



CMS announces guidance for states to implement the phased reopening of nursing homes

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On May 18, 2020, the Centers for Medicare & Medicaid Services (CMS) [announced](#) new guidance to help state and local officials identify factors to inform the timeline for reopening nursing homes and other long-term care facilities (LTCFs). As many states begin a phased reopening of businesses, CMS recommends certain critical steps before relaxing the restrictions that have been imposed on LTCFs to prevent the spread of COVID-19. CMS' stated goal is for communities to have a plan in place for when LTCFs may safely reopen.

One critical step CMS recommends is that all residents and staff receive test results from a base-line test for COVID-19 before any restrictions are loosened, with staff testing to continue on a weekly basis thereafter. States are encouraged to survey those LTCFs that have had significant outbreaks of COVID-19 to ensure the LTCFs are taking steps to mitigate the spread of the virus and ensure the safety of residents and staff. CMS also recommends that even as the rest of the community implements the initial phases of government reopening plans, LTCFs remain at the highest level of mitigation and should not de-escalate or relax restrictions until the community progresses to later phases of reopening. This will ultimately translate to LTCFs being among the last to reopen in the community.

State and local leaders are encouraged to consider the following factors when determining whether restrictions on LTCFs should be relaxed:

- Status of COVID-19 cases in the local community
- Status of COVID-19 cases in nursing homes
- Whether facilities have adequate staffing
- Access to adequate testing (baseline test of all residents and weekly testing of all staff)
- Universal source control (resident and visitors wear a facemask; visitors maintain social distancing and perform hand washing or sanitizing upon entry to the facility)
- Sufficient access for staff to adequate personal protective equipment
- Local hospital capacity

CMS cautions that these factors should be reexamined periodically, and that facilities may need to reconfigure reopening plans as COVID-19 continues to impact communities in different ways. CMS' guidance also attaches a sample plan, *Recommended Nursing Home Phased Reopening for States*, which complements the federal *Opening Up America Again* phased reopening plan,¹ but incorporates stricter criteria in light of the heightened risk of infection to LTCF residents and staff. Each phase of the sample plan outlines criteria for implementation of that phase, visitation and service considerations, and surveys to be performed during each phase. Notably, CMS' sample plan contemplates that with the exception of compassionate care situations during Phases One and Two of the federal plan, LTCFs will remain closed to visitors until Phase Three. Reopening to visitors and other topics are addressed in CMS' [FAQs](#).

The Appendix to CMS' guidance advises that with respect to the surveys to be performed during each phase of its sample plan, states should consider certain criteria when prioritizing which facilities to survey first once a LTCF moves into a new phase. There are two lists of criteria—one for surveys investigating complaints and one for standard recertification surveys—the latter of which includes as the top priority, “[f]acilities that have had a significant number of COVID-19 positive cases.” Ultimately, CMS states:

We recognize that there are many different scenarios or combinations of timing of surveys and types of noncompliance that will exist. We defer to [s]tates for final decisions on scheduling surveys consistent with CMS survey prioritization guidelines.

As state and local officials formulate and implement reopening plans specific to their communities, LTCFs should consult CMS guidance, as well as other federal, state, and local government-issued guidance to ensure they are taking adequate steps to control the spread of COVID-19 in their facilities.² Facilities are advised to ensure that any plans to reopen fully incorporate not only CMS' guidance but mandates from state and local regulators as well.

Additionally, as we discussed in an earlier [client alert](#), LTCFs are likely to face increased government enforcement action in the wake of the COVID-19 crisis. LTCFs are therefore advised to consider [taking steps](#), if they have not already, to prepare for success in the event of a government audit, investigation, enforcement action, or lawsuit.

We will continue to monitor COVID-19 developments affecting LTCFs and will provide updated guidance.

¹ [Opening Up America Again](#) is President Trump's three-phased approach to lifting restrictions that have been imposed in an effort to contain the spread of COVID-19. This federal guidance includes proposed state or regional gating criteria to be satisfied before proceeding to a phased reopening of the state or region: Phase One recommendations for states and regions that satisfy the gating criteria, Phase Two for states and regions with no evidence of a rebound and that satisfy the gating criteria a second time, and Phase Three for states and regions with no evidence of a rebound that satisfy the gating criteria a third time.

² See [“COVID-19 Long-Term Care Facility Guidance,”](#) [“CMS Announces Findings at Kirkland Nursing Home and New Targeted Plan for Healthcare Facility Inspections in light of COVID-19,”](#) [“Guidance for Infection Control and Prevention of Coronavirus Disease 2019 \(COVID-2019\) in Nursing Homes \(REVISED\),”](#) and [“Preparing for COVID-19: Long-term Care Facilities, Nursing Homes.”](#)

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