

# COVID-19: UPDATED NURSING AND LONG-TERM CARE FACILITIES – CORONAVIRUS (COVID-19) CONSIDERATIONS

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## **U.S. Health Care Alert**

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Nursing homes and other long-term care facilities (hereinafter, “LTC Facilities”) are among the health care providers whose patient populations are particularly vulnerable to the ongoing spread of COVID-19. We have recently seen, and the Centers for Disease Control and Prevention (“CDC”) has confirmed, the fragile patient populations treated at nursing homes are “at the highest risk of being affected by COVID-19” due to the setting and types of residents served — older adults often with underlying chronic medical conditions.<sup>1</sup> The long-term and residential nature of patient stays at LTC Facilities adds to the vulnerability of these patient care settings.

According to CDC statistics, “over 4 million Americans are admitted to or reside in nursing homes and skilled nursing facilities each year and near one million persons reside in assisted living facilities.” According to the World Health Organization report, the fatality rate for COVID-19 patients older than 80 in China was 21.9 percent, while patients of all ages with no underlying chronic condition had a fatality rate of 1.4 percent.<sup>2</sup> The United States has already seen significant consequences from COVID-19 in the nursing home setting. On March 30, 2020, the CDC released estimates of the number of cases in nursing homes, most recently on March 30. Various media reports detail that CDC director Robert Redfield stated that over 400 facilities have confirmed cases.<sup>3</sup> Senators have been pressuring the CDC to start taking a formal tally of cases and also releasing the names of facilities where residents have tested positive.<sup>4</sup> Indicating a sizeable increase from the CDC’s most recent report, USA Today determined that, based on data obtained from 37 states’ agencies, at least 2,300 LTC Facilities have positive cases and more than 3,000 residents have died.<sup>5</sup> Separately and as of April 19, 2020, Florida reported 1,627 COVID-19 cases in residents or staff at long-term care facilities.<sup>6</sup> Further information regarding data reporting and future changes will be discussed below.

Life Care Center of Kirkland (“Kirkland”) in the State of Washington, is a prime example of the spreading of the virus in the nursing home context.<sup>7</sup> Of the 120 patients at Life Care Center of Kirkland on February 19, 2020, 63 have tested positive for COVID-19, although many had already been transferred to local hospitals. As of March 23, 2020, COVID-19 cases had been identified in 81 residents, 34 staff members, and 14 visitors to the facility.<sup>8</sup> As of March 23, 37 deaths had been linked to the facility.<sup>9</sup> The Centers for Medicare & Medicaid Services (“CMS”) has fined Life Care Center of Kirkland over \$600,000 based upon findings of alleged non-compliance with certain federal requirements for nursing homes.<sup>10</sup>

As a result of one of the deaths at Kirkland, a complaint has been filed, titled: “Complaint for Damages: Fraud and Wrongful Death.”<sup>11</sup> The daughter of an 85 year old resident who died from COVID-19 in early March, filed suit against multiple defendants including Life Care Centers of America, Inc. (“LCCA”), which is one of the largest

nursing home providers in the country with over 200 facilities in 28 states.<sup>12</sup> Among other claims, the lawsuit alleges the defendants “engaged in fraud by concealing, suppressing and failing to disclose material facts.”<sup>13</sup> The suit was filed in the King County Superior Court of Washington on April 10, 2020. The other named defendants include Lake View Operations, LLC, LCCA’s Vice President of Operations — West, and Kirkland’s Executive Director. Kirkland is discussed further below.

In light of the continued guidance for LTC Facilities and reports of several LTC Facilities around the country managing cases of residents/patients infected by COVID-19<sup>16</sup>, this alert is meant to focus on certain COVID-19 issues of particular note for LTC Facilities, although this is not meant to be an exhaustive list. Of note, the materials discussed herein focus on federal guidance applicable to LTC Facilities; however, LTC Facilities should also consider state and local law and guidance as well as the requirements of accrediting bodies. Finally, LTC Facilities should take note of publications and guidance from industry organizations and associations that may inform LTC Facilities as to best practices in response to COVID-19.

## **UPDATED RECOMMENDATIONS FROM CMS AND CDC**

On April 2, 2020, the CDC and CMS issued guidance on key recommendations for nursing homes, as well as state and local governments. Highlighted in this information, were the new focused infection control surveys being implemented by CMS (discussed further below). Initial results of these surveys have “found that 36 percent of facilities inspected in recent days did not follow proper hand washing guidelines and 25 percent failed to demonstrate proper use of personal protective equipment (PPE).”

