

Nursing & Assisted Living Facility Professional

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SENT EACH MONTH TO YOU AS A MEMBER OF THE HEALTHCARE HEROES

THE ADELMAN ADVANTAGE by Rebecca Adelman

Nursing Home Communicable Disease Reporting Requirements and Possible Penalties



The Centers for Medicare & Medicaid Services (CMS) has been delivering Policies and Memos to the States and Regions regarding every aspect of nursing home operations and care during the COVID-19 pandemic. Beginning March 4, 2020 with the most recent guidance posted April 19, 2020, CMS has been responding to pressure from nursing home associations, resident advocates and the media with

the policies that are listed at the end of this article. For more details and our firm's recommended action plans to mitigate the impact these policies may have on your organization, please contact me.

This article will focus on the April 19, 2020 CMS policy on "Upcoming Requirements for Notification of Confirmed COVID-19 (or COVID-19 Persons under Investigation) Among Residents and Staff in Nursing Homes" requiring that skilled nursing facilities report to the CDC on a weekly basis, based on the information they have on hand. CMS will also be assessing Civil Monetary Penalties (CMP) of possibly \$1000 per week (and may increase) if nursing homes are not reporting.

I. Upcoming Requirements for Notification of Confirmed COVID-19 (or COVID-19 Persons under Investigation) Among Residents and Staff in Nursing Homes

On April 19, 2020, CMS reinforced the existing requirement that that nursing homes must report communicable diseases, healthcare-associated infections, and potential outbreaks to State and Local health departments. The complete Memorandum (Ref. QSO-20-26-NH) can be found on the CMS website (www.cms.gov).

In rulemaking that will follow, CMS is requiring facilities to report this data to the Centers for Disease Control and Prevention (CDC) in a standardized format and frequency defined by CMS and CDC.

Failure to report cases of residents or staff who have confirmed COVID-19 and Persons under Investigation (PUI) could result in an enforcement action. CMS will also be previewing a new requirement for facilities to notify residents' and their representatives to keep them up to date on the conditions inside the facility, such as when new cases of COVID-19 occur.

A. What Should Your Organization Be Doing NOW

Your organization must remain up to date with the CDC Guidance as they are changing frequently and being revised. On April 13, 2020, the CDC changed the Infection Control Guidance. These revisions were updated based on currently available information about COVID-19 and the current situation in the United States, which includes community transmission, infections identified in healthcare personnel (HCP), and shortages of facemasks, N95 filtering facepiece respirators (FFRs) (commonly known as N95 respirators), eye protection, gloves, and gowns. Visit this link for information. <https://www.cdc.gov/coronavirus/2019-nCoV/index.html>

Review the CMS policies and related tools and reporting forms for continued compliance (see the list at the end of the article).

B. The Upcoming Reporting Requirements and Actions NOW

To Do: Comply With Facility Reporting:

Current requirements at 42 CFR 483.80 and CDC guidance specify that nursing homes notify State or Local health department about residents or staff with suspected or confirmed COVID-19, residents with severe respiratory infection resulting in hospitalization or death, or ≥ 3 residents or staff with new-onset respiratory symptoms within 72 hours of each other. At present, these data are not collected by CMS, CDC, or the Federal Emergency Management Agency (FEMA). CMS and CDC will soon provide nursing homes with specific direction on standard formatting and frequency for reporting this information through the CDC's National Health Safety Network (NHSN) system. Currently, this information is provided optionally by nursing homes. The required collection of this information will be used to support surveillance of COVID-19 locally and nationally, monitor trends in infection rates, and inform public health policies and actions. This information may be retained and publicly reported in accordance with law.

To Do: Report to Residents and Residents Representatives

In addition to requiring reporting to CDC, in rulemaking that will follow, CMS also be requiring that facilities notify its residents and their representatives to keep them informed of the conditions inside the facility. Develop policies and procedures for reporting to residents and families as outlined here.

This is separate from the reporting required to CDC in that this information will be shared by the nursing home directly with

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residents and their representatives. At a minimum, once these requirements are in place, nursing homes must inform residents and their representatives within 12 hours of the occurrence of a single confirmed infection of COVID-19, or three or more residents or staff with new-onset of respiratory symptoms that occur within 72 hours. Also, updates to residents and their representatives must be provided weekly, or each subsequent time a confirmed infection of COVID-19 is identified and/or whenever three or more residents or staff with new onset of respiratory symptoms occurs within 72 hours.

Facilities will include information on mitigating actions implemented to prevent or reduce the risk of transmission, including if normal operations in the nursing home will be altered. This information must be reported in accordance with existing privacy regulations and statute.

