

Publications

Health Care Alert: CMS Publishes Anticipated Rules for Reporting of COVID-19 Cases by Nursing Homes

Related Attorneys

Suzanne J. Scrutton

Robin P. Amicon

CLIENT ALERT | 5.5.2020

On April 30, 2020, the Centers for Medicare and Medicaid Services (CMS) published an interim final rule with comment period (IFC) that, among other things, adds new COVID-19-related reporting requirements to the Medicare Conditions of Participation (CoPs) for long-term care facilities (LTCFs). According to the IFC, these requirements will become effective upon publication of the IFC in the Federal Register (expected to occur May 8, 2020); however, sources within the industry suggest that CMS is looking for facilities to come into compliance immediately.

Prior to the issuance of the IFC, Medicare CoPs required LTCFs to establish and maintain infection prevention and control programs, and guidance from the Centers for Disease Control and Prevention (CDC) recommended notifying state or local health departments about new cases of suspected or confirmed COVID-19. However, LTCFs were not specifically required to report any information regarding the impact of COVID-19 at their facilities,^[1] and the information they did report was not collected in a standardized format or accessible through a centralized system.

As revised by the IFC, Medicare CoPs will require LTCFs to report information on the following to CDC's National Healthcare Safety Network (NHSN) at least weekly or more often if specified by the Secretary of Health and Human Services:

- Suspected and confirmed COVID-19 infections among residents and staff, including residents previously treated for COVID-19;
- Total deaths and COVID-19 deaths among residents and staff;
- Personal protective equipment and hand hygiene supplies in the facility;
- Ventilator capacity and supplies available in the facility;
- Resident beds and census;
- Access to COVID-19 testing while a resident is in the facility;

- Staffing shortages; and
- Any other information specified by the Secretary of Health and Human Services.

Information reported to NHSN will be shared with CMS and may be subject to public disclosure in accordance with the Freedom of Information Act (FOIA).

Additionally, the IFC states that LTCFs will be required to notify residents, their representatives, and families by **5:00 p.m. the next calendar day** following the occurrence of either one of these triggering events: 1) a single confirmed infection of COVID-19 among the facility's residents or staff; or 2) three or more residents or staff with new-onset of respiratory symptoms that occur within 72 hours of each other. The notifications must be provided in accordance with applicable patient confidentiality laws and must not contain personally identifiable information, and must include information on mitigating actions implemented to prevent or reduce the risk of transmission, including if normal operations of the facility will be altered. Cumulative updates are required each time a triggering event occurs, and no less than weekly.

The IFC indicates that facilities will not be expected to make individual telephone calls, but may instead utilize more efficient forms of mass communication such as listservs, website postings, and/or recorded telephone messages.

Reporting guidance and training is available from NHSN at: <https://www.cdc.gov/nhsn/ltc/covid19/index.html>.

If you have questions about the new reporting rules or their impact on your organization, please contact Suzanne Scrutton, Robin Amicon, or your regular Vorys attorney.

--

Vorys COVID-19 Task Force

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.

--

[1] Notably, prior to the issuance of the IFC, Medicare CoPs did require compliance with any applicable state and local reporting requirements for COVID-19. Reporting to NHSN will not relieve LTCFs of separate obligations to report possible incidents of communicable disease and infections as required under state and local law.