



COVID-19 Nursing Home and Adult Care Facility Guidance Review

Introduction

The Center for Elder Law & Justice has compiled this guide to serve as a review of all federal and state guidance that has been issued to Skilled Nursing Facilities, (SNFs), commonly known as Nursing Homes (NH), and Adult Care Facilities (ACFs), during the ongoing COVID-19 emergency. Included is a timeline of all guidance issued by the Centers for Medicaid Services (CMS), the New York State Department of Health (DOH), and Executive Orders (EO) issued by Governor Cuomo, along with summaries of those documents, as well as a review of the most recent issued guidance by subject matter. We hope that this document can serve as tool to allow residents, families, advocates, and ombudsman, to find the relevant documents and guidance they need to educate themselves and to assist in their advocacy efforts.

This guide is a living document, is subject to change, and is current as of June 17, 2020. If the reader is aware of any federal and/or state guidance that pertains to NHs and ACFs that is not in this document or the reader thinks a subject area should be added, please do not hesitate to reach out to Supervising Attorney Lindsay Heckler or Staff Paralegal Liam McMahan.

Table of Contents

Guidance Timeline

February 3 through June 17.....pg. 4 – pg. 18

Guidance by Subject Matter

Mandatory Staff Testing.....pg. 18

Hospital Discharge to Adult Care Facilities and Nursing Homes.....pg. 19

COVID-19 Reporting Requirements (CMS and NYS/DOH)
For Residents, Family, Representatives, and CDC.....pg. 21

Visitation and Resident/Family Communications.....pg. 22

Survey and Enforcement.....pg. 24

Regulatory and Executive Guidance Timeline

<p>FEB 3</p>	<p>DOH Webinar: Update for Healthcare Providers on Novel Coronavirus</p> <ul style="list-style-type: none"> - Details movement and monitoring restrictions in the United States, the most current clinical knowledge of the virus, and recommendations from the CDC on infection control and prevention.
<p>FEB 6</p>	<p>CMS QSO-20-09-ALL Information for Healthcare Facilities Concerning Coronavirus</p> <ul style="list-style-type: none"> - Encourages all Medicare participating facilities in the nation, including NH and ACF, to review CDC information about coronavirus with links provided in the guidance document. - Reminds facilities of responsibility to plan for emerging infectious diseases. - Provides resources to assist in facility self-assessment and review of infection control practices. - Includes guidance from the Office for Civil Rights on HIPAA. <p>DOH Dear CEO 2019 Novel Coronavirus</p> <ul style="list-style-type: none"> - Request from the DOH that all facilities review their existing inventories of personal protective equipment(PPE). - Links to CDC guidance regarding PPE: https://www.cdc.gov/coronavirus/2019-nCoV/hcp/infection-control.html - Directs providers to contact the NYS Office of Emergency Management (OME) to request PPE if their need cannot be met locally, by vendors, or by their County OME.
<p>FEB 20</p>	<p>DOH Webinar: Healthcare Provider COVID-19 Q&A</p> <ul style="list-style-type: none"> - Provides resources and information on the development of the pandemic.
<p>FEB 27</p>	<p>DOH Webinar: Healthcare Provider COVID-19 Q&A</p> <ul style="list-style-type: none"> - Provides update on the status of the virus globally and in the state. - Includes surge planning resources for providers preparing for the virus.
<p>MAR 4</p>	<p>CMS QSO-20-12-ALL Suspension of Survey Activities</p> <ul style="list-style-type: none"> - Suspends all non-emergency inspections in health care facilities around the country to focus on health and safety threats like infectious diseases and abuse. - Sets priority for survey/inspection activity, from highest to least, as: Immediate jeopardy complaints, infection control complaints, those required for recertification (including SNF), re-visits to resolve enforcement, initial certification, surveys for facilities with a history of infection control deficiencies at immediate jeopardy, and surveys for facilities with a history of infection control deficiencies at less than immediate jeopardy. - Survey prioritization updated on March 20, 2020. <p>CMS QSO-20-14-NH Guidance for Infection Control and Prevention of Coronavirus</p> <ul style="list-style-type: none"> - Provides guidance that SNFs should monitor the CDC website for information and resources concerning coronavirus. - Nursing homes that suspect they have COVID or have an increased number of respiratory illnesses should contact their local or state health department for guidance. - Outlines screening procedure for visitors and staff.

	<ul style="list-style-type: none"> - Discusses when appropriate to send or receive a COVID positive resident to/from a hospital. Nursing homes should only care for COVID positive residents if they can follow CDC recommended infection prevention and control practices. - CDC Guidance for Management of Patients with Confirmed Coronavirus - Revised on March 13th to include a ban on all visitation except for compassionate care situations. <p>CMS QSO-20-13-Hospitals Guidance for Infection Control and Prevention</p> <ul style="list-style-type: none"> - Addressed FAQs related to optimizing patient placement, with the goal of addressing individual patient needs while protecting other patients and healthcare workers. - States that if a hospital is to discharge a patient, the receiving facility must be able to implement all recommended infection prevention and control recommendations.
<p>MAR 6</p>	<p>CMS FAQ Medicare Fee-for-Service (FFS) Billing</p> <ul style="list-style-type: none"> - Comprehensive FAQ detailing Medicare billing during the coronavirus public health emergency. - Clarifies that the waiver for the 3-day qualifying hospital stay applies to all SNF-level beneficiaries under Medicare Part A. - Updated 6/2/2020. <p>DOH DAL NH 20-04 COVID-19 Guidance for Nursing Homes</p> <ul style="list-style-type: none"> - Initial guidance to nursing home operators and owners. - Discusses symptoms of the virus, CDC guidelines, and more. - First guidance regarding visitation restrictions. States nursing homes must have staff available to screen visitors for symptoms or potential exposure to someone with COVID-19. - Encourages nursing homes to temporally modify visiting hours or procedures to facilitate monitoring in a situation of community transmission. - This is a revised version from March 11, 2020 with minor changes.
<p>MAR 7</p>	<p>NYS Executive Order 202</p> <ul style="list-style-type: none"> - Declares a State disaster emergency. - Loosens requirements for licensure to collect swab specimens for COVID-19 testing and to perform tasks otherwise limited to the scope of practice of a licensed or registered nurse, provided that training deemed adequate by the Commissioner of Health is completed and tasks are done under the supervision of a nurse. - Allows rapid discharge and transfer between hospitals and nursing homes as authorized by the Commissioner of Health, provided all reasonable measures to protect the health and safety of patients and residents are taken.
<p>MAR 11</p>	<p>DOH ACF DAL 20-10 COVID-19 Guidance for Adult Care Facilities</p> <ul style="list-style-type: none"> - Discusses symptoms of the virus, CDC guidelines, and more. - Outlines requirements for screening visitors eventually elevated to a ban on visitation on March 13. - States that staff that show symptoms must not be permitted to remain at work and should not return until completely recovered. - All surfaces must be cleaned and disinfected daily/frequently.

