



## Issue Brief: CMS Interim Final Rule Establishing Nursing Home Reporting Requirements

(Information current as of: May 5, 2020)

**Background:** The Centers for Medicare & Medicaid Services (CMS) on April 30<sup>th</sup> issued an [Interim Final Rule with Comment Period \(CMS-5531-IFC\)](#), which includes a requirement for facilities to report nursing home residents and staff infections, potential infections, and deaths related to COVID-19.

**Effective Date:** The requirement will be effective on **Friday, May 8**, which is the date when the interim final rule is scheduled for publication in the Federal Register.

**Note: providers should begin working on these requirements right away.** It is possible CMS will allow a short grace period following May 8 for facilities to implement the new requirement, but the agency has not yet indicated that it will do so. For example, CDC data submissions described below must be submitted at least weekly; the LeadingAge national team has asked CMS to identify exactly when that first report will be due, but CMS has not yet provided a response.

**CMS describes the purpose of the rule this way:** These reporting requirements along with public reporting of the data support our responsibility to protect and ensure the health and safety of residents by enforcing the standards required to help each resident attain or maintain their highest level of well-being. [The Social Security Act] requires that a facility must establish an infection control program that is designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public. We believe that these reporting requirements are necessary for CMS to monitor whether individual nursing homes are appropriately tracking, responding, and mitigating the spread and impact of COVID19 on our most vulnerable citizens, personnel who care for them, and the general public. The information provided may be used to inform residents, families, and communities of the status of COVID-19 infections in their area. We believe that this action strengthens CMS' response to the PHE for the COVID-19 pandemic and reaffirms our commitment to transparency and protecting the health and safety of nursing home residents.

**Regulatory Language:** Section 483.80 is amended by adding paragraph (g) to read as follows:

(g) COVID-19 reporting. The facility must-

(1) Electronically report information about COVID-19 in a standardized format specified by the Secretary. This report must include but is not limited to—

(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.

**(2)** Provide the information specified in paragraph (g)(1) of this section at a frequency specified by the Secretary, but no less than weekly to the Centers for Disease Control and Prevention's National Healthcare Safety Network. This information will be posted publicly by CMS to support protecting the health and safety of residents, personnel, and the general public.

**(3)** 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. This information 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 p.m. the next calendar day following the subsequent occurrence of either: 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.

## **ADDITIONAL INFORMATION**

### CDC Reporting

- The new reporting requirements at § 483.80(g)(1) and (2) do not relieve LTC facilities of the existing obligation to continue to comply with § 483.80(a)(2)(ii), which requires facilities to report possible incidents of communicable disease and infections. This includes complying with state and local reporting requirements for COVID19.
- This information will be used to monitor trends in infection rates and inform public health policies. CDC will share the information reported with CMS, and CMS will retain and publicly report this information to support protecting the health and safety of residents, personnel, and the general public.
- This information must be reported in accordance with existing privacy regulations and statute and must not include Personally Identifiable Information.

The CDC's National Healthcare Safety Network (NHSN) released the long-term care facility COVID-19 reporting module on April 28, consisting of four pathways: Resident Impact and Facility Capacity; Staff and Personnel Impact; Supplies and Personal Protective Equipment; and Ventilator Capacity and Supplies. The [CDC website](#) includes data collection forms, instructions, slides CDC staff have used for training purposes, and registration links for upcoming, live question-and-answer sessions relating to NHCS enrollment and use of the module.

## Reporting to Residents, Resident Representatives and Families

- This reporting requirement supports the overall health and safety of residents by ensuring they are informed participants in the care that they receive as well as providing assurances of the mitigating steps the facility is taking to prevent and control the spread of COVID-19.
- Facilities must include information on mitigating actions implemented to prevent or reduce the risk of transmission, including if normal operations in the nursing home will be altered such as restrictions or limitations to visitation or group activities.
- For purposes of this reporting requirement, facilities are not expected to make individual telephone calls. Instead, facilities can utilize communication mechanisms that make this information easily available to all residents, their representatives, and families, such as paper notification, listservs, website postings, and/or recorded telephone messages.

Providers should note that the IFC varies in some respects from what CMS previewed in [QSO-20-26-NH](#):

- The memo stated providers would report COVID-19 infections to residents and resident representatives. The IFC expands that to families.
- The memo stated providers would provide notifications only for confirmed COVID-19 infections of residents or staff; the IFC rule refers to both confirmed and suspected COVID-19 infections.
- The memo stated providers would report within 12 hours of a triggering event. The IFC requires notification by 5 p.m. the next calendar day following the event.

### **Enforcement:**

The interim final rule does not address enforcement, but CMS noted in [QSO-20-26-NH](#) that failure to report resident or staff incidences of communicable disease or infection, including confirmed COVID-19 cases, or to provide timely notification to residents and their representatives of these incidences could result in an enforcement action against the nursing home.