The following key recommendations were announced:

- Nursing homes should immediately ensure that they are complying with all CMS and CDC guidance related to infection control.
- As nursing homes are a critical part of the healthcare system, and because of the ease of spread in LTC Facilities and the severity of illness that occurs in residents with COVID-19, CMS/CDC urges State and local leaders to consider the needs of LTC Facilities with respect to supplies of PPE and COVID-19 tests.
- Nursing homes should immediately implement symptom screening for all staff, residents, and visitors – including temperature checks.
- Nursing homes should ensure all staff are using appropriate PPE when they are interacting with patients and residents, to the extent PPE is available and per CDC guidance on conservation of PPE.
- To avoid transmission within nursing homes, facilities should use separate staffing teams for residents to the best of their ability, and, as President Trump announced at the White House today, the administration urges nursing homes to work with State and local leaders to designate separate facilities or units within a facility to separate COVID-19 negative residents from COVID-19 positive residents and individuals with unknown COVID-19 status.

Another notable recommendation is for states to designate specific facilities for COVID-19 positive patients. A facility in Massachusetts has been designated as such, and its 142 beds will be reserved for residents across the

region who contract COVID-19. Alternatively, distinct units within individual facilities could be designated for patients who are positive, negative, or under observation for potential exposure.

Full Press Release: [Trump Administration Issues Key Recommendations to Nursing Homes, State and Local Governments \(April 2, 2020\)](#)

Guidance Document: [COVID-19 Long-Term Care Facility Guidance \(April 2, 2020\)](#)

## CMS NURSING FACILITY COVID-19 GUIDANCE

On March 23, 2020, CMS announced the findings of the inspections of Kirkland in Washington State and identified a new targeted plan for facility inspections in response to COVID-19.<sup>17</sup> On March 16, 2020, CMS and Washington Health Services State Survey Agency concluded an inspection of Life Care Center of Kirkland. There were three “immediate jeopardy” situations according to the CMS release. “[S]pecifically, the facility’s failure to rapidly identify and manage ill residents, notify the Washington Department of Health about the increasing rate of respiratory infections among residents, and failure to possess a sufficient back up plan following the absence of the facility’s primary clinician, who fell ill.” As noted above, this is not the only nursing home that has felt the impact of COVID-19. According to the [CMS release of March 23](#), 147 nursing homes across 27 states have at least one resident with COVID-19 based on CDC data shared with CMS (as noted above, as of March 30, there are now over 400 facilities with confirmed cases). In light of this information, CDC and CMS are collaborating about locations where there are active cases and identifying locations that may be likely for future cases and target the inspections accordingly. Building on the March 4, 2020 guidance identified below, only certain inspections will be conducted, which include: complaint inspections, targeted infection control inspections, and self-assessments. CMS Administrator Seema Verma stated, “Today, we are issuing a call to action to nursing homes, hospitals and the entire health care system: Don’t wait to be inspected. Starting today you can – and should – use CMS’s self assessment tool to ensure you’re prepared to prevent the spread of Coronavirus.”

On March 13, 2020, the [CMS issued revised guidance for LTC Facilities specific to COVID-19](#), which is intended to help LTC Facilities improve their infection control and prevention practices and provide additional guidance related to facilities’ visitation policies.<sup>18</sup>

### Infection Control, Prevention, and Screening

[CMS provided guidance](#) related to LTC Facilities’ screening and treatment of suspected and confirmed COVID-19. CMS directed LTC Facilities to contact their local health department if they have questions or suspect a resident has COVID-19. CMS deferred to the CDC guidance stating, “[P]rompt detection, triage and isolation of potentially infectious residents are essential to prevent unnecessary exposures among residents, healthcare personnel, and visitors at the facility.” CMS further advised LTC Facilities to vigilantly identify any possibly infected individuals and consider increasing the frequency of monitoring patients for potential symptoms of respiratory infections. Separately, on March 4, 2020, CMS announced that until further notice state survey agencies and accrediting organizations are to focus their facility inspections exclusively on issues related to infection control and other serious health and safety threats.<sup>19</sup>

Additionally, on March 11, 2020, [CMS provided further guidance to state surveyors, health care facilities, patients and caregivers](#), and accrediting organizations in the form of an FAQ.<sup>20</sup> Specifically, CMS advised LTC Facilities focus efforts on infection disease protocols, including preparing for treating patients with COVID-19, and recommends LTC Facilities monitor closely CMS and CDC publications related to triage of presumptive or confirmed cases of COVID-19 and shortfalls in personal protective equipment.

