

CDPH Requires all California Skilled Nursing Facilities to Submit 'COVID-19 Mitigation Plan' Creating New Documentation Concerns

Key Points:

- New CDPH mandate requires action by skilled nursing facilities within 21 calendar days of issuance of All Facilities Letter.
- CDPH to conduct onsite visits to skilled nursing facilities every 6 to 8 weeks to verify compliance with facility's approved COVID-19 Mitigation Plan.
- New Mitigation Plan requirement is in addition to any local requirements for COVID-19 planning.

On May 11, 2020, the California Department of Public Health ("CDPH") issued an All Facilities Letter ([AFL 20-52](#)) requiring skilled nursing facilities ("SNF") to develop and implement a facility specific COVID-19 mitigation plan (the "Plan") with six different, complicated elements. The CDPH requirement is in addition to any local requirements for COVID-19 planning and may or may not track the requirements already in place in some local jurisdictions. SNFs should carefully review the requirements before drafting the Plan. SNFs must submit the Plan to CDPH within 21 calendar days from the AFL. The following highlights some of the requirements of AFL 20-52:

Mitigation Plan

All mitigation plans must include the following elements:

- Testing and Cohorting (Must have a plan for regular testing of residents and staff)
- Infection Prevention and Control (Full Time Infection Preventionist ("IP") and training requirements)
- Personal Protective Equipment (PPE) (Plan for adequate provisioning)
- Staffing Shortages (Policies to address shortages, including contingency and crisis strategies)
- Designation of Space (Policies for separation of infected residents, if possible)
- Communication (Designated staff for daily communications re COVID-19)

Infection Preventionist

by Janet C. Eisenbeis & Jillian Somers Donovan



SNFs must have a full-time, dedicated IP. This can be achieved by more than one staff member sharing the role, but a plan must be in place for infection prevention quality control. In addition, with CDPH highlighting training it is critical that SNFs maintain proof of in-service regarding infection prevention and control—keeping legible and full records, tracking non-participants, and ensuring relevant topics are covered—despite all of the work going into the current crisis.

CDPH Onsite Visits

In addition to the written planning requirements, CDPH will conduct an onsite visit to each facility to validate its certification at least every six to eight weeks. CDPH may take enforcement actions, including a finding of Immediate Jeopardy and monetary penalties, if a SNF does not implement its approved Plan and CDPH identifies unsafe practices that are likely to harm patients. Just as SNFs must be prepared to show proof that they are complying with the new reporting requirements under F884 and F885, SNFs must also be prepared for the surveys announced by CDPH in AFL 20-52. SNFs should continue to identify a person or team designated to respond to a survey, and maintain COVID-19 specific documentation (including any new policies and procedures) that verify CMS and CDPH requirements are being met. That designee should also be prepared to articulate the SNFs infection prevention and other policies related to the rapidly evolving COVID-19 requirements.

Submission of COVID-19 Mitigation Plans

The facility administrator, or an appropriate representative who physically works in the SNF, must submit a scanned copy of the Plan and attestation to the facility's local CDPH District Office. CDPH does not include any requirements regarding the form or format of the required attestation in the AFL. Generally an attestation confirms that something is true or authentic.

With new guidance coming out frequently from multiple sources and over 140 lawsuits already filed over COVID-19 in California¹, documentation will continue to be critical as we move through the COVID-19 crisis. SNFs will need to evaluate the requirements in AFL 20-52 and develop a reasonable and verifiable COVID-19 Mitigation Plan. For SNFs located in a jurisdiction that already requires some type of written COVID-19 planning, the decision to modify the prior plan or create a new product will be facility-specific.

¹ According to a data-tracker referenced in the ABA Journal. (See <https://www.abajournal.com/news/article/nearly-800-covid-19-lawsuits-have-been-filed-according-to-law-firms-tracker>.)

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