



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 I – NATIONAL ADVOCACY

April 17, 2020

Agenda

- I. Introduction and housekeeping
- II. Overview of the problem
- III. Actions to expand coverage, reimbursement
- IV. Federal waivers of regulations
- V. CMS Recommendations/Guidance
- VI. National level advocacy
- VII. Advocacy recommendations
- VIII. Q&A

Presenters

Toby Edelman, Senior Policy Attorney, Center for Medicare Advocacy

Eric Carlson, Directing Attorney, Justice in Aging

Richard Mollot, Executive Director, Long Term Care Community Coalition

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INTRODUCTION

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THE CORONAVIRUS PANDEMIC

- Nursing facilities have been at the center of the pandemic.
- Less than two months ago, Life Care Center at Kirkland (WA) became the site where coronavirus was first seen.
 - Residents, staff, visitors became ill.
 - Death toll now 47.

NURSING HOME RESIDENTS

- All people in congregate settings are at higher risk than others, but nursing home residents are at tremendous risk because
 - Generally older
 - Multiple health conditions, medically fragile
- Some reports: one-quarter of all deaths are residents of nursing homes, assisted living, board and care, but likely undercounted. Some countries are not counting residents in death toll.

PROBLEMS EXACERBATED

- Problems we've seen for years are exacerbated by the pandemic.
 - Staffing shortages are worse, as sick staff are unable to work.
 - Infection control and prevention remain an enormous problem.
 - CMS: in infection control surveys week of Mar. 30, 36% of facilities with infection control surveys did not do proper handwashing; 25% did not use PPE correctly.

LACK OF INFORMATION

- Federal government is not releasing, and probably does not have, information about which facilities have COVID-19 positive residents and staff, how many are sick, how many have died.
 - No federal mandate on facilities to report; not all states are requiring facilities to report.
 - National/state media compiling information.

WITHOUT INFORMATION

- States cannot target additional personal protective equipment (PPE) and staff to facilities in greatest need (American Health Care Association agreed, Apr. 13).
- Residents and families more fearful, especially since visitors have been banned since mid-March.

BEST PRACTICES

- Some states are doing a better job at
 - Collecting and publicly sharing facility-specific information about infections and deaths.
 - Establishing COVID-19-only facilities in vacated facilities.
 - Including residents/families in transfer/discharge decisions.

GOING FORWARD

- Need to stay focused on what we can do now to make a terrible situation better for residents and families, to the extent possible.
- Remember, when this immediate crisis is over, what we need to change in our health care system.

WHAT WE WANT TO DO TODAY AND AT NEXT WEEK'S WEBINAR

- Share what we know about federal requirements and waivers
- Talk about CMS's recommendations and guidance.
- Discuss advocacy at federal and state levels.
- Hear from you.

CMS AND CONGRESS

- At the federal level,
 - Expansion of coverage
 - Increased reimbursement
 - Waivers of longstanding Requirements of Participation (federal standards of care for facilities that choose to participate in Medicare or Medicaid, or both)

EXPANSION OF COVERAGE NURSING HOME-SPECIFIC

- Changes to Medicare
 - Waiver of requirement of 3-day inpatient hospital stay, as prerequisite to Medicare coverage in SNF.
 - Extension of coverage beyond 100 days, but only if need for skilled care is result of COVID-19.

EXPANSION OF COVERAGE NURSING HOME-SPECIFIC

- Increased use of telehealth (therapists, social workers, physicians)
- Authorization of nurse practitioners, physician assistants, clinical nurse specialists

INCREASED REIMBURSEMENT

- Proposed annual update to Medicare SNF reimbursement increases payments by 2.3% (\$784 million) for FY 2021 (Apr. 10).
- CMS approved more than \$51 billion with accelerated/advance payment program for Medicare providers, including SNFs (Apr. 9).

INCREASED REIMBURSEMENT

- \$30 billion of \$100 billion in emergency COVID-19 stimulus fund
 - CMS Administrator announced initial payout of \$1.5 billion to SNFs (“There are no strings attached, so the health care providers that are receiving these dollars can essentially spend that in any way that they see fit.”), *Skilled Nursing News* (Apr. 8).