## Visitation Restrictions

CMS addressed how to limit transmission of COVID-19 in LTC Facilities by managing visitation. Specifically and emphatically, CMS states, “Facilities should **restrict** visitation of all visitors and non-essential health care personnel (“HCP”), except for certain compassionate care situations, such as an end-of-life situation.” In end-of-life situations, visitors should be limited to a specific room. LTC Facilities are expected to convey these restrictions to potential visitors and advise they defer visitation until further notice. CMS also noted that if a state were to further limit visitation to apply even in end-of-life situations, a LTC Facilities' compliance with the state requirement would not result in a citation for noncompliance with CMS's visitation requirements.

If visitation is to occur, LTC Facilities should require visitors to wash their hands and wear personal protective equipment, such as face masks. Any potential visitor, including clergy and bereavement counselors, should be screened for fever or respiratory symptoms. If a visitor presents with said symptoms of COVID-19, they are not to be permitted into the facility at any time, even in end-of-life situations. Decisions about visitation in compassionate care situations are to be made on a case-by-case basis. Lastly, CMS directs LTC Facilities to:

- Advise visitors, and any individuals who entered the facility (e.g., hospice staff), to monitor for signs and symptoms of respiratory infection for at least 14 days after exiting the facility. If symptoms occur, advise them to self-isolate at home, contact their healthcare provider, and immediately notify the facility of the date they were in the facility, the individuals they were in contact with, and the locations within the facility they visited.

CMS identified a number of exceptions to the above visitation restrictions:

- *Health care workers:* This applies to other health care workers, such as hospice workers, Emergency Medical Services (“EMS”) personnel, or dialysis technicians that provide care to residents. They should be permitted to come into the facility as long as they meet the CDC guidelines for health care workers.
- *Surveyors:* CMS and state survey agencies are constantly evaluating their surveyors to ensure they do not pose a transmission risk when entering a facility. For example, surveyors may have been in a facility with COVID-19 cases in the previous 14 days, but because they were wearing personal protective equipment effectively per CDC guidelines, they pose a low risk to transmission in the next facility and must be allowed to enter. However, there are circumstances under which surveyors should still not enter, such as if they have a fever.

CMS also advises the screening applicable to visitors be applied to facility staff as well; health care providers with signs and symptoms of respiratory infection should not report to work, and if they develop said signs and symptoms at work, such staff should immediately stop work, put on a face mask, and self-isolate at home. CMS suggests that LTC Facilities specifically identify staff that work at multiple facilities and make sure that such staff

are actively screened, as they pose a potentially high risk to patients. CMS also advised LTC Facilities, as it relates to vendors, stating:

- [R]eview and revise how they interact vendors and receiving supplies, agency staff, EMS personnel and equipment, transportation providers (e.g., when taking residents to offsite appointments, etc.), and other non-health care providers (e.g., food delivery, etc.), and take necessary actions to prevent any potential transmission. For example, do not have supply vendors transport supplies inside the facility. Have them dropped off at a dedicated location (e.g., loading dock). Facilities can allow entry of these visitors if needed, as long as they are following the appropriate CDC guidelines for Transmission-Based Precautions.

## **Additional Guidance**

In addition to the above, CMS provided guidance related to the following topics:

- Cancellation of communal dining and all group activities, such as internal and external group activities.
- Reminding residents to practice social distancing and perform frequent hand hygiene.
- Transferring facility residents/patients with confirmed infections to hospitals and/or accepting residents/patients with confirmed infections from hospitals.
- Maintenance of appropriate supply levels and citations for deficiencies.

Facilities should take advantage of other CMS and CDC resources, which are discussed and linked below.

## **Patient Transfers**

On April 13, 2020, [CMS released guidance](#) highlighting the flexibilities regarding patient transfers. Transfers may be necessary to separate residents based on whether they have tested positive or are otherwise suspected of having COVID-19. As discussed below, several 1135 blanket waivers deal directly with the transfer of patients. In general, the guidance clarifies that no additional approval is needed to transfer or discharge residents between certified LTC Facilities, provided the transfer is being undertaken to cohort residents. However, when transfers are to be made to non-certified facilities, State Agency approval is required. The guidance goes on to discuss reimbursement under particular patient transfer scenarios including:

- Transfers between certified LTC Facilities.
- Transfer from a certified LTC Facility to a non-certified, but state approved location at which care will be provided by the LTC Facility's staff.
- Transfers to facilities with the provision of services “under arrangement.”
- Transfers to federal or state facilities staffed by government personnel and transfers by order of governmental authority (ex. FEMA).