	<ul style="list-style-type: none"> - Residents suspected of infection should be given a mask and isolated in a separate room with airborne precautions and the facility should contact the NYSDOH immediately.
<p>MAR 12</p>	<p>NYS Executive Order 202.1</p> <ul style="list-style-type: none"> - Allows nursing homes to make temporary changes to physical plant, bed capacities, and services provided, upon approval of the Commissioner of Health, in response to a surge in patient census. - Echoes language in executive order 202 allowing for rapid transfer and discharge between hospitals and nursing homes, provided all reasonable measures are taken to protect the health and safety of patients and residents. - Allows individuals not employed by the Board of Elections to assist residents of nursing homes or adult care facilities in the completion of absentee ballot applications and voting.
<p>MAR 13</p>	<p>CMS QSO-20-14-NH Guidance for Infection Control and Prevention of Coronavirus Related Press Release</p> <ul style="list-style-type: none"> - Revision of guidance released on March 4th for nursing homes. - Adds a ban of all visitors and non-essential health care personnel, except for certain compassionate care situations, such as an end-of-life situation. - Provides links to CDC guidance for restricting access to health care workers. - Mandates nursing homes cancel all group activities, implement active screening for fever and respiratory symptoms, and other infection control practices. - Requires screening of all staff at the beginning of shifts. - States that facilities need to facilitate resident communication with the Ombudsman program if in-person access is not available. - Discusses when appropriate to send or receive a COVID positive resident to/from a hospital. Nursing homes should only care for COVID positive residents if they can follow CDC recommended infection prevention and control practices. - CDC Guidance for infection control <p>DOH Health Advisory: COVID-19 Cases in Nursing Homes and Adult Care Facilities</p> <ul style="list-style-type: none"> - Echoes the ban on visitation set forth in previous guidance as well as the requirement to screen staff and cancel group activities. - Requires facemasks for staff while within 6 feet of residents. - Mandates that facilities offer other activities for residents in their rooms, such as video calls. - Residents suspected of infection with COVID should be given a facemask to wear and the facility must immediately contact the NYSDOH. The resident must be isolated in a separate room with the door closed. - ACFs must provide staff to screen residents for symptoms if residents access the community and community transmission is recognized in the area where ACF is located - Residents must wear facemask when healthcare personnel (HCP) or other direct care providers enter their rooms unless not tolerable. - Residents with COVID-19 must cohort with dedicated HCP.

<p>MAR 17</p>	<p><u>DOH Immediate Temporary Suspension of Adult Care Facilities Day Programs for Non-Residents</u></p> <ul style="list-style-type: none"> - Requires all adult day health care programs to immediately suspend all day programs for non-residents until further notice. - Requests that all participants be given assistance in identifying and finding services that they may need to address their current needs and that a record is kept of such correspondence.
<p>MAR 18</p>	<p><u>DOH COVID-19 Guidance for the Authorization of Community Based Long-Term Services</u></p> <ul style="list-style-type: none"> - States that staff LDSS and Conflict-Free Evaluation and Enrollment Center staff must rely on the guidance and direction of facility medical directors as to whether it is medically necessary for a resident to have a Community Health Assessment in pursuit of Community Based Long-Term Services and Supports covered by Medicaid. <p><u>NYS Executive Order 202.5</u></p> <ul style="list-style-type: none"> - Allows or requires appearance by any parties to a fair hearing by written, telephonic, video or other electronic means. - Permits physicians, physician assistants, nurses, licensed practical nurses, and nurse practitioners, licensed and in current good standing in any state in the United States to practice medicine in N.Y.S. Also physicians who are licensed and in current good standing in N.Y.S. but not registered in N.Y.S. - Allows patients affected by the disaster emergency to be transferred to receiving Article 28 facilities as authorized by the Commissioner of Health. - Permits nursing homes receiving individuals affected by the disaster to perform comprehensive assessments or obtain physician approvals for admission of those residents temporarily evacuated to such nursing homes as soon as practicable following admission or to forego such assessments/orders for individuals returned to facilities from which they were evacuated. Nursing homes can also comply with admission procedures as soon as practicable for such individuals or forego those procedures when returning individuals to facilities from which they were evacuated. - Allows temporary changes to physical plant, bed capacities, and services provided upon approval by the Commissioner of Health or the Commissioner of OPWDD.
<p>MAR 20</p>	<p><u>DOH Recommendations to Protect Nursing Home Residents</u></p> <ul style="list-style-type: none"> - Set of recommendations for protecting residents during COVID that includes policies required by earlier guidance such as: canceling group activities, suspending visitation, and screening staff for symptoms. - Recommends creating/increasing listserv communications to update families as well as assigning staff to serve as the primary contact to families. - Provides a list of links and resources to help support resident mental and emotional health. - <u>DOH COVID-19 Guidance for NH Transition and Diversion and TBI Waiver Providers</u> - Waives face-to-face requirements for Home and Community-Based Services provided under Nursing Home Transition and Diversion (NHTD) and Traumatic Brain Injury (TBI) 1915 (c) Medicaid Waivers, unless medically necessary. - NHTD/TBI waiver providers may utilize telephonic or telehealth following applicable NYS telehealth guidance.

	<ul style="list-style-type: none"> - Service plan and related program documents requiring original signatures may be executed using electronic signature consent. Verbal consent may be used on a temporary basis until an original can be secured by mail or other means. - Applicants pending nursing home discharge to the community may proceed to waiver services if the nursing home approves the safe discharge; the services included in the plan of care are in place; and the RRDC and SC are satisfied such services will ensure the welfare of the individual. <p>CMS QSO-20-20-All Prioritization of Survey Activities</p> <ul style="list-style-type: none"> - Sets a 3-week time period starting on March 20, 2020 where CMS will prioritize and conduct inspections/surveys (including revisit surveys) related to complaints and facility-reported incidents that are triaged at the Immediate Jeopardy level, for all allegations, in addition to a review with a Focused Infection Control survey. Federal surveyors will perform targeted Infection Control surveys of facilities in those areas most in need of additional oversight. - The following surveys will not be authorized during this period: Standard surveys including life safety code and emergency preparedness elements, and revisits that are not associated with IJ. - Imposition of Denial of Payment for New Admissions, and per day civil money penalty accumulation, as well as imposition of termination for facilities that are not in substantial compliance at 6 months, will be suspended until revisits are again authorized. - Includes a self-assessment tool for nursing homes to gauge their preparedness for infection control.
<p>MAR 21</p>	<p>DOH Advisory: Respiratory Illness in Nursing Homes and Adult Care Facilities</p> <ul style="list-style-type: none"> - Advisory that in Nursing Homes and Adult Care Facilities recent testing has revealed that symptoms of influenza-like illness are very often determined to be COVID-19 in facilities located in areas with sustained community transmission. - All facilities in areas with sustained community transmission should follow the guidance from the NYSDOH advisory issued on March 13, 2020. <p>DOH Guidance Regarding ACF Operations During COVID-19 Outbreak</p> <ul style="list-style-type: none"> - Outlines the process of requesting PPE for ACFs. - Covers common questions about requirements including criminal history record check, medical evaluations, the uniform assessment system, congregate dining & medication management, activities, and plans of correction. - Allows Community Health Assessments to be conducted by telephone or telehealth - During the COVID-19 response, periodic reassessments for Assisted Living Program participants will not be required. - ACFs now required to provide tray services or other alternatives to avoid congregate dining in large groups. - ACF activity requirements have NOT been waived and activities respectful of social distancing protocols should be planned. <p>DOH Guidance for SNFs on Home Hemodialysis Services</p> <ul style="list-style-type: none"> - Guidance for SNFs seeking emergency approval from the NYSDOH for temporary provision of Home Hemodialysis services to nursing home residents.