<https://skillednursingnews.com/2020/04/skilled-nursing-facilities-could-soon-see-1-5b-under-cmss-emergency-relief-plan-with-more-on-the-way/>

IMMUNITY FROM CRIMINAL AND CIVIL LIABILITY

- NY State budget bill provides immunity from civil and criminal liability to health care facilities and health care professionals for harm or damages related to COVID-19.
- *USA Today* reports Florida nursing home trade association seeking immunity.

OUR CONCERNS

- Facility staff, including health care professionals and paraprofessionals, are putting their lives on the line every day to take care of residents.
- But, for the unscrupulous, combination of more money, fewer rules, less oversight, and possible immunity is dangerous.

WAIVERS OF RESIDENT PROTECTIONS

- Most of our discussion today focuses on what is waived in federal nursing home law, what remains, issues we have identified so far of greatest concern for residents.
- Federal government has also granted §1135 Medicaid waivers to states.



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CMS Waives Various Nursing Facility Regulations

Eric Carlson, Directing Attorney

April 17, 2020

Waivers Relating to Transfers

Transfer **Within** Facility

- **For sole purpose of separating COVID+ and COVID- residents**, CMS has waived regulatory rights to:
 - Share a room by consent of both persons.
 - Receive notice before transfer within facility.
 - Refuse certain transfers within facility.

Facility-to-Facility Transfers

- CMS waives some portions of transfer/discharge regulations, but only in 3 situations:
 - Transferring residents **with COVID-19 or respiratory infection symptoms** to facility dedicated to care of such residents;
 - Transferring residents **without diagnosis or symptoms** to facility dedicated to care of such residents; or
 - Transferring residents without symptoms of a respiratory infection to another facility for 14-day observation.

Process for “Cohort” Transfers

- “New” facility must agree to accept resident.
- Advance notice is not required.
 - CMS is “only waiving the requirement ... for the written notice of transfer or discharge to be provided before the transfer or discharge. This notice must be provided as soon as practicable.”

Notice AFTER Transfer?

- Consider: Notice “as soon as practicable” is of little use if transfer already has taken place.

Waive Physical Plant Standards

- “To allow for a non-SNF building to be temporarily certified and available for use by a SNF in the event there are needs for isolation processes for COVID-19 positive residents.”

Waive Standards to Allow for Repurposing of Rooms

- “Rooms that may be used for this purpose include activity rooms, meeting/conference rooms, dining rooms, or other rooms, as long as residents can be kept safe, comfortable, and other applicable requirements for participation are met.”

Weaknesses in Waivers

- What's missing?
 - Quality of care standards for facilities caring for COVID-positive residents.
 - Collaboration and discharge planning; communication with residents and their representatives.

Care Provider Standards

Nurse Aide Training

- Waiver of nurse aide training requirements, except for “competency.”
- Ordinarily,
 - Within 4 months of employment, must complete 75 hours of training and pass competency examination.
 - Must participate in training program during first 4 months.

Access to “Outside” Professionals

- Waiver to allow physician visits to be performed remotely via telehealth.
- MD can delegate any tasks to physician assistant, nurse practitioner, or clinical nurse specialist.
 - Tasks must be under the physician’s “supervision.”

Social Distancing in Nursing Facilities

Distancing Internally

- CMS issues guidance & waives regulations to
 - Eliminate communal meals and other communal activities, including resident councils.

Severely Limiting Visitation

- Prohibit visitation except for “compassionate situations.”
 - “Compassionate situations” including but not limited to end of life visitation.

Few “Essential” Persons

- Visitation restrictions include:
 - Family and friends.
 - Ombudsman program representatives.
 - Non-essential health care providers.
 - “Essential” read narrowly.
- Also, no access for ANYONE with symptom of respiratory infection.

When Visits Do Take Place

- Limited to resident's room or other designated room, e.g., "clean" room.
- Must wear Personal Protective Equipment, e.g., face masks.
- "Hand hygiene."
- "Suggest refraining from physical contact."

Alternatives to In-Person Visiting

- Phone calls, video calls, standing outside window, etc.
- Suggestions/recommendations from CMS, rather than mandate.
- Limitations: facility buy-in and possible lack of technology.
 - One response – New Mexico authorizes state funds to purchase tablets for use in facilities.

Facilitating Contact with Ombudsman, etc.

