

CMS Issues New COVID-19 Reporting Requirements for Long-Term Care Facilities

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Healthcare Alert

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Long-term care facilities have long had written standards, policies, and procedures for infection control, including “when” and “to whom” possible incidents of communicable diseases should be reported. Pursuant to those protocols, many long-term care facilities have been transparent with residents and families about the number of COVID-19 cases and deaths among employees and residents. In light of the COVID-19 Public Health Emergency, the Centers for Medicare and Medicaid Services (CMS) has now issued a new interim regulation codifying a specific requirement that all skilled nursing facilities promptly and regularly report COVID-19 cases to both the federal government and also to residents, resident-representatives, and resident-families.

On May 8, 2020 and effective immediately, CMS issued an Interim Rule with Comment Period which adds a new subsection to the federal regulations for long-term care facilities, skilled nursing facilities, and nursing facilities enrolled in either Medicare or Medicaid. Under new 42 CFR §483.80(g), skilled nursing facilities must promptly and regularly report suspected and confirmed COVID-19 cases and deaths. As an Interim Rule, the regulation is subject to possible revision after a public comment period that expires on July 7, 2020.

To Whom Do the New Reporting Rules Apply?

The new reporting requirements apply to “providers” – a term which includes all long-term care facilities, skilled nursing facilities, or nursing facilities that are eligible to participate in either the federal Medicare program or the federally-funded, state-administered Medicaid program.

What Does the Rule Require?

Reports to the CDC. Providers must report the below items at least weekly to the Centers for Disease Control and Prevention (CDC):

- Suspected and confirmed COVID-19 infections among residents and staff, including residents previously treated for COVID-19;
- the number of total deaths and COVID-19 deaths among residents and staff;
- the status of personal protective equipment (PPE) and hand hygiene supplies in the facility;
- ventilator capacity, if any, and supplies in the facility;
- the number of resident beds and the facility’s census;
- the extent to which there is access to COVID-19 testing; and
- any staffing shortages being experienced by the facility.

The weekly reports are to be submitted via the CDC National Healthcare Safety Network (NHSN)’s COVID-19 module.

Reports to the Residents and Families. Long-term care facilities, skilled nursing facilities and nursing facilities must also provide prompt notification and cumulative updates to their residents, resident-representatives and residents' families by the end of the next day – calendar day, not just business day:

- whenever there is a confirmed COVID-19 case among residents or staff; or
- whenever there are three (3) or more residents or staff who experience a new onset of respiratory symptoms occurring within 72 hours of each other.

The reported information must not include personally identifiable information (PII). Facilities must also provide updates on mitigating actions being implemented to prevent or reduce the risk of transmission, including the extent to which normal operations of the facility will be altered.

Guidance issued by the CMS Quality, Safety & Oversight Group suggests there are a variety of ways that facilities can meet the new resident-reporting requirement, including e-mail listservs, website postings, paper notification and/or recorded telephone messages. CMS does not expect facilities to make individual telephone calls to each resident, resident's family or responsible party.

What Will CMS Do With The Information?

CMS intends to publicly post the CDC's NHSN data – including the names of specific facilities and the number of COVID-19 cases (suspected and confirmed) and deaths on a CMS data site by the end of May 2020.

Enforcement of the New Reporting Requirements

To ensure compliance with the new reporting requirements, CMS has updated its various survey protocols for COVID-19 by creating two new deficiency tags. Under new tag F884, facilities that have not complied with the new CDC reporting requirements after a two-week grace period (through May 24, 2020) and the issuance thereafter of a written warning letter will be subject to per-day civil monetary penalties starting at \$1,000, potentially increasing to one-day per-day civil monetary penalties of \$2,000. While equally important to CMS – and, in all likelihood, residents and their families – the new F885 tag for COVID-19 Reporting to Residents, their Representatives, and Families will be enforced with the reasonable laxity afforded by many other COVID-19 survey requirements set forth in CMS QSO-20-20-All (Prioritization of Survey Activities).

When to Report to the CDC NHSN

The weekly CDC NHSN reporting requirement begins with the business week of Monday, May 11, 2020; providers should submit their first data by Sunday, May 17, 2020 at 11:59 p.m., there is a grace period through May 24, 2020 for providers struggling to meet these new obligations. CMS estimates it will take just under an hour for facilities to complete the weekly surveillance and data entry associated with the reporting requirement. Facilities that have not begun reporting by May 24, 2020 will receive a written warning letter, after which civil monetary penalties will begin to accrue.

If you have any questions please contact Bill Kennedy (kennedyw@whiteandwilliams.com; 215.864.6816) or another member of the Healthcare Group.

As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#)

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