[This transfer scenario guidance](#) helps to clarify flexibilities detailed in a CMS publication issued March 28, 2020. That document detailed flexibilities for temporary expansion sites (a/k/a facilities without walls).



## Reporting Requirements

On April 19, 2020, and in recognition of the importance of prompt and accurate reporting to state and local health departments, the CDC, CMS itself, and to residents or their representatives, CMS provided additional reporting requirements for LTC Facilities of confirmed or suspected cases of COVID-19.

LTC Facilities are currently required to notify state or local health departments of severe respiratory infections resulting in hospitalization or death, or instances of three or more residents or staff with new-onset respiratory symptoms within 72 hours of each other. CMS acknowledges this information is not yet collected at the federal level, such as CMS or CDC; however, “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.”

[CMS is adding reporting requirements](#), through forthcoming rulemaking, mandating LTC Facility notify their residents and their representatives of the conditions at the LTC Facility. LTC Facilities will share this information directly with residents, in accordance with existing privacy regulation and statute. Once the requirements are finalized, LTC Facilities 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.” LTC Facilities will be required to update residents 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. Said disclosures will also include information on mitigation and actions taken to reduce risk of transmission. Failure to comply with certain of these requirements could result in enforcement action against the LTC Facility by CMS.

## CDC GUIDANCE

The CDC provided, and continues to update, [resources related to COVID-19 specific to LTC Facilities](#), including a preparedness checklist, guidance on infection prevention and control, and additional guidance for LTC Facilities when there are, and are not, COVID-19 cases in their community. What follows is a high-level summary of CDC guidance; however, LTC Facilities should review the guidance related to LTC facilities on the [CDC's website](#).

### COVID-19 Preparedness Checklist

The CDC suggests LTC Facilities take the following into consideration to improve preparedness for responding to COVID-19 and in developing their COVID-19 response plan:

- Rapid identification and management of ill residents.
- Considerations for visitors and consultant staff.
- Supplies and resources.
- Sick leave policies and other occupational health considerations.
- Education and training.
- Surge capacity for staffing, equipment and supplies, and postmortem care.

The CDC also provided a [checklist](#) identifying key areas LTC Facilities should consider and allowing LTC Facilities to self-assess the strengths and weaknesses of preparedness efforts.<sup>10</sup>

## **Infection Prevention and Control**

The CDC's guidance related to infection prevention and control mirrors the guidance provided by CMS; specifically, the CDC recommends LTC Facilities:

- Restrict all visitation except for certain compassionate care situations, such as end-of-life situations.
- Restrict all volunteers and nonessential HCP (e.g., barbers).
- Cancel all group activities and communal dining.
- Implement active screening of residents and HCP for fever and respiratory symptoms.

The CDC further stated, “[N]ursing homes should assume [COVID-19] could already be in their community” and should implement the above recommended precautions.

## **VA GUIDANCE**

On March 10, 2020, the U.S. Department of Veterans Affairs (“VA”) announced safeguards to protect nursing home and spinal cord injury patients highlighting the VA's 134 nursing homes around the country.<sup>22</sup> Three main points were identified that are applicable to VA nursing homes:

1. All VA nursing homes will adopt a “No Visitor Stance,” meaning no outside visitors will be permitted to see residents. The exception is when veterans are in the last stage of life in the hospice units. In this case, the visitors will be limited to a particular room.
2. All VA nursing homes will suspend new admissions. VA nursing homes will continue to welcome resident transfers from VA facilities once medical personnel have determined patients are not at risk for infection from COVID-19 or transmitting COVID-19.
3. Nursing home staff will be actively screened daily and dedicated to working at Community Living Centers.

## **EMERGENCY RESPONSE: FEDERAL AND STATE**

On March 13, 2020, President Donald Trump declared a nationwide emergency.<sup>23</sup> This declaration increases federal support to the Department of Health & Human Services in its role as the lead federal agency in the ongoing COVID-19 pandemic response. As a result of the declaration, the Federal Emergency Management Agency (“FEMA”) will reimburse eligible emergency protective measures taken to respond to COVID-19 at the direction or guidance of public health officials. FEMA assistance will not duplicate assistance from other federal agencies and will be provided at a 75 percent cost share. In response to the COVID-19 emergency, CMS has taken proactive steps through 1135 waivers and the issuance of an Interim Final Rule to expand efforts against COVID-19.<sup>24</sup>

