Colorado Health Care Association & Center for Assisted Living

Association Update

CMDA Meeting – October 3rd, 2023

Jenny Albertson, NHA, QCP – Director of Quality and Regulatory Affairs

COVID Vaccination NEW "up-to-date"

- The FDA approval will trigger a change in the National Health and Safety Network's (NHSN) surveillance definition of "up-to-date" to align with the new vaccine recommendations. **As of September 25, 2023, individuals are considered "up-to-date" with their COVID-19 vaccines in NHSN if they meet one of the following criteria:**
  - Received a 2023-2024 updated COVID-19 vaccine

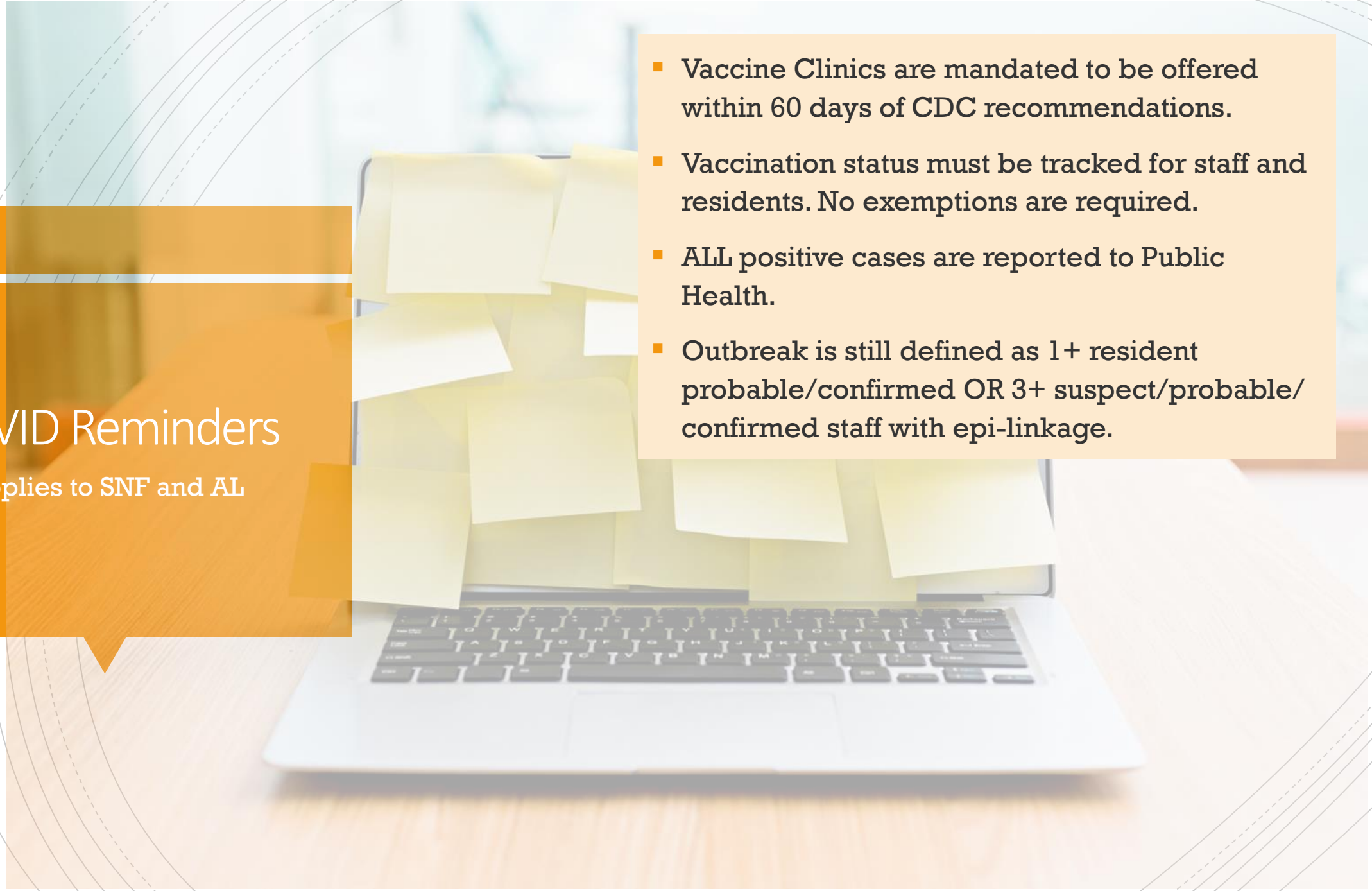
  or
  - Received a bivalent* COVID-19 vaccine within the last two months

**Note that the bivalent vaccines are no longer authorized as of 9/12/2023.*

- NHSN expects a significant dip in the percentage of long-term care residents and staff who are reported as up-to-date for COVID vaccine beginning the week of September 25-October 1, 2023.