<p>MAR 23</p>	<p><u>NYS Executive Order 202.10</u></p> <ul style="list-style-type: none"> - Grants immunity to medical professionals from civil liability for injury or death alleged to have been sustained directly as a result of omission by such medical professional in the course of providing medical services in support of NYS' response to the pandemic. - Exception: the injury or death is caused by the gross negligence of the medical professional. - Applies to physicians, physician's assistants, specialist assistants, nurse practitioners, licensed registered professional nurses, and practical nurses. - Allows any healthcare facility to allow students who are in programs to become licensed in NYS to practice a healthcare professional, to volunteer at the facility for educational credit. - Relieves health care providers of various recordkeeping requirements in order to respond to COVID-19 including maintaining medical records accurate reflect the evaluation and treatment of patients, or requirements to assign diagnostic codes or to create or maintain other records for billing purposes. - This E.O has expired (See E.O. 202.28). - Allows Article 28 facilities (including SNFs) to complete patient review instruments as soon as practicable for patients received as a result of the disaster emergency. - Loosens restrictions and requirements for administering telehealth services.
<p>MAR 25</p>	<p><u>DOH Advisory: Hospital Discharges and Admission to Nursing Homes</u></p> <ul style="list-style-type: none"> - Mandates that hospital discharge planners confirm to nursing homes, by telephone, that residents are medically stable for discharge and comprehensive discharge instructions must be provided by the hospital prior to the transport of a resident to a nursing home. - States that no resident shall be denied re-admission or admission to a nursing home solely based on a confirmed or suspected diagnosis of COVID-19. - Nursing homes are prohibited from requiring a hospitalized resident who is determined medically stable to be tested for COVID-19 prior to admission or readmission.
<p>MAR 26</p>	<p><u>DOH Guidance for Nursing Homes and ACFs Webinar Slides</u></p> <ul style="list-style-type: none"> - Webinar from the NYSDOH with slides detailing guidance for infection prevention and control up to this date.
<p>MAR 27</p>	<p><u>NYS Executive Order 202.11</u></p> <ul style="list-style-type: none"> - Allows graduates of registered professional nurse and licensed practical nurse licensure qualifying education programs to be employed to practice nursing under the supervision of a registered professional nurse with the endorsement of the employing nursing home for 180 days immediately following graduation. - Order expires on April 6, 2020.
<p>MAR 30</p>	<p><u>CMS Blanket Waivers – Related Explanatory Guidance</u></p> <ul style="list-style-type: none"> - Explanatory guidance for waivers effective March 1, 2020 that may be used without advance notice to CMS but for which records relating to use must be made available upon request. - Allow for reimbursement and financial interactions between healthcare facilities and providers during the coronavirus emergency that otherwise are not allowed including certain remuneration, referrals, and other conduct. - For example, a healthcare entity can provide greater nonmonetary compensation to a physician such as continuing medical education related to the COVID-19 outbreak.

<p>MAR 31</p>	<p>DOH Protocols for Essential Personnel to Return to Work Following COVID-19 Exposure</p> <ul style="list-style-type: none"> - Outlines the conditions that must be met to allow essential personnel who have been exposed to a confirmed or suspected case of COVID-19 or who have confirmed or suspected COVID-19 to work in the required workplace setting.
<p>APR 2</p>	<p>CMS Long-Term Care Facility Guidance</p> <ul style="list-style-type: none"> - Reminds nursing homes that they should be in compliance with all CMS and CDC guidance related to infection control and provides links to both. - States that all staff should use appropriate PPE including that all long-term care facility personnel should wear a facemask while they are in the facility. - To the best of their ability nursing homes should use separate staffing teams for COVID-19 positive residents, and designate separate facilities or units. <p>DOH Options when PPE is in Shorty Supply or Not Available</p> <ul style="list-style-type: none"> - Provides recommendations for facilities in all healthcare settings for when PPE is in shorty supply or not available. - Use of unapproved equipment or experimental methods outside approved studies should be limited to situations in which the immediate lack of PPE is judged to result in safety risks greater than those potentially resulting from using unapproved equipment or methods.
<p>APR 3</p>	<p>NYS Emergency Disaster Treatment Protection Act: Article 30-D of NYS Public Health Law</p> <ul style="list-style-type: none"> - Passed by the NYS legislature and signed into law by NYS Governor Cuomo as part of the budget process, extends immunity to hospitals and nursing homes from civil or criminal liability for harm or damages alleged to have been sustained as a result of an act or omission in the course of providing health care services during the pandemic. - Immunity does not apply if the harm or damages were caused by an act or omission constituting willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm by the nursing home or hospital. - The acts, omissions or decisions resulting from a resource or staffing shortage shall not be considered to be willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm. <p>DOH COVID-19 Guidance Suspension of Health Plan Utilization Review Requirements</p> <ul style="list-style-type: none"> - Due to the suspension or relaxation of prior authorization, utilization review, and certain notification requirements for many health services during the COVID-19 emergency, nursing homes should make their best efforts to provide 48 hours' notice to patients' health plans and to arrange for discharge to participating providers of relevant health plan networks when discharging to a lower level of care. - If an admission to an out-of-network rehabilitation or skilled nursing facility is needed during the emergency, the out of network facility should make best effort to provide 48 hours' notice and negotiate a rate of payment within 48 hours of the notification. - States that it is important that providers strictly enforce their illness and sick leave policies and that staff showing symptoms of illness should not be permitted to remain at work.

<p>APR 4</p>	<p>DOH Guidance for Resident and Family Communication in ACFs and NHs</p> <ul style="list-style-type: none"> - Guidance from the NYSDOH that strongly encourages adult care facilities and nursing homes to implement a communication protocol for both residents and their families, loved ones, and guardians unable to visit. - Provides best practices for developing a communication protocol during COVID. <p>DOH Advisory: CMS Has Released 1135 Waivers to Address an Adequate Supply of Workforce</p> <ul style="list-style-type: none"> - Temporarily waives training and certification of nurse aides in nursing homes to assist with potential staffing challenges. - Maintains requirement that nursing homes not employ anyone for long than four months unless they meet training and certification requirements. - Removes requirement to complete new training and competency evaluation when there has been a continuous period of 24 consecutive months during which the individual did not receive compensation for nursing or related services. - Removes requirement for yearly performance review for every nurse aide as well as for in-service education based on those reviews. - Waives the requirement for a 3-day prior hospitalization for coverage of a SNF stay. - Allows nursing homes to suspend PASRR assessments for new residents for 30 days. - Waives requirement that residents are ensured access to in-person resident groups. - Waives the requirement that physicians and non-physician practitioners perform in-person visits for nursing home residents
<p>APR 7</p>	<p>DOH Advisory: CMS Waiver to Address the High Need for Paid Feeding Assistants</p> <ul style="list-style-type: none"> - Waives 8-hour training requirement for feeding assistants in nursing homes provided that they meet minimum training requirements detailed in the advisory, that they complete a competency assessment, and that they only provide assistance to residents without complicated feeding problems. <p>DOH Advisory: Hospital Discharges and Admission to ACFs</p> <ul style="list-style-type: none"> - States that all ACFs must have a process in place to expedite return of asymptomatic residents from the hospital. - Mandates that no resident shall be denied re-admission or admission to an ACF solely based on a confirmed or suspected diagnosis of COVID-19. - Additionally ACFs are prohibited from requiring a COVID-19 test before admission or readmission. - ACFs cannot admit residents who are symptomatic unless their licensure and certification require onsite clinical staff capable of attending to the medical needs of a symptomatic COVID-19 resident, pursuant to hospital discharge instructions (such as an enhanced assisted living residence). <p>NYS Executive Order 202.14</p> <ul style="list-style-type: none"> - Requires any entity in the state to report any medical equipment held in inventory and deemed by the Commissioner of Health as necessary to the NYSDOH and allows the DOH to shift those items between healthcare facilities based on need. - Sets conditions that authorize the witnessing of a Health Care Proxy be completed utilizing audio-video technology.

