



July 18, 2024

VIA EMAIL

The Honorable Kathy Hochul
Governor
State of New York
The Capitol
Albany, New York 12224

The Honorable James V. McDonald, M.D., M.P.H.
Commissioner
New York State Department of Health
Corning Tower
Albany, New York 12237

RE: COVID-19 HERDS Reporting for Nursing Homes and Adult Care Facilities

Dear Governor Hochul and Commissioner McDonald:

I am writing on behalf of LeadingAge New York, and over 400 not-for-profit and public providers of long-term care and aging services, to urge you to eliminate the daily COVID-19 adult care facility (ACF) and nursing home COVID-19 HERDS reporting requirement. This daily 19-question survey no longer serves the goals it once did, and instead diverts precious resources from critical resident care needs. The COVID daily survey began in April 2020 -- over four years ago -- as an element of the emergency response to the COVID-19 pandemic. Thankfully, we are in a far better place today than we were in 2020. The public health emergency has ended on both the federal and state levels, and the CDC has concluded that COVID-19 "is no longer the emergency that it once was, and its health impacts increasingly resemble those of other respiratory viral illnesses."

LeadingAge NY and our members understand the importance of data to inform public health decisions, and we recognize that the incidence of COVID cases rises and falls intermittently, like any other respiratory virus. However, the daily collection of granular information about COVID tests, infections and immunizations in long-term care facilities is no longer necessary. Even if such data were indeed needed, the HERDS survey would be an inappropriate source. Due to flaws in its questions, the HERDS survey collects irrelevant and unreliable data. It is also largely duplicative of other, more reliable data sources. As explained more fully below, the elimination of the daily HERDS report will not affect the State's ability to conduct epidemiological surveillance or respond to outbreaks. Given the end of the emergency and the serious workforce shortages that continue to plague long-term care, precious staff resources should not be diverted to what has become a largely unnecessary and unproductive exercise.

A. The HERDS Survey is Duplicative of Other Federal and State Reporting Requirements

The HERDS survey gathers daily information regarding the numbers of COVID-positive residents, newly-diagnosed residents and employees, residents on isolation, daily deaths of residents who have a positive COVID test result, and residents who have received or declined certain COVID vaccinations in both ACFs and nursing homes. As detailed below, much of this information is reported elsewhere, and therefore the daily survey is duplicative. In some cases, the penalties for failure to report are also duplicative.

1. Federal Nursing Home COVID-19 Reporting Requirements

The CDC's National Healthcare Safety Network (NHSN) collects more reliable COVID-19 data from nursing homes using updated collection tools. Nursing homes are required to report data on a weekly basis through the NHSN system on COVID cases, hospitalizations, deaths, and COVID vaccinations.

The NHSN Long-Term Care Facility reporting instruments have been updated many times since they were introduced in May 2020 and are supported by written manuals and instructions with definitions of data elements, FAQs, and web-based recorded and live trainings. The CDC's attention to defining the data it seeks to collect and providing comprehensive instructions has helped to ensure the validity of its data.

Compliance with NHSN reporting is high, adding to the validity of the data collected. The requirement is enforced by CMS through an automated monetary penalty process in response to each missed report. A failure to submit a complete and timely report triggers a fine of \$1,000 for the first offense. For each additional week the nursing home fails to comply with this requirement, the penalty increases by an additional \$500. Similarly, even a single late or omitted HERDS report triggers an enforcement process with a penalty of up to \$2,000 and increasing penalties for subsequent violations. According to CDC's NHSN compliance data, more than 98 percent of required reports from facilities in New York State in 2024 have been submitted through mid-June, and 98 percent of those reports were determined to have satisfied CDC's quality assurance checks.

2. State Reporting Requirements

In addition to reporting COVID cases via HERDS and NHSN, nursing homes must report nosocomial infections, including COVID-19, in residents or employees to the State Department of Health (DOH) Bureau of Healthcare Associated Infections (BHAI). Similarly, ACFs must report cases of COVID-19 to the local health department (LHD) in which the facility is located. These reports ensure that public health authorities have the information they need to respond rapidly to emerging outbreaks.

B. The HERDS Survey Data are Not Useful

The HERDS survey was developed at the height of the COVID emergency, and updates in the survey instrument have not kept pace with the changing environment. As a result, the survey collects a great deal of extraneous data, and the data collected fail to provide an accurate understanding of key issues.

For example, the survey asks for the number of residents with a COVID diagnosis, a new COVID diagnosis in the previous calendar day, and on isolation in the previous calendar day. Daily counts of this nature are unnecessary under current conditions. Further, the survey questions appear to assume that the cohort of residents of these facilities remain the same over time. In fact, especially in nursing homes, residents are

admitted and discharged frequently. Thus, the information gathered by the HERDS does not necessarily relate to the same cohort from day to day. Comparing data from one day to the next in this way is therefore limited in its utility.