- “If in-person access is not available ..., facilities need to facilitate resident communication (by phone or other format) with”
 - Ombudsman program;
 - Resident’s representative;
 - Resident’s physician; or
 - Representative of protection and advocacy agency.

Other Waivers

Assessments and Reporting

- Deadlines waived for Minimum Data Set (MDS) assessment and transmission.
- Waiving Pre-Admission Screening and Annual Resident Review (PASARR).
- Waiver of requirement to submit staffing data through Payment Based Journal system.

Thinking About Waivers

- Most regulations are still effective.
 - E.g., Except in three limited situations, transfer/discharge protections are still in place.



Federal Requirements & Recommendations

Richard Mollot, Executive Director
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Federal Requirements & Recommendations: Background

- **The Centers for Medicare and Medicaid Services (CMS):** the federal agency which oversees nursing homes, hospitals, and other health care providers who receive Medicare and/or Medicaid funds.
- **State Survey Agencies:** Responsible for making sure that federal requirements are achieved by providers in their states and that consumers are protected.
- **Federal Requirements & Guidance:** Mandatory expectations for providers and state inspectors.
- **Federal Recommendations:** What the government considers to be a good idea but entirely optional.



CMS Recommendations for Nursing Homes

1. Nursing Homes should immediately ensure that they are complying with all CMS and CDC guidance related to infection control.
 - Facilities should focus on adherence to appropriate hand hygiene as set forth by CDC.
 - CMS issued extensive infection control guidance, including a self-assessment checklist that long-term care facilities can use to determine their compliance with these crucial infection control actions.
 - Facilities should also refer to CDC's guidance to long-term care facilities on COVID-19 and also use guidance on conservation of personal protective equipment (PPE).
2. State and local health departments should work together with long-term care facilities in their communities to determine and help address long-term care facility needs for PPE and/or COVID-19 tests.
3. Long-term care facilities should immediately implement symptom screening for all.



CMS Recommendations for Nursing Homes

4. Long-term care facilities should ensure all staff are using appropriate PPE when they are interacting with patients and residents, to the extent PPE is available and per CDC guidance on conservation of PPE.
 - For the duration of the state of emergency all long-term care facility personnel should wear a facemask while they are in the facility.
 - Full PPE should be worn for the care of any resident with known or suspected COVID-19 per CDC guidance on conservation of PPE.
 - If COVID-19 transmission occurs in the facility, healthcare personnel should wear full PPE for the care of all residents irrespective of COVID-19 diagnosis or symptoms.
 - Patients and residents who must regularly leave the facility for care (e.g., hemodialysis patients) should wear facemasks when outside of their rooms.
 - When possible, all long-term care facility residents, whether they have COVID-19 symptoms or not, should cover their noses and mouths when staff are in their room. Residents can use tissues for this. They could also use cloth, non-medical masks when those are available.

5. To avoid transmission within long-term care facilities, facilities should use separate staffing teams for COVID-19-positive residents to the best of their ability, and work with State and local leaders to designate separate facilities or units within a facility to separate COVID-19 negative residents from COVID-19 positive residents and individuals with unknown COVID-19 status.



CMS Requirements for State Surveys (Inspections)

- **Normally:** States must survey all nursing homes on an annual basis, with a permissible timespan between inspections of 9-15 months.
- **Temporary Federal Requirements:** CMS issued a memo on March 23 “authorizing modification of timetables and deadlines for the performance of certain required activities, delaying revisit surveys, and generally exercising enforcement discretion for three weeks.
During this three-week timeframe, only the following types of surveys will be prioritized and conducted:
 1. Complaint/facility-reported incident surveys identified as immediate jeopardy.
 2. Targeted Infection Control Surveys: Federal CMS and State surveyors will conduct targeted Infection Control surveys of providers identified through collaboration with the Centers for Disease Control and Prevention (CDC) and the HHS Assistant Secretary for Preparedness and Response (ASPR).
- As of April 17, CMS has continued this policy, indicating on a phone call this week that it will continue until they communicate otherwise.



CMS Requirements for Resident Transfer and Discharge

- **Normally:** With very limited exceptions, facilities must provide 30 days notice for a facility-initiated discharge. Residents have the right to initiate an appeal within that timeframe.

