CMS Continues to Refine Survey and Infection Control Guidance for Long Term Care Facilities During the COVID-19 Pandemic

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Long-term care facilities, including nursing homes, (collectively, LTCF) have been a hot spot for the transmission of the novel coronavirus disease (COVID-19). In an effort to balance quality, transparency and infection control, on April 24, 2020, the Centers for Medicare & Medicaid Services (CMS) issued a Quality, Safety and Oversight Group (QSO) Memorandum (QSO-20-28-NH) (QSO Memo), which addresses (i) how LTCF quality rating scores will account for COVID-19-related surveys; (ii) CMS’ plans to publish LTCF staffing censuses; and (iii) several frequently asked questions (FAQs) related to prior CMS guidance to LTCFs regarding infection control and operations during the COVID-19 pandemic.
In Depth

LTCF Quality Surveys

CMS previously announced a suspension of any LTCF surveys except those that focus on urgent patient safety threats and infection-control issues. This targeted focus allowed CMS to prioritize resident safety without interrupting patient care. However, because of CMS’ ongoing targeted inspection plan, the CMS Nursing Home Five Star Quality Rating System could be skewed by over-weighting the ratings of surveyed facilities. CMS will continue posting survey results on the CMS Nursing Home Compare Website, but it will refrain from incorporating targeted survey results into a facility’s star rating. Instead, LTCFs will be scored and rated based on surveys conducted prior to March 4, 2020.

LTCF Staff Censuses

CMS plans to release the average total number of nursing and other staff that each facility has on site per day, recognizing the potential value of this data in assisting state agencies to direct personal protective equipment (PPE) to LTCFs and other healthcare providers. CMS believes this increased transparency may be useful to residents and their families as well as to state and federal public health authorities. This data will also be aggregated by state and nationally. LTCFs are required to report their direct staff census, average daily patient census and total beds to comply with 42 C.F.R. § 483.70(q). However, LTCFs most recently reported this information for the fourth quarter of 2019, meaning the data that will be published may not accurately reflect a facility’s current COVID-19-related staffing.

FAQ Clarifications

In the QSO Memo, CMS addressed 19 FAQs pertaining to its prior guidance and related to certain waivers of federal requirements. Highlights of these FAQs include the following:

- **Discharge and Admission**
  - Patients recovering from COVID-19 may be discharged from hospitals to LTCFs without a negative COVID-19 test. Test-based strategies for discontinuing transmission-based precautions are preferred, but if test-based strategies are unavailable, the following clinical strategies are acceptable:
    - If a patient does not meet the criteria for discontinuing transmission-based precautions, that patient should only be discharged to a facility that can adhere to CDC infection prevention and control recommendations, and the patient should be placed in a dedicated COVID-19 care location.
    - If a patient meets criteria for discontinuing transmission-based precautions and continues to exhibit COVID-19 symptoms, to the extent practicable, the patient should reside in a single-occupancy room, be restricted to the room, wear a facemask during care activities, and adhere to these restrictions until symptoms abate or until 14 days after the illness...
began, whichever is longer.

- If a patient meets criteria for discontinuing transmission-based precautions and no longer exhibits any COVID-19 symptoms, no additional restrictions are needed upon discharge.
- Patients who are discharged from hospitalizations unrelated to COVID-19 may be transferred to LTCFs without testing, but transmission-based precautions should be exercised by placing such patients in a single-occupancy room or a separate observation room until 14 days have elapsed since admission.

