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**Dear Member:**

#### Correction to CDC Data Page Link in Guidance

Last Friday afternoon, DHHS issued new and updated guidance on staff testing requirements, visitation and other community engagement activities in congregate settings. Of importance to members is Maine's use of data metrics that are more applicable to our state, yet differ from CMS guidelines when determining visitation and activities.

The updated guidance for Nursing Homes and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF-IIDs) includes three documents linked below. New guidance for all types of Assisted Housing for adults is contained in one document linked below.

- [Table-Guidance-for-LTC-ICF IID-Activities.pdf](#)
- [Testing-CommEngagement-AssistedHousing-Guidance.pdf](#)
- [NursingFacility-Visitation-CMS-Memo.pdf](#)
- [LTC-Visitation-Guidance.pdf](#)

Today, OADS informed providers that there was a typographical error in the link to the Maine CDC COVID-19 data page that was included in the guidance that may result in an error message. Please use the following link to access the CDC data page: <https://www.maine.gov/dhhs/mecdc/infectious-disease/epi/airborne/coronavirus/data.shtml>

- Scroll to the bottom of the page, where you will see a list of additional data tables.
- Choose "View Tables of Data for the Previous 14 and 28 Days"
- Click on "Download Data for the Previous 14 and 28 Days (PDF)"
- Use the 28-day table to locate your county rate per 10,000.

#### ICYMI: Resident Voting Rights Workshop Available On Demand

This free 1-hour workshop, sponsored by the Maine LTC Ombudsman Program, Disability Rights Maine, and AARP Maine, is now available on demand: <https://www.maineombudsman.org/Voting-Rights/>

MHCA encourages members to learn about voting rights for residents of long-term care facilities, including those under guardianship. Presenters review new guidance from Maine's Secretary of State on how to vote safely by absentee ballot during the pandemic. They also give staff and administrators clear guidelines on appropriate support for residents who may need assistance filling out applications and ballots. In addition, members will find helpful links also posted on the LTCOP web site.

MHCA also reminds you that when submitting absentee ballot request forms and voter registration forms, please be sure to include the unique signature of each resident for whom you are making the request. Request forms without voter signatures will be rejected. Each request form and registration form must be signed by the voter.

In general, municipal clerks suggest it isn't a good idea to have a single person managing the entire process but rather, best practice is to have two people overseeing it. Also, if a staff member is going to help a resident, they have to sign the witness box. Please share this information with your appropriate staff. Due to the demands on municipal clerks this election season, members may feel free to reach out to AARP Maine at 207-776-6304 or [lparham@aarp.org](mailto:lparham@aarp.org) for assistance.

#### New OSHA Guidance for COVID-19 and AHCA/NCAL OSHA Resources

AHCA/NCAL now has an Occupational Safety and Health Administration (OSHA) [Respiratory Protection Plan Template](#) developed by our OSHA Experts at Littler. Providers should note that if respirators are being used (such as N95s) you must have a Respiratory Protection Program in place to comply with OSHA standards. OSHA has fined long term care providers for not having the protection plan in place during the COVID-19 pandemic. The template is designed to be reviewed and tailored by each individual facility. Facilities should review the [Respiratory Protection Standard \(29.C.F.R. 1910.134\)](#).

OSHA has released [guidance](#) for enforcement discretion when considering issuing citations for respirators and fit testing. This guidance applies only to fit-testing of NIOSH-approved tight-fitting Powered Air Purifying Respirators (PAPRs) used as a contingency capacity strategy when performing job tasks with high or very high occupational exposure risk to COVID-19. It does not apply to:

- PAPRs that have not been approved by NIOSH;
- PAPRs used by any workers with low or medium exposure risk to COVID-19;
- PAPRs used by any workers for protection against airborne hazards other than COVID-19 (e.g., chemical hazards); and
- Loose-fitting hooded PAPRs that do not require fit-testing.

Due to N95 shortages, employers should prioritize the use of fit-testing supplies to protect employees who must use respirators for high risk procedures.

