



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 III – FEDERAL UPDATES

May 8, 2020

Agenda

- I. Introduction and housekeeping
- II. CMS Reporting Requirements
- III. CMS Waivers of Regulatory Requirements
- IV. Other Updates
 - I. Use of CMPs to purchase devices
 - II. Administration Announcements
- V. Overview of Targeted Infection Control Surveys
- VI. Q&A/Discussion

Presenters

- Richard Mollot, Executive Director, Long Term Care Community Coalition
- Robyn Grant, Director of Public Policy & Advocacy, National Consumer Voice for Quality Long-Term Care
- Jocelyn Bogdan, Program & Policy Specialist, National Consumer Voice for Quality Long-Term Care
- Toby Edelman, Senior Policy Attorney, Center for Medicare Advocacy
- Eric Carlson, Directing Attorney, Justice in Aging



Federal Reporting Requirements

Richard Mollot, Executive Director

Long Term Care Community Coalition

www.nursinghome411.org



Federal Requirements (May 8, 2020):

WHAT

§ **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.



Federal Requirements (May 8, 2020):

- Information must be provided weekly to the Centers for Disease Control & Prevention (CDC). [CMS can require more frequent reporting.]
- “This information will be posted publicly by CMS to support protecting the health and safety of residents, personnel, and the general public.”

WHEN &
WHERE

CMS anticipates publicly posting CDC’s NHSN data (including facility names, number of COVID-19 suspected and confirmed cases, deaths, and other data as determined appropriate) weekly on <https://data.cms.gov/> by the end of May.



Federal Requirements (May 8, 2020):

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.

TO WHOM





Federal Requirements (May 8, 2020):



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.



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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/>.

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COVID-19 EMERGENCY DECLARATION BLANKET WAIVERS

March 28, CMS announced blanket waivers effective March 1.

Additional waivers were announced, effective April 21.

<https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>

Physician delegation of visits and tasks

A physician can delegate conducting visits and other tasks that he/she is normally required to carry out personally to the following health care professionals: a nurse practitioner, physician assistant, or clinical nurse specialist who is not an employee of the facility.

Quality Assurance and Performance Improvement (QAPI)

The scope of the QAPI program will be narrowed to focus exclusively on adverse events and infection control.

In-Service Training

The requirement for certified nursing assistants to complete at least 12 hours of in-service training annually is waived until the end of the first full quarter after the public health emergency concludes.

Detailed Information Sharing For Discharge Planning for LTC Facilities

LTC facilities do not have to assist residents and their representatives in selecting a post-acute care provider using data such as standardized patient assessment data, quality measures, and resource use.

Clinical Records

LTC facilities will have ten working days to provide a resident a copy of their records upon request, rather than two working days.

You can find a summary of key CMS Nursing-Home waivers on Consumer Voice's website:

https://theconsumervoice.org/uploads/files/actions-and-news-updates/Summary_of_CMS_Waived_Regulations_-_COVID-19_4-6-20.pdf

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**CMS
provides
funding for
purchase
of
electronic
devices**

President announces government action at press conference



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**FEMA to
deliver
PPE to
all
nursing
homes**



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**CMS
provides
guidance
on use of
funds by
state
survey
agencies**



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Coronavirus Commission for Safety and Quality in Nursing Homes to be formed

Coronavirus Commission for Safety and Quality in Nursing Homes

As a part of President Trump's Opening Up America Again effort, the Centers for Medicare & Medicaid Services (CMS) will have an independent Commission conduct a comprehensive assessment of the nursing home response to the 2019 Novel Coronavirus (COVID-19) pandemic. The Commission will be convened and lead by a CMS contractor and will provide independent recommendations to the contractor to review and report to CMS to help inform immediate and future responses to COVID-19 in nursing homes. These facilities are responsible for an increasingly vulnerable population of Americans who are often at high risk for complications from the COVID-19 virus. This effort builds upon CMS Administrator Seema Verma's [five-part plan](#) to ensure safety and quality in America's nursing homes, which was announced in April 2019, and recent agency efforts to combat the spread of COVID-19 within these facilities.

Since February, CMS has taken unprecedented action to address COVID-19 within nursing homes. On [February 6](#), CMS took action to prepare the United States for COVID-19 by reissuing longstanding infection control guidelines. CMS then moved quickly to address the rapid spread of infection by issuing guidance on new [screening processes](#) for facilities, on the use of [personal protective equipment](#) (PPE), and on [temporary restrictions](#) on non-essential medical staff and visitors in March. CMS immediately followed these actions by [prioritizing routine inspections](#) to conduct targeted surveys for infection control and complaints resulting in findings of Immediate Jeopardy situation. The Agency also issued a [call to action](#) for nursing homes and state and local governments as a means of reinforcing infection control responsibilities and urging leaders to work closely with facilities to determine needs for testing and PPE. Recently, CMS announced [payment increases](#) for certain lab tests that use high-throughput technologies to rapidly diagnose large numbers of COVID-19 cases. Finally, CMS will now require nursing homes to [report cases of COVID-19](#) directly to the Centers for Disease Control and Prevention (CDC) and inform residents and their families and representatives of COVID-19 cases within their facilities in an effort to improve transparency. The convening of the Commission is the next step in improving quality and safety within nursing homes.