**LTCF Visitation**

- CMS urges facilities to make strong efforts to maintain strong communications between residents and their outside support systems. As previously reported, CMS plans to issue rules obligating facilities to report COVID-19 infections to residents and their representatives. The QSO Memo emphasizes that facilities should also consider alternative means of communication, such as telecommunication, listservs, virtual office hours and posting messages on public-facing websites. LTCFs are also reminded about the potential utility of the Long-Term Care Ombudsman Program to address questions or concerns from residents and families.
- CMS also reminds LTCFs that they can request up to $3,000 from their state agency's civil monetary penalty (CMP) contact to purchase communicative devices, including webcams, tablets and protective covers for such devices. CMS also observes that these communicative devices may be useful in conducting telehealth visits with residents’ practitioners. Certain CMP funds are held in reserve for states and may be utilized to purchase communicative devices, although CMS cautions that some states may not be able to fund communicative device purchases with CMP funds for all LTCFs.
- CMS reemphasizes the importance of restricting non-essential personnel and visitors from entering LTCFs, as we previously discussed. Facilities have discretion in determining whether a visit is “essential” or whether a “compassionate care situation” exists. CMS urges facilities that “unless it is absolutely necessary to go into a nursing home, people should not.” Facilities should evaluate residents’ needs when determining whether a visitor is essential (e.g., a hospice patient’s health status is rapidly declining) or whether ancillary personnel are essential (e.g., facility repairs are necessary for resident safety). In all such visits, facilities should ensure all necessary precautions are met to prevent the spread of COVID-19.
- CMS reminds LTCFs that it is unlawful for a facility to restrict a resident from leaving the facility, but facilities should take all reasonable measures to discourage any such departures. Some suggestions include encouraging residents to reschedule appointments for a later date, providing access to telemedicine modalities or providing residents with PPE to minimize the risk of transmission. Facilities should monitor the resident for 14 days upon his or her return for fever and signs and symptoms of respiratory infection. Further, LTCFs should document in the resident’s medical record how the facility discouraged the resident’s departure and that the facility explained the risks of leaving to the resident or the resident’s
representative.

- **Federal Waivers**
  - Consistent with our prior report, CMS reiterated that several waivers have been implemented, many of which apply to LTCFs.

- **Cohorting, Separating and Admitting Residents**
  - CMS provides examples for how LTCFs can cohort residents with confirmed COVID-19. This includes dedicating a floor, unit, wing, or other facility for new admissions and readmissions for residents whose COVID-19 status is unknown or for those who develop symptoms prior to diagnosis.
  - While the federal waivers are in effect, certified LTCFs may change residents’ rooms or establish rooms in non-traditional locations (e.g., conference rooms) to form cohorts without obtaining advance CMS approval. State approval may be necessary for adding beds to areas not typically used as resident rooms.
  - Two or more certified LTCFs may agree to transfer or discharge residents between them for the purposes of cohorting. Facilities do not need to obtain CMS approvals, and each facility can bill Medicare or Medicaid for the residents that are transferred to their facility.
  - Certified LTCFs may also transfer residents to non-certified locations. In doing so, the certified LTCF staff must continue caring for the resident, and reimbursement remains with the LTCF providing such care. The non-certified location may be paid “under arrangement” for any services provided to residents.
  - The federal waivers only apply to cohorting activities that pertain to the prevention of COVID-19.

- **LTCF Surveys and Infection-Control Measures**
  - During the time that CMS surveys are reserved for urgent situations, LTCFs are encouraged to utilize a new focused infection control survey process, the CMS Self-Assessment Tool, to conduct internal surveys. Results from self-assessments are not considered an official survey, but surveyors are permitted to request to review these self-assessments. Facilities continue to be responsible for complying with essential health and safety standards despite the suspension of survey activities.
  - CMS encourages LTCFs to complete the Self-Assessment Tool to help ensure the facility is prepared to prevent the transmission of COVID-19. Surveyors may call LTCFs to remind the facility to complete the Self-Assessment Tool or to ask for the facility’s results.
  - A portion of the Self-Assessment Tool asks whether the LTCF has established a surveillance plan that includes, in part, taking residents’ vital signs per shift. CMS clarifies that LTCFs have discretion regarding which residents should have their blood pressure taken during every shift. This self-assessment question is meant to give facilities latitude to make individual resident assessments that are appropriate for the resident’s current health status weighed against any risk of COVID-19 transmission.
  - If a surveyor visits an LTCF, the LTCF is permitted to screen the surveyor for signs and symptoms of COVID-19, but the LTCF is not permitted to restrict the surveyor’s access. CMS reminds LTCFs that surveyors are required to wear proper PPE for any inspections that cannot be done wholly remotely.
Key Takeaways

With increasing focus on LTCFs in the context of the COVID-19 pandemic, CMS guidance to LTCFs continues to evolve while emphasizing fundamental principles of resident health and safety, COVID-19 transmission prevention, and the unique healthcare and psychosocial needs of LTCF residents. LTCFs should consult the QSO Memo FAQs for additional guidance related to particular scenarios relevant to day-to-day operations, and anticipate forthcoming rulemaking on reporting obligations and related matters.

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