

COVID-19: CMS Regulatory Review

During these unprecedented times, our deepest concerns go out to those directly impacted by the COVID-19 pandemic and those on the frontline keeping residents of seniors housing and skilled nursing communities safe. We understand that seniors housing and skilled nursing operators are bearing tremendous burdens, and NIC applauds your efforts to protect and serve residents of seniors housing and skilled nursing communities.

NIC is responding by doing what we do best – delivering data, analytics, and connections – to continue to provide transparency to the sector.

COVID-19: CMS Actions Taken

The Centers for Medicare and Medicaid Services (CMS) have taken numerous actions in response to the coronavirus pandemic. The following are the latest summaries and links to CMS for further details, organized categorically.

Facilities

NEW

- [New Reporting & Testing Requirements for Nursing Home Residents and Staff](#). CMS announces regulatory changes that require nursing homes to test staff and offer testing to residents for COVID-19. Nursing homes will have to provide tests to residents during all outbreaks, or when residents show any symptoms of COVID-19. Nursing homes using point-of-care testing devices will be required to report diagnostic test results as required by the CARES Act.
- [All U.S. Nursing Homes to Receive Point-of-Care COVID-19 Testing Kits](#). The federal government will be providing all nursing homes with point-of-care COVID-19 testing kits to be used for residents and workers. Nursing homes will receive the devices in an order determined by the rate of virus' spread in the surrounding community. 2,000 nursing homes are expected to receive the testing kits the week of July 19, 2020.
- [HHS Announces Nearly \\$4.9 Billion Distribution to Nursing Facilities Impacted by COVID-19](#): The U.S. Department of Health and Human Services (HHS) announced it has begun distributing billions in additional relief funds to skilled nursing facilities to help them combat devastating effects of the pandemic. The funding will be used to support nursing care properties suffering from significant expenses or lost revenue. All certified SNFs having six or more certified beds are eligible for this targeted distribution.
- [CMS Issues Guidance to States on Reopening Nursing Homes Safely](#): New guidance is available for state and local officials to ensure the safe reopening of nursing homes across the country. The guidance details critical steps nursing home and communities should take prior to relaxing restrictions implemented to prevent the spread of COVID-19. The guidance encourages state leaders to collaborate with state survey agencies and local health departments to decide how criteria should be implemented.
- [CMS Announces Independent Commission to Address Safety and Quality in Nursing Homes](#): The Centers for Medicare & Medicaid Services (CMS) announced a new independent Commission that will

conduct a comprehensive assessment of the nursing home response to the 2019 COVID-19 pandemic. The Commission will provide independent recommendations to the contractor to review and report to CMS to help inform immediate and future responses to COVID-19 in skilled nursing properties.

- **Long-Term Care Facility Transfer Scenarios:** CMS is providing supplemental information for transferring or discharging residents between skilled nursing facilities (SNFs) and/or nursing facilities based on COVID-19 status (i.e., positive, negative, unknown/under observation). In general, if two or more certified LTC facilities want to transfer or discharge residents between themselves for the purposes of cohorting, they do not need any additional approval to do so. However, if a certified LTC facility would like to transfer or discharge residents to a non-certified location for the purposes of cohorting, they need approval from the State Survey Agency.
- **CMS Facility without Walls (Temporary Expansion Sites):** To ensure that local hospitals and health systems have the capacity to handle a potential surge of COVID-19 patients, CMS took action to allow temporary expansion sites (also known as CMS Hospital Without Walls). This means that a long-term care (LTC) facility can temporarily transfer its COVID-19 positive resident(s) to another facility. The facility that is transferring a resident does not have to issue a formal discharge in this situation because it will still be considered the provider and will bill Medicare. The facility transferring will then be responsible for reimbursing the other provider that accepted its resident(s) during the emergency period. This will help residents with COVID-19 by placing them into facilities that are prepared to care for them, which is consistent with recent CDC guidance. In addition, it will help residents without COVID-19 by placing them in facilities without other COVID-19 residents, which will mitigate the risk of spreading the virus.
- **CMS Guidance to Long Term Care Properties:** The Centers for Medicare & Medicaid Services (CMS) and the Centers for Disease Control and Prevention (CDC) are issued new recommendations to State and local governments and long-term care facilities to help mitigate the spread of COVID-19. CMS issued new guidance while highlighting that long-term care facilities are a critical component of America's healthcare system and they are unique, as they serve as both healthcare providers and as full-time homes for some of the most vulnerable Americans. To address this spread, CMS, is working with CDC to provide nursing homes with clear guidance on how they can keep their residents safe. The recommendations include the following:
- **Coronavirus Stimulus Bill Includes \$200M for Nursing Home Infection-Control Efforts:** Given the fact that CMS has made infection control a priority for nursing and current surveys of nursing homes, this bill will put additional support behind the current efforts of CMS to help ensure the safety of nursing home residents and staff. In addition, this is targeted to help the states' efforts to prevent the spread of the virus.

Workforce & Labor

- **CMS Suspends Rules to Boost Frontline Medical Staff:** There are significant challenges delivering vital services at hospitals and health systems throughout the U.S. given the increases in patient volumes. CMS announced changes that affect medical staff including doctors and nurses in order to focus on reducing supervision and certification requirements so that practitioners can be hired quickly and perform work to the fullest extent of their licenses. This effort will allow hospitals, clinics, and

other healthcare facilities to boost their frontline medical staffs as they fight to save lives during the pandemic. As a result of this CMS action:

- » Doctors can now directly care for patients at rural hospitals, across state lines if necessary, via phone, radio, or online communication, without having to be physically present
 - » Nurse practitioners, in addition to physicians, may now perform some medical exams on Medicare patients at skilled nursing facilities so that patient needs continue to be met
 - » Occupational therapists from home health agencies can now perform initial assessments on certain homebound patients
 - » Hospice nurses will be relieved of hospice aide in-service training tasks so they can spend more time with patients
- **CMS Waives Workforce Training and Certification Requirements:** To stem pandemic-related staffing shortages, CMS is waiving a rule that says new aides cannot work longer than four months without becoming certified. The relief provides much-needed support to a workforce under tremendous strain.