Building on the Trump Administration's actions to protect seniors, the Commission will help inform efforts to safeguard the health and quality of life of vulnerable Americans as CMS continues to battle COVID-19. The Commission will include residents, families, resident/patient advocates, leading industry experts, clinicians, medical ethicists, administrators, academicians, infection control and



May 4, 2020

The Nursing Home COVID-19 Crisis: More is Needed to Protect Residents and Staff

On May 1 the Trump Administration announced a series of actions it is taking to address the rampant spread of the coronavirus in nursing homes. These actions include distribution of 14 days' worth of PPE to each nursing home, money for State Survey Agencies, a new rule on reporting cases and deaths, and the creation of a special commission on the coronavirus to assess response and make recommendations.

While these are steps in the right direction, they do not sufficiently address the widespread need in nursing homes, where more than 11,000 residents have died in the last two months due to COVID-19. Needed is a coordinated federal response for immediate action to stop the spread of COVID-19 and provide the necessary resources, assistance, and supplies to the states and front-line workers to get them through this crisis.

Comprehensive and immediate support are needed now to stem the frightening spread of this virus through facilities. That includes:

- **Access to sufficient PPE for the duration of the crisis.** While the 2-week supply by FEMA will assist many facilities as a stopgap measure, we are potentially facing several more weeks, if not months, of battling the spread of this infection in facilities. A coordinated effort to get PPE to states and facilities for the duration of this crisis is critical.
- **Required testing of all residents and staff and availability of testing kits.** Testing of all residents and staff on a periodic basis is needed to stop the spread of the virus, as well as be able to target interventions and resources to the most affected areas. At least three

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**Push for immunity
for long-term care
facilities sweeps the
country**

**Advocates fight
back!**

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**Good
news
from
Congress
(!)**



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**Congress
appropriates
funding**



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**Bills
introduced to
decrease
isolation,
better protect
residents**

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ACCESS Act

H.R. 6487; S. 3517

<https://www.congress.gov/bill/116th-congress/house-bill/6487/text>

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Quality Care for Nursing Home Residents And Workers During COVID-19 Act of 2020

H.R. 6698



INFECTION CONTROL SURVEYS

MARCH – APRIL 2020

HISTORICALLY

- Infection control is #1 deficiency cited in nursing facilities
 - Approximately 2 of 3 facilities
 - Jordan Rau, Kaiser Health News, multiple reports

INFECTION CONTROL SURVEYS

- CMS suspended regular surveys for 3-week prioritization period (beginning March 20 and since extended until further notice).
- Surveys limited to
 - Complaints and facility-reported incidents triaged as immediate jeopardy.
 - Infection control surveys.

CMS SENT TONY CHICOTEL, CANHR, TWO SETS OF INFECTION CONTROL SURVEYS

- April 17; April 29 (duplicates; some emergency preparedness-only surveys; several immediate jeopardy surveys)

INFECTION CONTROL SURVEYS

- 169 surveys (+2 from earlier in March) in 20 states

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 STATES

- Illinois: 20 surveys total, including 16 surveys (80%) with infection control deficiency, reflecting 42% of surveys nationwide that cited an infection control deficiency.
 - In contrast,
 - Massachusetts: 19 surveys, no deficiencies.
 - Texas: 25 surveys, no deficiencies.

12 STATES CITED ZERO INFECTION CONTROL DEFICIENCIES

- Alabama, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas
 - These states conducted 73 infection control surveys (43% of infection control deficiencies conducted).

TWO STATES CITED IMMEDIATE JEOPARDY DEFICIENCY

- Florida and Washington State

CMS GUIDANCE ON THE SURVEYS

- “Spend as little time onsite as possible, and review as much as possible offsite, such as a facility’s infection control or emergency preparedness policies.”
- CMS also said surveyors need personal protective equipment (PPE).

MOST SURVEY REPORTS ARE ABBREVIATED

- But some “no harm” surveys describe multiple failures (failures to wash hands, use PPE, disinfect medical equipment used with multiple residents, track and isolate residents with suspected or confirmed COVID-19, etc.) by multiple staff (nurses, CNAs, housekeeping, dietary, etc.).

REPORT ON INFECTION CONTROL SURVEYS

- CMA, Infection Control Surveys at Nursing Facilities: It Looks Like Business as Usual (Apr. 7, 2020), <https://www.medicareadvocacy.org/wp-content/uploads/2020/05/Special-Report-Infection-Control-5-7-2020.pdf>
 - Shorter summary, <https://www.medicareadvocacy.org/cma-special-report-infection-control-surveys-at-nursing-facilities-it-looks-like-business-as-usual/>.

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