Nursing Facility Accountability and Supports Package 2.0

September 10, 2020

The Commonwealth has taken significant steps to support nursing facility residents and staff throughout the pandemic:

- **$260 million in state funding**, including $130 million tied directly to infection control audit results, in addition to at least **$180 million in federal funding**
- Over **2.8 million pieces of PPE** from the state emergency stockpile
- **Short and long-term staffing support to augment existing facility needs**
- Baseline testing and ongoing staff surveillance testing for all staff and residents
- Increased oversight and accountability through regular state implemented infection control audits using a 28-point checklist and targeted survey tool

New COVID-19 cases and deaths in nursing facilities have declined by over 90% since late April based on 7-day averages (see Table 1 below).

Building off the April accountability and support measures, the Nursing Facility Accountability and Supports Package 2.0 holds facilities to higher standards of care and infection control, invests up to $140 million in new funding, and restructures Medicaid rates, consistent with the recommendations of the Nursing Facility Taskforce.

The five key elements of the Nursing Facility Accountability and Supports Package 2.0 are:

1. **Requirements to strengthen staffing and the direct care workforce, de-densify congregate rooms, and improve standards of care**
    - Establish minimum staffing levels;
    - Hold facilities financially accountable for revenue spent to support direct care staffing; and
    - Require facilities to de-densify congregate rooms, including the elimination of 3 and 4 bedrooms
2. **Long term investment through MassHealth rate restructuring**
    - $82 million net new investment into rates in line with the recommendations of the Nursing Facility Task Force to promote a high-quality, sustainable and right-sized industry
    - The new rate structure incentivizes high-quality, high-occupancy, and care for high-acuity special populations while ensuring stability for high-Medicaid facilities
3. **Targeted COVID-19 funding –** up to $60 million in targeted, near-term funding to support COVID response actions
    - Majority of funding is only dispersed in the event that statewide infection rates rise and the industry experiences staffing shortages
4. **Sustained oversight and monitoring –**the state will continue monitoring facilities across infection control, staffing, and management through regular reporting and increased infection control surveys
5. **Early identification of issues and rapid response teams–** proactive response including rapid response teams and other supports, corrective measures, and enforcement

Approach Details:

1. **Requirements to strengthen staffing and the direct care workforce, de-densify congregate rooms, and improve standards of care**
    - Facilities will be held accountable for compliance with these new requirements, and will be subject to financial penalties for noncompliance
    - Nursing facilities will be required to meet an Hours Per Patient Day (HPPD) staffing minimum of 3.5[1] by January 2021
    - Nursing facilities will be required to invest at least 75% of their revenue towards direct care staffing costs, effective October 1, 2020
        - Replaces the MassHealth direct care staffing add-on to better hold facilities accountable for managing their revenue and investing in direct care staff
    - De-densify congregate rooms by eliminating 3 and 4 bedrooms and making other changes to meet square footage requirements to ensure adequate distance between residents, promote infection control, and improve resident quality of life
        - In the immediate term, between October and December 31st, facilities must begin converting 3 and 4 bed rooms to singles or doubles using existing capacity or managing admissions
            - The $60 million of targeted COVID funding will be contingent on facilities complying with this requirement

          In addition, DPH will require, through updates to its licensure regulation, all facilities to eliminate 3 and 4 bed rooms and increase the minimum square footage in doubles, by January 2022.

2. **Long term investment through MassHealth rate restructuring**
    - A net new investment of $82M annually beginning in October 1 to promote a high-quality, sustainable industry in line with the policy recommendations of the Nursing Facility Task Force
    - Progressive rate reforms move towards right-sizing the industry by incentivizing high-quality care, efficient-occupancy rates, care for high-acuity special populations, and long-term stability to high-Medicaid facilities
    - Simplified, integrated structure eliminates antiquated add-ons to provide greater transparency into the rate calculation and distribution of funding
    - Eliminates the historic issue where high occupancy facilities have effectively cross-subsidized lower occupancy facilities; this ensures appropriate resources and sustainability for facilities that are operating at reasonable levels of occupancy
    - On average, these reforms will result in a 6% rate increase across the industry, and an average 8% increase for high-quality, high-occupancy, and/or high-Medicaid facilities

3. **Targeted near-term funding: Up to $60 million between October and December 31st to support COVID-19 response efforts and ensure quick action if statewide infection rates rise to a defined threshold**
    - $12-36M for COVID-19 surge funding in the event that statewide infections rise to and the industry experiences staffing shortages

[1] Or an amount equivalent to the lower bound HPPD level in the CMS 3-star range

- Funding will be contingent upon facilities meeting up-front staffing, testing, de-densification, and other reporting requirements and must be spent on COVID-related costs
- Up to $24M to all nursing facilities for continued surveillance testing through December dependent upon additional federal financial supports.
  - The state will seek to leverage available federal funding for nursing facility testing to the extent possible
- $3.6M for facilities that meet heightened criteria to establish a dedicated COVID-19 isolation space from October-December.
  - After September 30, eligible facilities that opt in to create isolation spaces must meet the heightened infection control, quality, and staffing criteria and will be required to admit COVID positive residents.

4. **Sustained oversight and monitoring: The Commonwealth will continue oversight and monitoring of facilities across three key dimensions: infection control, staffing, and management to enable early identification of issues and inform the state's response**
   - Ongoing, regular infection control surveys of all facilities using the new CMS infection control survey tool
     - Facilities with deficiencies will be re-surveyed to ensure issues are corrected
   - Assessment of staffing levels and management competency
     - Staffing will be determined through regular reporting on staffing requirements, including Hours Per Patient Day (HPPD) and contingency staffing plans
     - Management competency will be evaluated across multiple indicators including compliance with surveillance testing policy, refusal of state supports, and CMS recertification surveys

5. **Early identification of issues and rapid response teams: The state will proactively address issues with targeted supports, corrective measures, and enforcement actions**
   - Targeted supports:
     - Clinical staffing rapid response teams will continue to provide nursing and other staffing needs**;** facilities will also have access to the LTC staffing portal, allowing for direct communication with job candidates through an improved matching algorithm to support hiring needs
     - Infection control assistance through contracted infection control specialists and DPH's onsite program
     - Management supports through a state-contracted crisis management firm
   - Corrective measures:
     - Facilities with identified infection control, staffing or management deficiencies, the state will require the facility to implement a corrective action plan or take other appropriate steps to address the deficiency
     - If facilities do not submit corrective action plan where required or demonstrate they have corrected deficiencies, they may be subject to additional enforcement action, including monetary penalties.
   - Enforcement actions:
     - Facilities that are consistently unable to correct deficiencies and/or demonstrate an ability to operate safely will be subject to a range of enforcement actions

including financial penalties, receivership, admissions freeze, termination from MassHealth or ultimately closure.

Table 1.

Nursing Facilities: Comparison of COVID-19 Cases and Deaths between late April and beginning of September			
	COVID-19 Cases (7-day avg)	COVID-19 Deaths (7-day average)	Cases and Deaths Combined
April 24-30	540.3	112.1	652.4
August 31- September 7	7.3	8.0	15.3
Percent decline	-99%	-93%	-98%