

Administration Turns Focus to Long-Term Care Industry

Insights

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Three new efforts announced this week highlight the Federal government's increased focus on the response to COVID-19 by the long-term care industry.

1. CMS Issues Interim Final Rule Requiring Reporting of COVID-19

On April 30, CMS released an interim final rule with comment period that amends 42 C.F.R. § 483.80 to establish explicit reporting requirements for confirmed or suspected cases of COVID-19. The rule goes into effect on the date of publication in the Federal Register, which is scheduled for May 8, 2020.

Federal Reporting Requirements: Providers will be required to electronically report about COVID-19 in a standardized format. Reports must include:

- 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 in the facility;
- Resident beds and census;
- Access to COVID-19 testing while the resident is in the facility;
- Staffing shortages; and
- Other information specified by CMS.

This information must be provided at a frequency to be determined by CMS, but no less than weekly to CDC's National Healthcare Safety Network. CMS will post it publicly and facility records will be available through the Freedom of Information Act unless an exception applies.

Reports to Residents and Families: The interim final rule also requires SNFs to inform residents, their representatives, and families of those residing in the facilities by 5:00 p.m. the next calendar day following the occurrence of either a single confirmed COVID-19 infection or three or more residents or staff with new-onset of respiratory symptoms occurring within 72 hours of each other. The information must:

- Not include any personally identifiable information;
- 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
- Include any cumulative updates for residents, their representatives, and families at least weekly or by 5:00 p.m. the next calendar day following the subsequent occurrence of either:
 - Each time a confirmed COVID-19 infection is identified, or

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**JORDAN
KEARNEY**
Partner
San Francisco

- Whenever three or more residents or staff with new onset of respiratory symptoms occur within 72 hours of each other.

The preamble to the rule specifies that facilities are not expected to make individual telephone calls to satisfy this requirement. Instead, they can utilize communication mechanisms that make this information easily available to all residents, their representatives, and families, such as paper notification, listservs, website postings, and/or recorded telephone messages.

California Reporting Requirements: In California, [AFL 20-43.1](#) (issued April 24, 2020) implied that current state reporting requirements would satisfy then-existing Federal reporting obligations. Because the new Federal requirements are more extensive (and providers are obligated to follow the most stringent requirement, here), the AFL is now arguably moot. We expect CDPH will revisit the issue shortly.

2. CMS Announces the Coronavirus Commission for Safety and Quality in Nursing Homes

CMS is engaging a contractor, which will include an independent Commission, to conduct a comprehensive assessment of the nursing home response to the COVID-19 pandemic. The Commission will report to a CMS contractor to review and subsequently report to CMS to help inform immediate and future responses to COVID-19. The Commission will include residents, families, resident/patient advocates, leading industry experts, doctors and scientists, resident and patient advocates, family members, infection and prevention control specialists, and state and local authorities.

The Commission is expected to convene in May and develop recommendations on three key tasks:

- Ensure that nursing home residents are protected from COVID-19 and improve the responsiveness of care delivery to meet the needs of and maximize quality of life for residents;
- Strengthen regulations to enable rapid and effective identification and mitigation of COVID-19 transmission in nursing homes; and
- Enhance federal and state enforcement strategies to improve compliance with infection control policies in response to COVID-19.

The results of the contractor's work, including the Commission's analyses, are likely to inform updates to the regulatory framework, which are certain to come as a result of the pandemic. For example, the Commission is expected to consider better coordination on nursing home data by surveyors, state and local agencies and nursing homes.

3. FEMA to Ship PPE to SNFs

The White House Coronavirus Task force announced that FEMA is preparing two shipments of PPE, including surgical masks, gowns, eye protection, and gloves, to each Medicare and Medicaid-certified nursing facility. Both shipments are to arrive before July 4 and should each contain a one-week supply of PPE.

For further information, please contact [Jordan Kearney](#), [Mark Reagan](#), or [Scott Kiepen](#) in San Francisco, [Mark Johnson](#) or [Stan Stock](#) in San Diego, or your regular Hooper, Lundy & Bookman contact.

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