CLIENT ALERTS & INSIGHTS

CMS Establishes New Long Term Care Facility Rule for COVID-19 testing of Residents and Staff

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Due to the high risk for infection, serious illness and death in long term care ("LTC") facilities, CMS is amending the current infection control requirements for LTC facilities by adding obligation to "test all of its residents and facility staff for COVID-19."[1] Staff includes any individuals employed by, under contract or arrangements with or volunteering to provide services to a LTC facility and that are physically working on-site, including a hospice.

During this period, LTC facilities have a statutory obligation to allow facility access to state surveyors and ombudsmen requesting immediate access to residents. State agencies are responsible for ensuring the surveyors are following CDC guidelines for infection protection and return to work parameters.

The rules do not specify the details of such testing and the Secretary is charged with setting the parameters for testing, which *may* include:

- Frequency of testing;
- The identification of:
  - any facility resident or staff diagnosed with COVID-19 in the facility;
  - any facility resident or staff with symptoms consistent with COVID-19 or with known or suspected exposure to COVID-19;
- criteria for conducting testing of asymptomatic individuals;
- response time for test results; and
- other factors specified by the Secretary to help identify and prevent transmission of COVID-19.

The rule requires that all testing be conducted in a manner consistent with current professional standards of practice for conducting COVID-19 tests and that the LTC facility document the completion of the testing and the results of each test. For residents, the rule requires that the facility document in the resident's medical record that the testing was offered, completed and the results of each test.

LTC facilities are required to take actions to prevent further transmission of COVID-19 when a resident or staff members present with symptoms or test positive for COVID-19 and electronically report COVID-19 data as required by the Secretary.

Workers who test positive or who show symptoms should not return to work until certain return to work criteria as set forth by the Secretary are met.

It is expected that for residents that test positive for COVID-19 or show symptoms that the LTC facilities take measures to mitigate the transmission of the virus, that may include cohorting consistent with CDC guidelines or confining these residents to specified areas or staffing.

LTC facilities should coordinate with state and local health departments on the availability of testing supplies, obtaining testing supplies and processing test results.

For more information, contact a member of the Benesch Healthcare+ Practice Group.

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Please note that this information is current as of the date of this Client Alert, 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 the CDC and local officials.



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[1] https://www.cms.gov/files/document/covid-ifc-3-8-25-20.pdf at page 122