



JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

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

May 29, 2020

Agenda

- 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

- Eric Carlson, Directing Attorney, Justice in Aging
- Robyn Grant, Director of Public Policy & Advocacy, National Consumer Voice for Quality Long-Term Care
- Toby Edelman, Senior Policy Attorney, Center for Medicare Advocacy
- Sam Brooks, Program Manager, National Consumer Voice for Quality Long-Term Care

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

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 incases 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.



The National
CONSUMER VOICE
for Quality Long-Term Care
formerly NCCNHR

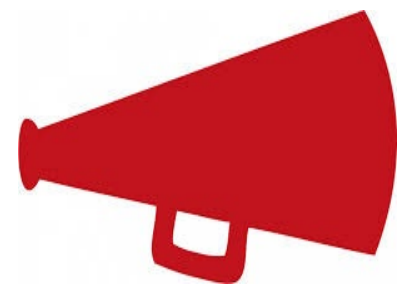
ADVOCACY RECOMMENDATIONS

Robyn Grant

Director of Public Policy and Advocacy

www.theconsumervoice.org

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.



Center for
Medicare Advocacy

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.
 - CMA, Infection Control Surveys at Nursing Facilities: It Looks Like Business as Usual (May 7, 2020), <https://medicareadvocacy.org/wp-content/uploads/2020/05/Special-Report-Infection-Control-5-7-2020.pdf>.

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).

GAO REPORT

- *Infection Control Deficiencies Were Widespread and Persistent in Nursing Homes Prior to COVID-19 Pandemic* (May 20, 2020),
<https://www.gao.gov/assets/710/707069.pdf>

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

- Susan Jaffe, “Hundreds Died of COVID at NYC Nursing Homes With Spotless Infection Inspections,” *The City* (May 27, 2020), <https://www.thecity.nyc/health/2020/5/27/21273143/hundreds-died-of-covid-at-nyc-nursing-homes-with-spotless-infection-inspections>.

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.

KENTUCKY

- 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.”

-
- Bailey Loosemore, “Most Kentucky nursing homes have passed COVID-19 inspections despite widespread outbreaks,” *Louisville Courier Journal* (May 28, 2020), <https://www.courier-journal.com/story/news/local/2020/05/27/coronavirus-most-kentucky-nursing-homes-pass-covid-19-inspections/5268217002/>.

INFECTION CONTROL SURVEYS

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

-
- Toby S. Edelman
 - Center for Medicare Advocacy
 - tedelman@MedicareAdvocacy.org
 - 202 293-5760



Center for
Medicare Advocacy

For further information, or to receive the
Center's free weekly electronic newsletter, *CMA Alert*,
update emails and webinar announcements, contact:

Communications@MedicareAdvocacy.org

Or visit

www.MedicareAdvocacy.org

QA



Robyn Grant, rgrant@theconsumervoice.org
Jocelyn Bogdan, jbogdan@theconsumervoice.org
www.theconsumervoice.org

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

Eric Carlson, ecarlson@justiceinaging.org
www.justiceinaging.org



Toby Edelman, tedelman@medicareadvocacy.org
www.medicareadvocacy.org

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

Richard Mollot, Richard@ltccc.org
www.nursinghome411.org