OSHA will, on a case-by-case basis, exercise enforcement discretion when considering issuing citations for fit-testing and respirators when an employer has:

- Provided NIOSH-approved tight-fitting PAPRs to protect personnel against COVID-19 using a high efficiency (HE) particulate cartridge or filter, when initial and/or annual fit-testing is infeasible due to shortages of N95, N99, N100, R95, R99, R100, P95, P99, and P100 respirators and/or fit-testing supplies;
- Monitored fit-testing supplies and made good faith efforts to obtain fit-testing supplies;
- Implemented, to the extent feasible, engineering controls, work practices, and/or administrative controls that reduce the need for respiratory protection, such as using partitions, restricting access, and cohorting patients; and
- Maintained a fully-compliant RPP, other than fit-testing requirements, including ensuring personnel are informed of new policies and trained on new procedures, ensuring employees receive required medical evaluations, ensuring batteries and filters for PAPRs are well maintained to provide positive pressure throughout the entire shift or procedure, and ensuring employees wearing tight-fitting PAPRs maintain neatly trimmed facial hair that does not compromise the seal of the respirator or come between the sealing surface of the facepiece and the face, and that does not interfere with valve function.

Please note - Where the above efforts are absent and respiratory protection use is required, or voluntary use is permitted, and an employer fails to comply with applicable medical evaluation, fit-testing, maintenance, care, and training requirements, citations can be issued.

OSHA issued [frequently asked questions](#) regarding COVID-19 reporting obligations. In the FAQs, OSHA has clarified what is considered an “incident” in the case of COVID-19, which triggers the time period for calculating whether a case meets the reportability criteria. The term “incident” is defined by OSHA as an exposure to COVID-19 in the workplace as opposed to when an employee develops symptoms or tests positive for COVID-19. Additional information on reporting in-patient hospitalizations and employee deaths, including OSHA’s definition of in-patient hospitalizations can be found in the updated [AHCA/NCAL OSHA resource](#) on reporting and recording OSHA standards.

#### **CMS Releases Medicare Accelerated and Advance Payment Guidance**

On October 8, the Centers for Medicare and Medicaid Services (CMS) released updated Medicare Accelerated and Advance Payment guidance based upon the recently enacted Continuing Appropriations Act, 2021 and Other Extensions Act.

The CMS guidance outlines the following repayment schedule:

- Repayment does not begin for one year starting from the date the accelerated or advance payment was issued (e.g., the date a SNF received its payment);
- Beginning at one year from the date the payment was issued and continuing for 11 months, Medicare payments owed to providers and suppliers will be recouped at a rate of 25 percent;
- After the 11 months end, Medicare payments owed to providers and suppliers will be recouped at a rate of 50 percent for another six months; and
- After the six months end, a letter for any remaining balance of the accelerated or advance payment(s) will be issued.
- If such a letter is issued, SNFs will have 30 days from the date of the letter to repay the balance in full. If payment is not received within 30 days, interest will accrue at the rate of 4 percent from the date the letter was issued, and will be assessed for each full 30-day period that the balance remains unpaid. Information related to Extended Repayment Schedules will be included in these letters. CMS may immediately issue these letters to SNFs who received accelerated or advance payments in error.

In a departure from previous policy, CMS notes that SNFs can submit one or more lump sum payments to pay off all or some of their total balance. To arrange a lump sum payment, CMS indicates SNFs should contact their MAC(s) for more instructions on how to make a lump sum payment, especially if payment will be made after the repayment timeframe begins.

For questions related to the Accelerated and Advance Payment Program, CMS has established COVID-19 hotlines at each MAC that are operational Monday through Friday to assist all providers with accelerated or advance payment concerns. Providers can contact the MAC that services their geographic area(s). To locate designated MAC areas, visit the [MAC website list](#). The CMS Factsheet is located [here](#) and the FAQ document is located [here](#).

Thank you for all you do to care for your residents and staff.

Nadine L. Grosso  
Vice President and Director of Communications  
ngrosso@mehca.org