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Skilled Nursing News

CMS Issues Guidance to States on Reopening Nursing Homes: Universal Testing Needed to Lift Visitation Ban

The Centers for Medicare & Medicaid Services (CMS) released guidelines on reopening nursing homes on Monday, with parameters around testing requirements and visitation — while emphasizing that nursing facilities will be among the last institutions that can safely reopen as the U.S. takes tentative steps toward moving out of COVID-19-induced lockdowns.

Written by: Maggie Flynn

5/18/2020

CMS announced that states have flexibility on deciding how the criteria in the guidelines should be implemented, given the variety in how the COVID-19 pandemic is affecting different communities.

For instance, states can require that all facilities in certain regions meet the reopening benchmarks, or make the call on a building-by-building basis.

However, the agency adamantly recommended that nursing homes secure COVID-19 testing for all residents and staff before advancing through the three planned phases of reopening, or relaxing any restrictions.

"CMS recommends nursing homes do not advance through any of the stages of reopening or relax any restrictions until all residents and staff have received a baseline test to establish that there are no known cases of COVID-19 in the facility," CMS administrator Seema Verma said on a call with reporters held Monday evening. "In addition to the baseline test, we are calling on nursing homes to screen all staff daily and test them weekly. Further testing of residents may be necessary upon identification of coronavirus symptoms."

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The factors CMS listed to inform the relaxation of restrictions on skilled nursing facilities include:

1. A community's case status
2. A nursing home's case status
3. Adequate staffing
4. Local hospital capacity
5. Universal source control — i.e. residents and visitors wearing face masks or face coverings
6. Access to adequate testing
7. Access to sufficient personal protective equipment (PPE)

"Due to the elevated risk COVID-19 poses to nursing home residents, we recommend additional criteria for advancing through phases of reopening nursing homes than is recommended in the broader administration's Opening Up America Again framework," CMS wrote.

These additional criteria include states surveying SNFs that "experienced a significant COVID-19 outbreak prior to reopening" to make sure the facility is preventing transmission.

In essence, a nursing home's opening needs to lag behind the general community's reopening by 14 days, according to the guidance.

Adequate testing plans for SNFs — a long-standing pain point in the COVID-19 pandemic — should consider several factors. These include:

1. The capacity to give all facility residents a single baseline COVID-19 test, as well as the capacity to test all residents when an individual is identified with symptoms of COVID-19 or when a staff member tests COVID-19-positive.
2. The capacity to provide all nursing home staff, including volunteers and vendors in the facility on a weekly basis, with a baseline test and to retest all staff every week ——though the weekly testing could be adjusted based on COVID-19 circulation in the community.
3. Written screening protocols for staff, residents, and all those who enter a facility.
4. An arrangement with laboratories to process tests.
5. A procedure for residents or staff that decline tests or cannot be tested.

SNFs across the country have reported challenges related to the capacity to both secure testing and get results back; in New York, operators have expressed concerns about the ability to scale up testing amid new mandates, while laboratories in the state reported being overwhelmed.

PruittHealth, which operates primarily in the Southeast of the U.S., had to scramble to secure adequate testing for residents, and at least as of the end of April, did not have the capacity to test staff despite being able to scale up its testing resources considerably.

And the president and CEO of one of the largest nursing home operators in the U.S. said that while the SNF testing situation is improving, there's still a lot of ground to make up, given that most SNFs don't have their own labs and supplies for the tests have been short.

"You have a supply issue, and a logistical issue, and a capacity issue — all of which are improving, but by no means do we have the resources we need to test, to really identify where the virus exists and prevent the spread," George Hager, the president and CEO of the Kennett Square, Pa.-based Genesis HealthCare (NYSE: GEN) told SNN on May 5.

The testing methods might vary by what is available in a community, whether that includes a local hospital lab using high-throughput testing, working with state labs, or mobile efforts with a point-of-care test from Abbott — which has separately drawn scrutiny over the accuracy of its results.