	<ul style="list-style-type: none"> - Allows any physician who will graduate in 2020 from a properly accredited academic medical program with a properly accredited residency program to practice at any institution in the state under the supervision of a licensed physician.
APR 9	<p>NYS Executive Order 202.15</p> <ul style="list-style-type: none"> - Allows respiratory therapy technicians, mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts licensed and in current good standing in any state to practice in NYS.
APR 10	<p>DOH Nursing Home COVID-19 Preparedness Assessment</p> <ul style="list-style-type: none"> - An updated version of the infection control preparedness self-assessment tool for long term care facilities.
APR 16	<p>NYS Executive Order 202.18</p> <ul style="list-style-type: none"> - Requires that any skilled nursing facility, nursing home, or adult care facility notify family members or next of kin if any resident tests positive for COVID-19, or if any resident suffers a COVID-19 related death within 24 hours. - Allows physicians, physician assistants, clinical nurse specialists, specialist assistants, radiologic technologists registered nurses, licensed practical nurses, and nurse practitioner's or a substantially similar title licensed and in current good standing in Canada to practice medicine in NYS. - Allows individuals who graduated from registered or accredited medical programs located in NYS in 2020 to practice medicine without a license if supervised by a physician licensed and registered to practice medicine in NYS. - Permits graduates of licensure qualifying nurse practitioner education programs to be employed to practice nursing in a hospital or nursing home for 180 days immediately following successful completion provided they file an application for certification. - Permits licensed master social workers, licensed clinical social workers, and similar titles licensed and in current good standing in any state or Canada to practice in NYS. - Allows for many other healthcare professionals who are recent graduates or licensed and in good standing in any state or Canada to practice in NYS.
APR 17	<p>DOH COVID-19 Control Measures for Adult Care Facilities</p> <ul style="list-style-type: none"> - Provides specific guidance for infection control in Adult Care Facilities including screening for symptoms for staff and residents, isolation and quarantine, environment cleaning, and when to seek medical attention. - Any resident with a fever, cough, or difficulty breathing should immediately be placed in a room by themselves. - -Any staff with a fever, cough, difficulty breathing, or other respiratory symptoms must be sent home immediately. - -Residents suspected to have COVID-19 should not share a room with residents confirmed to have COVID-19. <p>DOH ACF COVID-19 Preparedness Checklist</p> <ul style="list-style-type: none"> - Infection control preparedness self-assessment tool for adult care facilities.

	<p>NYS Executive Order 202.19</p> <ul style="list-style-type: none"> - Establishes a penalty for non-compliance with requirements for nursing home and adult care facility COVID communication requirements set forth in executive order 202.18 on April 16, 2020. - Penalty is \$2,000 per violation per day and any subsequent violation is punishable with imprisonment not exceeding one year, or a fine not exceeding \$10,000 or both.
<p>APR 19</p>	<p>CMS QSO-20-26-NH Upcoming Requirements for Notification of Confirmed COVID</p> <ul style="list-style-type: none"> - Echoes previous guidance that nursing homes must report communicable diseases, healthcare-associated infections, and potential outbreaks to State and Local health departments. - Outlines a plan to release new COVID-19 reporting requirements for nursing homes - Find the finished version of those reporting requirements in the interim final rule released on May 6, 2020. <p>DOH DAL BFD 20-04 Guidance for Management of Decedent Personal Effects</p> <ul style="list-style-type: none"> - States that tracking personal effects must be performed with 100% accuracy, due to the importance of decedent personal effects to family members. - Chain of custody must be documented from when items are collected after death to their release to the appropriate entity. - HCFs should prepare to store personal effects for an extended period of time. A secure facility should be chosen that will be large enough to handle a significant quantity of personal effects. - All personal effects should be tagged with a unique identifier, as well as the unique identifier of the decedent. - Facilities must educate staff on the policies and procedures in place. - Provides guidance on how to appropriately handle various types of personal effects and maintain proper infection prevention and control. - Family members should be cautioned to wait at least 7 days before unpacking items from bags and boxes. <p>DOH Advisory: Discontinuation of Isolation for Patients with COVID-19</p> <ul style="list-style-type: none"> - Guidance allows discontinuance of isolation for patients with COVID-19, adult homes, nursing homes, and other congregate settings, if at least 3 days have passed since recovery, respiratory symptoms have improved, and at least 7 days have passed since symptoms first appeared. - NYSDOH recommends, without a test, to wait to discontinue isolation for when at least 3 days have passed since recovery without fever reducing medications, respiratory symptoms have improved, and at least 14 days have passed since symptoms appeared or 14 days have passed since the first positive test if asymptomatic at that time. - NYSDOH recommends, with testing, to wait to discontinue isolation for a lack of fever without fever-reducing medication, improvement in respiratory symptoms, and negative results of an FDA Emergency Use Authorized COVID-19 assay from at least two consecutive tests collected at least 24 hours apart. <p>DOH DAL CPSO 20-01 Guidance for Nursing Homes on Managing Resident Deaths</p> <ul style="list-style-type: none"> - States that whenever possible nursing homes should allow family to identify a funeral firm on admission.

	<ul style="list-style-type: none"> - When managing decedents, nursing homes must attach a form of identification to the body if there is not an identification wrist band with matching identification on the outside of the body bag or pouch. - Nursing homes should be aware of county requirements for handling decedents. - Nursing homes must contact the decedent's family members as soon as possible but in no case later than 24 hours of the decedent becoming deceased and allow visitation of the decedent's body while assuring proper infection control practices. <p>DOH DAL C20-01 Guidance for Resident and Family Communication</p> <ul style="list-style-type: none"> - Lists best practices for nursing homes and adult care facilities to consider to keep residents and families engaged during the pandemic including face-to-face video call programs, daily updates for family, conducting socially distanced resident council meetings, and more.
APR 24	<p>NYS Executive Order 202.23</p> <ul style="list-style-type: none"> - Authorizes the Commissioner of Health to suspend or revoke the operating certificate of any skilled nursing facility or adult care facility if it has not adhered to any regulations or directives issued by the Commissioner of Health and to appoint a receiver.
APR 29	<p>DOH DAL Infection Control and Cohorting Requirements</p> <ul style="list-style-type: none"> - Reminder to nursing homes that they must only accept and retain those residents for whom the facility can provide adequate care. - Outlines some but not all of the safety requirements to adequately care for residents with COVID-19 including: visitation, PPE, staff monitoring, resident and family communication, and cohorting protocols. <p>DOH DAL Extension of COVID-Related Work Exclusion Period</p> <ul style="list-style-type: none"> - States that the NYSDOH will now require that nursing home employees who test positive for COVID-19 but remained asymptomatic are not eligible to return to work for 14 days from first positive test date in any situation. - Establishes an online portal that includes more than 95,000 healthcare workers across New York state and the nation that can be used by nursing homes.
APR 30	<p>CMS Coronavirus Commission for Safety and Quality in Nursing Homes</p> <ul style="list-style-type: none"> - Announcement of an independent commission to conduct an assessment of the nursing home response to coronavirus and develop best practices to address COVID-19.
MAY 5	<p>NYS Executive Order 202.27</p> <ul style="list-style-type: none"> - Continues the suspension and modification of various laws and regulations authorized under E.O.s 202 through 202.14 with some exceptions. - Exceptions: <ul style="list-style-type: none"> o Immunity from professional liability (see E.O 202.10) o State waiver of rapid discharge/transfer between hospitals and nursing homes. (The CMS waiver of these rules is still in effect.) o PRI assessments
MAY 6	<p>CMS QSO-20-29-NH Interim Final Rule Notification of Confirmed and Suspected COVID</p> <ul style="list-style-type: none"> - Details new rules set to be released on May 8, 2020 centered around reporting requirements for COVID-19 among residents and staff in nursing homes.

