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Trump Administration Unveils Enhanced Enforcement Actions Based on Nursing Home COVID-19 Data and Inspection Results

Today, under the leadership of President Trump, the Centers for Medicare & Medicaid Services (CMS) unveiled enhanced enforcement for nursing homes with violations of longstanding infection control practices. This announcement builds on the previous actions CMS has taken to ensure the safety and security of America's nursing homes as the nation battles coronavirus disease 2019 (COVID-19), and is a key step in the Trump Administration's Guidelines for Opening Up America Again.

"The Trump Administration is taking consistent action to protect the vulnerable," said CMS Administrator Seema Verma. "While many nursing homes have performed well and demonstrated that it's entirely possible to keep nursing homes patients safe, we are outlining new instructions for state survey agencies and enforcement actions for nursing homes that are not following federal safety requirements."

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. CMS is increasing enforcement (e.g., civil money penalties (CMPs)) for facilities with persistent infection control violations, and imposing enforcement actions on lower level infection control deficiencies to ensure they are addressed with increased gravity.

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provided additional funding to CMS for necessary survey and certification work related to COVID-19, of which \$80 million in new resources will be available for states to increase surveys. To ensure effective oversight is achieved, CMS will allocate the CARES Act funding based on performance-based metrics. States that have not completed 100 percent of focused infection control surveys of their nursing home by July 31, 2020 will be required to submit a corrective action plan to their CMS location outlining the strategy for completion of these surveys within 30 days. If, after the 30-day period, states have still not performed surveys in 100 percent of nursing homes, their CARES Act fiscal year 2021 allocation may be reduced by 10 percent. Subsequent 30-day extensions could result in an additional 5 percent reduction. These funds would then be redistributed to those states that completed 100 percent of their focused infection control surveys by July 31.

Utilizing the CARES Act funding, states will be required to perform on-site surveys of nursing homes with previous COVID-19 outbreaks and will be required to perform on-site surveys (within three to five days of identification) of any nursing home with new COVID-19 suspected and confirmed cases.

To help nursing homes implement infection control best practices, CMS will provide technical assistance through Quality Improvement Organizations (QIOs). CMS and the Centers for Disease Control and Prevention (CDC) will continue to monitor the data it receives through the new nursing home COVID-19 surveillance system to identify nursing homes with outbreaks and work with Governor's offices and states to keep nursing home residents safe.

Since April 19, 2020, CMS has required nursing homes to inform, residents, their families, and representatives of COVID-19 cases in their facilities. For the first time, nursing homes are required to report COVID-19 cases and deaths directly to the CDC on an ongoing basis as the result of an unprecedented CMS regulatory requirement issued on May 1, 2020. The Trump Administration implemented the new reporting requirement to develop a robust federal disease surveillance system to quickly identify problem areas and inform future infection control actions. The reporting requirement applies to long-term care facilities only (also known as skilled nursing facilities and nursing facilities, and generally as nursing homes). By law, CMS regulates and oversees nursing homes, which are certified to provide Medicare and/or Medicaid skilled nursing facility services. Therefore, the data does not include COVID-19 data from assisted living facilities, which are not regulated at the federal level.

As of May 24, 2020, about 12,500 nursing homes – approximately 80 percent of the 15,400 Medicare and Medicaid nursing homes – had reported the required data to the CDC. These facilities reported over 60,000 confirmed COVID-19 cases and almost 26,000 deaths. Of the nursing homes that reported data, approximately one in four facilities had at least one COVID-19 case, and approximately one in five facilities had at least one COVID-19 related death. Early analysis shows that facilities with a one-star quality rating were more likely to have large numbers of COVID-19 cases than facilities with a five-star quality rating. CMS will take enforcement action against the nursing homes that have not reported data into the CDC as required under CMS participation requirements.

CMS will post the underlying CDC-collected data on a link on Nursing Home Compare later this week, so the public can view general information of how COVID-19 has impacted nursing homes in a user-friendly format. The data will be broken down by state, number of residents and number of staff. The data will be searchable by facility name and will be downloadable so researchers and other stakeholders can perform their own in-depth analysis. CMS will update the data weekly. CMS will also post a link to the data on the home page of the Nursing Home Compare website so patients, residents, and families can easily find it. Nursing Home Compare is a valuable tool for patients, residents, and families to understand the quality of nursing homes and to support their healthcare decisions. Adding this information only increases its value and reinforces CMS's commitment to transparency.

CMS is ratcheting up penalties for noncompliance with infection control to help prevent backsliding, improve accountability, and ensure prompt compliance. Since February 2020 CMS has provided over 13 guidance documents and facts sheets pertaining to infection control and conducted weekly calls with nursing homes to share best practices from the field. The enhanced enforcement actions will increase penalties for nursing homes have had past infection control deficiencies.