But at the federal level, CMS is comfortable with the testing capacity across the country, Verma said.

"We feel that there is sufficient testing capacity available in all states, and so these recommendations and guidelines were put together with that in mind," the administrator said Monday.

LeadingAge, an association which represents non-profit senior housing and care providers, disagreed strongly with Verma's assertions, stating that the guidance from CMS "is not grounded in the everyday realities."

"We need funding to make both of those possible for the brave people who care for vulnerable older adults day in and day out," LeadingAge president and CEO Katie Smith Sloan said in a statement provided to SNN. "Our members pay between $200,000 and $250,000 per week to test staff just twice a week. That's $1 million a month. Nursing homes need help from federal or state governments to cover these necessary costs. Today's guidance delivers none of that."

The American Health Care Association (AHCA), which represents 14,000 nursing homes and assisted living communities across the U.S., expressed support for the new guidance and appreciation for the focus on testing in a statement attributed to president and CEO Mark Parkinson. But it also emphasized the need for support and funding for long-term care.

"Moving forward, it is vital that all long term care facilities receive additional support and funding from state governments to conduct expanded testing," Parkinson said in the statement. "We encourage governors to use the $11 billion that has been allocated to states for expanding testing in our nursing homes, assisted living communities and other long term care facilities."

Skilled Nursing News

Congress Boosted Medicaid Match to Help Fight COVID-19 — But Many States Left Nursing Homes Out

As Medicaid funding is increased, the states are intended to use the money to fight the battle against the coronavirus spread, but not every state seems to be on the same playing field.

Written by: Maggie Flynn

5/17/2020

One of the first legislative packages designed to help the U.S. navigate the fallout of the COVID-19 pandemic included an increase in the federal matching funds for state Medicaid programs during the emergency period related to the coronavirus.

And a second major aid package under debate would go even further to increase federal dollars for Medicaid.

But though the majority of patients in the nation's nursing homes are covered by their state's Medicaid programs, the 6.2% increase in the Federal Medical Assistance Percentage (FMAP) included in the March 18 Families First Coronavirus Response Act doesn't necessarily trickle down to those facilities in every state.

"The intent of the 6.2% FMAP was to fight the battle against the coronavirus spread," Eddie Parades, senior vice president of government affairs at StoneGate Senior Living, told Skilled Nursing News in a May 12 interview, citing conversations with "a couple" U.S. senators. "But it was awarded to the executive branch of each one of the states, and our understanding is there were no strings attached."

The government pays covers a specific percentage — the FMAP — of their Medicaid expenses, and when the Families First Coronavirus Response Act was passed, that percentage was increased by 6.2 percentage points. But those funds went directly to each state's governor, Parades noted.

Essentially, that means governors can choose to use those increased funds as they see best for the Medicaid program, albeit under the federal mandates to document expenditures in a way that ensures a clear audit trail, according to the federal government's FMAP FAQs, updated on April 13.

Some states have used the funds to increase the Medicaid rates paid to nursing facilities; others have not, as multiple executives at real estate investment trusts (REITs) have noted.

The American Health Care Association (AHCA), a trade group representing more than 14,000 skilled nursing and assisted living facilities, has been tracking states where a Medicaid rate increase was approved — albeit not necessarily states that opted to pass on their FMAP boost. According to the group's data as of May 15, these included: California, Colorado, Connecticut, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Montana, New Hampshire, North Carolina, Oregon, Rhode Island, South Carolina Tennessee, Vermont, Virginia, Washington and Washington D.C.

Notably absent from the list: hotspots in the Northeast, including New York and New Jersey, where the death toll in nursing homes has made national news.

Washington, where the first major outbreak of COVID-19 occurred in a skilled nursing facility in Kirkland, was one of the states to implement an increased Medicaid rate as a result of their boost in FMAP funds. But Washington nursing homes had to ensure they stayed in touch with the state to secure those dollars, Washington Health Care Association (WHCA) president and CEO Robin Dale told SNN during a May 11 interview.

