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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

February 23, 2021

Representative Jeff Yaroch
Chairman, House Appropriations Subcommittee on LARA
Michigan House of Representatives, District 33
JYaroch@house.mi.gov

Dear Representative Yaroch,

Thank you for your correspondence regarding our ongoing efforts to safeguard the health and safety of those who reside or work in long term care facilities. Enclosed with this letter are our responses to your questions. We also look forward to the opportunity to appear before the House Appropriations Subcommittee on LARA to provide additional insight on the work that our department has been doing to protect our most vulnerable residents during the COVID-19 pandemic.

Please feel free to contact me if additional follow up is warranted. We look forward to continued partnership with you and the appropriations subcommittee.

Sincerely,

A handwritten signature in black ink that reads "Marlon I. Brown".

Marlon I. Brown
Director of Policy and Legislative Affairs
Michigan Department of Licensing and Regulatory Affairs

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**Department of Licensing and Regulatory Affairs (LARA)
Bureau of Community and Health Systems (BCHS)**

Responses to Questions from Representative Jeff Yaroch
Chairman, House Appropriations Subcommittee on LARA
February 23, 2021

1. Question: Please update the committee on the infection control survey of all facilities. How many issues were discovered and how many corrective actions were taken? How much notice are facilities given before inspection?

LARA Response: The Michigan Department of Licensing and Regulatory Affairs (LARA) and its Bureau of Community and Health Systems (BCHS) has amongst its responsibilities the regulatory oversight for state licensing and federal certification of various health care facilities. This oversight includes long-term care facilities such as nursing homes, homes for the aged, and adult foster care facilities in addition to many non-long-term care facilities such as hospitals. BCHS oversees the implementation, monitoring and enforcement of these state and federal regulations that includes requirements for infection prevention and control. In addition to its state licensing authority, LARA is the state survey agency in Michigan to assure that covered providers participating in the Medicare and Medicaid programs follow the Centers for Medicare and Medicaid Services (CMS) regulations.

During the COVID-19 pandemic, one of the many focuses by LARA has been on long-term care facilities and infection prevention and control methods. In addition to the state and federal funding received annually by LARA to support these regulatory programs, the department also received an additional \$1.4 million to provide education and consultation to our state licensed nursing home providers in maintaining compliance with infection prevention and control protocols.

Under its state licensing authority, and the supplemental funding (federal CARES) appropriated to the Department, BCHS has assisted the Department of Health and Human Services (DHHS) by:

- Completing 35 inspections, mostly onsite, to nursing home providers applying to DHHS to become a Care and Recovery Center (CRC) for COVID+ residents. This included 10 revisits to ensure that areas of concerns cited during the initial onsite inspection have been corrected.
- Completing 114 desk reviews and virtual visits to nursing home providers applying to DHHS to become a COVID Relief Facility (CRF).

In addition to providing assistance to DHHS, this supplemental funding has allowed BCHS to complete 124 onsite infection prevention and control surveys at state licensed nursing homes and provide education and consultation. These state infection control surveys are scheduled and preannounced enabling providers can

prepare materials and information so that health care surveyor's consultation and education is beneficial to the provider.

Under its federal authority, BCHS has conducted 1,148 infection control focused inspections of the 446 nursing homes in Michigan to ensure compliance with federal regulations. These federal inspections were unannounced per CMS requirements.

In a recent review by CMS, BCHS completed 100% of its federally required infection control focused inspections compared to the national average of 94%. During these inspections, BCHS cited 301 deficiencies (or 26% compared to other states at 13%). In addition, BCHS cited 62 immediate jeopardy citations (or 20.6% compared to the national average of just 8%). BCHS also spent approximately 15.8 hours per onsite inspection (compared to the national average of 6.7 hours). We believe this national comparison demonstrates the dedication of BCHS federal surveyors to promote a quality and safe environment for residents.

2. Question: Please discuss Care and Recovery Centers. What is LARA's role in the infection control of these facilities? Are facilities meeting these standards?

LARA Response: The Care and Recovery Centers (CRC) pursuant to statute is under the authority and responsibility of DHHS. LARA's role is to provide onsite inspections for applications submitted by the provider to DHHS. Once DHHS has reviewed an eligible applicant, DHHS then forwards the application to LARA for a desk review of past compliance history and an onsite inspection. Once BCHS conducts the inspection, the state survey team provides a report back to DHHS for further review and consideration. Some of the things that BCHS looks at during its review include whether the provider is equipped to separate the COVID-19 residents from non-COVID residents, if the provider has an infection control plan and is implementing it properly, whether the provider has ample and appropriate supplies, etc. Most of the CRC applicants have met the criteria set forth by DHHS.