	<ul style="list-style-type: none"> - Nursing homes now required to submit data centered around the status of COVID in their facility once weekly, data available at: https://data.cms.gov/stories/s/COVID-19-Nursing-Home-Data/bkwz-xpvg - Mandates that nursing homes inform residents, representatives, and families by 5 p.m. the next calendar day following the occurrence of a single confirmed infection of COVID or three or more residents or staff with new-onset respiratory symptoms occurring within 72 hours of each other by 5.p.m. the next calendar day. - Nursing homes must also update residents, representatives, and families at least weekly about the cumulative status of the virus in their facility. - Notification must not include any personally identifiable information unless the facility is updating a single resident and their representatives/family about their own health condition. - Includes the COVID-19 focused survey for nursing homes to be used to determine compliance with the new regulations.
<p>MAY 10</p>	<p>DOH DAL 20-06 Nursing Home Assistance and Coordination Center</p> <ul style="list-style-type: none"> - Announcement of the Nursing Home Assistance and Coordination Center created by the NYSDOH to address urgent requests from nursing homes statewide. - The Center will operate 24 hours a day, 7 days a week, and can be reached at 1-833-978-2581 <p>NYS Executive Order 202.30</p> <ul style="list-style-type: none"> - Requires that all nursing homes and adult care facilities test all personnel for COVID-19 twice per week. - Both the operator and administrator of all nursing homes and adult care facilities must provide to the DOH a certification of compliance with this order no later than May 15, 2020. - Requires that nursing homes first certify that they can properly care for a patient before any article 28 general hospital can discharge a patient to their facility. - No article 28 hospital shall discharge a patient to a nursing home without first performing a diagnostic test for COVID-19 and obtaining a negative result.
<p>MAY 11</p>	<p>DOH ACF DAL #20-14, NH 20-07 Required COVID-19 Testing for all NH and ACF Personnel and Directive: Hospital Discharges and Admissions to NH and ACF</p> <ul style="list-style-type: none"> - Details the requirement put forth on May 10, 2020 in Executive Order 202.30 that all nursing homes and adult care facilities test all personnel for COVID-19. - Testing must occur twice per week. - Any personnel who tests positive for coronavirus must stay home and facilities must follow previously released guidance for allowing those individuals to return to work - Includes a copy of the certification that all operators and administrators must return to the NYSDOH. - Updated on May 19, 2020 to reflect DOH issued FAQ re staff testing requirements. - Directive emphasizes the requirement that NH must only accept and retain residents for whom the facility can provide “adequate care” and ACFs have an obligation to provide care to residents and ensure their life, health, safety and welfare are protected pursuant to their licensure requirements. - Directive states further no hospital shall discharge a patient to a NH or ACF unless the facility administrator has first certified they are able to provide that patient with adequate care and hospitals must test any patient who may be discharged to a NH or ACF for

	<p>COVID-10 and shall not discharge a patient to a NH or ACF without one negative COVID-19 test.</p>
<p>MAY 13</p>	<p>CMS Toolkit for Nursing Homes Fighting COVID-19</p> <ul style="list-style-type: none"> - Compendium, not intended as guidance, of actions employed across the United States to assist nursing homes in meeting the needs of residents since the onset of COVID-19, intended to serve as a learning tool. <p>DOH Advisory: Nursing Home Cohorting FAQs</p> <ul style="list-style-type: none"> - States that the area of a nursing home for residents with COVID-19 should be demarcated and when possible an entire unit should be devoted to residents with COVID-19. - Staffing assignments should be made to maintain separate teams for residents with and without COVID-19 to the greatest extent possible, and where not possible care should be bundled and PPE changed before leaving the positive cohort. - Roommates of a resident who tests positive for COVID-19 who themselves have a negative test should be immediately separated from the resident who tests positive and placed in a private room due to the high risk of infection within the next 14 days.
<p>MAY 18</p>	<p>QSO-20-30-NH Nursing Home Reopening Recommendations</p> <ul style="list-style-type: none"> - -Guidance from CMS that outlines considerations for reopening nursing homes that covers: Criteria for relaxing restrictions and mitigating the risk of resurgence, visitation and service considerations, and restoration of survey activities. - Outlines a recommended phased reopening for nursing homes for consideration.
<p>MAY 19</p>	<p>DOH FAQ Facility Staff Testing Requirement</p> <ul style="list-style-type: none"> - Further guidance pursuant to that which was released on May 11, 2020. - States that staff who have had positive diagnostic for COVID-19 in the past are included in the twice per week personnel testing requirement in SNFs and ACFs but this is subject to change. - Tests must be conducted at least two days part, staff who are on vacation do not need to be tested and antibody testing is insufficient to meet requirements. - Staff are allowed to work while waiting for test results but staff who test positive must test negative before returning to work and follow all prior guidance for return. - Staff cannot be compelled to undergo testing but those who do not are not permitted to work in the facility. - Provides further guidance to common questions about the testing requirement.
<p>MAY 21</p>	<p>NYS Executive Order 202.32</p> <ul style="list-style-type: none"> - Allows for clinical laboratories to accept and examine specimens for COVID-19 testing from personnel of nursing homes and adult care facilities without a prescription or order from an authorized ordering source.
<p>JUN 1</p>	<p>QSO-20-31 All COVID-19 Survey Activities, CARES Act Funding, enhanced Enforcement for Infection Control deficiencies, and Quality Improvement Activities in Nursing Homes</p> <ul style="list-style-type: none"> - States that have not completed 100% of their focused infection control nursing homes surveys by July 31, 2020 will be required to submit a corrective action plan to CMS within 30 days and after 30 days if they still have not completed 100% of their survey requirement they will face a reduction in their CARES Act FY 2021 allocation.