"The first step was to look at all Medicaid spending; they took that and decided how much of the FMAP funding could be provided to nursing homes," he said.

*The state of Washington identified the degree of savings to the state that could be attributed to the skilled nursing sector for this increased FMAP. It then had to determine how it was going to distribute those funds, and the effective date of the increase; the date would determine the amount of the increase, Dale explained.

If the state began distributing those funds to nursing homes retroactive to February 1, the rate add-on would be $29 per day, using the savings generated by the enhanced FMAP. When the Centers for Medicare & Medicaid Services (CMS) approved that date, that $29 per patient per day was added to the Medicaid rate starting from that day. Those funds started coming through sometime in March, Dale said, praising for the work the state did in conjunction with providers to make this assistance happen.

"It helped providers pay hazard pay or increase overtime for staff," he said. "And any other additional increases, like agency [staffing], which doubled, tripled, and quadrupled magically in March. Everybody needed help, almost right away, and that $29 was a big help to keeping these providers on their feet through March and into April."

The methods states have used to implement the increase flat dollar amounts, or a percentage of the Medicaid rate, while some have used temporary emergency Medicaid rate increases, Parades noted.

Several other states, however, have either said "no" to increases or are in the midst of dialogue about how to use those FMAP funds. For many of AHCA's skilled nursing providers, they've had to press the states to secure Medicaid rate increases, AHCA senior vice president of reimbursement policy Mike Cheek told SNN.

The states that haven't allocated FMAP funding for nursing homes are trying to navigate their own COVID-19 pressures; they're focused on the unemployment spike from the COVID-19 fallout, Cheek said, and have been considering whether to use their FMAP increase as economic stimulus or to cover the newly uninsured.

"Those are important questions, of course, and there are merits to the state arguments for that," he told SNN. "So it's a tough balancing act."

That concern was something Parades encountered in Oklahoma, where StoneGate has 13 SNFs and assisted living centers — specifically, concerns about the increase in Medicaid utilization as more and more people are affected by the economic troubles stemming from the pandemic.

"Statistically, every individual that files unemployment historically has also demanded a $10,000 increase of Medicaid benefits," he told SNN. "So you can imagine the massive influx of unemployment claims. The states are anticipating Medicaid utilization volumes to increase. They're worried about not maybe passing through those funds directly to health care providers today; they're keeping their powder dry for when Medicaid [demand] increases."

Oklahoma received about $1.25 billion in federal funding stimulus support to be used as Gov. Kevin Stitt sees fit, Parades said. Providers in the state have met with the Medicaid authority and the governor's staff; they have indicated an influx for nursing homes is under consideration, but nothing is definite, he told SNN on May 12.

In Texas, which received about $2 billion, leaders are considering a rate package proposal of $335 million from the Texas Health and Human Services Commission (HHSC), the state's Medicaid authority; of that total, the HHSC would send about $138 million directly to SNFs in temporary emergency relief payments, Parades told SNN on May 12. This would offset labor and personal protective equipment (PPE) costs; as of May 12, the proposal was still working through the legislative budget board.

StoneGate has 21 SNFs and assisted living facilities in the Lone Star State.

"The challenge is we are about 10 weeks into this, and our cash burn is unsustainable," Parades told SNN. "We're very appreciative of the actions, but it still hasn't happened."

In Alabama, Stephanie McGee Azar, the commissioner of the Alabama Medicaid Agency, used the increased FMAP funds to adjust the nursing home daily rate upward by $20 per patient per day, Alabama Nursing Home Association president and CEO Brandon Farmer told SNN on May 15.

The order technically runs from March 1 through the duration of the national emergency; in practice, this increase will definitely be in place through June 30, he said.