- **In response to COVID-19 pandemic:** CMS is waiving requirements (with some exceptions) to allow a long term care (LTC) facility to transfer or discharge residents to another LTC facility solely for the following cohorting purposes:
 1. Transferring residents with symptoms of a respiratory infection or confirmed diagnosis of COVID-19 to another facility that agrees to accept each specific resident, and is dedicated to the care of such residents;
 2. Transferring residents without symptoms of a respiratory infection or confirmed to not have COVID-19 to another facility that agrees to accept each specific resident, and is dedicated to the care of such residents to prevent them from acquiring COVID-19; or
 3. Transferring residents without symptoms of a respiratory infection to another facility that agrees to accept each specific resident to observe for any signs or symptoms of a respiratory infection over 14 days.

Resident discharge protections waived under very limited circumstances related to COVID.



Federal Requirements: No Discrimination on Basis of Age or Disability

HHS Office for Civil Rights in Action



In a March 28, 2020 bulletin, the U.S. HHS stated that

1. “[P]ersons with disabilities should not be denied medical care on the basis of stereotypes, assessments of quality of life, or judgments about a person’s relative “worth” based on the presence or absence of disabilities or age.
2. Decisions by [health care providers] concerning whether an individual is a candidate for treatment should be based on an individualized assessment of the patient based on the best available objective medical evidence.



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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 @

<https://nursinghome411.org/join/>.

Listen to our *new* Nursing Home 411 podcast on Spotify & Apple Podcasts.

National Advocacy

- Centers for Medicare and Medicaid Services (CMS)
 - Ongoing communication with Director of Nursing Homes Division
 - Frequent emails
 - Meetings
 - Memos

CMS

Two glimmers of hope

1 - Reporting of COVID cases

2 - Communication between residents and families



CMS



Letter to Seema Verma,
CMS Administrator

Problems communicated to CMS

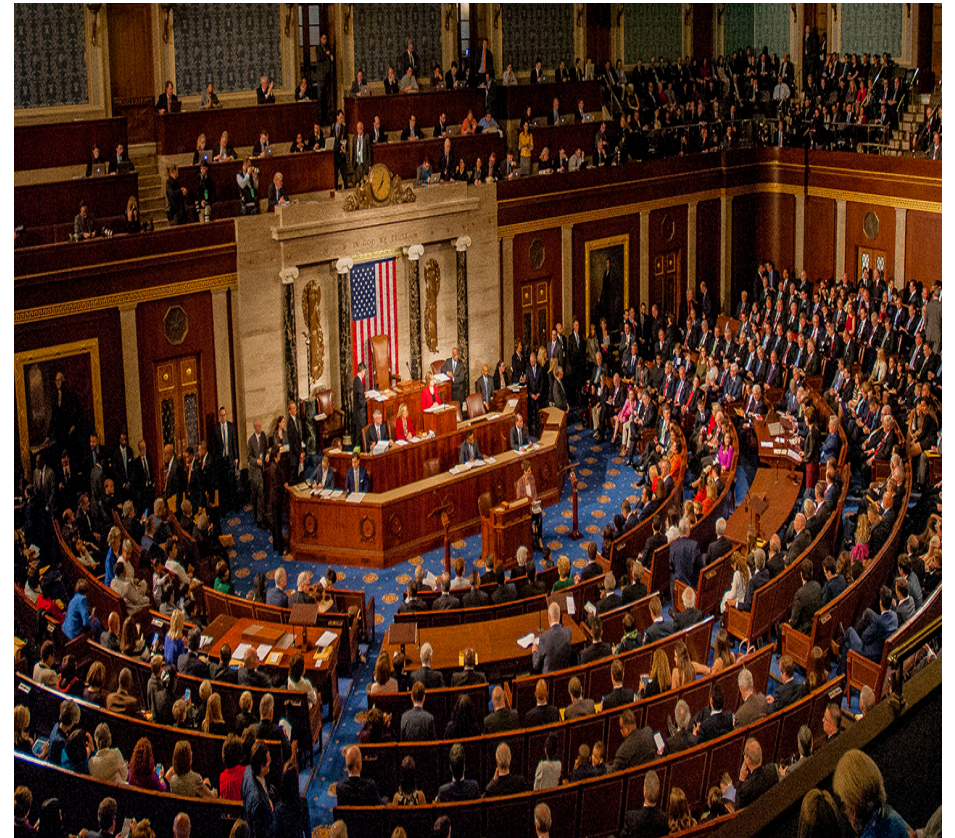
- Lack of knowledge and reporting
 - Number of cases, fatalities, staffing levels, amount of PPE, availability of testing kits in each facility
- Very little knowledge of what is happening in facilities
- Isolation of nursing home residents and extreme anxiety of family members
- Various aspects of COVID-only facilities
 - Lack of any criteria for designating such facilities
 - Moving residents out of one facility to another in order to create COVID only facilities
 - Lack of advance notice for these transfers between/within facilities
- Continued involuntary discharges of residents to unsafe locations