	<ul style="list-style-type: none"> - States now required to perform on-site surveys of nursing homes with previous COVID-19 outbreaks defined as confirmed cases/bed capacity at 10% or more, cumulative confirmed plus suspected cases/bed capacity at 20% or greater, or ten or more deaths reported due to COVID-19. - States now required to perform on-site surveys for any nursing home with 3 or more new COVID-19 suspected and confirmed cases since the last National Healthcare Safety Network COVID-19 report or 1 confirmed resident case in a facility that was previously COVID-free. - Starting in FY 2021 states will be required to perform annual Focused Infection Control surveys of 20 percent of nursing homes based on State discretion or additional data identifying facility and community risks. - Allows states to expand beyond current restricted survey prioritization once entering Phase 3 of Nursing Home Re-opening guidance issued on May 18, 2020, or earlier at the state's discretion. - Resumption of more routine surveys should prioritize providers with a history of noncompliance or allegations thereof with the following items: Abuse or neglect, infection control, violations of transfer or discharge requirements, insufficient staffing or competency, or other quality of care issues (e.g., falls, pressure ulcers, etc.). - Strengthens enforcement actions that CMS will take for non-compliance for an infection control deficiency, including the introduction of directed plans of correction, including use of root cause analysis, to facilitate systemic changes. - Expands the role of Quality Improvement Organizations (QIOs) to allow for more education and training to every nursing home in the country specifically towards infection control.
<p>Jun 9</p>	<p><u>NYS Executive Order 202.40</u></p> <ul style="list-style-type: none"> - Amends the testing requirement put forth in Executive Order 202.30 so that nursing homes and adult care facilities located in regions that have reached Phase Two of reopening must test all personnel for COVID-19 only once per week.
<p>Jun 16</p>	<p><u>DAL ACFs COVID-19 Economic Impact Payments</u></p> <ul style="list-style-type: none"> - States that the Economic Impact Payment (EIP), or stimulus check, that was or will be provided to Social Security Retirement, Social Security Income (SSI), Social Security Disability, and Railroad Retirement recipients, belongs to the Social Security or SSI beneficiary and is not a Social Security or SSI benefit. - ACFs will need to notify the resident/authorized representative/power of attorney that the stimulus has been received as they will receive the EIP for those resident that they act as representative payee for. - ACFs shall promptly make residents' stimulus payments available to access and spend - If an ACF accepts the resident's impact payment for safekeeping, the ACF must adhere to Department regulations regarding storing resident funds and valuables. - Recommends that ACF staff assist residents in contacting the IRS at the phone number provided in the guidance if they did not receive, or have questions regarding, their economic impact payments.
<p>June 17</p>	<p><u>Nursing Home Annual Pandemic Emergency Plan Bill Signed into Law</u></p> <ul style="list-style-type: none"> - Requires nursing homes to submit an annual pandemic emergency plan to the commissioner of DOH. - Emergency plan must include:

	<p>(1) a communication plan to update authorized families and guardians of infected residents once per day on the resident's condition (or more frequently if the condition changes), and to update families and guardians of other residents at least once per week in addition to providing all residents with daily access to remote videoconferencing;</p> <p>(2) protection plans against infection for staff, residents and families that includes a plan for hospitalized residents to be readmitted after treatment and a plan for the facility to have access to at least a 2-month supply of PPE; and</p> <p>(3) a plan for preserving a resident's place in the facility is the resident is hospitalized.</p>
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SNF and ACF Guidance by Topic:

Mandatory Staff Testing

Originally mandated under E.O 202.30 and supplemented by DOH guidance, E.O. 202.40, requires both the operator and administrator of all nursing homes and adult care facilities to provide for or arrange testing twice weekly of all staff or once weekly if facility region has entered phase 2 of reopening. Any staff who refuse to be tested for COVID-19 will be prohibited from working in the nursing home or adult care facility.

- E.O 202.30: Issued May 10th and effective through July 9th extended in subsequent E.O.)
 - Modifies nursing home and adult care facility regulations to require the operator and administrator to test or make arrangements for the testing of all personnel, including all employees, contract staff, medical staff, operators and administrators, for COVID-19, twice per week, pursuant to a plan developed by the facility administrator and filed with DOH no later than 5:00 p.m. on Wednesday, May 13, 2020. Any positive test result shall be reported to the DOH by 5:00 p.m. of the day following receipt of such test result, in a manner determined by the Commissioner of Health.
 - Requires both the operator and the administrator of all nursing homes and adult care facilities to provide to DOH a certification of compliance with this E.O. and directives of the Commissioner of Health, and all other applicable E.Os and directives of the Commissioner of Health.
 - Authorizes the commissioner of Health to suspend or revoke the operating certificate of any nursing home or adult care facility if it is determined that such facility has not complied with the E.O, or any regulations or directives issued by the Commissioner of Health, and if determined to not be in compliance, notwithstanding any law to the contrary the Commissioner may appoint a receiver to continue the operations on 24 hours' notice to the current operator, in order to preserve the life, health and safety of the people of NYS.
 - Any nursing home or adult care facility which does not comply with the E.O shall be subject to a penalty for non-compliance of \$2,000 per violation per day, as if it were a violation of section 12 of the public health law, and any subsequent violation shall be punishable as if it is a violation of section 12-b of the public health law, with a penalty of \$10,000 per violation per day.

- Any personnel of a nursing home or adult care facility who refuse to be tested for COVID-19 pursuant to a plan submitted to the Department of Health shall be considered to have outdated or incomplete health assessments and shall therefore be prohibited from providing services to such nursing home or adult care facility until such testing is performed.
- E.O. 202.40: Issued on June 9th
 - Amends the testing requirement put forth in Executive Order 202.30 so that nursing homes and adult care facilities located in regions that have reached Phase Two of reopening must test all personnel for COVID-19 only once per week.
- DOH DALs (ACF #20-14, NH-20-07): Required COVID-19 Testing for All Nursing Home and Adult Care Facility Personnel: Issued on May 11th
 - Details the requirement put forth in Executive Order 202.30 that all nursing homes and adult care facilities test all personnel for COVID-19.
- DOH FAQ – Nursing Home and Adult Care Facility Staff Testing Requirement: Updated on May 19th
 - States that staff who have had positive diagnostic for COVID-19 in the past are included in the twice per week personnel testing requirement in SNFs and ACFs but this is subject to change.
 - Tests must be conducted at least two days' apart, staff who are on vacation do not need to be tested and antibody testing is insufficient to meet requirements.
 - Staff are allowed to work while waiting for test results but staff who test positive must test negative before returning to work and follow all prior guidance for return.
 - Staff cannot be compelled to undergo testing but those who do not are not permitted to work in the facility.
 - Provides further guidance to common questions about the testing requirement.

Hospital Discharges to Adult Care Facilities and Nursing Homes

Executive Orders No 202.1 and No. 202.10 facilitated expedited discharges from hospitals, and encouraged measures to increase the number of beds available to hospital patients. DOH guidance issued on March 25 prohibited SNFs from denying admission or re-admission solely based on a confirmed or suspected diagnosis of COVID-19. On April 7, DOH issued similar guidance for ACFs. On May 7, the Governor issued E.O 202.30 that prohibited a hospital from discharging a patient to a NH without first obtaining a negative COVID-19 test result. DOH expanded this to include ACFs.

- E.O. 202: Issued on March 7th
 - Amended state public health law and regulations to permit hospitals and nursing homes that are treating patients during the emergency to rapidly discharge, transfer, or receive such patients as authorized by the Commissioner of Health, so long as the facilities take all reasonable measures to protect the health and safety of such patients and residents, including safe transfer and discharge practices.
- E.O. 202.1: Issued on March 12th
 - Echoes language in executive order 202 allowing for rapid transfer and discharge between hospitals and nursing homes, provided all reasonable measures are taken to protect the health and safety of patients and residents.

