

COVID-19



CORONAVIRUS: NURSING HOMES REQUIRED TO REPORT COVID-19 CASES TO CDC, RESIDENTS, AND RESIDENT REPRESENTATIVES

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Foulston has produced a series of issue alerts as we continue to monitor the evolving COVID-19 situation and provide additional guidance. Please find all updates and our latest resources available [here](#).

On April 19, 2020, the Quality, Safety & Oversight Group at the Centers for Medicare & Medicaid Services (“CMS”) released a new directive titled “Upcoming Requirements for Notification of Confirmed COVID-19 (or COVID-19 Persons under Investigation) Among Residents and Staff in Nursing Homes.” The Directive outlines the regulations CMS intends to issue to increase the tracking of, responding to, and mitigating of COVID-19 in nursing homes.

REPORTING TO THE CENTERS FOR DISEASE CONTROL AND PREVENTION (“CDC”)

Current CDC guidance supports the existing CMS infection prevention and control program requirements applicable to nursing homes specifying notification to state or local health departments about residents or staff with suspected or confirmed COVID-19, residents with severe respiratory infection resulting in hospitalization or death, or three (3) or more residents or staff with new-onset respiratory symptoms within 72 hours of each other. This data, however, is not currently collected by CMS, CDC, or the Federal Emergency Management Agency (“FEMA”).

In the Directive, CMS confirmed it will issue regulations requiring nursing homes to report their COVID-19 infection data to the CDC in a standardized format and frequency to be defined by the CMS and CDC. This information will be used to support surveillance of COVID-19 from local, state, and national perspectives, monitor infection rate trends, and impact public health policies and actions. The failure to report cases of residents or staff who have confirmed cases of COVID-19 and “Persons under Investigation” could result in an enforcement action.

CDC reporting guidance for long-term care facilities can be found [here](#).

NOTIFICATION TO RESIDENTS AND RESIDENT REPRESENTATIVES

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CMS wants to increase transparency for residents and their representatives. The Directive states CMS will require nursing homes to promptly notify residents and their representatives of the COVID-19 situation inside the facilities. Nursing homes must share this information directly with residents and their representatives. Specific requirements for notifying residents and their representatives will come in future rulemaking, but the Directive outlines what CMS expects will be the minimum requirements. At a minimum, nursing homes must notify residents and their representatives **within 12 hours** of the occurrence of a single confirmed infection of COVID-19 and when three or more residents or staff experience a new onset of respiratory symptoms that occur within 72 hours.

Residents and their representatives must be updated either weekly or each subsequent time a confirmed infection of COVID-19 is identified and/or whenever three or more residents or staff experience a new onset of respiratory symptoms that occur within 72 hours. The notification must include information on mitigating actions implemented to prevent or reduce the risk of transmission and any details regarding whether normal operations will be altered. All notifications must comply with HIPAA and state privacy laws, meaning facilities must take steps to maintain the privacy and confidentiality of resident and staff information. The failure to timely notify residents and their representatives of these incidents could result in an enforcement action against the nursing home.

The April 19, 2020 CMS Directive can be found [here](#).

ACTION ITEMS

Nursing homes should review their existing infection prevention and control programs and update the policies and procedures for the prompt reporting of communicable diseases to the CDC, residents, and their representatives. Nursing homes may consider developing communication templates for describing the current COVID-19 situation within their facilities and the actions they have taken to prevent or reduce the risk of transmission. The templates should incorporate the implemented practices including, but not limited to restricting visitors, third-party delivery protocols, designated COVID-19 wings, sanitization, testing, etc.

We encourage nursing homes to view these notices as an important communication tool to highlight the efforts that have been taken to reduce the transmission of COVID-19. In this difficult situation, there have been many sacrifices, but there have been some positives gained as well. Social distancing has forced everyone to become creative in facilitating communication. Where visits used to unfold in the confines of the facility, nursing homes are now offering "Fence Fridays" where residents and their loved ones can physically see other, albeit from six feet apart, while experiencing the beauty of a spring day. Foulston Siefkin is proud to support you in your efforts to respond to and conquer this challenging situation.

FOR MORE INFORMATION

If you have questions or want more information regarding the CMS regulations mitigating COVID-19 in nursing homes, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity to work with you to meet your specific business needs. Foulston's healthcare lawyers maintain a high level of expertise regarding federal and state regulations affecting the healthcare industry. At the same time, our healthcare practice group's relationship with Foulston's other practice groups, including the taxation, general business, labor and employment, and commercial litigation groups, enhances our ability to consider all of the legal ramifications of any situation or strategy. For more information, contact **Brooke Bennett Aziere** at 316.291.9768 or baziere@foulston.com, **Lisa Brown** at 785.354.9414 or lbrown@foulston.com, or **Amanda Wilwert** at 913.253.2181 or awilwert@foulston.com. For more information on the firm, please visit our website at www.foulston.com.

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PRACTICE AREAS

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