

CMS IMPLEMENTS RULE EFFECTIVE MAY 8, 2020, REQUIRING NURSING HOME COVID-19 REPORTING TO RESIDENTS/REPRESENTATIVES AND THE CDC

May 8, 2020

Effective today, May 8, 2020, the Centers for Medicare & Medicaid Services (CMS) published a new Rule (the “Rule”) concerning updated COVID-19 reporting requirements for nursing homes. The Rule is implemented under a new regulation, 42 C.F.R. § 483.80(g), and is effective immediately. This development follows CMS’s April 19, 2020, announcement under [QSO-20-26-NH](#) that updated reporting requirements for nursing homes would be forthcoming (See Hancock Daniel’s prior discussion of this announcement [here](#)). On May 6, 2020, CMS released [QSO-20-29-NH](#), which provides guidance to state survey agencies regarding the Rule and its enforcement implications.

The Rule mandates that nursing homes electronically report the following information in a standardized format specified by the United States Secretary of Health:

- (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.

The Rule goes on to direct nursing homes to provide this information “no less than weekly to the Centers for Disease Control and Prevention’s National Healthcare Safety Network.” In addition, facilities are directed to “inform residents, their representatives, and families of those residing in facilities by 5 p.m. the next calendar day following the occurrence of either a single confirmed infection of COVID-19, or three or more residents or staff with new onset of respiratory symptoms occurring within 72 hours of each other.” In providing this information, facilities must ensure that they do not include personally identifiable information, and that they inform residents of facility mitigating efforts and alterations to facility operations. Facilities are further directed to provide cumulative updates at least weekly or by 5 p.m. the next calendar day each time a confirmed infection of COVID-19 is identified, or whenever three or more residents or staff with new onset of respiratory symptoms occur within 72 hours of each other.

WHAT THIS MEANS FOR PROVIDERS

Beyond mandated reporting to the CDC and to residents and their representatives as outlined above, CMS has not released any additional requirements for reporting the above information. However, facilities are encouraged to continue monitoring for further updates from CMS and their respective state survey agencies. Additionally, facilities must ensure they have implemented effective policies and procedures to monitor not only for confirmed COVID-19, but for new onset of respiratory symptoms among residents and staff. Consistent with our prior [recommendations](#) on this topic, facilities are advised to implement a reporting structure regarding COVID-19 cases and symptoms that channels information through designated individuals within facility management. This process should ensure confidentiality of any information reported in order to properly control applicable messaging, provide proper reassurances related to resident/visitor safety, and avoid creating unnecessary concern among residents and family members.

With respect to CDC reporting, facilities must be enrolled in the CDC's National Healthcare Safety Network (NHSN), and must complete the COVID-19 reporting through the CDC's [Long Term Care Facilities \(LTCF\) COVID-19 Module](#). Facilities are required to submit their first set of data through the COVID-19 Module by 11:59 p.m. on Sunday, May 17, 2020, and at least every seven days thereafter. CMS has indicated that it intends to make this data publicly accessible at <https://data.cms.gov> by the end of May.

Concerning enforcement of the above requirements, facilities failing to comply with the CDC reporting requirements may be subject to citation under F884: COVID-19 Reporting to CDC, at scope and severity (S/S) level F (no actual harm with the potential for more than minimal harm that is not an Immediate Jeopardy [IJ] and that is widespread). However, CMS indicates in [QSO-20-29-NH](#) that a two-week grace period will be granted to facilities to initiate reporting as required (this initial grace period ending at 11:59 p.m. on May 24, 2020). Thereafter, facilities which have failed to report by 11:59 p.m. on May 31, 2020, will receive a warning letter, and facilities that fail to begin reporting by 11:59 p.m. on June 7, 2020, will be subject to a per day civil monetary penalty (CMP) of \$1,000.00. This per day CMP will increase by \$500.00 each week thereafter for as long as the facility fails to report.

With respect to enforcement of the requirements for reporting to residents/representatives, noncompliance will be cited under F-Tag F885: COVID-19 Reporting to Residents, their Representatives, and Families. CMS indicates that "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," so long as the efforts are "reasonable" in making it "easy for residents, their representatives, and families to obtain the information facilities are required to provide."

Notwithstanding these updates to survey enforcement, facilities should be mindful that CMS's COVID-19 survey prioritization announced on March 23, 2020, remains in effect (See [QSO-20-20-All](#)).

If you have any questions or need further guidance regarding the upcoming rules regarding COVID-19 reporting for residents/resident representatives, please contact a member of Hancock Daniel's [Long-Term Care & Post-Acute Care](#) team.

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