- Each discharge shall be carried out after a written order made by a physician, in their judgment, such removal, transfer or discharge will not create a medical hazard to the person or that such discharge is considered to be in the patient's best interest despite the potential hazard of movement.
- Such discharge shall be made only after explaining the need for discharge to patient and the patient's representative/family and prior notification to the facility expected to receive the patient.
- DOH Advisory: Hospital Discharges and Admission to Nursing Homes: Issued March 25th
 - States no resident shall be denied re-admission or admission to a nursing home solely based on a confirmed or suspected diagnosis of COVID-19 and that nursing homes are prohibited from requiring a hospitalized resident who is determined medically stable to be tested for COVID-19 prior to admission or readmission.
 - Hospital discharge planners confirm to nursing homes, by telephone, that residents are medically stable for discharge and comprehensive discharge instructions must be provided by the hospital prior to the transport of a resident to a nursing home
- DOH Advisory: Hospital Discharges and Admission to ACFs: April 7th
 - States that all ACFs must have a process in place to expedite return of asymptomatic residents from the hospital.
 - Mandates that no resident shall be denied re-admission or admission to an ACF solely based on a confirmed or suspected diagnosis of COVID-19.
 - Additionally, ACFs are prohibited from requiring a COVID-19 test before admission or readmission.
 - ACFs cannot admit residents who are symptomatic unless their licensure and certification require onsite clinical staff capable of attending to the medical needs of a symptomatic COVID-19 resident, pursuant to hospital discharge instructions (such as an enhanced assisted living residence).
- DOH DAL Infection Control and Cohorting Requirements: April 29th
 - Reminder to nursing homes that they must only accept and retain those residents for whom the facility can provide adequate care
 - Outlines some but not all of the safety requirements to adequately care for residents with COVID-19 including: visitation, PPE, staff monitoring, resident and family communication, and cohorting protocols
- NYS Executive Order 202.28: May 7th
 - Mandates testing of all nursing home and adult care facility staff twice a week.
 - Prohibits a hospital from discharging a patient to a hospital unless the nursing home operator or administrator has first certified it is able to properly care for that patient.
 - Prohibits a hospital from discharging a patient to a nursing home without first performing a diagnostic test for COVID-19 and obtaining a negative result.
- DOH ACF DAL #20-14, NH 20-07 Required COVID-19 Testing for all NH and ACF May 11th
 - Details the requirement put forth on May 10, 2020 in Executive Order 202.30 that all nursing homes and adult care facilities test all personnel for COVID-19.
 - Testing must occur twice per week.
 - Any personnel who tests positive for coronavirus must stay home and facilities must follow previously released guidance for allowing those individuals to return to work.

- Includes a copy of the certification that all operators and administrators must return to the NYSDOH.
- Updated on May 19, 2020 to reflect DOH issued FAQ re staff testing requirements.
- DOH Directive: Hospital Discharges and Admissions to NH and ACF (part of May 11th DALs)
 - Emphasizes the requirement that NH must only accept and retain residents for whom the facility can provide “adequate care” and ACFs have an obligation to provide care to residents and ensure their life, health, safety and welfare are protected pursuant to their licensure requirements.
 - States no hospital shall discharge a patient to a NH or ACF unless the facility administrator has first certified they are able to provide that patient with adequate care and hospitals must test any patient who may be discharged to a NH or ACF for COVID-10 and shall not discharge a patient to a NH or ACF without one negative COVID-19 test.

COVID-19 Reporting Requirements (CMS and NYS/DOH) Residents, Family, Representatives, and CDC

CMS Reporting Requirements to the Centers for Disease Control and Prevention (CDC) and Residents, Families, and Representatives

On May 8, 2020, CMS published an interim final rule with comment period and was effective on that date.¹ The new CMS rule (42 C.F.R. §483.80(g)(1)(i)-(viii)) requires facilities to report, electronically and in a standardized format specified by the Secretary:

- (i) Suspected and confirmed COVID-19 infections among residents and staff, including residents previously treated for COVID-19;
- (ii) Total deaths and COVID-19 deaths among residents and staff;
- (iii) Personal protective equipment and hand hygiene supplies in the facility;
- (iv) Ventilator capacity and supplies in the facility;
- (v) Resident beds and census;
- (vi) Access to COVID-19 testing while the resident is in the facility;
- (vii) Staffing shortages; and
- (viii) Other information specified by the Secretary.

Facilities must submit the information at least weekly to the CDC’s National Healthcare Safety Network (NHSN). Some of that data is made available to the public weekly at this web address: <https://data.cms.gov/stories/s/COVID-19-Nursing-Home-Data/bkwz-xpvg>

The new CMS rule also requires facilities to inform residents, their representatives, and families of those residing in facilities by 5 p.m. the next calendar day following the occurrence of either a single confirmed infection of COVID-19, or three or more residents or staff with new-onset of respiratory symptoms occurring within 72 hours of each other. The information cannot include personally

¹ Comments on the interim final rule are due by July 7, 2020, to comment go to the federal register <https://www.federalregister.gov/documents/2020/05/08/2020-09608/medicare-and-medicaid-programs-basic-health-program-and-exchanges-additional-policy-and-regulatory>

identifiable information and must include cumulative updates at least weekly or by 5 p.m. the next calendar day. (42 C.F.R. §483.80(g)(3))

On May 6, 2020, Before releasing the interim final rule, CMS issued QSO-20-29-NH Interim Final Rule Updating Requirements for Notification of Confirmed and Suspected COVID-19 Cases Among Residents and Staff in Nursing Homes, which details the requirements laid out above. This guidance is available at: <https://www.cms.gov/files/document/qso-20-29-nh.pdf>

NYS Reporting Requirements

On April 16, NYS Governor Cuomo issued E.O 202.18 and 202.19:

- E.O. 202.18: Issued on April 16th
 - Requires any skilled nursing facility, nursing, or adult care facility to notify family members or next of kin if any resident tests positive for COVID-19, or if any resident suffers a COVID-19 related death, within 24 hours of such positive test result or death.
- E.O. 202.19: Issued on April 17th
 - Establishes a penalty for non-compliance with requirements for nursing home and adult care facility COVID communication requirements set forth in executive order 202.18 on April 16, 2020.
 - Penalty is \$2,000 per violation per day and any subsequent violation is punishable with imprisonment not exceeding one year, or a fine not exceeding \$10,000 or both.

Nursing Home Annual Pandemic Emergency Plan Bill

- Signed into law by the Governor June 17th, requires as part of the Emergency Plan nursing homes submit to DOH for approval that it includes once per day on the resident's condition (or more frequently if the condition changes), and to update families and guardians of other residents at least once per week.

Visitation and Resident/Family Communications

As of June 17, neither the Governor nor DOH have issued any meaningful updates as to when the restriction on visitors to ACF and NH will be modified/lifted. On May 18th CMS issued recommendations to the states for considerations for reopening nursing homes.

