



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 V

May 22, 2020

Agenda

- I. Introduction and housekeeping
- II. CMS's Nursing Home Reopening Recommendations
- III. Tips for Advocates
- IV. GAO Report on Infection Control in Nursing Homes
- V. Reporting Requirements
- 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
- Richard Mollot, Executive Director, Long Term Care Community Coalition

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Nursing Facility Reopening Recommendations from CMS

Eric Carlson, Directing Attorney

May 22, 2020

Recommendations for State and Local Officials

- Up to state to choose procedure for that state.
- Procedure may vary depending on region of state.
 - CMS, Nursing Home Reopening Recommendations for State and Local Officials, QSO-20-30-NH (May 18, 2020).
 - CMS, Nursing Home Reopening Recommendations Frequently Asked Questions (May 18, 2020).

Factors to Consider

- Level of community transmission.
- Case status in facility.
- Adequate staffing.
- Access to adequate testing.
 - Staff: baseline and then weekly.
 - Residents: baseline; if infection occurs, then weekly.
- Daily screening protocols, e.g., temperature checks, questions, observation.
- Facemasks and PPE.
- Adequate hospital capacity.

Follows “Opening Up America Again”

- Three phases.
- Nursing facilities lag behind rest of community by at least 14 days, because nursing facility residents face higher risk.

Phase One

- No visits except for “compassionate care.”
- Entry only for essential personnel.
- Communal dining and activities for COVID-negative residents, with social distancing.
- Weekly testing of staff.
- Residents tested if positive case is revealed; testing continues until all are COVID-negative.

Handling COVID-positive Residents

- All Phases require:
 - “Dedicated space in facility for cohorting and managing care for residents with COVID-19.”
 - “Plan to manage new/readmissions with an unknown COVID-19 status and residents who develop symptoms.”

Criteria for Entering Phase 2

- Community meets Phase 2 standards, i.e., no rebound in cases after 14 days in Phase 1.
- No new COVID cases in nursing facility for 14 days.
- No staff shortages.
- Adequate PPE and disinfectants.
- Adequate access to testing.
- Adequate hospital capacity.

Phase 2: Facility Standards

- Same as Phase 1 in most respects.
- Except for:
 - Limited entry of non-essential healthcare personnel.
 - Greater ability to conduct group activities, including outings, with groups of 10 or fewer persons.

Criteria for Entering Phase 3

- Community meets Phase 3 standards, i.e., no rebound in cases during Phase 2.
- No new COVID cases in nursing facility for 28 days.
- No staff shortages.
- Adequate PPE and disinfectants.
- Adequate access to testing.
- Adequate hospital capacity.

Phase 3: Facility Standards

- Visitation allowed, with screening, masks, and social distancing.
- Entry of non-essential healthcare personnel.
- Entry of volunteers.
- Communal dining and activities (including outings) allowed, but with social distancing.
- Continued testing and screening.

What Is a “New” Case?

- COVID-positive residents do not “count” for purposes of determining whether a facility may enter Phase 2 or 3, if the resident picked up the infection elsewhere.
 - Concern is for when infections appear to be spreading within facility.

Survey Activities

- Phase 1: Immediate jeopardy, infection control, initial certifications, and state priorities.
- Phase 2: Same as Phase 1, with addition of complaints alleging actual harm.
- Phase 3: Normal survey operations.



