

Publications

Health Care Alert: CMS Issues QSO Explaining Interim Final Rule on Reporting of COVID-19 Cases by Nursing Homes

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As set forth in our prior *Health Care Alert*, on April 30, 2020, the Centers for Medicare and Medicaid Services (CMS) published an Interim Final Rule that added new COVID-19-related reporting requirements to the Medicare Conditions of Participation (CoPs) for long-term care facilities. On May 6, 2020, CMS issued *Quality, Safety, and Oversight (QSO) letter 20-29-NH*, explaining the Interim Final Rule's new COVID-19 reporting and notification requirements. The QSO provided important clarifications, including the following:

- Facilities must submit their first set of data by 11:59 p.m. on May 17, 2020, with a two-week initial grace period to being reporting cases to the National Healthcare Safety Network (NHSN) (which ends at 11:59 p.m. on May 24, 2020). Facilities that fail to begin reports after the third week (by 11:59 p.m. on May 31, 2020) will receive a warning letter reminding them to begin reporting. For facilities that have not started reporting in the NHSN system by 11:59 p.m. on June 7, 2020 (ending the fourth week of reporting), CMS will impose a per day civil monetary penalty (CMP) of \$1,000 a day for the failure to report that week. Non-compliance for subsequent weeks will result in additional and increased CMPs.
- CMS established two new survey tags for noncompliance with the new reporting requirements – (1) F884 (reporting to CDC as required by 42 CFR §483.80(g)(1)-(2)) and (2) F885 (reporting to residents, their representatives, and families as required at §483.80(g)(3)(i)-(iii)).
- CMS anticipates publicly posting the NHSN data (including facility names, number of COVID-19 suspected and confirmed cases, deaths, and other data as determined appropriate) weekly on <https://data.cms.gov/> by the end of May.

- The NHSN reporting complements existing state level reporting efforts and does not replace existing state or local reporting requirements.
- Nursing homes must enroll in NHSN initially to submit its data. But once enrolled, states and local health departments are permitted to submit data on behalf of the nursing home. Additionally, data can be batched and submitted as a single file for multiple facilities. However, even if this were to occur, it does not relieve facilities of their accountability to report in accordance with the regulation.
- The NHSN system has the capability for retrospective reporting from January 1, 2020 onward, but CMS will not take enforcement action if a nursing home is unable to accurately report information from that time. CMS does, however, encourage facilities to report older data.
- Facilities are required to report deaths of residents that occur in other locations (i.e., a hospital).
- Facilities must notify **all** residents, representatives, and families when a notifiable event occurs, not just those affected with suspected or confirmed cases of COVID-19. The notification must include data when a confirmed COVID-19 case is identified or when three or more residents or staff have new onset of respiratory symptoms that occur within 72 hours of each other in the facility. Facilities must make cumulative updates for each additional notifiable event. CMS does not require a particular method of notification, and does not expect facilities to make individual telephone calls to each resident's family or responsible party; it does expect, however, that facilities make all reasonable efforts to promptly inform residents, their representatives, and families of the information facilities are required to provide.

Please also note that this reporting is only required for nursing homes.

Please refer to the QSO letter for more detailed information.

If you have questions about the new reporting rules or their impact on your organization, please contact Suzanne Scrutton, Robin Amicon, or your regular Vorys attorney.

Vorys COVID-19 Task Force

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.