### **1135 Waivers**

CMS announced [blanket 1135 waivers](#) on certain specific topics on March 13, 2020, which has been updated periodically, most recently on April 21, 2020. What follows is a general summary of the major waivers applicable to LTC Facilities — it should be noted, there are nuances and exceptions to each waiver. Said waivers include, but are not limited to:

- **Physician Services:**
  - **Physician Delegation of Tasks in SNFs.** CMS is waiving the requirement in 42 CFR § 483.30(e)(4) that prevents a physician from delegating some tasks to PAs, NPs, or clinical nurse specialists when the regulations specify that the physician must perform it personally, except when prohibited by state law or LTC Facility policy. CMS is modifying this regulation to specify that any task delegated under this waiver must continue to be under the supervision of the physician.
  - **Physician Visits.** CMS is waiving the requirement at § 483.30(c)(3) that all required physician visits (not already exempted in § 483.30(c)(4) and (f)) must be made by the physician personally. CMS is modifying this provision to permit physicians to delegate any required physician visit to a nurse practitioner (NPs), physician assistant, or clinical nurse specialist who is not an employee of the facility, who is working in collaboration with a physician, and who is licensed by the State and performing within the state's scope of practice laws.
- **3-Day Prior Hospitalization:** CMS is waiving the requirement for a three-day prior hospitalization for coverage of a SNF stay, providing temporary emergency coverage of SNF services for those people who need to be transferred as a result of the effect of a disaster or emergency. In addition, for certain beneficiaries who recently exhausted their SNF benefits, it authorizes renewed SNF coverage without first having to start a new benefit period.
- **Physical Environment:**
  - CMS is waiving requirements under 42 CFR § 483.90 to allow for a non-SNF building to be temporarily certified as and available for isolation processes, if the location is approved by the state. CMS will also waive certain conditions of participation and certification requirements for temporary facilities when requested by the state.
  - Alternative rooms in facilities may be used to assist with isolation needs temporarily. Residents may be housed in activity rooms, meeting/conference rooms, dining rooms, or other rooms, as long as residents can be kept safe, comfortable, and other applicable requirements for participation are met. This can be done so long as it is not inconsistent with a state's emergency preparedness or pandemic plan, or as directed by the local or state health department.
- **Reporting Minimum Data Set:** CMS is waiving 42 C.F.R. 483.20 to provide relief to SNFs on the time-frame requirements for Minimum Data Set assessments and transmission.
- **Staffing Data Submission:** The requirements for submitting staffing data through the Payroll-Based Journal system under 42 CFR 483.70(q) are waived.
- **Pre-Admission Screening and Annual Resident Review (PASRR):** CMS is waiving 42 C.F.R. § 483.20(k), allowing nursing homes to admit new residents who have not received Level 1 or Level 2 Preadmission Screening. Level 1 assessments may be performed post-admission. On or before the 30th day of



admission, new patients admitted to nursing homes with a mental illness (MI) or intellectual disability (ID) should be referred promptly by the nursing home to State PASARR program for Level 2 Resident Review.

- **Resident Groups:** CMS is waiving the requirements at 42 CFR 483.10(f)(5) which ensure residents can participate in-person in resident groups. This waiver would only permit the facility to restrict in-person meetings during the national emergency given the recommendations of social distancing and limiting gatherings of more than ten people. Refraining from in-person gatherings will help prevent the spread of COVID-19.
- **Resident Roommates and Grouping:** CMS is waiving the requirements at 42 CFR 483.10(e)(5), (6), and (7) solely for the purposes of grouping or cohorting residents with respiratory illness symptoms and/or residents with a confirmed diagnosis of COVID-19, and separating them from residents who are asymptomatic or tested negative for COVID-19. This action waives a facility's requirements, under 42 CFR 483.10, to provide for a resident to share a room with his or her roommate of choice in certain circumstances, to provide notice and rationale for changing a resident's room, and to provide for a resident's refusal a transfer to another room in the facility. This aligns with CDC guidance to preferably place residents in locations designed to care for COVID-19 residents, to prevent the transmission of COVID-19 to other residents.
- **Workforce:** CMS is waiving the requirements at 42 CFR § 483.35(d), (except for 42 CFR §483.35(d)(1)(i)), which require that a SNF and nursing facility may not employ anyone for longer than four months unless they met the training and certification requirements under §483.35(d). Note that facilities are still required to ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care under 42 CFR 483.35(c).
- **Resident Transfer and Discharge:** CMS is waiving requirements in 42 CFR § 483.10(c)(5); 483.15(c) (3), (c)(4)(ii), (c)(5)(i) and (iv), (c)(9), and (d); and § 483.21(a)(1)(i), (a)(2)(i), and (b)(2)(i) (all with some exceptions) to allow a LTC Facility to transfer or discharge residents to another LTC Facility solely for the following cohorting purposes:
  - Transferring residents with symptoms of a respiratory infection or confirmed diagnosis of COVID-19 to another facility that agrees to accept each specific resident and is dedicated to the care of such residents;
  - Transferring residents without symptoms of a respiratory infection or confirmed to not have COVID-19 to another facility that agrees to accept each specific resident and is dedicated to the care of such residents to prevent them from acquiring COVID-19; or
  - Transferring residents without symptoms of a respiratory infection to another facility that agrees to accept each specific resident to observe for any signs or symptoms of a respiratory infection over 14 days.