3. Question: Is LARA using data to determine where they need to do additional inspections? If so, could you site the data? Are there facilities which have a systemic problem with infection control? If so, could you elaborate on the systemic problem they are facing?

LARA Response: BCHS uses both state and federal resources to determine if an inspection or a revisit is required. Some of the information used in determining a need for inspection includes:

- Weekly CMS data that lists specific providers for an infection control focused survey based on COVID+ case data reported by the facility or region the provider is located in.
- A referral from either DHHS or a local county health department identifying a provider that may need inspection, consultation, and education on infection prevention and control.

- A recent BCHS inspection that identified significant lapses in infection prevention and control methods, including citations of immediate jeopardy or potential harm.
- A complaint from a resident, family member, or public alleging breaches in infection control, quality of care, or non-compliance with state and federal regulations.

There have been providers identified with significant infection prevention and control issues along with other systemic issues of compliance. In these cases, LARA uses both its federal and state inspection teams. The federal team focuses on identifying lapses in practice. The state team focuses on education and consultation to assist in correcting any deficient practices. In addition, LARA can refer providers to DHHS for additional virtual and onsite education to increase training and compliance with good infection prevention and control practices. LARA and DHHS have partnered during this pandemic to share and coordinate resources to assist providers.

4. Question: What is LARA doing to ensure facilities are making vaccinations a priority?

LARA Response: The lead agency for the COVID-19 vaccination roll-out is DHHS. LARA continues to work collaboratively with DHHS. LARA has provided licensing information to DHHS to assist in the vaccine roll-out and has participated in DHHS meetings. LARA has also assisted DHHS in collecting feedback from providers and provider associations on opportunities to increase vaccination participation by residents and caregivers in congregate care settings, such as nursing homes, homes for the aged, and adult foster care homes. With input from LARA, DHHS has been working very closely with the providers, associations, local public health departments, and other key stakeholder groups to encourage everyone, whether a resident or an employee, to get vaccinated. DHHS has done targeted communication around this issue to help make vaccination a priority to protect our most vulnerable populations.

5. Question: Does Michigan's visitation rules differ from federal CMS and CDC guidance?

LARA Response: LARA and DHHS met with CMS representatives to discuss state and federal visitation guidance. To date, CMS has not alerted LARA or DHHS of any concerns with the Michigan visitation order. It is our understanding that DHHS is in the process of reviewing the visitation order for possible updates and changes.

6. Question: Along the lines of visitations, what steps are being taken to address the mental health of nursing home residents? We are going on a year that many of these individuals have gone without contact from family and friends. Is anything being done to proactively help with this?

LARA Response: LARA, DHHS, and the State Ombudsman's office has worked tirelessly with providers and provider associations to ensure that residents in congregate care settings have the means to communicate with their family members and friends. Many nursing homes have invested in technology, such as smart devices, and other more rudimentary solutions, such as window visits, to help residents stay connected virtually and in-person. In addition, DHHS has provided supplemental funding to assist providers in purchasing and upgrading their technology to assist in virtual visits to stay connected. BCHS inspectors routinely check on the well-being of residents at every onsite visit, as early in this pandemic BCHS inspectors were the few local, state, and federal agencies or organizations continuing onsite, in-person inspections.

7. Question: Were the inspectors asked, or, did they provide their opinion on the feasibility of the current nursing home plan?

LARA Response: BCHS inspectors routinely provide feedback and observations on what is occurring in the field. This feedback is shared with other state agencies as appropriate to assist with program and policy development and enhancements. As for the current nursing home plan, LARA will need further clarification to what plan is specifically being referenced.

8. Question: If they did, what was their feedback?

LARA Response: Initially, inspectors helped identify providers struggling with supplies of personal protective equipment. When identified, LARA would coordinate with its emergency coordinator, DHHS and the applicable local health department to assist with that emergent need. In addition, BCHS inspectors provided feedback on basic lapses in infection prevention and control methods seen while onsite to assist LARA and DHHS to develop additional guidance and training assistance to providers.

9. What, if any, input is being given to the administration by LARA?

LARA Response: LARA continues to remain focused on completing the federally required infection control and prevention surveys as directed by CMS along with having the state survey team provide education and consultation on how to maintain infection control. LARA continues to coordinate with DHHS and other departments whenever our expertise is needed.