

Protecting Employees on the Front Lines: Interim Cal/OSHA Guidance for Skilled Nursing and Long-Term Care Facilities

A recent COVID-19 outbreak at a King County, Washington state long-term care skilled nursing facility led to numerous cases and deaths among residents and visitors. Most likely as a result of continued and growing cases of COVID-19 at skilled nursing and long-term care facilities, on April 5, 2020, Cal/OSHA published *Interim Guidance for Protecting Workers at Skilled Nursing and Long-term Care Facilities from Exposure to Coronavirus Disease (COVID-19)*.¹ The stated purpose of the Interim Guidance is to "provide[s] employers and workers in skilled nursing and long-term care facilities with vital information for preventing exposure to the virus."

Though the Interim Guidance provides detailed instructions and resources for long-term care facilities that are helpful, unfortunately, certain aspects of the Interim Guidance remain unclear. For example, the Interim Guidance utilizes the terms "long-term health care facility" and "long-term care facility" interchangeability without differentiating between the two. Further, Cal/OSHA has not officially confirmed whether Residential Care Facilities for the Elderly ("RCFE") are covered under this Interim Guidance." However, in an effort to obtain additional guidance, we reached out to a representative of Cal/OSHA's Consultation Services Branch who affirmed that the intent of the Interim Guidance was to cover RCFEs.

The Interim Guidance focuses on Cal/OSHA's §5199 Aerosol Transmissible Disease ("ATD") standard.² Under the ATD standard, employer requirements vary depending on whether an employer is classified as a laboratory, a "full standard employer,"³ or a "referring employer."⁴ RCFE and longer-term care facilities often fall into the category of referring employers as they do not house or treat cases of or suspected cases of airborne infectious diseases. Accordingly, RCFEs and long-term care facilities are subject to less stringent requirements than full standard employers.

Cal/OSHA's Interim Guidance seemingly follows in direct response to the new reality faced by referring employers, including RCFEs and long-term care facilities. Namely – there is no room at the local hospitals for COVID-19 positive or symptomatic patients/residents. Thus, a majority of referring employers are now maintaining COVID-19 positive or

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symptomatic patients/residents at the community rather than transferring them to hospitals.

Under the Interim Guidance, if a facility does diagnose, house, or treat a resident with suspected or confirmed COVID-19, it must implement heightened Cal/OSHA safety protocols under the ATD standard in addition to the taking the steps below:

- Move the patient to an airborne infection isolation room (AIIR) if the facility has one available. If no AIIR is available, the facility should consult with the California Department of Public Health and provide the maximum level of separation available and appropriate. This may include a private room with the door usually kept closed with portable systems to create negative pressure; ⁵
- Provide employees with a fit-tested, NIOSH-approved respirator⁶ whenever the employee is in the area where COVID-19 patients are located;
- Provide any medical screening or surveillance recommended by the California Department of Local Health to employees to support the early detection of COVID-19 infection.

It is worth noting that these steps may seem untenable to RCFEs and other referring employers who are not equipped with AIIRs, respirators, or "portable systems to create negative pressure." In these cases, employers will need to determine a short term compliance strategy that will substantially conform with Cal/OSHA's guidelines and diligently document their efforts to comply.

Employers should also follow the CDC's interim guidance for Infection Prevention and Control for Patients with Suspected or Confirmed COVID-19 in Nursing Homes. The CDC recommends: 1) restricting all visitors and unnecessary personnel from the facility; 2) canceling group activities and communal dining; and 3) implementing active screening of residents and employees for fever and respiratory symptoms.

¹ <https://www.dir.ca.gov/dosh/Coronavirus/Skilled-Nursing.html>

² RCFE's are not identified in the list of §5199(a)(1)(A) facilities that the ATD covers, further confusing the coverage issue.

³ Employers which may provide diagnosis, treatment, and other services to people requiring airborne infection isolation.

⁴ Employers that do not provide ongoing treatment, housing, or other services to patients who are cases or suspected cases of airborne infectious diseases, including COVID-19.

⁵ While this term is not defined in the Interim Guidance, generally speaking, this method is achieved by using particulate air (HEPA) filtered forced air machines. See, <https://www.ncbi.nlm.nih.gov/pubmed/15573039>

⁶ Healthcare facilities are currently facing a nationwide shortage of personal protective equipment ("PPE"). Cal/OSHA has issued guidance for health care providers in light of the severe respirator supply shortages including appropriate PPE substitutions and employee training on additional precautions when respirators are not available: <https://www.dir.ca.gov/dosh/coronavirus/Cal-OSHA-Guidance-for-respirator-shortages.pdf>

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