Lastly, individual waivers may also be requested under 1135 through the CMS regional office.<sup>25</sup> For instance, as of April 20, 2020, CMS had approved Medicaid waivers for nearly every state and multiple territories, addressing a number of areas, including nursing homes.<sup>26</sup>

## Interim Final Rule

[Additional changes were announced](#) by CMS as part of an Interim Final Rule. In regards to telehealth services, additional nursing facility services will now be covered by Medicare. CMS is also removing frequency limitations on subsequent care services in nursing facilities.

## CARES ACT

Congress has also taken action to aid Americans during the COVID-19 emergency. On March 27, 2020, the [Coronavirus Aid, Relief, and Economic Security](#) ("CARES") Act was signed into law.<sup>27</sup> Several provisions impact LTC Facilities including Sec. 3711. Increasing Access to Post-Acute Care During Emergency Period. This provision permits waivers of the IRF 3-Hour Rule and Site Neutral Rule for Payments to LTCHs.

Additionally, LTC Facilities may be eligible for funds related to "health care related expenses or lost revenues that are attributable to coronavirus." To be eligible a provider must submit an application that includes "a statement justifying the need of the provider for the payment and the eligible health care provider shall have a valid tax identification number." No additional information was provided in the Act on the application process. Applications will be reviewed on a rolling basis and use of the funds is limited to "building or construction of temporary structures, leasing of properties, medical supplies and equipment including personal protective equipment and testing supplies, increased workforce and trainings, emergency operation centers, retrofitting facilities, and surge capacity."

Additionally, some locales have also declared a state of emergency. Such a declaration may further allow access to additional resources or authorize governmental actions in a more expeditious manner that may alter the processes by which a facility would ordinarily operate with regard to investigation, enforcement, or other regulatory matters. For these reasons, it is important to closely monitor your state and local health authorities, as well as federal agencies and declarations, directives, or other executive orders. K&L Gates is also in a position to assist with monitoring these declarations and how they may impact your efforts to provide health care services.

## CONCLUSION

LTC Facilities should take note of the ample guidance provided by the various organizations, such as CMS and the CDC. Below are links to a number of those documents. This guidance can assist LTC Facilities in making informed, strategic decisions related to the very real threat faced by facilities and their patients. While these documents can serve as guideposts in formulating a response to COVID-19, LTC Facilities may wish to engage inside and/or outside counsel to ensure their response is tailored to their needs and the patient population they service. To that end, K&L Gates LLP has created a HUB webpage to generally address the legal implications of the COVID-19 outbreak on businesses. K&L Gates is well positioned to provide guidance to LTC Facilities on the many health care-related concerns raised by the COVID-19 outbreak as well as other matters that may arise in the current climate.