COVID Reminders

Applies to SNF and AL



- Vaccine Clinics are mandated to be offered within 60 days of CDC recommendations.
- Vaccination status must be tracked for staff and residents. No exemptions are required.
- ALL positive cases are reported to Public Health.
- Outbreak is still defined as 1+ resident probable/confirmed OR 3+ suspect/probable/ confirmed staff with epi-linkage.

Spending our CMP Fund

- CMS updates the grant program
- QSO Memo 23-23-NH

Grants are capped at certain amounts, based on type

Examples of permissible grants:

- Resident or Family Council support
- Consumer education material
- Training to Improve Quality of Care
- Activities to Improve Quality of Life
- CMS Developed Global Public Health Emergency (PHE) – Communication devices, Visitation aids, Air quality devices

Non-allowable uses of grant funds:

- Mental and Behavioral Health support
- Nursing Workforce support
- Complex technology (see Attachment B, page 5 for full list)

Aim at improving all to a basic level of service rather than striving for something innovative

Funding projects to benefit residents that can be implemented in all nursing homes by a variety of different organizations (i.e., not only available through a limited number of sources that may not be accessible to all nursing homes); and

Strive to enable all nursing homes have access to the similar, basic capabilities, reflective of those typically found in a traditional household (e.g., wireless internet access).

Proposed Staffing Mandate Make your voice heard

During the 60-Day Comment Period, AHCA is collecting and submitting member comments

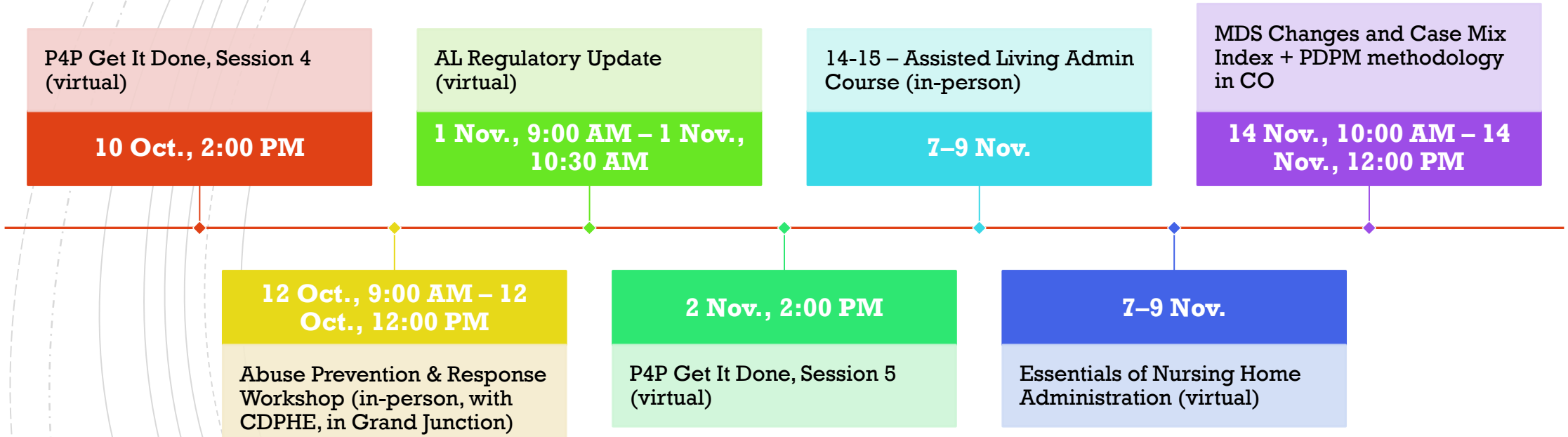
National Goal = 10,000 Unique Comments

Every time we've done this, we get results.

Give your unique perspective, in your words.

DUE NOVEMBER 6th

Opportunities



Proposed Staffing Mandate

24/7 RN Coverage (already CO standard for all but rural communities who can acquire waivers)
RN 0.55 (The DON is included) + C.N.A. 2.45
The 24/7 RN requirement does not imply compliance with the minimum HPRD or vice versa.
Does not currently include LPN or any other type of staff hours. No substitutions permitted.
Requires us to use our Facility Assessments to back up why staffing at minimum or more
Includes a Medicaid Transparency portion too which requires states to submit to CMS how many dollars are spent on direct care staffing.
Staffing will be added to Nursing Home Care Compare site, similar to the "red hand" indicator.

