

CMS-Mandated COVID-19 Reporting Requirements and Enforcement Actions Coming for Skilled Nursing

Key Points

- Facilities will have until the week ending June 7, 2020 to report specific COVID-19 data to the CDC or face the assessment of deficiencies and CMPs.
- Facilities are now required to notify residents, their representatives, and families when the facility has a confirmed COVID-19 infection or 3 instances of new onset respiratory symptoms within 72 hours.
- Facilities remain subject to surveys for immediate jeopardy and infection control (including two new tags related specifically to this COVID-19 reporting) and must be prepared to respond to those surveys with solid documentation.

Although the Centers for Medicare and Medicaid Services (CMS) has suspended many of its regular survey activities due to the COVID-19 crisis, skilled nursing facilities are still subject to surveys related to Immediate Jeopardy situations and infection prevention. They will also soon see a new set of F-tags related specifically to COVID-19 reporting. These new F-tags come with their own enforcement criteria and a mandated Civil Money Penalty. While providers are devoting extraordinary time and resources to protecting residents and staff from COVID-19, they must also ensure a team is focused on the reporting requirements and is prepared to respond to a survey. With questions about legal immunity for healthcare providers still looming, it is especially important that providers take all steps to not only address COVID-19, but to prepare for surveys and comply with documentation requirements.

The new reporting requirements are twofold: (1) public reporting to the Centers for Disease Control and Prevention (CDC) and (2) reporting to residents, their representatives, and family.

CDC Reporting

Under CMS's interim rule facilities are required to electronically report standardized information about COVID-19 including, but not limited to:

- suspected and confirmed COVID-19 infections among residents and staff;



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- COVID-19 deaths among staff and residents;
- PPE and hand hygiene supplies in the facility;
- ventilator capacity and supplies;
- access to testing; and
- staffing shortages.

Facilities will now have until May 17, 2020 to submit their first data set, however, CMS will not begin assessing deficiencies and CMPs until the fourth week of reporting—ending June 7, 2020.¹ Failure to report by June 7, 2020 will result in an enforcement action of a \$1,000 CMP and an F-level deficiency under new tag F884. Any subsequent failures will result in a CMP that increases by \$500.00. Notably, the CMP will increase by \$500.00 even if the failures are not in consecutive weeks. Any facility found to have reported incomplete or inaccurate information will also be deemed to have failed to report and will be subject to these penalties. Failure to comply with F884 will be assessed offsite based on the data reporting system.

Resident/Family Reporting

The CMS rule also requires facilities to inform residents, their representatives, and families when the facility has (1) a single confirmed infection of COVID-19 or (2) three or more residents or staff with new-onset respiratory symptoms within 72 hours of each other. According to the Interim Final Rule this requirement for notification is effective, today, May 8, 2020.

This notification must be sent by 5pm the next calendar day after the occurrence of either of these triggering events. This notification must include information on actions being taken to prevent or reduce the risk of transmission. CMS will survey for this reporting under F885 onsite through its COVID-19 Focused Survey covering infection prevention.

With the state of legal immunity related to COVID-19 still uncertain in California, it will be imperative for providers to prepare not only to provide the best care for their residents based on constantly evolving guidance, but also to prepare for infection prevention surveys by designating a team to respond should surveyors enter the building, completing any documentation required to respond to the COVID-19 outbreak, and properly reporting under this new CMS rule (as well as continuing to report under all State and local public health orders). As the guidance from the CDC, CMS, and public health officials is updated facilities must not only review the new care recommendations, but assign a contact to keep track of documentation requirements. With public health orders changing rapidly and requirements coming from federal, state, and local sources this is no easy feat. Although it may be frustrating to put resources toward documentation during a crisis, a robust response is imperative in an effort to keep providers from hot water.

For questions about specific documentation requirements, facility-specific reporting, or how the new survey process may be applied in your building providers should consult their legal counsel.

References:

[Interim Final Rule](#)
[QSO 20-20](#)
[QSO 20-26](#)
[QSO 20-29](#)

¹ Facilities that fail to report by May 31st will receive a warning letter.