

# PUBLICATION

## CMS Publishes Rule and Guidance Requiring Long Term Care Facilities to Conduct Additional COVID-19 Reporting to CDC and Residents

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The federal Centers for Medicare and Medicaid Services (CMS) has published a new interim final rule and additional guidance and FAQs that, among other portions applicable to other health care providers, address the new requirement that Medicare and Medicaid certified skilled nursing facilities and nursing facilities (LTC Facilities) not only report communicable diseases, health care-associated infections, and potential outbreaks to State and Local health care departments, but also report COVID-19 data to the federal Centers for Disease Control and Prevention (CDC) and to their residents.

The rule adds three salient provisions to the existing regulations at 42 C.F.R. § 483.80(g). The first requires that LTC facilities electronically report COVID-19 information through the National Healthcare Safety Network (NHSN) [reporting module](#), including:

- 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
- Other information specified by the Secretary of the U.S. Department of Health and Human Services (the Secretary).

The second provision requires that this information be reported at a frequency determined by the Secretary, but no less than weekly – and LTC facilities may choose to submit multiple times a week. The information will be shared with CMS, who will retain and publicly report it (including but not limited to facility names, number of COVID-19 suspected and confirmed cases, and deaths). LTC facilities should note that these obligations are in *addition* to their existing duty to report possible incidents of communicable diseases and infections, including state and local requirements for COVID-19 reporting.

The third provision mandates that LTC facilities inform residents, their representatives, and their families of confirmed or suspected COVID-19 cases among the facilities' residents and staff on the following timelines:

Timeframe/Frequency	Information To Be Reported
By 5 p.m. the next calendar day following the occurrence	<ul style="list-style-type: none"><li>• A single confirmed case of COVID-19 or</li><li>• Three or more residents or staff with new-onset of respiratory symptoms that occur within 72 hours of each other</li></ul>

<b>At least weekly, by 5 p.m. the next calendar day following the subsequent occurrence</b>	<ul style="list-style-type: none"> <li>• Each time a confirmed infection of COVID-19 is identified or</li> <li>• Whenever three or more residents or staff with new-onset of respiratory symptoms occur within 72 hours of each other</li> </ul>
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LTC facilities must also include information on mitigation 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 on visitation or group activities. All information must be reported in accordance with existing privacy regulations and statutes and must not include any personally-identifiable information.

The rule becomes effective May 8, 2020, upon publication, but comments on the rule will be accepted until 5 p.m. ET on July 7, 2020. LTC facilities must submit their first set of data by 11:59 p.m. local time on Sunday, May 17, 2020, and weekly thereafter, to be compliant. LTC facilities that fail, after a two-week grace period, to report the required data will receive a deficiency citation and a civil money penalty imposition. CMS has updated the surveyor assessment tools for COVID-19 to reflect these new reporting requirements—the new tools are available in the new [CMS guidance](#) and in the COVID-19 Focused Survey subfolder on the CMS Nursing Homes website. The guidance directs surveyors to begin using these revised documents immediately and recommends that LTC facilities should also begin using the revised tools to perform their self-assessments.

Baker Donelson is assisting nursing homes in implementing the rule correctly and as efficiently as possible. 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 advice 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.