FINANCIAL IMPACT

According to the proposed rule, the overall financial impact would result in an estimated cost of $32 million in year 1; $246 million in year 2; $4.1 billion in year 3; with costs increasing to $5.7 billion by year 10. CMS estimates the total cost at $40.6 billion over 10 years.

LTC facilities would be expected to bear the burden of these costs unless payors increase rates to cover costs. Medicaid's portion of the cost would be $26.9 billion, and Medicare's portion of the increase would be $4.5 billion.

CMS estimates the proposed staffing requirement (not including the costs to increase staffing) would result in a 10-year Medicare savings of $2.5 billion (on a cost of $40.6 billion) from avoided emergency room visits and hospitalizations.

Staffing Minimums

This minimum HPRD must be present, BUT if the acuity needs of the residents in a facility require it, the RN and NA HRPD may be higher.

Facilities should utilize their facility assessment and evaluate the complexity of care required by their unique resident population to ensure they are meeting resident needs.

Surveyors will have a quantifiable way to determine "sufficient staffing." This is an unfunded mandate – no additional funding for surveyors to add this to their basket of work.

Determinations of compliance with minimum HPRD requirements for RNs and NAs will be made based on the most recent available quarter of PBJ System data.

- Prior to being granted an exemption, the facility must be surveyed to assess the health and safety of residents and cited as noncompliant with minimum nurse staffing requirement, but not at scope and severity that would meet the exclusion criteria.
- Where supply of applicable health care staff is not sufficient (determined by Bureau of Labor Statistics and Census Bureau data), or the facility is at least 20 miles from another LTC facility, as determined by CMS;
  - The facility is making a good faith effort to hire and retain staff;
  - Must have developed and implemented a recruitment and retention plan.
  - Have to show efforts to demonstrate they were unable to recruit, despite diligent efforts, including offering prevailing wages.
    - Provide documentation of your financial commitment to staffing demonstrated through resources expended annually on nurse staffing relative to revenue; AND
    - The facility has not failed to submit PBJ data in accordance with re-designated 483.70(p), is not a Special Focus Facility (SFF); has not been cited for widespread insufficient staffing with resultant resident actual harm or a pattern of insufficient staffing with resultant resident actual harm, as determined by CMS; and has not been cited at the "immediate jeopardy" level of severity with respect to insufficient staffing within the 12 months preceding the survey during which the facility's non-compliance is identified.

Hardship Exemption is really hard to get and only is granted one year at a time

New Requirements for the Facility Assessment F838:

- These requirements will be moved to a standalone regulatory section (from to § 483.70(e) under Administration to proposed § 483.71) to ensure that facilities have an efficient process for consistently assessing and documenting the necessary resources and staff that the facility requires.
- The proposed changes to the facility assessment requirements include:
  - Greater inclusion of direct care staff, including representatives of direct care employees (union, local safety organization, third-party worker advocacy group).
  - Increased emphasis on the Facility Assessment utilizing evidence-based, datadriven methods linked to resident assessment as well as increased emphasis on staff skillsets.
  - Adds the requirement to review "behavioral health issues" when reviewing disease and conditions cared for within the facility.
  - Facilities would be required to address specific staffing needs for each shift, which is day, evening, night, weekends, and to adjust as necessary based on any significant changes to the resident population.
  - A contingency plan would also be required for events that do not require the activation of the facility's emergency plan but do have the potential to impact resident care.
  - Facilities would be required to develop and maintain a staffing plan to maximize recruitment and retention of nursing staff as part of their Facility Assessment.

Phase-in

	with the Facility assessment requirements.	final rule.
Phase 2 Urban	Facilities to comply with the requirement for a RN onsite 24 hours a day, 7 days a week.	2 years after the publication date of the final rule.
Phase 3 Urban	Minimum staffing requirement of 0.55 and 2.45 HPRD for RNs and NAs respectively	3 years after the publication date of the final rule
Facilities located in rural areas		
Phase 1	Require facilities to comply with the Facility assessment requirements	60-days after the publication date of the final rule.
Phase 2 Rural	Facilities to comply with the requirement for a RN onsite 24 hours a day, 7 days a week	3 years after the publication date of the final rule.
Phase 3 Rural	Minimum staffing requirement	5 years after the publication date of the

- Census Bureau definition will be used for "rural"
- Check for your community's classification here: https://www.ruralhealthinfo.org/am-i-rural