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

STATE ADVOCACY RECOMMENDATIONS

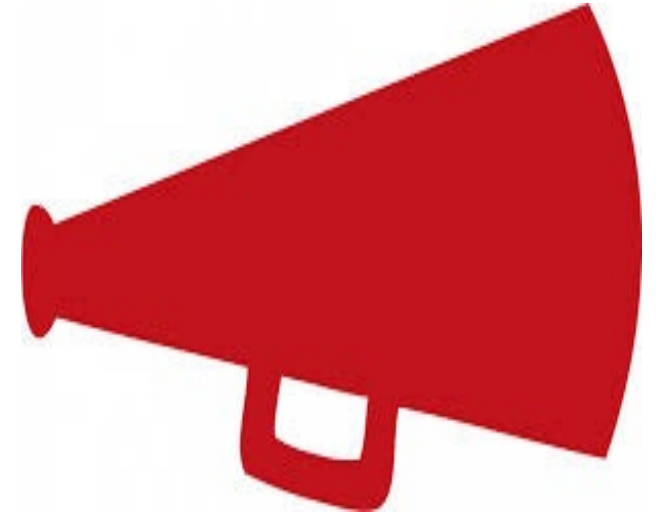
Robyn Grant

Director of Public Policy and Advocacy

www.theconsumervoice.org

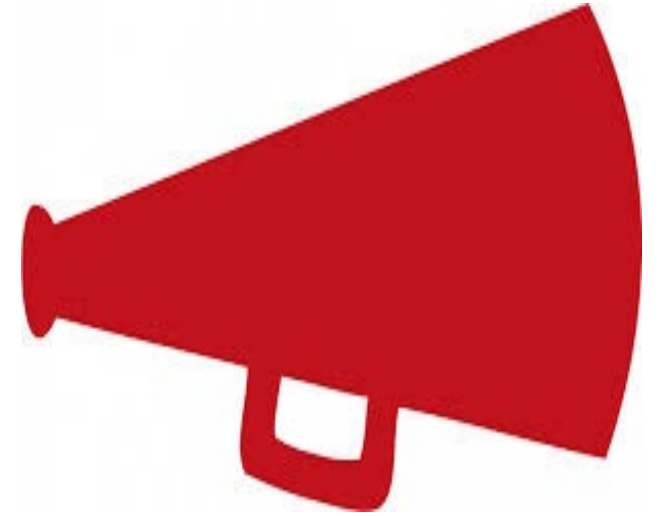
State Advocacy Recommendations

- Involve the Long-Term Care Ombudsman Program (LTCOP) and Citizen Advocacy Groups in state decisions about how and when nursing homes will be reopened.
- Develop criteria that you believe should trigger surveys by your State Survey Agency (SSA) since SSAs can perform surveys during any phase based on state priorities.
- Expand compassionate care situations more broadly so family members who provide essential physical and/or psychosocial assistance and support to a resident can visit. Form a state stakeholder workgroup that includes the LTCOP, Citizen Advocacy Groups, families, and residents to define the circumstances under which this would be permitted.



State Advocacy Recommendations

- Continue to support adequate PPE and testing.
- Require daily facility reporting and state monitoring of at least the following information:
 - Number of COVID-19 cases,
 - Number of fatalities (COVID and non-COVID related),
 - Staffing levels
 - Available supply of PPE and testing kits.





Center for
Medicare Advocacy

NEW GAO REPORT ON INFECTION CONTROL

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>
- That about sums it up!

DATA REVIEWED

- 2 sets: 2013-2017; 2018-2019
 - New survey process introduced Nov. 2017, with new F-codes, so GAO did not look at data from Nov. 28-Dec. 2017.

GAO FINDINGS

- 82% of nursing facilities were cited with 1 or more infection control deficiencies 2013-2017, including
 - 48% of facilities, multiple consecutive years
 - 19% of facilities, multiple nonconsecutive years
 - 35% of facilities, 3 or 4 consecutive years
 - 6% of facilities, all 5 years

PERCENTAGE OF FACILITIES CITED WITH DEFICIENCY EACH YEAR

- 2013-2017: 39% to 41% of facilities
- 2018-2019: 40% of facilities

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.

OTHER GAO FINDINGS

- **For-profit** facilities (68% of facilities) more likely to be cited with infection control deficiencies
 - They accounted for 72% of deficiencies cited
 - They accounted for 61% of facilities without infection control deficiency

OTHER GAO FINDINGS

- Facilities with overall ratings of **5 stars**, (17% of all facilities) were less likely to be cited with infection control deficiency
 - They accounted for 33% of facilities not cited for infection control.
 - They accounted for only 10% of facilities with infection control deficiencies in multiple years.

STATE-SPECIFIC DATA

- number of surveys
- number of facilities with infection control deficiency
- number of facilities with infection control deficiency in one year, multiple consecutive years, and multiple non-consecutive years

FUTURE WORK

- GAO says it plans “to examine CMS guidance and oversight of infection prevention and control in a future GAO report, including the classification of infection prevention and control deficiencies.” Highlights, <https://www.gao.gov/products/GAO-20-576R>

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Center's free weekly electronic newsletter, *CMA Alert*,
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Federal Reporting Requirements

Richard Mollot, Executive Director

Long Term Care Community Coalition

www.nursinghome411.org



Reporting to Residents & Families

Nursing homes must inform residents, their representatives, and families of those residing in facilities by 5 p.m. the next calendar day following the occurrence of either

1. A single confirmed infection of COVID-19, or
2. three or more residents or staff with new-onset of respiratory symptoms occurring within 72 hours of each other.

There are a variety of ways that facilities can meet this requirement, such as informing families and representatives through email listservs, website postings, paper notification, and/or recorded telephone messages. We do not expect facilities to make individual telephone calls to each resident's family or responsible party to inform them that a resident in the facility has laboratory-confirmed COVID-19.





