

Opinion: Survey and Documentation Requirements Present Challenges to LTC During Pandemic

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It is frequently said that the nursing home industry is the second-most regulated industry, only behind the nuclear power industry. The reason for this governmental oversight is easily understood as an attempt to ensure quality and accountability. Collection of data is an important aspect of these efforts.

However, in this time of unprecedented crisis, what has worked previously may not only not work, but might even be harmful to residents and staff.

The reality is that when COVID-19 strikes a long-term care facility--nursing homes and assisted living/personal care communities--there are suddenly large numbers of seriously ill residents, shortages of staff, personal protective equipment (PPE), and testing; those able to work are overwhelmed with staff education and anxious family members. The usual process of surveys, fines, blame and lawsuits is entirely unnecessary, counterproductive and inappropriate for this pandemic. To rub salt in the wound, the fears of long term care facilities that premiums for liability policies may be going up by 80% – 200% are proving warranted.

State and federal governments have made many admirable efforts to help health care providers focus their attention where it belongs—on patient care and not paperwork. Many regulations have been loosened, temporary waivers implemented to remove barriers, and most surveys temporarily suspended -- except for focused infection control inspections and instances of alleged immediate jeopardy. CMS is developing the Coronavirus Commission for Safety and Quality in Nursing Homes. Several governors and legislatures around the country are attempting to address liability concerns.

Problems still remain. The Centers for Medicare and Medicaid Services (CMS) has stated that they intend Infection Control surveys to be “streamlined ... to minimize the impact on provider activities, while ensuring providers are implementing actions to protect the health and safety of individuals to respond to the COVID-19 pandemic.” QSO-20-20-ALL (March 23, 2020). Unfortunately, this has not been the experience for many nursing homes to date. Worse, CMS describes their desire to “enhance federal and state enforcement strategies to improve compliance with infection control policies” in punitive terms. On June 1, 2020, CMS directed every state to complete on-site focused infection control surveys by July 31, 2020 to avoid putting the states’ CARES Act supplemental funding at risk. QSO-20-31-ALL (June 1, 2020). CMS has indicated they will increase Infection Control surveys in order to increase fines and deficiencies. Unfortunately CMS continues to articulate its motives in terms of “enforcement,” rather than emphasizing ways to improve resident care.

At this time, different Department of Health (DOH) field offices appear to ask for different information during surveys. While the industry continues to ask for a standardized list of documents and necessary information, Table 1 provides a brief listing of some recent survey requests. Pennsylvania administrators have been asked to provide data to multiple state and federal organizations, including

the DOH, the Department of Human Services(DHS), local health departments, State Coalitions, CMS, the Occupational Safety and Health Administration (OSHA) and the Centers for Disease Control and Prevention (CDC), to name but a few. These data, which include amount of PPE, contact information, number of COVID positive residents and employees, number of beds, demographic information such as age and birthdate, etc., can often prove to be duplicative. To many, it appears that the right hand doesn't know what the left hand is doing. The development of a central reporting system would be extremely helpful. Through it, multiple agencies could extract information so that the facilities would only be required to report information once.

Senator Grassley feels the pandemic has confirmed a lack of oversight in nursing homes and long-term care facilities. He has said, "without strong oversight and enforcement of laws and regulations, accountability and compliance can fall short," pointing to a nursing home in Washington state that experienced one of the earlier COVID-19 outbreaks and that was later cited for its failure to contain the virus and protect residents. It appears he is faulting the facility (i.e., "blaming" them) for "allowing" the residents to contract COVID-19.

This attitude of blame is not helpful in the current climate of crisis. While no one disagrees with oversight and enforcement of regulations, the words of Mark Parkinson, President and CEO of AHCA and NCAL, make much more sense: "Outbreaks are not the result of inattentiveness or a shortcoming in nursing homes. It's the combination of the behavior of this virus and the unique threat it presents to the people we care for--older adults with multiple underlying health conditions. Long term care providers are doing everything they can with the limited resources they have been given to slow the acceleration of the virus for our residents." He adds, "More oversight or additional fines and penalties on nursing homes could reduce critical resources these centers need, or even put them at risk of closing."

Placing blame also significantly increases the probability of lawsuits from families. Many of them are already nervous, anxious and upset from not being able to see loved ones in facilities for weeks and having seen hostile articles about "poor nursing home care" and "cover ups" in the newspaper and on TV and the internet.

On a Federal level, here's what can be done:

- Ask CMS and states to make all current surveys collaborative and non-punitive except in egregious cases. Streamline document requests and be sensitive to a facility's need to place patient care above all else.
- Mandate CMS, CDC, OSHA and states to make data-reporting requirements less duplicative and burdensome.
- Pass legislation that immediately provides immunity for COVID-19 related care in long-term care facilities, including a provision that explicitly states that reliance on government (federal, state and/or local) guidance is a complete legal defense.
- Give recommendations to the CMS Commission on Safety and Quality in NHs that reflect the reality of the compassionate care being given at long-term care facilities.

- Support additional funding for universal testing and develop guidelines for usage in the long-term care setting.

While probably well intended, the current enforcement and survey process needs to be adjusted to account for the ongoing risks to our facilities, residents and staff during this pandemic. The way the current process is being carried out now is like someone rushing into a house on fire to check if the smoke alarm batteries are working. There has to be a better way, and we ask the government to work with the industry to make that happen.

Table 1: Sample of Requested Items and Critical Questions

Current census and number of residents and/or staff who are COVID-19 positive	Key list of personnel, location and phone numbers
Name of Infection Control Practitioner, and qualifications	Surveillance logs from the beginning of COVID monitoring
Policy on Contact Precautions	Facility's Outbreak Plan
Policy on Droplet Precautions	"Have you had any employees test positive? When? What positions?"
Policy on Infection Control Surveillance	Current practices for the monitoring and/or restriction or suspension of visitors
Copies of contracts for supplemental staffing (agency staffing)	Monitoring staff for symptoms- please provide specifics. Provide a copy of the questionnaire
Emergency Preparedness Plan for supplemental staffing. Provide a copy of that part of Plan.	Access to PCC for remote clinical record review. (Point Click Care is an electronic health record platform)
Nursing schedules	

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