National Advocacy

Congress

In addition to many issues already discussed:

- Full-time infection preventionist with a specified level of training and experience
- Per day civil money penalties for infection control violations
- At least two weeks of paid sick leave for nursing home employees



ACCESS ACT

- *Advancing Connectivity during the Coronavirus to Ensure Support for Seniors Act has been introduced in the Senate and House*



Advocacy Recommendations

ISOLATION MENU

Available Tuesday - Sunday 11:00 am to 8:00 pm, curbside, carryout or delivery only.
CLOSED MONDAYS

IT'S BURGER DAY EVERYDAY!

ALL BURGERS + CHICKEN SANDWICHES
FOR \$6.99 CARRYOUT or CURBSIDE.

Limited menu to burgers and chicken
sandwiches while dealing with the
COVID-19 outbreak. Ask for Kid menu items.

SIDE CHOICES: French Fries, Chips, Fried
Okra, or Sweet Potato Fries.

Call into your local metro Urb to place your
order togo.

Norman (405) 307-8555

Yukon (405) 324-8362

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Northwest OKC (405) 720-5844

For Delivery order through PostMates
(Small upcharge included in PostMates price)



Please help keep our doors open during this
difficult period. We care deeply about our
community, our staff and our guests.
Support us and other local businesses by
ordering togo food, purchasing gift cards or
by giving us a shoutout online.

Know we are taking every
possible sanitary precaution to keep you
safe. Thank you for your support, patience
and compassion right now.

BURGERS

HONEY PEPPER BACON BURGER
Topped with honey pepper bacon and cheddar.

IU BLUE CHEESE BURGER
Caramelized onions, burgundy mushrooms, jalapenos,
bleu cheese crumbles and honey pepper bacon top this
incredibly tasty burger!

CHEESE AND MUSHROOM BURGER
Burgundy mushrooms smothered with melted swiss.

CALIFORNIA BURGER
A classic burger topped with jack, bacon and avocado.

THETA BURGER
A menu favorite for over 30 years! Our burger with
mayonnaise and pickle chips and topped with cheddar
and barbecue sauce.

FLAMETHROWER BURGER
Pepper jack with jalapenos, diced honey pepper bacon
and spicy ranch dressing makes this a spicy treat!

CATTLEMAN'S BURGER
Swiss, honey pepper bacon and barbecue sauce top this
delightful burger.

RANCH BURGER
Grated cheddar, ranch dressing and bacon bits.
Doesn't get any better than this!

OLD FASHIONED BURGER
Lettuce, tomato, red onion. Simple and delicious!

SANDWICHES

HONEY CHICKEN SANDWICH
Our "Best in Show" sandwich. A grilled chicken breast topped
with honey pepper bacon, jack and our honey mustard on a
toasted brioche bun.

CAJUN CHICKEN SANDWICH
A cajun chicken breast topped with grilled onions, burgundy
mushrooms, mozzarella and sliced avocado on our toasted
brioche bun.

