do not need to be retested for COVID-19 within 90 days after the date of symptom onset. Facility staff can be tested elsewhere (e.g. by another employer) **if** it is completed in the same timeframe and the results are documented by the facility.

If the 48-hour turn-around time to get tests done cannot be met due to community testing supply shortages, limited access or inability of labs to process tests, the facility needs to document their efforts to obtain quick turnaround test results with the labs AND their contact with their local and state health departments.

#### REFUSAL OF TESTING

CMS recognizes the right of refusal for staff and residents. If staff or residents refuse testing, facilities must have procedures in place to address this refusal and thoroughly document their testing processes to demonstrate compliance.

#### DOCUMENTATION

Facilities must document COVID testing in the medical record for the resident and the employee's personnel record. Physician orders are required for residents and staff; CMS is allowing standing orders. Facilities need to have a separate file on COVID testing for contractors and vendors. The documentation required for COVID testing varies depending on the purpose of the testing (i.e. symptomatic, outbreak or routine). Facilities must follow CDC guidelines on testing and specimen collection.

#### REPORTING

For facilities utilizing the antigen tests, they must have a CLIA certificate of waiver and are required to report negative and positive results to public health agencies. For tests obtained from outside labs, facilities must report the data to the CDC NHSN, in addition to other local and state reporting requirements.

#### PENALTIES

Failure to comply with these testing requirements will result in a F886 tag. Enforcement remedies will be imposed based on resident outcome, with civil monetary penalties based on scope and severity. However, facility documentation that demonstrates their attempts to perform and/or obtain testing in accordance with these guidelines should mitigate a noncompliance F886 citation.

#### PAYOR SOURCE FOR TESTING

Medicare Part B and Medicare Advantage will pay for resident tests for diagnostic testing (i.e. residents with symptoms, asymptomatic testing due to an outbreak, baseline testing and testing to determine if resident no longer has COVID). To pay for staff testing, potential available funding sources are the \$2.5 billion Provider Relief Fund, individual state coverage of staff testing and staff health insurance.

The other CMS memo, [QSO Memo 20-37-NH](#), describes the survey frequency, citations and fines for noncompliance with CLIA regulations related to POC antigen testing.