As part of CMS's response to the COVID-19 pandemic, the agency prioritized the types of nursing home inspections that take place. On March 4, 2020 CMS prioritized inspections to allow inspectors to focus on the most serious health and safety threats like infectious diseases and abuse. On March 23, CMS suspended certain inspections to increase our focus on preventing the spread of COVID-19. Since March 4, CMS and its network of state-based inspectors have conducted over 8,300 surveys with the results of a total of 5,700 available today. There is currently wide variation in the number of focused infection control surveys of nursing homes performed by states, between 11.4 percent and 100 percent, with a national average of approximately 54.1 percent. CMS plans to post the results of the inspections later this week, on a monthly basis as they are completed.

All of this information are being used to strengthen CMS enforcement action going forward, such that nursing homes are held accountable for resident care. Older Americans are particularly vulnerable to complications arising from the virus and nursing home residents have been uniquely affected. The Trump Administration is intensely focused on protecting this population, but it ultimately falls to the nursing homes themselves to ensure they provide care compliant with essential health and safety requirements.

CMS is also providing additional support and technical assistance to low performing nursing homes through its QIOs. QIOs are organizations composed of health quality experts and clinicians that have experience in helping healthcare provider to improve the quality of care delivered to people with Medicare. CMS has now charged the QIOs to focus their efforts on providing education and training to all nursing homes in the country. This will include weekly National Infection Control Training, which focuses on all aspects of infection control, prevention and management to help nursing homes prevent the transmission of COVID-19.

QIOs are also providing direct assistance to small and rural nursing homes and those serving vulnerable populations in areas where access to care is limited. The QIOs will help them understand and comply with CMS and CDC reporting requirements and, in some cases, they will provide on-site support to help nursing homes that have been identified as having the greatest needs in infection control. CMS will be working with Governors' offices to direct QIOs to those nursing homes that have significant needs and have had outbreaks. QIOs will help these facilities create an action plan and implement specific steps to establish a strong infection control and surveillance program.

Since the beginning of the pandemic, CMS has taken unprecedented and aggressive steps to address the impact of COVID-19. The importance of ongoing transparency and information sharing has proven to be one of the keys to the battling this pandemic.

The full list of CMS Public Health Action for Nursing Homes on COVID-19 to date is in the chart below.

CMS Public Health Action for Nursing Homes on COVID-19 as of June 1, 2020	
February 6, 2020	CMS took action to prepare the nation's healthcare facilities for the COVID-19 threat.
March 4, 2020	CMS issued new guidance related to the screening of entrants into nursing homes.
March 10, 2020	CMS issued guidance related to the use of personal protective equipment (PPE).
March 13, 2020	CMS issued guidance on the restriction of nonessential medical staff and all visitors except in certain limited situations.
March 23, 2020	CMS announced a suspension of routine inspections, and an exclusive focus on immediate jeopardy situations and infection control inspections.
March 30, 2020	CMS announced that hospitals, laboratories, and other entities can perform tests for COVID-19 on people at home and in other community-based settings outside of the hospital – including nursing homes.
April 2, 2020	CMS issued a call to action for nursing homes and state and local governments reinforcing infection control responsibilities and urging leaders to work closely with nursing homes on access to testing and PPE.
April 15, 2020	CMS announced the agency will nearly double payment for certain lab tests that use high-throughput technologies to rapidly diagnose large numbers of COVID-19 cases.
April 19, 2020	CMS announced it will require nursing homes to report cases of COVID-19 to all residents and their families, as well as directly to the CDC. On May 1 ,

	CMS implemented the proposed policy in an Interim Final Rule. The rule became effective on May 8.
April 30, 2020	CMS announced the formation of an independent Commission that will conduct a comprehensive assessment of the nursing home response to COVID-19.
May 6, 2020	CMS released a memorandum to State Survey Agency directors providing more details on the new reporting requirements of the Interim Final Rule.
May 13, 2020	CMS published a new informational toolkit comprised of recommendations and best practices from a variety of front line health care providers, governors' COVID-19 task forces, associations and other organizations and experts that is intended to serve as a catalogue of resources dedicated to addressing the specific challenges facing nursing homes as they combat COVID-19. Toolkit is found here: Toolkit
May 18, 2020	CMS issued guidance for state and local officials on the reopening of nursing homes.
June 16, 2020	CMS issued guidance to states on COVID-19 survey activities, CARES Act funding, enhanced enforcement for infection control deficiencies, and quality improvement activities in nursing homes. CMS also issued a letter to Governors.

To view the state survey memo, visit: <https://www.cms.gov/medicareprovider-enrollment-and-certificationsurveycertificationgeninfopolicy-and-memos-states-and/covid-19-survey-activities-cares-act-funding-enhanced-enforcement-infection-control-deficiencies-and>

To view the letter to the Governors, visit: <https://www.cms.gov/files/document/6120-letter-governors.pdf>

To view a state breakdown of the Nursing Home COVID-19 data, visit: <https://www.cms.gov/files/document/6120-nursing-home-covid-19-data.pdf>

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