Regulatory & Reimbursement

- **CMS Reevaluates Accelerated Payment Program and Suspends Advance Payment Program:** CMS announced that it is reevaluating the amounts that will be paid under its Accelerated Payment Program and suspending its Advance Payment Program to Part B suppliers effective immediately. The agency made this announcement following the successful payment of over \$100 billion to healthcare providers and suppliers through these programs. CMS had expanded these temporary loan programs to ensure providers and suppliers had the resources needed to combat the beginning stages of the COVID-19. Funding will continue to be available to hospitals and other healthcare providers on the front lines of the coronavirus response primarily from the Provider Relief Fund.
- **CMS Approves 12 Additional State Medicaid Waivers to Give States Flexibility to Address the Coronavirus Disease 2019 (COVID-19):** CMS approved an additional 10 state Medicaid waiver requests, bringing the total number of approved waivers for states to 23. The waivers offer states new flexibilities to focus their resources on combatting the outbreak and providing the best possible care to Medicaid beneficiaries in their states.
- **Emergency Preparedness and Response for Home and Community Based (HCBS) Waivers:** CMS approved one additional Appendix K Amendments requests to existing Home and Community Based Services (HCBS) Waivers under Section 1915 (c) of the Social Security Act (Act), bringing the total to 3 approved waivers to date. Appendix K is a tool states may use to temporarily modify approved HCBS Waivers during emergency situations.
- **New Guidance Regarding Enhanced Medicaid Funding for States – Federal Medical Assistance Percentage (FMAP):** CMS has released new guidance under the Families First Coronavirus Response Act that provides states with more federal Medicaid funding during the COVID-19 pandemic. This includes a 6.2 percentage point FMAP increase which all states are eligible for provided they meet

certain requirements. This is effective beginning January 1, 2020 and extending through the last day of the calendar in which the public health emergency declared by the Secretary of Health and Human Services for COVID-19.

Surveys & Reporting

- **CMS Orders Resumption of Nursing Home Staffing Data Collection.** CMS announced plans to end the emergency waiver and resume requirements for all nursing homes to submit staffing data through the Payroll-Based Journal (PBJ) system by August 14, 2020. The waiver was meant to allow regulators to concentrate efforts on dealing with COVID-19 and lessen administrative burdens on providers.
- **Administration Unveils Enhanced Enforcement Actions Based on Nursing Home COVID-19 Data and Inspection Results.** CMS unveiled enhanced enforcement for nursing homes with violations of longstanding infection control practices. The enhanced and targeted accountability measures are based on early trends in the most recent data regarding incidence of COVID-19 in nursing homes, as well as data regarding the results of the agency's targeted infection control inspections.
- **Requirements for Notification of Confirmed COVID-19 in Nursing Homes:** CMS is now requiring nursing homes to report cases of COVID-19 directly to the Centers for Disease Control and Prevention (CDC) and requiring nursing homes fully cooperate with CDC surveillance efforts around COVID-19 spread. The CDC will be providing a reporting tool to nursing homes that will support Federal efforts to collect nationwide data to assist in COVID-19 surveillance and response. The coordinated effort with CMS will provide even more detailed information to state and local health departments on how COVID-19 is affecting nursing home residents.
- **CMS is Prioritizing and Suspending Certain Surveys:** CMS is prioritizing surveys by authorizing modification of timetables and deadlines for the performance of certain required activities, delaying revisit surveys, and generally exercising enforcement discretion for three weeks. During the three week time period, only the following surveys will be prioritized and conducted:
 - » Complaint/facility-reported incident survey
 - » Targeted Infection Control Survey
 - » Self-assessments

Timeline of Funding Packages and Select CMS Actions Taken

- March 4:** CMS Suspends All Non-Emergency Inspections
- March 6:** Phase 1: Coronavirus Preparedness & Response Supplemental Appropriations Act Passed
- March 13:** Telehealth Benefits Expanded with Emergency Declaration
- March 18:** Phase 2: Families First Coronavirus Response Act Passed
- March 27:** Phase 3: Coronavirus Aid, Relief & Economic Security Act (CARES) Passed
- March 30:** CMS Permits Hospitals Without Walls and Issues Waivers to Expand Healthcare Workforce
- April 19:** CMS Announces Nursing Homes COVID-19 Transparency Effort
- April 24:** \$484B in Additional Coronavirus Relief Provided for Small Business and Hospital Support
- April 26:** CMS Suspends Advance Payment Program
- April 30:** CMS forms Coronavirus Commission for Safety and Quality in Nursing Homes
- May 8:** CMS publishes COVID-19 Reporting Requirements for State Survey Agencies
- May 13:** Recommendations and Best Practices Toolkit Released
- May 18:** CMS Issues Guidance on the Reopening of Nursing Homes
- May 22:** HHS announces \$4.9B distribution to nursing facilities impacted by COVID-19
- June 1:** Enhanced Enforcement Actions Unveiled Based on COVID-19 Data and Inspections
- June 25:** CMS Orders Resumption of Nursing Home Staffing Data Collection
- July 14:** CMS to Send Point-of-Care COVID-19 Testing Kits to Nursing Homes
- August 25:** New Reporting & Testing Requirements for Nursing Home Residents and Staff