Reporting to Residents & Families

This information must—

1. **Not include** personally identifiable information;
2. **Include** information on mitigating actions implemented to prevent or reduce the risk of transmission, including if normal operations of the facility will be altered; and
3. **Include** any cumulative updates for residents, their representatives, and families...
 - At least weekly or
 - by 5 p.m. the next calendar day following the subsequent occurrence of either:
 - a. each time a confirmed infection of COVID-19 is identified, or
 - b. whenever three or more residents or staff with new onset of respiratory symptoms occur within 72 hours of each other.



Reporting to CDC

§ 483.80 Infection control. (g) *COVID-19 Reporting.* The facility must—

(1) Electronically report information about COVID-19 in a standardized format specified by the Secretary. This report must include but is not limited to-

- (i) Suspected and confirmed COVID-19 infections among residents and staff, including residents previously treated for COVID-19;
- (ii) Total deaths and COVID-19 deaths among residents and staff;
- (iii) Personal protective equipment and hand hygiene supplies in the facility;
- (iv) Ventilator capacity and supplies in the facility;
- (v) Resident beds and census;
- (vi) Access to COVID-19 testing while the resident is in the facility;
- (vii) Staffing shortages; and
- (viii) Other information specified by the Secretary.

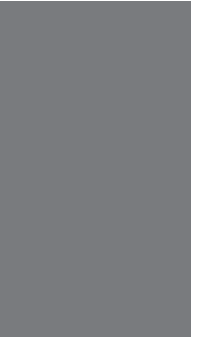


Reporting to the Public

- Information must be provided weekly to the Centers for Disease Control & Prevention (CDC).
- “This information will be posted publicly by CMS to support protecting the health and safety of residents, personnel, and the general public.”
- This information will be posted by CMS on their website, <https://data.cms.gov/>.
- We will all be monitoring this and will report back in future programs as well as via newsletters.



Coronavirus Resource Center



[NURSINGHOME411.ORG/CORONAVIRUS/](https://nursinghome411.org/coronavirus/)

The screenshot shows the website's navigation menu with four tabs: "COVID-19 Resources", "News & Reports", "Data", and "Federal Guidance". Below the menu is a vertical list of five purple buttons with white text, each representing a resource. To the right is a featured article titled "Nursing Homes Were a Disaster Waiting to Happen" by Richard Mollot, dated April 28, 2020. The article includes a sub-header "Opinion", a lead paragraph, and social media sharing icons.

COVID-19 Resources **News & Reports** **Data** **Federal Guidance**

- LTCCC'S EMERGENCY ACTION PLAN FOR NY STATE
- LTCCC'S NEW YORK TIMES OP-ED: NURSING HOMES WERE A DISASTER WAITING TO HAPPEN
- ISSUE ALERT: INFECTION CONTROL & PREVENTION
- MARCH 2020: NEW GUIDANCE ON NURSING HOME HEALTH INSPECTIONS SEVERELY LIMITS OVERSIGHT AND ENFORCEMENT
- MARCH 2020 STATEMENT: CORONAVIRUS & NURSING HOME VISITATION

Opinion

Nursing Homes Were a Disaster Waiting to Happen

Long before Covid-19, poor care and lax standards were widespread and well known.

By Richard Mollot
Mr. Mollot is the executive director of the Long Term Care Community Coalition.

April 28, 2020

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Coronavirus Resource Center

DATA

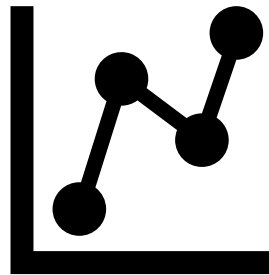
■ COVID-19 Fatalities

- New York
- National

■ Staffing

■ Provider Info

■ Infection Control & Citations



NY COVID-19 FATALITY DATA (05/11/20)	
Confirmed at NH	2,706
Presumed at NH	2,646
Confirmed + Presumed at NH	5,352
Confirmed at ACF	112
Presumed at ACF	52
Confirmed + Presumed at ACF	164
Total	5,516

Source: NY DOH



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Visit our home page

www.nursinghome411.org

for

- Coronavirus resources & updates;
- Fact sheets on nursing home resident rights;
- Data on staffing, infection control violations, and ratings for all U.S. nursing homes;
- Forms & tools for resident-centered advocacy;
- Dementia Care Advocacy Toolkit;
- And more!

Sign up for alerts @

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QA



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