CLIENT ALERTS & INSIGHTS

Benesch COVID-19 Resource Center: New Reporting Requirements and Other Waivers Impacting Long-Term Care Facilities

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New Long Term Care facility Reporting Obligations.

The U.S. Department of Health and Human Services ("HHS") published an interim final rule[1] (the "Interim Rule") in response to the COVID-19 public health emergency that will take effect May 8, 2020 that amends Medicare and Medicaid program requirements and standards. The Interim Rule, implemented by the Secretary of HHS (the "Secretary") and the Centers for Medicare and Medicaid Services ("CMS"), will prove to be significant for long-term care facilities.

New CDC Reporting Requirements: Infection control and prevention remains a top priority for HHS in long-term care facilities during the public health emergency. The Interim Rule expands monitoring and reporting communicable diseases to include reporting to the Centers for Disease Control and Prevention no less than weekly the following:

- 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 available in the facility;
- Resident beds and census;
- Access to COVID-19 testing while the resident is in the facility;
- Staffing shortages; and
- Any other information specified by the Secretary.

HHS indicates that it will "retain and publicly report this information to support protecting the health and safety of residents, personnel, and the general public." Long-term care facilities should note that these new obligations do not replace or alter existing State or Local reporting.

Resident and Family Notification Requirements: The Interim Rule also includes a new requirement for long-term care facilities to inform residents, their representatives, and families ("Resident Parties") of confirmed or suspected COVID-19 cases among residents and staff.

Long-term care facilities must notify Resident Parties by 5 PM 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 that occur within 72 hours of each other.

Cumulative updates to Resident Parties must be provided at least weekly by 5 PM 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.

Reporting must be in accordance with existing privacy rules and are to include information on mitigating actions implemented to prevent or reduce the risk of transmission of COVID-19, i.e., restrictions or limitations to visitation or group activities. Methods of communication that make this information easily available to Resident Parties such as paper notification, list serves, website postings or recorded telephone messages may be used.

In addition to the above Interim Rule, CMS has issued additional 1135 Waivers that impact long term care facilities:

Resident Transfer & Discharge[2]: CMS is waiving certain requirements related to post-acute care services such as skilled nursing and long term care facilities so as to expedite the safe discharge and movement of patients among care settings. While discharge to an appropriate setting with the necessary medical information and goals of care are still required, the more detailed requirements to provide lists of post-acute care facilities available to the patient, notice of the freedom to choose and disclosure of financial interests is waived during this period.

Coronavirus Commission for Safety and Quality in Nursing Homes[3]: CMS announced the formation of a new independent Commission to conduct a comprehensive assessment of the nursing home response to the COVID-19 pandemic and help inform efforts to safeguard the health and quality of life of vulnerable Americans. Lead by an independent CMS contractor and made up of residents and families, industry experts and clinicians, and other experts selected through a nomination process, the Commission is tasked to identify three key recommendations:

- Ensuring that nursing home residents are protected from COVID-19 and improving the responsiveness of care delivery to maximize resident quality of life
- Strengthening regulations to enable rapid and effective identification and mitigation related to COVID-19 transmission in nursing homes.
- Enhancing state and federal enforcement strategies to focus on compliance with infection control policies.

Further Telehealth Waivers: CMS continues to expand the types of services and providers that are eligible for the provision of health care services through telehealth. Providers now include physical therapists, occupational therapists and speech language pathologists. Furthermore, CMS is now permitting the use of audio-only equipment for a limited set of code-specific evaluation and management services, and behavioral health counseling and educational services[4].

For more information regarding the information above, please contact a member of the Benesch Healthcare+ Practice Group. Also, consult the Benesch COVID-19 Resource Center for sources and additional information regarding COVID-19.

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Benesch stands ready to assist with any questions as we closely follow COVID-19 developments and support client's response efforts.

Please note that this information is current as of the date of this client bulletin, based on the available data. However, because COVID-19's status and updates related to the same are ongoing, we recommend real-time review of guidance distributed by CDC and local officials.



[1] The Interim Rule may be found at https://www.cms.gov/files/document/covid-medicare-and-medicaid-ifc2.pdf.

[2] See the updated COVID-9 Emergency Declaration Blanket Waivers for Health Care Providers issued on April 29, 2020 at https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf

[3] For more information regarding the Commission go to: https://www.cms.gov/files/document/coronavirus-commission-safety-and-quality-nursing-homes.pdf

[4] The designated codes for audio-only services may be found under "compliance codes" in the zip folder located on the CMS Telehealth for telehealth covered services at https://www.cms.gov/Medicare/Medicare-General-Information/Telehealth/Telehealth-Codes.