COVID-19: ADVOCATING FOR NURSING HOME RESIDENTS, PART VI

May 29, 2020
I. Introduction and housekeeping
II. Review of What’s Happening
III. Tips for Advocates
IV. Infection Control Surveys
V. State Data – Reporting, Testing, Immunity
VI. Q&A/Discussion
Presenters

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Nursing Facilities in a COVID-19 World:

Where Are We Now?

Eric Carlson, Directing Attorney

May 29, 2020
Visitors

• No visits except for “certain compassionate care situations, such as an end-of-life situation.”
  • FAQ: Examples are hospice care, and sharp decline in health status.
    • CMS Frequently Asked Questions, Question 4, April 24, 2020.

• Advocacy point: “Compassionate care” should not be limited to end of life.
Blanket Waivers of Nursing Facility Regulations

• Medicare eligibility flexibility: Waiving 3-night hospitalization requirement.

• Data submission not required.
  • MDS assessment information.
  • Payroll Based Journal staffing level data.

• Waive residents’ right to participate in groups.

• Waive choice of rooms and roommates, but only in order to group residents based on COVID-19 status.
Reporting COVID Information

• Information to CDC at least weekly:
  • Including suspected and confirmed COVID cases, total deaths and COVID-linked deaths.
  • Information will be posted publicly by CMS, starting in late May or early June.

• Facilities must:
  • Inform residents, their representatives and family by 5pm the next day after an occurrence of:
    • Confirmed COVID-19 case among residents and staff in their facility; or
    • Three or more residents or staff with new respiratory symptoms that occur within 72 hours of each other.
Waiver of Transfer/Discharge Regulations in Only Three Situations

1. Resident with COVID-19 transferred to COVID-dedicated facility.
2. Resident without COVID-19 transferred to No-COVID facility.
3. Transfer for 14-day observation.
Cohorting

• No set standards for facilities dedicated to care of COVID-positive residents.
• Specifics are left to states.
• Advocacy can seek:
  • Standards for facilities.
  • Process to protect individual residents, so that they aren’t transferred with no notice whatsoever.
Limited Surveys & Enforcement

• Currently, only surveying for
  • Incidents triaged at Immediate Jeopardy (IJ) level.
  • Infection control surveys.
  • Initial certification surveys

• No enforcement unless finding of immediate jeopardy.
Reopening Recommendations from CMS

• Three phases, set to lag behind the three phases that the community will follow in reopening.
  • Criteria to enter **Phase 2** includes no rebound in cases in community after 14 days in phase 1 AND no new nursing facility onset COVID cases in NH for 14 days.
  • Criteria to enter **Phase 3** includes no rebound in cases in community during phase 2 AND no new onset nursing facility onset COVID cases for 28 days.

• Relatively little difference between Phase 1 and 2: no visits but compassionate care visits until Phase 3.
Testing Standards for Reopening

• Access to adequate testing.
  • Staff: baseline and then weekly.
  • Residents: baseline; if infection occurs, then weekly.

• Starting Over(!):
  • “However, if a resident contracts COVID-19 within the nursing home without a prior hospitalization within the last 14 days, this facility should go back to the highest level of mitigation, and start the phases over.”
States Facing Many Choices

• How to do “reopening.”

• CMS gives option to move through phases
  • By state,
  • By region, e.g., county, or
  • By facility.
Providers Seeking Legal Immunity

• Efforts at both federal and state levels.

• Roughly half the states have instituted some sort of immunity.
  • Sometimes through governor’s executive order.
  • Sometimes through state law.
Advocacy Recommendations

• Ensure adequate PPE and testing.
• Establish criteria for COVID-only facilities.
• Protect residents during admission, transfer, discharge.
• Require daily facility reporting and state monitoring of key information (e.g. number of COVID-19 cases, number of fatalities, staffing level, supply of PPE and testing kits, etc.).
• Involve the Long-Term Care Ombudsman Program (LTCOP) and Citizen Advocacy Groups in state decisions about how and when nursing homes will be reopened.
• Call for a phased-in approach to lifting restrictions on visitation. Form a state stakeholder workgroup that includes the LTCOP, Citizen Advocacy Groups, families, and residents to develop this approach. Start with expanding compassionate care situations.
• Advocate for your state survey agency to set its priorities in such a way that gets surveyors into facilities.
INFECTION CONTROL SURVEYS
WAIVER OF STANDARD SURVEYS

- Since March 20, 2020, surveys have been conducted only for
  - complaints and facility-reported incidents triaged as immediate jeopardy and
  - infection control surveys.
INFECTION CONTROL SURVEYS

- CMS sent, and we reviewed, 171 surveys, late March-late April.
INFECTION CONTROL SURVEYS

- 171 surveys (including 2 in early March):
  - 130 (76%) did not cite an infection control deficiency.
  - 41 cited an infection control deficiency.
    - 30 (73%) cited no-harm infection control deficiency.
    - 8 (.05%) cited immediate jeopardy infection control deficiency, which was removed during survey.
    - 3 (.02%) cited immediate jeopardy (including Life Care Center of Kirkland).
Infection Control Deficiencies Were Widespread and Persistent in Nursing Homes Prior to COVID-19 Pandemic (May 20, 2020),
GAO FINDINGS

- 82% of nursing facilities were cited with 1 or more infection control deficiencies 2013-2017, including
  - 48% of facilities, multiple consecutive years
DEFICIENCY CLASSIFICATIONS
2013-2017

- 99% cited as no harm, so
  - 67% did not have penalty imposed or implemented
  - 31% had penalty imposed, but not implemented (they “corrected” the noncompliance).

- CMS implemented enforcement action (financial penalty) for 1% of the infection control deficiencies.
CMS SAID 6800 INFECTION CONTROL SURVEYS CONDUCTED

- CMS says surveys will be posted.
- No CMS analysis or discussion of these surveys yet.
- But media are beginning to read and describe surveys at state level.
WHAT’S HAPPENING IN THE STATES?

- We’ve heard some states are citing infection control deficiencies as immediate jeopardy.
- Other states, not.
NEW YORK CITY, KENTUCKY ARTICLES

- This week, both reported
  - Few or no infection control deficiencies cited, even in facilities where many residents and staff have died of COVID-19.
  - Questionable survey practices
    - Remote, not on-site, surveys
    - Collaborative approach with facilities.
NEW YORK CITY

- Found more than 600 residents died at 25 NYC facilities whose infection control surveys cited NO infection control deficiencies.
  - One facility surveyed twice after families complained about COVID.
  - 54 residents at facility have died.
NEW YORK CITY

- Article says: “In some cases outside New York City, inspections have been conducted entirely or partially by video chat.”
  - Not on-site (as required).
NYC ARTICLE

KENTUCKY

- Infection control surveys at 154 of state’s 285 licensed nursing facilities, “including facilities that have reported some of the highest number of cases,” cited infection control deficiencies at 2 facilities (both, face masks).
- In 2019, 102 nursing facilities cited with infection control deficiencies.
President of Kentucky Association of Health Care Facilities said facilities “have been pleased with the ‘collaborative’ process of the COVID-19 inspections, and she hopes facilities can continue to work more closely with state and federal regulators once the virus has passed.”
INFECTION CONTROL SURVEYS

- Please monitor, to the extent you can.
- Let us know what you find out.
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