In Alabama, nursing homes that do not use the entirety of the $20 increase will see that reflected in their new rates. The nursing homes have to file cost reports on June 30, and the next rate set by the state and the Medicaid office will be based off those reports, to take effect on January 1, 2021.

“If, at the time which we file cost reports, a building or provider has not spent that additional $20, then in the rate-setting for the next cycle starting January 1, their rate would be adjusted by the amount that was not spent,” he explained.

Out of the 234 SNFs in Alabama, 127 are reporting COVID-19 cases, he told SNN on May 15. Many facilities are using the increased rate to buy additional PPE and prepare for elevated staffing needs, and Farmer noted that while the state appears to be plateauing overall, “it’s not slowing down, at least not in the SNFs.”

“This interim rate adjustment, to us, is certainly much needed and very much appreciated, and would be spent and is being spent to help combat this crisis,” he said. “Moving forward, certainly, it would not be enough to address the entirety of the needs of all the state’s facilities, but it is a manner that got us funds in an expedited capacity.”

*This article has been updated to better reflect Washington’s FMAP process.

McKnight’s
LONG-TERM CARE NEWS

Protecting Privacy in the Midst of COVID-19

The nation’s nursing facilities, assisted-living facilities, inpatient rehabilitation facilities and home care providers — and their long-term care (LTC) workforces — are at the forefront of the COVID-19 crisis.

Written by: Stephanie Anthony & Randi Seigel

5/19/2020

Caring for those at highest risk of contracting COVID-19 and experiencing severe cases, LTC providers are faced with overwhelming challenges and difficult decisions. They must protect and care for their patients while keeping their workers safe and their businesses operating efficiently and in compliance with evolving federal and state rules.

In addition to navigating on-the-ground operational challenges, LTC providers must simultaneously ensure that patient health information (PHI) maintained by the LTC providers remains private and secure. Because of states’ social distancing and, in some cases, shelter-at-home mandates, the LTC workforce may be largely working from home. Working from home creates unique challenges to compliance with the Health Insurance Portability and Accountability Act (HIPAA). The Office of Civil Rights (OCR) has issued several HIPAA waivers to ease

regulatory burdens on providers by exercising enforcement discretion and waiving potential penalties – for HIPAA violations and for failure to distribute notices of privacy practices — against healthcare providers that serve patients through everyday communications technologies during the COVID-19 nationwide public health emergency. These waivers, however, do not protect LTC workers if they do not employ reasonable safeguards in the home work environment. LTC providers should remind their workforce:

- Not to print records with PHI unless it is absolutely necessary in order for them to conduct their work from home. If paper records must be printed, the records should be maintained until they can be brought into the office to be shredded. OCR has previously advised that covered entities should not be "permitted to simply abandon PHI or dispose of it in dumpsters or other containers that are accessible by the public or other unauthorized persons." PHI must be rendered essentially unreadable or indecipherable before being disposed of.
- Not to discuss patients within earshot of others in their home or in public.
- Not to click on suspect links contained in emails and how to identify phishing emails. A significant number of large cyber breaches are caused by staff error through clicking on email links.

With regard to electronic PHI (ePHI), LTC providers are operating in a particularly challenging environment. Cybercriminals often capitalize on changing technological environments by increasing phishing attempts or scams. For example, the World Health Organization (WHO) recently issued a warning regarding threat actors impersonating the WHO in an attempt to steal money or sensitive information. LTC providers should ensure that the daily traffic on their data lines is monitored and be able to identify and address unusual traffic patterns.

In addition, LTC providers should remind their workforce to follow these practices:

- Deploy a complex password (one that contains numbers, letters and symbols) on their wireless routers.
- When possible, access ePHI using only a VPN and company-approved technology.
- Password-protect files or documents containing confidential or sensitive information.
- Close all browsers and applications at the conclusion of each work session, and routinely delete browser history.
- Do not run social media applications in the background when using mobile devices for business purposes.
- Use encrypted methods to email PHI.
- Do not click on suspicious links or links in emails from an unknown sender.
- Do not maintain ePHI on mobile phones; if ePHI must be maintained on the phone (e.g., to record an image of a patient's injury), then the ePHI should be uploaded to the patient's record as soon as possible and deleted from the workforce member's phone.