- QSO-20-NH Nursing Home Reopening Recommendations: May 18th
 - Guidance from CMS that outlines considerations for reopening nursing homes that covers: Criteria for relaxing restrictions and mitigating the risk of resurgence, visitation and service considerations, and restoration of survey activities.
 - Outlines a recommended phased reopening for NH and does not recommend opening facilities to visitors (except for compassionate care situations) until the final phase when:
 - There have been no new, nursing home onset COVID-19 cases in the nursing home for 28 days (through phases one and two);
 - The nursing home is not experiencing staff shortages;
 - The nursing home has adequate supplies of personal protective equipment and essential cleaning and disinfection supplies to care for residents;
 - The nursing home has adequate access to testing for COVID-19; and
 - Referral hospital(s) have bed capacity on wards and intensive care units.

- DOH DAL NH 20-04 COVID-19 Guidance for Nursing Homes: March 6th
 - Initial guidance to nursing home operators and owners, discusses symptoms of the virus, CDC guidelines, and more.
 - First guidance regarding visitation restrictions. States nursing homes must have staff available to screen visitors for symptoms or potential exposure to someone with COVID-19. Encourages nursing homes to temporarily modify visiting hours or procedures to facilitate monitoring in a situation of community transmission

- DOH ACF DAL 20-10 COVID-19 Guidance for Adult Care Facilities: March 11th
 - Discusses symptoms of the virus, CDC guidelines, and more.
 - Outlines requirements for screening visitors eventually elevated to a ban on visitation on March 13.
 - States that staff that show symptoms must not be permitted to remain at work and should not return until completely recovered.
 - All surfaces must be cleaned and disinfected daily/frequently.
 - Residents suspected of infection should be given a mask and isolated in a separate room with airborne precautions and the facility should contact the NYSDOH immediately.

- CMS QSO-20-14-NH Guidance for Infection Control and Prevention of Coronavirus: March 13th
 - Revision of guidance released on March 4th for nursing homes.
 - Adds a ban of all visitors and non-essential health care personnel, except for certain compassionate care situations, such as an end-of-life situation.
 - Provides links to CDC guidance for restricting access to health care workers.
 - Mandates nursing homes cancel all group activities, implement active screening for fever and respiratory symptoms, and other infection control practices.
 - Requires screening of all staff at the beginning of shifts.
 - States that facilities need to facilitate resident communication with the Ombudsman program if in-person access is not available.
 - Discusses when appropriate to send or receive a COVID positive resident to/from a hospital. Nursing homes should only care for COVID positive residents if they can follow CDC recommended infection prevention and control practices.

- DOH Recommendations to Protect Nursing Home Residents: March 20th
 - Set of recommendations for protecting residents during COVID that includes policies required by earlier guidance such as: canceling group activities, suspending visitation, and screening staff for symptoms.
 - Recommends creating/increasing listserv communications to update families as well as assigning staff to serve as the primary contact to families.
 - Provides a list of links and resources to help support resident mental and emotional health.

- DOH Guidance for Resident and Family Communication in ACFs and NHs: April 4th
 - Guidance from the NYSDOH that strongly encourages adult care facilities and nursing homes to implement a communication protocol for both residents and their families, loved ones, and guardians unable to visit.
 - Provides best practices for developing a communication protocol during COVID.

- DOH DAL C20-01 Guidance for Resident and Family Communication: April 19th

- Lists best practices for nursing homes and adult care facilities to consider to keep residents and families engaged during the pandemic including face-to-face video call programs, daily updates for family, conducting socially distanced resident council meetings, and more.

Survey and Enforcement

During the course of the emergency, CMS suspended a majority of enforcement activities to focus on infection control and prevention survey infections and complaints that allege immediate jeopardy situations. As of June 17th, the CMS suspension of surveys except of the focused infection prevention and control and those pertaining to immediate jeopardy situations, remains in effect.

- CMS QSO-20-12-ALL Suspension of Survey Activities: Issued March 4th
 - Suspends all non-emergency inspections in health care facilities around the country to focus on health and safety threats like infectious diseases and abuse.
 - Sets priority for survey/inspection activity, from highest to least, as: Immediate jeopardy complaints, infection control complaints, those required for recertification (including SNF), re-visits to resolve enforcement, initial certification, surveys for facilities with a history of infection control deficiencies at immediate jeopardy, and surveys for facilities with a history of infection control deficiencies at less than immediate jeopardy.
 - Survey prioritization updated on March 20, 2020.
- CMS QSO-20-20-All Prioritization of Survey Activities: March 20th
 - Sets a 3-week time period starting on March 20, 2020 where CMS will prioritize and conduct inspections/surveys (including revisit surveys) related to complaints and facility-reported incidents that are triaged at the Immediate Jeopardy level, for all allegations, in addition to a review with a Focused Infection Control survey. Federal surveyors will perform targeted Infection Control surveys of facilities in those areas most in need of additional oversight.
 - The following surveys will not be authorized during this period: Standard surveys including life safety code and emergency preparedness elements, and revisits that are not associated with IJ.
 - Imposition of Denial of Payment for New Admissions, and per day civil money penalty accumulation, as well as imposition of termination for facilities that are not in substantial compliance at 6 months, will be suspended until revisits are again authorized.
 - Includes a self-assessment tool for nursing homes to gauge their preparedness for infection control.
- QSO-20-31 All COVID-19 Survey Activities, CARES Act Funding, enhanced Enforcement for Infection Control deficiencies, and Quality Improvement Activities in Nursing Homes
 - States that have not completed 100% of their focused infection control nursing homes surveys by July 31, 2020 will be required to submit a corrective action plan to CMS within 30 days and after 30 days if they still have not completed 100% of their survey requirement they will face a reduction in their CARES Act FY 2021 allocation.
 - States now required to perform on-site surveys of nursing homes with previous COVID-19 outbreaks defined as confirmed cases/bed capacity at 10% or more, cumulative confirmed plus suspected cases/bed capacity at 20% or greater, or ten or more deaths reported due to COVID-19.
 - States now required to perform on-site surveys for any nursing home with 3 or more new COVID-19 suspected and confirmed cases since the last National Healthcare Safety

Network COVID-19 report or 1 confirmed resident case in a facility that was previously COVID-free.

- Starting in FY 2021 states will be required to perform annual Focused Infection Control surveys of 20 percent of nursing homes based on State discretion or additional data identifying facility and community risks.
- Allows states to expand beyond current restricted survey prioritization once entering Phase 3 of Nursing Home Re-opening guidance issued on May 18, 2020, or earlier at the state's discretion.
- Resumption of more routine surveys should prioritize providers with a history of noncompliance or allegations thereof with the following items: Abuse or neglect, infection control, violations of transfer or discharge requirements, insufficient staffing or competency, or other quality of care issues (e.g., falls, pressure ulcers, etc.).
- Strengthens enforcement actions that CMS will take for non-compliance for an infection control deficiency, including the introduction of directed plans of correction, including use of root cause analysis, to facilitate systemic changes.
- Expands the role of Quality Improvement Organizations (QIOs) to allow for more education and training to every nursing home in the country specifically towards infection control.

NYS Emergency Disaster Treatment Protection Act (Article 30-D PHL)

- Passed by the NYS legislature and signed into law by NYS Governor Cuomo as part of the budget process, extends immunity to hospitals and nursing homes from civil or criminal liability for harm or damages alleged to have been sustained as a result of an act or omission in the course of providing health care services during the pandemic.
- Immunity does not apply if the harm or damages were caused by an act or omission constituting willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm by the nursing home or hospital.
- The acts, omissions or decisions resulting from a resource or staffing shortage shall not be considered to be willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm.