

PUBLICATION

CMS Alerts Nursing Homes of Additional COVID-19 Reporting Requirements to CDC and Residents

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On April 19, 2020, the Centers for Medicare and Medicaid Services (CMS) announced that in addition to requiring that nursing homes report communicable diseases, healthcare-associated infections, and potential outbreaks to State and Local health care departments, CMS will soon require that nursing homes report this data to the Centers for Disease Control and Prevention (CDC) through the National Healthcare Safety Network (NHSN). The impending rule will also impose new requirements for COVID-19 reporting to residents and their representatives: nursing homes will have to keep their residents and residents' representatives timely informed of the facilities' status and mitigation efforts surrounding COVID-19. The rule has not yet been published, but the NHSN reporting module for nursing homes has been activated; information regarding the module's operation and module trainings can be accessed [here](#). CMS maintains that collection of this data under the forthcoming rule will support the agencies' local and national COVID-19 surveillance efforts, allow them to monitor trends in infection rates, and allow the agencies to provide information in support of public health policies and actions. Nursing homes that fail to report confirmed cases of COVID-19 or COVID-19 persons under investigation among residents and staff in their facilities could face enforcement actions from CMS.

CMS' announcement provides a preview of the upcoming rule's content and rationale. Nursing homes are already required to establish and maintain an infection prevention and control program that provides a safe, sanitary, and comfortable environment and that helps prevent the development and transmission of communicable diseases and infections. This includes the development of a surveillance system that can identify possible communicable diseases and infections before they begin to spread within the facility. Nursing homes must also know when and to whom such infections should be reported. Current federal regulations and CDC guidance require that nursing homes report the presence of residents or staff with suspected or known COVID-19 cases and residents with certain respiratory symptoms to their State and Local health departments, but reporting to federal agencies is optional. CMS's new rule will require disclosure to the CDC's National Health Safety Network system, and it will specify the formatting and frequency of reporting.

Nursing homes must pay particular attention to the upcoming reporting directives with regard to residents and their representatives: Facilities will be required to report the presence of each confirmed COVID-19 case or new-onset of respiratory symptoms among a threshold number of residents and staff within twelve hours of the occurrence. The rule will mandate subsequent updates on a weekly basis, or sooner in the case of additional COVID-19 diagnoses or symptom clusters. Nursing homes will also be required to report on infection mitigation efforts and whether the routine operations of the facility will be affected. The facilities must report this information in accordance with existing privacy regulations and statutes.

Although the rule implementing this announcement has been neither published nor made effective, the NHSN module has been activated for reporting. Baker Donelson is assisting nursing homes in preparing for the rule's implementation as early, as efficiently, and as effectively as possible. Steps that facilities can implement now include adoption of policies and procedures for collection and reporting of COVID-19 cases and clusters, participation in trainings on the module's operation, confirmation of updated contact information for resident representatives and family members, and implementation of mass-notification systems. For specific guidance

or more information on this alert, please contact [Stefanie Doyle, Caldwell Collins](#), or any member of [Baker Donelson's Long Term Care Team](#). For more information and general guidance on how to address legal issues related to COVID-19, please visit the [Coronavirus \(COVID-19\): What you Need to Know](#) information page on our website.