



COVID-19 Update: Final rule adopted requiring long-term care facilities to report COVID-19 data

May 13, 2020

On May 8, 2020, the Centers for Medicare and Medicaid Services (CMS) published an [interim final rule](#) making policy and regulatory revisions in response to the COVID-19 public health emergency. Included in this interim final rule is a new requirement for long-term care facilities, including skilled nursing facilities, to report COVID-19 facility data to the Centers for Disease Control and Prevention (CDC) and to residents, their representatives and families of residents in facilities.

The interim final rule adds a new subsection (g) to the existing infection control regulation for long term facilities at 42 CFR 483.80. Under this new provision, each facility must report electronically to the CDC, no less than weekly in a standardized format, information about COVID-19, including:

- 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 the Secretary of Health and Human Services.

Additionally, the regulation requires long-term care facilities to inform residents, their representatives and families of those residing in facilities 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. The report must be made by 5:00 p.m. the next calendar day following the occurrence and must:

- i. not include personally identifiable information;
- ii. 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
- iii. 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 other reportable events.

CMS issued [guidance to State Survey Agencies](#) summarizing the final rule and providing instructions on how to make these reports. Reports are made using the CDC's [National Healthcare Safety Network Module](#). CMS notes that facilities must submit their first set of data by 11:59 p.m., Sunday, May 17, 2020. Facilities must submit data at least once every seven days, and CMS instructs that facilities should make reports on the same day(s) each week (but CMS does not proscribe which day of the week this must be). CMS notes that the collection period should also remain consistent (e.g., Monday through Sunday) and each Monday, CMS will review the data submitted to assess if each facility submitted data at least once in the previous seven days. CMS will post data from the CDC's National Healthcare Safety Network [publicly](#).

The guidance to State Survey Agencies also includes updated COVID-19 focused nursing home survey protocols that include an assessment of the new requirements for facilities to report to the CDC and to residents, their representatives and their families. CMS notes that failure to comply will result in an enforcement action, including a civil money penalty (CMP). There is an initial two-week grace period during which no penalties will be issued. However, facilities that fail to begin reporting after the third week (by 11:59 p.m. on May 31, 2020) will receive a warning letter, and facilities that have not started reporting by 11:59 p.m. on June 7, 2020, will be assessed a CMP of \$1,000 per week, which increases by \$500 each week thereafter.

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