



Nursing Homes Should Brace for Additional COVID-19 Regulations, Surveys, and Oversight

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In response to the large number of adverse outcomes at nursing homes across the U.S., the Center for Medicare and Medicaid Services (“CMS”) [announced](#) on April 30, 2020 the formation of a Coronavirus Commission for Safety and Quality in Nursing Homes (“Coronavirus Commission”). The Coronavirus Commission will be convened by a contractor for CMS. The Coronavirus Commission will review data, examine how nursing homes have responded to the pandemic, and propose recommendations the contractor will pass along to CMS.

The mission of the Coronavirus Commission is to:

- Assure that nursing home residents are protected from COVID-19 by improving the responsiveness of care delivery and maximizing the quality of life for residents in nursing homes;
- Strengthen regulations to enable rapid and effective identification and mitigation of COVID-19 transmission in nursing homes; and
- Enhance federal and state enforcement strategies to improve compliance with infection control policies in response to COVID-19.

The commission is expected to be quickly formed with representatives from industry leaders, family members, clinicians, residents, patient care advocates, medical ethicists, administrators and other experts selected through a nomination process.

CMS also [announced](#) on April 30, 2020 that it expects to use some of the money appropriated by Congress under the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act to provide state survey agencies (“SSAs”) with approximately \$81 million of new funding. The funding will be available for SSAs to spend for stepped-up survey activity through September 30, 2023. According to a [memo](#)

[to SSA Directors](#), nursing homes should be prepared for new requirements for reporting COVID-19 cases and COVID-19-related symptoms to the Centers for Disease Control (“CDC”) and to residents and their representatives. The reports will need to include information on the facility’s actions to prevent or reduce transmission and will also have to comply with existing privacy regulations.

Seema Verma, CMS administrator, authored a blog post in April reiterating CMS’s plan to focus on five goals for the regulation of nursing homes:

- Strengthen oversight,
- Enhance enforcement,
- Increase transparency,
- Improve quality, and
- Put patient needs over paperwork.

As a result of this flurry of government activity, nursing homes, which are likely already overwhelmed and short of staff and resources due to COVID-19, will also need to brace for increased scrutiny and survey activity.

Nursing homes are advised to use a recently-published [survey tool](#) to:

- Perform their own assessments,
- Prepare for additional surveys,
- Address any concerns with infection control and compliance at their facilities,
- Document their compliance efforts.

Nursing homes should be able to demonstrate a prompt and effective response to both existing and newly-implemented compliance requirements.

Given the rapidly-changing regulatory environment and increased scrutiny for COVID-19 compliance, nursing homes should continually update their compliance programs to demonstrate adherence to new regulatory initiatives as they are implemented.

Nursing homes should be prepared to demonstrate their compliance and their preparedness efforts by using self-survey tools and documenting their appropriate and rapid responses to any deficiencies. Remaining compliant will require paying close attention to the activities of the Coronavirus Commission and the recommendations and guidance documents produced by this new commission.

If you have questions about the new compliance requirements facing nursing facilities, Frost Brown Todd's [Health Care Innovation Team](#) can help. Please contact [Chuck Johnson](#) or [Rhonda Schechter](#) for more information.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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