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Date: September 24, 2021

To: Nursing Facilities  
Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs)  
Adult Assisted Housing Providers

Re: Changes to facility surveillance testing, outbreak testing & visitation, clarification on admissions, ending of reimbursement for surveillance testing.

### **Purpose**

The purposes of this memorandum is to clarify: the applicability of the surveillance and outbreak testing requirements in the revised QSO-20-38-NH, updated by CMS on September 10, 2021; its applicability to visitation; facility admissions expectations; and provide notice that the Department will no longer be reimbursing facilities for surveillance testing of unvaccinated staff once the staff vaccination requirement is being enforced.

### **Federal CMS Guidance QSO-20-38-NH revised 9/10/21**

On September 10, 2021, CMS released revised guidance for nursing home facility testing, which allows a facility to utilize the results of contact tracing within the facility in lieu of facility-wide universal testing when a staff or resident has received a positive COVID-19 test result. Please note that facilities are still expected to notify the Maine CDC upon the identification of any positive case within the facility, and must follow the recommendations and guidance of the Maine CDC EPI Team staff member assigned to assist the facility in determining if the facility has an outbreak, as well as interventions to limit the spread of an outbreak.

*“Upon identification of a single new case of COVID-19 infection in any staff or residents, testing should begin immediately. Facilities have the option to perform outbreak testing through two approaches, contact tracing or broad-based (e.g. facility-wide) testing.*

*If the facility has the ability to identify close contacts of the individual with COVID-19, they could choose to conduct focused testing based on known close contacts. If a facility does not have the expertise, resources, or ability to identify all close contacts, they should instead investigate the outbreak at a facility-wide or group-level (e.g., unit, floor, or other specific area(s) of the facility). Broader approaches might also be required if the facility is directed to do so by the jurisdiction’s public health authority, or in situations where all potential contacts are unable to be identified, are too numerous to manage, or when contact tracing fails to halt transmission.”*

Additionally, the revised CMS 20-38-NH memo directs facilities to move from utilization of the County percent positivity rate for determining surveillance testing of unvaccinated staff, to utilization the “level of community transmission”, which can be found on the Centers for Disease

Control and Prevention Integrated County View site at <https://covid.cdc.gov/covid-data-tracker/#county-view>. The CMS memo indicates that facilities should revise their infection control and surveillance plans to establish a 2-week look back period for the basis of their unvaccinated staff surveillance testing. For example, a facility can establish their plan will be modified every 2 weeks based on a review of the County transmission data on the first and third Mondays of the month. **NOTE: in Maine all facility staff must be fully vaccinated consistent with the Maine CDC’s Immunization Requirements for Healthcare Workers Rule, with enforcement starting on October 29, 2021, so this revised CMS surveillance testing guidance applies prior to October 29, 2021.**

In light of evolving federal guidance, Maine will no longer be issuing or updating the previous state-level guidance tables for congregate facilities. These tables established 2 groups of facilities, Groups A and B, and provided guidance tailored to facility types. These tables were posted on the Division of Licensing and Certification, and the Office of Aging and Disability Services, websites.

Group A facilities should continue to follow the Federal CDC & CMS healthcare guidance. Group B facilities are encouraged to utilize the Federal CDC & CMS healthcare guidance and Federal CDC public guidance as best practice references in the development of their internal infection control plans/policies, which are required in State facility licensing rules.<sup>1</sup> In the event of an outbreak response situation, the Maine CDC will use, as a guide, both Federal CDC & CMS guidance for close contact determinations, testing, and preventative measures to reduce the risk of transmission of SARS-CoV-2 infection. Group A and B facilities are specified in Table 1.