In rulemaking that will follow, failure to report resident or staff incidences of communicable disease or infection, including confirmed COVID-19 cases (or Persons Under Investigation for COVID-19), or provide timely notification to residents and their representatives of these incidences, as required, could result in an enforcement action against the nursing home by CMS.

C. Prepare for Federal, State and Local Visits

A reminder that federal law mandates immediate access to any residents by any representative of the Secretary or State. The purpose of these visits will be for CDC (or its agents) to perform on-site infectious disease surveillance, testing of healthcare personnel and residents, or other related activities, as permitted under law.

Review all CDC reports and strategies and the CMS Guidance for Infection Control and Prevention of Coronavirus Disease 2019 (COVID-19) in nursing homes (REVISED) (March 13, 2020 Memorandum, Ref. QSO-20-14-NH).

Please reach out to me for resources, toolkits, forms and other risk mitigation and legal guidance during this challenging time. We are proud to be of service to our heroic providers and strong organizational leaders.

D. Implement All Policies From CMS and CDC

Here is a list of the Policy Memos from CMS. Please review and implement those related to nursing homes.

Novel Coronavirus (COVID-19) Long-Term Care Facility Transfer Scenarios

Guidance for Processing Attestations from Ambulatory Surgical Centers (ASCs) Temporarily Enrolling as Hospitals during the COVID-19 Public Health Emergency

Guidance for Infection Control and Prevention of Coronavirus Disease 2019 (COVID-19) in dialysis facilities (Revised)

Guidance for Infection Control and Prevention of Coronavirus Disease (COVID-19) in Hospitals, Psychiatric Hospitals, and Critical Access Hospitals (CAHs): FAQs, Considerations for Patient Triage, Placement, Limits to Visitation and Availability of 1135 waivers.

Guidance for Infection Control and Prevention of Coronavirus Disease 2019 (COVID-19) in Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs) and Psychiatric Residential Treatment Facilities (PRTFs)

Emergency Medical Treatment and Labor Act (EMTALA) Requirements and Implications Related to Coronavirus Disease 2019 (COVID-19) (Revised)

Guidance for Infection Control and Prevention of Coronavirus Disease (COVID-19) in Outpatient Settings: FAQs and Considerations

Clinical Laboratory Improvement Amendments (CLIA) Laboratory Guidance During COVID-19 Public Health Emergency

Prioritization of Survey Activities

Guidance for Infection Control and Prevention of Coronavirus Disease 2019 (COVID-19) in nursing homes (REVISED)

Guidance for Infection Control and Prevention of Coronavirus Disease 2019 (COVID-19) in dialysis facilities

Guidance for Infection Control and Prevention Concerning Coronavirus Disease 2019 (COVID-19) in Home Health Agencies (HHAs)

Guidance for use of Certain Industrial Respirators by Health Care Personnel

Guidance for Infection Control and Prevention Concerning Coronavirus Disease 2019 (COVID-19) by Hospice Agencies

Emergency Medical Treatment and Labor Act (EMTALA) Requirements and Implications Related to Coronavirus Disease 2019 (COVID-19)

Guidance for Infection Control and Prevention of Coronavirus Disease 2019 (COVID-19) in nursing homes

Suspension of Survey Activities

Guidance for Infection Control and Prevention Concerning Coronavirus Disease (COVID-19): FAQs and Considerations for Patient Triage, Placement and Hospital Discharge

We are here to bring you peace of mind so let me hear from you and STAY SAFE.

Rebecca Adelman is an entrepreneur, influencer, thought leader and founder of Adelman Law Firm, a Women's Business Enterprise National Council (WBENC) certified Women Business Enterprise (WBE) established in 2001. For nearly 30 years, Rebecca has concentrated her practice in insurance defense and business litigation. The firm's practice extends through the Tri-States of Arkansas, Mississippi and Tennessee. Rebecca's insurance defense practice includes representation of insurance companies and long-term care providers and their insurers, both regionally and nationally. She also provides consulting services and educational programming to healthcare professionals and business associates. She has active practices in the areas of general liability, professional liability, premises, and employment law. She is a listed mediator serving all areas of business and healthcare litigation. Contact Rebecca at rebecca@adelmanfirm.com and visit www.adelmanfirm.com and www.rebeccaadelman.com.

Riding the Waves



For staff working in nursing homes and assisted living communities, it probably feels like they are riding an emotional tsunami fraught with an array of emotions - frustration, fear, anxiety, and anger, to name a few. Staff are being pulled in multiple directions to address extensive needs and demands at work, and at home. It's no wonder that people may also feel worried. But, might there be an alternative to worrying?