## CITING REFERENCES AND ADDITIONAL RESOURCES:

- K&L Gates HUB:
  - [Responding to COVID-19.](#)
- CMS COVID-19 Specific Guidance:
  - [COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers \(April 15, 2020\)](#)
  - [Guidance for Infection Control and Prevention of Coronavirus Disease 2019 \(COVID-19\) in nursing homes \(REVISED\), QSO-20-14-NH \(March 13, 2020\)](#)
  - [IFC Federal Register Announcement \(April 1, 2020\)](#)
  - [Upcoming Requirements for Notification of Confirmed COVID-19 \(or COVID19 Persons under Investigation\) Among Residents and Staff in Nursing Homes \(April 19, 2020\)](#)
  - [Long Term Care Facilities \(Skilled Nursing Facilities and/or Nursing Facilities\): CMS Flexibilities to Fight COVID-19 \(March 28, 2020\)](#)
  - [COVID-19 Long-Term Care Facility Guidance \(April 2, 2020\)](#)
  - [COVID-19 Emergency Declaration Health Care Providers Fact Sheet \(March 30, 2020\).](#)
  - [Trump Administration Issues Key Recommendations to Nursing Homes, State and Local Governments \(April 2, 2020\)](#)
  - [2019 Novel Coronavirus \(COVID-19\) Long-Term Care Facility Transfer Scenarios \(April 13, 2020\)](#)
- Additional CMS Resources:
  - [COVID-19 FAQs.](#)
  - [Long Term Care \(LTC\) Infection Control Worksheet.](#)
  - [CMS Announces Findings at Kirkland Nursing Home and New Targeted Plan for Healthcare Facility Inspections in light of COVID- 19 \(March 23, 2020\)](#)
  - [Civil Money Penalty Reinvestment Program—Head to Toe Infection Prevention Toolkit.](#)
  - [Infection Control and Prevention regulations and guidance: 42 CFR 483.80, Appendix PP of the State Operations Manual—see F-tag 880.](#)
  - [Suspension of Survey Activities, QSO-20-12-All \(March 4, 2020\).](#)
  - [Frequently Asked Questions for State Survey Agency and Accrediting Organization Coronavirus Disease 2019 \(COVID-19\) Survey Suspension \(March 10, 2020\).](#)
  - [State Operations Manual Appendix Z - Emergency Preparedness for All Provider and Certified Supplier Types Interpretive Guidance.](#)
- CDC Guidance:

- [Preparing for COVID-19: Long-term Care Facilities, Nursing Homes.](#)
- [Coronavirus Disease 2019 \(COVID-19\) Preparedness Checklist for Nursing Homes and other Long-Term Care Settings.](#)
- [Coronavirus Disease 2019 \(COVID-19\) Updates.](#)
- [Nursing Homes and Assisted Living \(Long-term Care Facilities\).](#)
- [Healthcare Infection Prevention and Control FAQs for COVID-19](#)
- [Interim Guidance for Healthcare Facilities: Preparing for Community Transmission of COVID-19 in the United States.](#)
- VA Guidance
  - [VA Announces Safeguards to Protect Nursing Home and Spinal Cord Injury Patients.](#)
- Federal Legislation:
  - [H.R.748 - CARES Act](#)
- 1135 Waivers
  - [Waiver or Modification of Requirements Under Section 1135 of the Social Security Act \(March 13, 2020\).](#)
  - [Additional Emergency and Disaster-Related Policies and Procedures That May Be Implemented Only With a § 1135 Waiver \(March 15, 2019\).](#)
  - [Medicare Fee-for-Service \(FFS\) Response to the Public Health Emergency on the Coronavirus.](#)
- Emergency Preparedness Plan
  - [81 Fed. Reg. 63860 \(Sept. 16, 2016\).](#)
  - [Emergency Preparedness- Updates to Appendix Z of the State Operations Manual \(SOM\), QSO19-06-ALL \(February 1, 2019\).](#)

## FOOTNOTES

<sup>1</sup> [Preparing for COVID-19: Long-term Care Facilities, Nursing Homes](#), CTRS. FOR DISEASE CONTROL AND PREVENTION.

<sup>2</sup> [Report of the WHO-China Joint Mission on Coronavirus Disease 2019](#) (COVID-19) WORLD HEALTH ORG. (Feb. 16–24, 2020).

<sup>3</sup> Laura Strickler, [Number of long-term care facilities with COVID-19 cases tops 400 nationwide](#), NBC NEWS (March 30, 2020). See also Joanne Kenen, Rachel Roubein & Susannah Luthi, [How public health failed nursing homes](#), Politico (April 6, 2020).

<sup>4</sup> Laura Strickler, [CDC pressured to start keeping a formal tally of nursing homes with coronavirus cases](#), NBC NEWS (April 6, 2020).

<sup>5</sup> Marisa Kwiatkowski and Tricia L. Nadolny, [At least 2,300 nursing homes have coronavirus cases — and the reality is likely much worse](#), USA TODAY (April 13, 2020).

<sup>6</sup> Mary Ellen Klas and Lawrence Mower, [Under pressure, DeSantis releases names of elder care homes with COVID-19 cases](#), MIAMI HERALD (April 19, 2020).

<sup>7</sup> Press Briefing, [Update from Life Care Center of Kirkland - Mar. 13, 2020](#).

<sup>8</sup> Temet M. McMichael et al., [COVID-19 in a Long-Term Care Facility — King County](#), Washington, February 27–March 9, 2020, Morbidity and Mortality Weekly Report, CDC (March 26, 2020).

<sup>9</sup> Press Release, [Urgent need for people to limit contact, and other COVID-19 updates from Public Health for March 23, 2020](#), Seattle & King County Public Health.

