

Understanding the New CDC/CMS COVID-19 Notification Requirements

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Starting May 8, 2020,¹ long term care facilities (SNFs) will be required to inform “residents, their representatives, and families of those residing in facilities” about COVID-19 cases in their facilities. This must be started by May 9, 2020. They will also be required to submit data to the Center for Disease Control and Prevention Center (CDC) National Healthcare Safety Network (NHSN). Through [QSO 20-29](#), on May 6, 2020, the Centers for Medicare & Medicaid Services (CMS) released guidance purporting to explain these new requirements, but questions still remain. This article will explain the requirements, highlight significant issues, and suggest steps SNFs can be taking now to assure compliance.

CMS has created two new deficiency citations (Ftags) for the reporting requirements. F884 covers reporting to the CDC through the NHSN, and F885 is for informing residents and families. We discuss each of these below.

I. F884: (§483.80(g)(1)(2)): CDC REPORTING

The new regulations require SNFs to report a significant amount of data, at least weekly, through the NHSN. All information must be submitted electronically through the NHSN portal. A review of the four [NHSN Long Term Care Facilities modules](#) and instructions suggests that despite CMS’s stated intention to provide transparent reporting, the resulting data collection will not necessarily accomplish that goal. In some instances, CDC requires facilities to use methodologies and definitions that are different from those used by state and local agencies and other public health officials. For example, when reporting the number of deaths to the NHSN, facilities must combine laboratory-positive COVID-19 deaths with “suspected” COVID-19 deaths. In Pennsylvania, the Department of Health only reports confirmed COVID-19 deaths. Additionally, SNFs are required to submit data of which they are aware regarding the death of a resident, even if the death occurred after discharge or in another health care facility. The lack of consistency between reports and agencies will likely result in confusing and misleading data reporting, and facilities should be prepared to explain this if questioned.

¹ CMS announced its plans to require this reporting on April 19, 2020, ([QSO 20-26](#)) and released the prepublication of the [Interim Final Rule With Comment](#) on April 28, 2020. The new regulations affecting nursing homes at 42 CFR 483.80 (g)(1)-(3) are effective immediately upon publication in the [Federal Register](#). (*see*, 85 Fed. Reg. at 27601).

Q: When is the “start date” for data collection?

A: CDC would like facilities to count retroactively to January 1, 2020, but facilities are only required to go use **May 8, 2020** as the start date.

Q: What is the “real” effective date?

A: The CDC reporting requirements are effective May 8, 2020 with the first report due by 11:59 p.m. May 17, 2020, but CMS has granted a **two week grace period until May 31, 2020**. **There is no grace period for the resident and family notifications.**

Q. Who will enforce compliance with F884?

A: Federal surveyors will be reviewing submissions for timeliness and completeness. Noncompliance will result in the issuance of a 2567 citation at F884 deficiency with a scope and severity of F.

Q: What happens if a SNF is late in reporting to the NHSN?

A: If no report is made by May 31, 2020, CMS will send a “warning letter.” If no report is made by the end of the fourth week, June 7, 2020, CMS will impose a per day (PD) CMP of \$1,000 for one day for the failure to report that week. For each subsequent week of noncompliance, there will be an additional one day PD CMP at an amount increased by \$500. Each subsequent week of noncompliance will result in an additional one day PD CMP of \$500 added to any previous CMPs.

Q: How does CMS define “suspected” COVID-19?

A: “Suspected” is defined as residents being managed or treated with the same precautions as those with a laboratory positive COVID-19 test result but have not been tested or have pending test results. It also includes residents with a laboratory negative COVID-19 test result but who continue to be managed or treated with the same precautions as laboratory positive COVID-19 residents because of exposure and/or suggestive signs and symptoms.

When reporting, facilities must include residents with new suspected COVID-19 regardless if the resident is still in the facility, was transferred out, admitted to another facility, or died.

Q. What will CMS do with the reports?

A: CMS anticipates publicly posting facility names, number of COVID-19 suspected and confirmed cases, deaths, and other data yet to be identified weekly on its website <https://data.cms.gov/> by the end of May.