I'm not going to tell you to not worry. That's kind of like me telling you to not breathe. Worry is a common experience, but the good news is that we have choice about the relationship we want to have with that emotion. When we feel anxious (and pick any number of things that drive anxiety right now), we worry. Maybe we worry about what is going to happen, what we'll do next, and on and on. The problem with that particular approach is that the anxiety and worry affect our minds and bodies in destructive ways. Even if in *this moment* there is no actual threat, if we worry, the body reacts as if there is a danger *right in front of us*. We are on full alert.

Take this excerpt written by Wayne Muller from his book *a life of being, having and doing enough*.

“Worry comes with an implicit promise that abiding in its company will ensure that our problem will be solved – that we can somehow actually worry it away, fix it before anything bad happens. But worry is a false promise, a Trojan horse, a wolf in sheep’s clothing. While neither healing nor repairing anything at all, it saturates us with stress and uses all our attention to project fear and weakness into every possible future disaster. We manufacture catastrophic expectations, which cause our biological and nervous systems to remain forever on full, exhausting alert.”

When we remain on “full, exhausting alert” all the time, we suffer. Given that the pandemic may be far from over, and certainly the repercussions will be with us for a very, very long

time, we must strive for a different, and healthier, response than worry.

At the beginning of April, I attended the virtual annual meeting of The Society for Post-Acute and Long-Term Care Medicine (AMDA) and in a session on burnout prevention, the speakers, Ashley Swinson and Lisa Brooks, said something that resonated with me, “Ride the wave of discomfort.” My mind imagined a huge wave, whitecaps bubbling on the edges, foam churning. While I’ve never surfed (and likely never will!), the concept of riding the wave hit home for me. By choosing to ride the wave of discomfort, we are choosing to accept the way that things are. Don’t make the mistake of thinking that that means things can’t change. Nope, it just means that right now, we’re pretty uncomfortable in just about every realm of our lives, and, *it just is*. If we expend our energy fighting the current reality, we’re going to waste precious time and effort that can be spent on collaborating, sharing resources and finding solutions.

This leads me to another important concept - radical acceptance. Do a quick internet search of radical acceptance and you’ll come up with great books, blogs and articles. One of the leaders in this area is psychologist Tara Brach, who describes radical acceptance as “Clearly recognizing what we are feeling in the present, so that we can deal with that experience with compassion.” In other words, “This is happening right now. I sure don’t like it. But, I can handle it.” Accepting the current reality with all the sadness, loss and pain, certainly is not easy.

Psychologist Jennifer Delgado says, “Practicing radical acceptance simply means that you are recognizing reality, what happened or is happening, because fighting against it will only intensify your emotional reaction.” She also correlates fighting reality with increasing suffering and clarifies that while “pain is inevitable, suffering is optional.” What we are all going through right now is horribly painful, but we can make the choice to not suffer. For example, if we think, or communicate, statements like “This shouldn’t be happening,” or, “Why me?” we are adding suffering onto the pain of the current reality that the pandemic is happening, and our way of living and working is dramatically altered. Our energy is better spent on problem-solving, building partnerships and hopefully preventing this situation from happening again.

To every person working in healthcare in every setting, and in every department, thank you for your courage, your sacrifices and your commitment to caring for the most vulnerable people in our communities. We are riding the waves, and, we will get through this together.

Radical Acceptance: The technique to alleviate suffering by Jennifer Delgado

<https://psychology-spot.com/radical-acceptance/>

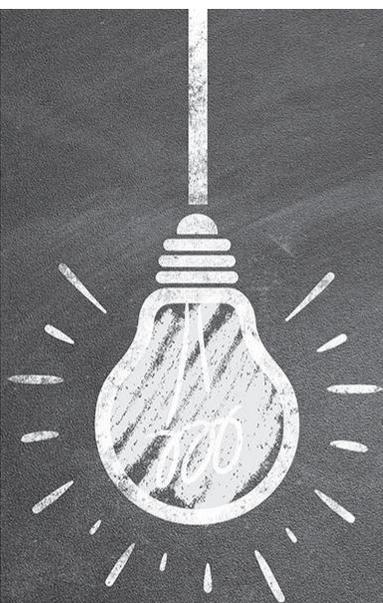
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RESCHEDULED: The National Long-Term Defense Summit - Adelman Law Firm has rescheduled the annual National Long-Term Care Defense Summit.

PLEASE SAVE THE DATES OF **November 11-12 2020** for the 8th annual Summit!

Please plan to join us.

For more information, please contact me at rebecca@adelmanfirm.com and visit the event website at <https://www.ltcdefensesummit.com/>