CLIENT ALERTS & INSIGHTS

COVID-19 Considerations for Nursing Homes

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The Coronavirus Disease 2019 ("COVID-19") outbreak has reached the international pandemic status. As of March 13, 2020, there are 132,758 confirmed cases of COVID-19 globally and 1,629 confirmed cases of COVID-19 nationally found in 47 states.[1] As vulnerable individuals live in nursing homes, precautions must be taken by nursing home providers to address this very real and present danger. The reported COVID-19 deaths in nursing home facilities in Washington state emphasizes the importance of these precautions. As of today, at least 20 residents died after testing positive for COVID-19, and as many as 70 employees were reported as having COVID-19 symptoms at a Kirkland, Washington nursing home.[2]

On March 11, 2020, President Trump, in an address to the Nation, cautioned citizens about visiting nursing homes. In the address, the Trump administration strongly advised "that nursing homes for the elderly suspend all medically unnecessary visits."[3] State and local governments are also taking aggressive steps, including releasing executive orders mandating actions to be taken by healthcare providers like nursing homes. For instance, the Director of the Ohio Department of Health issued an order to limit visitation in nursing homes to one visitor per resident a day and ordered that a log of all visitors be maintained. More extensive visitation restrictions were announced by the Ohio Governor the next day, on March 12, 2020; however, to date no official order has been released.[4] Accordingly, each state is taking its own approach to safety precautions for the vulnerable nursing home population. This is a fluid environment and providers must be aware that new information may be released any day and new actions may be immediately required of providers.

Nursing homes serve a susceptible population of individuals who, by definition, require varying levels of nursing and other supportive care to meet their needs. Based upon this emerging and burgeoning health threat, it is recommended that nursing homes continue to monitor the CDC's Coronavirus Disease 2019 (COVID-19) website as they (1) consistently implement policies and procedures to protect the health and welfare of residents, staff, and visitors; (2) evaluate the potential for disruption of supplies and workforce disruption and the effects of decreased staff availability; and (3) ensure its policies and procedures meet the current professional standards of care and are being consistently implemented. Even minor breaches in protocol related to infection control and prevention can place the entire nursing home's population at significant increased risk of COVID-19.

1. Consistently Implement Policies and Procedures to Protect the Health and Welfare of Residents, Staff, and Visitors

The high transmission rate of COVID-19 highlights the importance of preparedness for nursing homes, starting with being vigilant in training staff on updated policies and procedures.

The Centers for Disease Control and Prevention ("CDC") is specifically advising that nursing homes prevent the spread of COVID-19 with strategies utilized by the facilities every day to detect and

prevent the spread of other respiratory viruses such as influenza. The CDC has provided numerous resources and guidance for healthcare facilities and notable recommendations include:

- Posting signs at entrances alerting potential visitors to restrictions, including prohibiting visitors with any flu-like symptoms[5];
- Isolating residents exhibiting flu-like symptoms;
- Implementing appropriate infection prevention practices for incoming residents with symptoms;
- Limiting resident visitors who may have flu-like symptoms; and
- Screening employees each shift to prevent employees with flu-like symptoms from working.[6]

For additional information regarding advised COVID-19 precaution for healthcare providers, see our prior client alert, COVID-19: Health and Legal Considerations Convene.

2. Evaluate the Potential for Disruption of Supplies and Workforce Disruption and the Effects of Decreased Staff Availability

As confirmed cases of COVID-19 increase nationwide, nursing homes must be prepared for a supply disruption of vital infection control supplies. There is a real possibility of on-going delays in obtaining personal protective equipment ("PPE") due to high demand and diminishing supply, in part due to China manufacturing chains.[7] Nursing home management needs to be cognizant of and proactive in evaluating its inventory and its inventory utilization rate with contingency plans for additional access to necessary PPE.

Nursing home management must be ready to field questions and provide frequent communication to the residents and their families about the current protocols to protect residents from this serious viral threat. Nursing home disruption caused by policies protecting the spread of COVID-19 include the isolation or quarantine of residents with respiratory systems, the limitation of visitors, and a decreased work force for employees who self-quarantine at home. The CDC advises that nursing homes encourage their employees to not come into work if they are having any respiratory or flu-like systems. Nursing homes should continuously notify and remind employees of leave policies related to employee illness and self-quarantine.

The Centers for Medicare and Medicaid Services ("CMS") continues to provide guidance for infection control and prevention of COVID-19 in nursing homes, with recent guidance focusing on restricting visitor access. CMS advises that nursing homes actively screen and restrict visitors having any of the following factors: (1) signs or symptoms of a respiratory infection, (2) interaction with someone with a confirmed illness of COVID-19, under investigation for COVID-19, or are ill with respiratory illness, (3) recent international travel to countries with sustained community transmission as provided by the CDC[8], or (4) a residence in community where community-based spread of COVID-19 is occurring.[9]

3. Ensure Policies and Procedures Meet the Current Professional Standards of Care and are Being Consistently Implemented

Infection control policies and procedures that meet the current standards of care for COVID-19 must be in place for all departments to assure protection of the residents. Additional and ongoing employee education is a necessity with the most recent changes being implemented with the COVID-19 outbreak. The CDC suggests that nursing homes identify dedicated employees who are trained to care for COVID-19 patients such as an isolation care team.[10] This approach can significantly limit the spread within a facility if a resident is diagnosed with COVID-19. Thoroughly trained employees can consistently implement the detailed infection control protocols to protect others and maintain an intact isolation process.

Nursing homes should also notify state and local health departments if there is a COVID-19 patient to coordinate the best course of action for treatment and prevention of spread of the disease, and may also help coordinate staff assistance and transfers if there are staffing issues. Contact information for your local state health department can be found on health department directory pages on the CDC's website and the National Association of County and City Health Official's website.

Nursing homes risk complaint inspections and regulatory sanctions for the failure to consistently follow infection control policies that may result in resident illnesses or deaths. As noted, in our previous client alert DOJ Launches New Task Force Targeting Nursing Homes that Provide "Grossly Substandard Care", the Department of Justice ("DOJ") has started a task force that investigates nursing home failing to provide an adequate standard of care.

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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.

Should you have any questions, please do not hesitate to contact a member of Benesch's Healthcare+ Practice Group.

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[8] *Coronavirus Disease 2019 Information for Travel,* CDC, https://www.cdc.gov/coronavirus/2019-ncov/travelers/index.html.

[9] *Guidance for Infection Control and Prevention of Coronavirus Disease 2019 (COVID-19) in Nursing Homes (REVISED)*, Centers for Medicare & Medicaid Services, (Mar. 9, 2020), https://www.cms.gov/files/document/qso-20-14-nh-revised.pdf.