For LTC providers who are providing care via telehealth, OCR has issued some flexibilities, allowing providers to deliver services using technologies that may not be fully compliant with HIPAA. Specifically, OCR is allowing providers to use video chat applications, such as FaceTime, Google Hangouts video, Zoom and Skype, to deliver services. OCR asks providers to enable all privacy and encryption modes available. When possible, LTC providers should execute business associate agreements with these applications. Providers should notify patients that delivery of services through these applications potentially raises privacy risks. OCR stated that it will exercise "its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good faith provision of telehealth during the COVID-19 nationwide public health emergency."

In the event that a workforce member is concerned that PHI may have been accessed or disclosed improperly, he or she should immediately report any suspected or confirmed security events, including violations of company

security policies, lost or stolen devices, or potential unauthorized access or disclosure of company information, to the LTC provider. LTC providers must ensure that their privacy officer remains available and responsive to these reports and promptly investigates the concern.

McKnight's LONG-TERM CARE NEWS

Providers Stress Testing, Need for Additional Resources Following Federal Reopening Guidance

With Monday's guidance from CMS to test all residents and staff for long term care facilities, the procedures to do so are vitally important for the nation's essential staff and to seniors. Many facility operators feel that the states should assist in those efforts as well.

Written by: Danielle Brown

5/19/2020

Providers stressed the importance of testing and the need for additional support after the federal government laid out steps Monday for safely reopening nursing homes to visitors.

"As we have said repeatedly, before we can open our doors again, the ability to test residents and staff in every long-term care facility is essential given the impact of this deadly virus on our vulnerable residents," American Health Care Association CEO and President Mark Parkinson said. "[Monday's] guidelines from CMS will help residents and staff in our long-term care facilities get access to testing across the country and ensure other key checkpoints are reached before long term care facilities fully re-open to visitors."

The guidance, which was released late Monday afternoon by the Centers for Medicare & Medicaid Services, urges providers to conduct universal testing of both staff and residents before considering relaxing any visitation restrictions. It also asks surveyors to inspect nursing homes that have had significant COVID-19 outbreaks before reopening.

Parkinson called for more funding for testing. "Moving forward, it is vital that all long-term care facilities receive additional support and funding from state governments to conduct expanded testing," he said. "We encourage governors to use the $11 billion that has been allocated to states for expanding testing in our nursing homes, assisted living communities and other long-term care facilities. States can also assist with logistical support in implementing such a large endeavor, with help from the National Guard or the state's health department."

More still needed

LeadingAge echoed the need for funding and resources but was less complimentary of the CMS guidance. Providers are still in desperate need for testing and personal protective equipment, which are necessary tools in order to make reopening possible, LeadingAge President and CEO Katie Smith Sloan noted.

“The guidance from CMS is not grounded in these everyday realities of our members. We need a plan for testing. We need access to adequate testing supplies and PPE. And we need funding to make both of those possible for the brave people who care for vulnerable older adults day in and day out,” Sloan said.

“Our members pay between $200,000 and $250,000 per week to test staff just twice a week. That’s $1 million dollars a month. Nursing homes need help from federal or state governments to cover these necessary costs. Today’s guidance delivers none of that,” she said.

The organization called for additional help for aging services providers in order to make reopening plans a reality.

“Like the administration, we too want to have a plan to safely reopen nursing homes, and we agree that testing is essential. The reality is that too many nursing homes and other aging services providers are still desperately in need of testing and [PPE], and we don’t know when or if it’s coming. We need these tools to make reopening possible,” Sloan added.

Last week, the Trump administration urged states to universally test all nursing home residents and staff over the next several weeks.