The flaws in the survey instrument are most striking in the vaccination questions. Both the nursing home and ACF daily surveys ask seven questions regarding vaccination, and yet the data collected **will not tell you how many residents are “up to date” in their COVID vaccinations**. Further, due to a lack of clarity in the wording of the questions and instructions, the data likely do not provide the information the Department believes it is collecting. The following is a summary of some of the defects in the survey’s vaccination questions:

- The survey does not request the number of residents who are “up to date” with their COVID vaccination status. The CDC now defines “up to date” in COVID vaccinations for individuals aged 65 and over as having received “**2 updated 2023–2024 COVID-19 vaccine doses.**”¹ Instead of asking for the number of residents who have received the 2023-2024 vaccine doses, the HERDS survey requests the number of residents who have received “their complete COVID-19 vaccine series (either first and second dose of a two dose vaccine or a one dose vaccine)” and “at least one additional or booster dose.”² According to Department of Health staff, the figure reported in response to these questions should include not only those residents who have received the current 2023-24 vaccine, but also the residents who have completed the vaccine regimens approved from 2020-2022 and any additional or booster doses (**even if these residents never received the updated 2023-24 vaccines**). There is no way to discern from these questions the number of individuals who are “up to date.” The survey’s ongoing focus on the now obsolete 2020-22 vaccines is puzzling and confusing to data reporters.
- The survey asks for the number of residents “who have declined COVID-19 vaccination as of today.” According to Department of Health staff, this question should be interpreted to elicit a count only of current residents who have *never* received *any* COVID vaccine. Those who are currently declining to receive the updated COVID vaccine, but were previously vaccinated against COVID, should **not** be included in responses to this question. It is unlikely that this question is being interpreted consistently.
- The survey asks about the number of residents who received a vaccine “yesterday.” Unlike 2020 and 2021, facilities are no longer hosting large-scale vaccination clinics, facing vaccine shortages, or waiting prolonged periods for deliveries of vaccine supply. The number of residents who are vaccinated each day is not relevant to any policy or public health issue.
- The survey seeks the number of consenting and eligible residents who have not yet received a dose of vaccine. The Department is apparently seeking to determine the number of residents waiting to obtain a vaccine. This information, without additional context, is not useful.

C. The Costs of the Daily HERDS Survey Outweigh Any Benefit

The HERDS survey imposes significant opportunity costs and other costs on nursing homes, adult care facilities and the residents they serve, without providing equivalent value. Completing the HERDS survey on a daily basis demands input from several facility units and oversight by high-level executives. In order to

¹ The definition is different for individuals who choose the Novavax vaccine and have not previously received any vaccine doses.

² HERDS Survey, Questions 6 and 7. The instructions for Questions 6 and 7 refer to the one dose Johnson & Johnson – a vaccine that is no longer available.

fulfill their HERDS responsibilities, these personnel must take time away from supervising direct care staff, communicating with residents and families, responding to urgent issues, addressing gaps in staffing, and overseeing quality improvement activities. There is a well-documented health care workforce shortage in the state, and it is felt more acutely in long term care than in other sectors. As an example, Commissioner McDonald has issued a "[Determination of an Acute Labor Supply Shortage](#)" of nurse aides, certified nurse aides, licensed practical nurses, and registered nurses for 2022 and the first two quarters of 2023; we anticipate that more current data will reveal that the shortage continues. In light of this shortage, the State should help long-term care personnel to focus on issues more directly related to resident care, rather than imposing unnecessary administrative requirements.

Meanwhile, it is widely understood that the Department of Health itself is also experiencing a workforce shortage. It would not be surprising if the daily review of HERDS data and the necessary updating of survey instruments present challenges for the Department. Residents of nursing homes and adult care facilities would be better served if facility and Department resources could be deployed to address quality of care and quality of life issues.

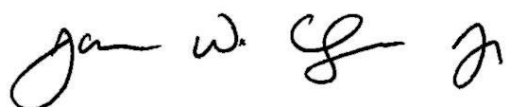
Recommendations

Based on the considerations outlined above, LeadingAge NY recommends that the state take the following steps:

- Eliminate the daily HERDS survey for nursing homes and adult care facilities immediately.
- Use COVID data reported elsewhere to inform state policy and public health responses to COVID-19, as outlined above.
- If the State needs data regarding new COVID cases in addition to what is already reported to local health departments and the State Department of Health's BHA, it could establish a reporting mechanism for nursing homes and ACFs for that limited purpose.

LeadingAge NY and our members understand the importance of collecting data in response to a public health threat. However, the scope and frequency of data collected must be proportionate to the nature of the threat, and the data elements must be clearly defined and relevant. LeadingAge NY is always happy to work with the Department to help ensure that it is able to collect needed data in an accurate and timely manner. These collaborations can help prevent confusion, avoid wasted effort, and result in better outcomes for all.

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
LeadingAge New York

Cc: Angela Profeta
Johanne Morne
Valerie Deetz