**Table 1. Group A and B Congregate Settings**

| Group A   | Group B   |
|---|---|
| <ul style="list-style-type: none"> <li>• Nursing Facilities</li> <li>• ICF/IIDs</li> <li>• Facilities designated as Alzheimer’s/ Dementia Care</li> <li>• PNMI/Residential Care Facilities/Assisted Living Facilities that are part of Multi-Level Complexes with Nursing Facilities</li> <li>• PNMI Appendix C Facilities (for Adults with High Functional/Medical Needs)</li> </ul> | <ul style="list-style-type: none"> <li>• Adult PNMI, Residential Care Facilities, and Assisted Living Facilities not included in Group A</li> <li>• Adult Family Care Homes</li> <li>• Adult Group Homes</li> </ul> |

<sup>1</sup> Note that Maine DHHS continues to offer consultation to facilities at no charge to develop an infection prevention and control plan as required in State licensing rules. Requests for consultation may be sent to OADS@maine.gov.

Maine CDC provided reference tools to assist all facilities in navigating the healthcare guidance. The tools can be found on the Maine CDC HAI Webpage, under “Resources”:

<https://www.maine.gov/dhhs/mecdc/infectious-disease/hai/index.shtml> . Within the tools are links to the federal references.

For assisted living and other non-healthcare congregate facilities (such as Group B), additional guidance is available through Federal CDC and includes but is not limited to the following:

- <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>
- <https://www.cdc.gov/aging/covid19-guidance.html>
- <https://www.cdc.gov/coronavirus/2019-ncov/community/retirement/index.html>
- <https://www.cdc.gov/coronavirus/2019-ncov/community/shared-congregate-house/guidance-shared-congregate-housing.html> (note is an archived page)
- <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>

The Division of Licensing and Certification will review Assisted Housing facilities’ compliance with the infection control rule at re-licensure and complaint surveys. As noted above, technical assistance continues to be available at no charge for facilities that have not completed or revised their infection control plans. Facilities looking for more information or assistance should send a request to [OADS@maine.gov](mailto:OADS@maine.gov).

### **No changes to QSO 20-39-NH**

Please note that CMS has not issued revised guidance for QSO-20-39-NH, which directs that facilities stop visitation until they have received the results of the first round of universal testing. As such, should a facility choose (in consultation with the Maine CDC) to conduct limited testing based on the contact tracing methodology, then the facility should only close/limit visitation in the areas in which testing is occurring.

### **Facility Admissions**

Staffing challenges are being faced among facilities, as throughout our healthcare system. The work of recruiting and retaining staff, which was challenging prior to the pandemic, has been exacerbated by the current Delta strain effects. Nevertheless, the CMS Conditions of Participation require that facilities admit residents as they have open beds and capacity, based on the facility’s admission criteria. In CMS’s “Guidance for Infection Control and Prevention of (COVID-19) in Nursing Homes” issued on March 13, 2020, and revised and reissued on March 10, 2021, CMS stated:

“Note: Nursing homes should admit any individuals that they would normally admit to their facility, including individuals from hospitals where a case of COVID-19 was/is present.”

This is important given that Maine hospitals report that they have large numbers of patients awaiting placement, which is limiting our capacity to care for COVID-19 as well as non-COVID-19 individuals requiring hospital level of care. The Department stands ready to provide technical assistance to facilities to address staffing challenges that limit opening beds.

**Surveillance Testing Reimbursement**

The requirements for facility surveillance testing only apply to unvaccinated staff in a facility. Fully vaccinated facility staff are not required to participate in scheduled surveillance testing. Since all facility staff are required to be fully vaccinated in Maine, the current process of cost reimbursement for facility surveillance testing will end effective October 30, 2021. Please contact DHHS Audit if you have any testing reimbursement questions at [DHHS.Audit@maine.gov](mailto:DHHS.Audit@maine.gov).

Facilities may continue to utilize the Maine CDC Health and Environmental Testing Laboratory (HETL) for testing of facility outbreak samples for free and shall continue to be responsible for any costs associated with transportation of samples to HETL. Please note that there is no reimbursement available for sample testing at private or hospital-based labs.