II. **F884: (§483.80(g)(3)): INFORMING RESIDENTS, RESPONSIBLE PARTIES AND FAMILIES**

Effective May 8, 2020, facilities are required to inform families about the number of positive COVID-19 cases as well as the number of clusters of three or more residents and staff who exhibit new respiratory symptoms within 72 hours of each other (Clusters). Facilities will be required to provide cumulative updates at least weekly or by 5:00 p.m. the next calendar day after new positive cases or new Clusters have been identified. The facilities must also provide information about mitigating actions they have taken to prevent or reduce the risk of transmission, including if normal operations in the nursing home will be altered (e.g., restrictions to visitation or group activities).

Q: How are facilities supposed to inform residents, responsible parties and families?

A: CMS has given facilities great flexibility in determining how best to communicate the required information, such as informing families and representatives through email listservs, website postings, and/or recorded telephone messages. CMS does not expect facilities to make individual telephone calls, *except* as otherwise required to notify representatives regarding an individual resident's change in condition.

Facilities may want to use one or more modes of communication for different groups or purposes. For example, a facility may want to use an email blast to notify families initially of these new requirements, and then establish a recorded telephone message line that will be updated as necessary for families and others to call. Facilities could also continue to post their mitigation strategies on their websites. Residents might be provided information by way of postings in the building, video updates or at mealtime.

PRACTICE TIP: Consider carefully how information is conveyed. Facilities experiencing an outbreak prefer to provide daily updates through a recorded telephone message instead of through daily email blasts. Always provide a name and contact information for families to call if they want additional information.

Q: What information must be provided to residents, responsible parties and families?

A: Cumulative, confirmed COVID-19 cases (residents and staff) as well as clusters of three or more residents and/or staff with respiratory symptoms within 72 hours. This information must be updated:

- By 5:00 p.m. the next day after one or more confirmed positive cases is identified;
- By 5:00 p.m. the next day after surveillance identifies that three or more clusters of residents/staff have had new respiratory symptoms within 72 hours of each other; or

- Weekly if there have been no changes.

Families must also be informed about the facility's mitigation efforts. At a minimum, this should include a statement that the facility is following the guidance and direction of federal, state and local agencies and public health officials, and that the directives change frequently.

Q: What date can be used to start the cumulative totals?

A: Facilities can use May 8, 2020 to start their cumulative totals. They do not need to go back to January 1, 2020. When notifying families, a facility can tell them that CMS has recently instituted a new program that requires nursing homes to provide residents, responsible parties and families with specific information about COVID-19. For example: "As of May 8, 2020, we had ____ confirmed cases of COVID-19, and ____ individuals who were exhibiting new respiratory symptoms. These cumulative numbers will be updated regularly as required."

Q: Who are considered "staff" for purposes of reporting confirmed cases or clusters of respiratory symptoms?

A: "Staff" includes employees, consultants, contractors, volunteers, and caregivers who provide care and services to residents in the facility, including nurse aides that have not yet completed a nurse aide training, competency, and evaluation program (NATCEP) but are providing services to residents.

Q: Must staff cases be included in the cumulative totals with resident cases?

A: Residents and families must be informed about staff cases as well as resident cases. Some facilities may choose to combine both types of cases, while others may decide to report separately. Either is allowable, as long as the cumulative totals are updated within the regulatory timeframes.

Q: Are facilities required to inform residents and families about deaths?

A: No, facilities are only required to submit information about deaths to the CDC. They are not required to include death-related data in their cumulative reports to families and residents. Facilities should be aware that CMS has indicated that it intends to post facility-specific death statistics on its website starting the end of May. Facilities are still required to notify families and responsible parties individually if their loved one passes.

Q: Who will be enforcing F885?

A: Federal and state surveyors may both enforce F885. Surveyors will be looking for documentation that facilities have provided residents and families with all

the required information in a timely manner. Facilities should keep copies of all transcripts (if using voicemail), emails, and periodic website screen shots.

III. NEW ELEMENTS OF COVID-FOCUSED SURVEY RELATED TO REPORTING OBLIGATIONS

CMS has provided facilities with tools to help maintain compliance with COVID-related issues. Most notably, [QSO 20-29](#) includes revisions to the COVID-focused survey protocol that outline what surveyors will be examining to assess compliance with these new requirements. Facilities should be using these tools to conduct their own self-assessments on a regular basis.

***Disclaimer:** This article does not offer specific legal advice, nor does it create an attorney-client relationship. You should not reach any legal conclusions based on the information contained in this article without first seeking the advice of counsel.*

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