<sup>10</sup> Letter from Patrick Thrift, Branch Manager, [Seattle Long Term Care](#), to Ellie Basham, Administrator, Life Care Center of Kirkland (April 1, 2020).

<sup>11</sup> Tim Reid, [Seattle-area nursing home hit with wrongful death lawsuit over coronavirus death](#), REUTERS (April 10, 2020).

<sup>12</sup> *Id.*

<sup>13</sup> *de los Angeles v. Life Care Cents. Of Am., Inc.*, 2020 WL 1818441 (Wash.Super., 2020) (Trial Pleading).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Madeline Holcombe, [Washington governor orders nursing homes to limit visitors as the coronavirus outbreak spreads across 11 facilities](#), CNN (Mar. 11, 2020),; WBRZ Staff, [Officials: 12 coronavirus cases, one death reported at New Orleans retirement home](#), WBRZ (Mar. 16, 2020).

<sup>17</sup> Press Release, CMS Announces Findings at Kirkland Nursing Home and New Targeted Plan for Healthcare Facility Inspections in light of COVID-19, DEP'T OF HEALTH & HUMAN SERVS., CTRS. FOR MEDICARE & MEDICAID SERVS. (March 23, 2020).

<sup>18</sup> DEP'T OF HEALTH & HUMAN SERVS., CTRS. FOR MEDICARE & MEDICAID SERVS., CTR. FOR CLINICAL STANDARDS AND QUALITY/QUALITY, SAFETY & OVERSIGHT GROUP, Guidance for Infection Control and Prevention of Coronavirus Disease 2019 (COVID-19) in nursing homes (REVISED), QSO-20-14-NH (Mar. 13, 2020).

<sup>19</sup> DEP'T OF HEALTH & HUMAN SERVS., CTRS. FOR MEDICARE & MEDICAID SERVS., CTR. FOR CLINICAL STANDARDS AND QUALITY/QUALITY, SAFETY & OVERSIGHT GROUP, Suspension of Survey Activities, QSO-20-12-All (Mar. 4, 2020).

<sup>20</sup> DEP'T OF HEALTH & HUMAN SERVS., CTRS. FOR MEDICARE & MEDICAID SERVS., CTR. FOR CLINICAL STANDARDS AND QUALITY/QUALITY, SAFETY & OVERSIGHT GROUP, Frequently Asked Questions for State Survey Agency and Accrediting Organization Coronavirus Disease 2019 (COVID-19) Survey Suspension (Mar. 11, 2020).



- <sup>21</sup> [Coronavirus Disease 2019 \(COVID-19\) Preparedness Checklist for Nursing Homes and other Long-Term Care Settings](#), CTRS. FOR DISEASE CONTROL AND PREVENTION.
- <sup>22</sup> News Release, U.S. Dep't of Veterans Aff., Off. of Pub. Aff. Media Relation, [VA announces safeguards to protect nursing home and spinal cord injury patients](#) (Mar. 10, 2020).
- <sup>23</sup> DEP'T OF HOMELAND SECURITY, FED. EMERGENCY MGMT. AGENCY, [COVID-19 Emergency Declaration, HQ-20-017-Fact Sheet](#) (Mar. 13, 2020).
- <sup>24</sup> Press Release, Dep't of Health & Human Servs., Ctrs. for Medicare & Medicaid Servs., [Trump Administration Makes Sweeping Regulatory Changes to Help U.S. Healthcare System Address COVID-19 Patient Surge](#) (March 30, 2020). See also Press Release, Dep't of Health & Human Servs., Ctrs. for Medicare & Medicaid Servs., [CMS Takes Action Nationwide to Aggressively Respond to Coronavirus National Emergency](#) (Mar. 13, 2020).
- <sup>25</sup> DEP'T OF HEALTH & HUMAN SERVS., CTRS. FOR MEDICARE & MEDICAID SERVS., [Additional Emergency and Disaster-Related Policies and Procedures That May Be Implemented Only With a § 1135 Waiver](#) (Mar. 15, 2019).
- <sup>26</sup> DEP'T OF HEALTH & HUMAN SERVS., CTRS. FOR MEDICARE & MEDICAID SERVS., MEDICAID.GOV, [Federal Disaster Resources](#), (last visited on April 20, 2020) (State for which waivers have been granted include: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, D.C., Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Northern Mariana Islands, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, U.S. Virgin Islands, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming).
- <sup>27</sup> See Coronavirus Aid, Relief, and Economic Security Act (Public Law No: 116-136).

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