

State and Federal Regulations Create New COVID-19 Reporting Requirements for Nursing Homes

April 24, 2020

COVID-19 (coronavirus) has quickly spread across the United States infecting hundreds of thousands of people. Since the beginning of the COVID-19 pandemic, health experts have warned that people over 65 are more vulnerable to this virus and are therefore more likely to have serious health complications should they contract it. This has caused nursing homes across the country to become hotspots for COVID-19 creating a major strain on nursing home staff as they struggle to provide care for infected residents. One major issue resulting from the rampant COVID-19 infection rate in nursing homes has been a delay in nursing homes reporting COVID-19 related infections and deaths to residents' family members and public health officials. As a result, both the New York State and Federal governments have passed regulations in recent days that create strict reporting requirements for nursing homes related to COVID-19.

Public health officials have been concerned about COVID-19's effect on nursing homes since the beginning of the outbreak in the United States. The Life Care Center nursing home in Kirkland, Washington became ground zero for the COVID-19 outbreak in the United States. In late February, staff at the nursing home began to notice a sharp increase in respiratory issues with its residents. Since then, hundreds connected to the facility have been diagnosed with COVID-19 and dozens have died making it one of the deadliest concentrations of the outbreak in the U.S.

Since then, COVID-19 has wreaked havoc on nursing home facilities in various states around the country. Recognizing the strain that COVID-19 was putting on nursing home facilities, in March, New York passed an executive order which essentially shields nursing home facilities from liability so long as they are making good faith efforts to treat residents with COVID-19. The New York law specifically states that "any health care facility or health care professional shall have immunity from any liability, civil or criminal, for any harm or damages alleged," so long as care is administered in accordance with state regulations and is affected by "decisions or activities in response to or as a result of the COVID-19 outbreak." This law effectively relaxed typical reporting and record keeping requirements for nursing home operators during the COVID-19 pandemic.

However, nursing homes have come under increased scrutiny in recent weeks as family members and government officials have grown increasingly concerned about a lack of transparency when it comes to nursing home facilities' treatment of its residents with COVID-19. Since the start of the COVID-19 outbreak in the United

States, nursing home facilities, like many other healthcare facilities and businesses, have significantly limited or entirely banned visitors from entering their facilities. This, coupled with the high demands on healthcare providers, has made it more difficult for family members to obtain information about the health of their loved ones living in nursing home as they are unable to visit and nursing home staff are overwhelmed in their efforts to care for residents. Government and public health officials have also grown concerned that the virus may be much more deadly in nursing homes than the current data suggests due to lack of reporting and proper testing. Some of these fears were realized last week when 17 bodies were discovered in a nursing home facility in New Jersey. First responders stated that the nursing home facility was clearly overwhelmed and it was not immediately clear if the deceased residents passed away due to complications from COVID-19 or due to some other health issue.

To combat these reporting issues, the Federal government, through the Centers for Medicare & Medicaid Services, issued mandatory guidance on April 19, 2020 requiring nursing home facilities to start reporting all COVID-19 diagnoses directly to the Centers for Disease Control and Prevention ("CDC"). Federal officials hope that by requiring nursing home facilities to report directly to the CDC, they will be better able to track and prevent the spread of COVID-19 in nursing home facilities. The new reporting requirement will also help public health officials to get a better idea of how deadly COVID-19 has been to nursing home residents.

Last week, New York State Governor Andrew Cuomo issued a new executive order requiring nursing home facilities to report positive COVID-19 cases and deaths to family members of nursing home residents within 24 hours. This order includes adult homes and other assisted living facilities. These guidelines were previously part of guidance issued by the state to nursing home facilities but are now mandatory as of April 15, 2020.

On April 23, 2020, Governor Cuomo also announced that New York State would be launching an investigation into nursing homes to ensure that nursing home facilities are following COVID-19 related rules issued by the state. These rules include:

- Requirement that nursing home staff wear PPE and have their temperature taken
- COVID-19 patients must be isolated from rest of facility
- Staff treating COVID-19 patients must not treat other residents
- All staff and residents must be notified within 24 hours if any resident tests positive for COVID-19
- Readmitting COVID-19 patients must only be done if they can be properly paid for

The Governor stated that the investigation would be a joint effort between the New York State Department of Health and the Attorney General. Nursing homes found to be in violation of any COVID-19 related rules could be fined or have their licenses revoked.

Cullen and Dykman LLP is committed to assisting our clients with their questions and concerns during this coronavirus (COVID-19) outbreak. Please do not hesitate to contact our readily available healthcare lawyers Andrew P. Nitkewicz at (516) 357-3895 or via email at anitkewicz@cullenllp.com and Ryan Soebke at (516) 357-3784 or via email at rsoebke@cullenllp.com.

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Practices

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