CALIFORNIA CLUB
Sliced ham, turkey breast, swiss, cheddar, sliced tomatoes,
lettuce, honey pepper bacon and avocado on toasted ciabatta
bread. \$9.99

BLACKENED SALMON SANDWICH
Blackened salmon, bistro sauce, lettuce, red onion, sliced
tomatoes on toasted ciabatta bread. \$12.99

BARKING FISH SANDWICH
Grilled Ahi Tuna with lemon caper aioli on a toasted brioche
bun. Try it! \$11.99

Recommendation #1: Establish a State Level Team

Responsibilities

- Gather information: daily reports about cases, fatalities, staffing levels, available supply of PPE/testing kits
- Coordinate with appropriate entities to ensure PPE, testing kits, other needed supplies are obtained; determine where they are most needed; distribute to those facilities
- Monitor onsite in facilities with COVID cases
- Assess if a facility is showing signs of distress; send in a strike team
 - Strike team to help with infection control, hands-on care, staff training and/or assistance with other needs

Recommendation #2: Establish Distinct COVID-19 Only Facilities or Units

There must be specific criteria for designation as a facility

- Suggested criteria:
 - A direct care staffing level (nurses and nurse aides) of at least 4.1 hours per resident day
 - A 24 hr registered nurse
 - A full-time infection preventionist
 - Adequate PPE
 - Private rooms

Recommendation #3: Transparency of Information

COVID information

- Number of COVID cases, COVID related deaths, total deaths all causes
- Reported to residents, families, staff, the public, local health department, state survey agency
 - State survey agency reports to CMS and CDC

Staffing information

- Posting inside facility and at facility entrance at beginning of each shift

COVID and Staffing information

State survey agency to post online on daily basis

Recommendation #4: Adequate PPE and Testing

Essential for protecting residents and staff!



Recommendation #5: Support and Protect Residents During Admission, Transfer, Discharge

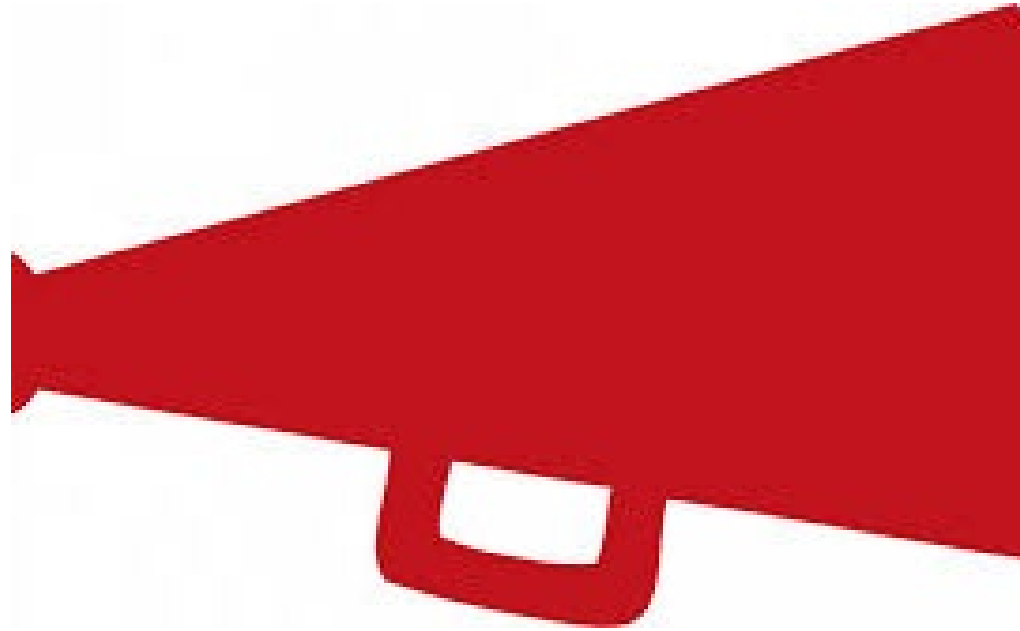
Transfer/Discharge

- Advance discussion of options/plans regarding proposed transfer
- Facility notification of resident, family/representative
- Facility notification of ombudsman and provision of names of residents/contact information for residents and their families
- Suspension of all non-COVID related involuntary transfers or discharges

Recommendation #5: Support and Protect Residents During Admission, Transfer, Discharge

Admissions

- Do not force facilities to admit any individual being discharged from a hospital regardless of their COVID status
- Do not permit facilities with no known or suspected COVID-19 outbreaks to admit or readmit anyone without testing negative for COVID-19 or having been isolated for 14 days with no signs or symptoms



A CALL TO ACTION!

Join us next Friday, April 24, 2:00pm ET

COVID-19: Advocating for Nursing Home Residents,
Part II – State Advocacy Activities

Friday, April 24, 2:00pm ET



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