



New COVID-19 Requirements and Possible Penalties for Nursing Homes

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On Sunday, April 19, 2020, the Centers for Medicare & Medicaid Services (CMS) announced it will be issuing a new rule on COVID-19 reporting requirements with possible penalties for nursing homes that fail to comply. 42 CFR 483.30 and the Centers for Disease Control and Prevention (CDC) guidance already mandate that nursing homes must notify state or local health departments regarding positive or suspected COVID-19 cases within the facilities. Previously, reporting to the CDC has been optional.

Under the new requirements, reporting to the CDC will become mandatory through a new reporting tool, and CMS will then make the reported data publicly available. In addition, nursing homes will be required to notify residents and their representatives of COVID-19 conditions within the facilities. These updates must be provided weekly, each subsequent time a confirmed COVID-19 infection is identified and/or anytime three or more residents or staff exhibit new respiratory issues within 72 hours. In notifying residents and their representatives, facilities must include information on implemented mitigating actions. Failure to follow these reporting regulations could result in enforcement action against the facility, including civil monetary penalties.

CMS is also requiring nursing homes to fully cooperate with CDC surveillance efforts, which allow for immediate access to any residents by a representative of the Secretary of Health and Human Services of the respective state.

Given the large civil monetary penalties incurred by Life Care Center of Kirkland, these new requirements signal to us that CMS is looking for new ways to penalize nursing facilities where COVID-19 outbreaks occur.

Williams Mullen will continue to monitor any other new COVID-19 requirements that could result in civil monetary penalties for nursing facility operators. Please contact Jim Bailey or Matt Cobb with questions.

Please note: This alert contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel.

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Related People

- James T. "Jim" Bailey – 804.420.6358 – jbailey@williamsmullen.com

- Matthew M. Cobb – 804.420.6390 – mcobb@williamsmullen.com

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