

## Insights

### When It Rains, It Pours - Nursing Facilities to Face Imminent Survey Activity, Enhanced Enforcement Actions, and Staff Testing Requirements as a Result of COVID-19

June 3, 2020

By: Andrew W. Breck and Meghan M. Linvill McNab

Nursing facilities have undoubtedly encountered unique challenges during the ongoing COVID-19 public health crisis. In an effort to protect the vulnerable population receiving care in these facilities, the Centers for Medicare and Medicaid Services (CMS) issued guidance on June 1, 2020 announcing the following COVID-19 survey activity that all states will be required to perform:

- Within 30 days of June 1<sup>st</sup>, on-site surveys of nursing facilities with previous COVID-19 outbreaks of (a) cumulative confirmed cases/bed capacity at 10% or greater; (b) cumulative confirmed plus suspected cases/bed capacity at 20% or greater; or (c) 10 or more deaths reported due to COVID-19.
- Within 3-5 days of identification, on-site surveys of any nursing facility with (a) 3 or more new COVID-19 suspected or confirmed cases since the last National Healthcare Safety Network (NHSN) report; or (b) 1 confirmed resident case in a facility that was previously COVID-free.
- Starting in 2021, annual Focused Infection Control surveys of 20 percent of nursing facilities based on each state's discretion or additional information identifying a facility as a risk.

Nursing facilities should also be aware of enhanced enforcement actions for any infection control deficiencies identified in such surveys in an effort to improve accountability and sustained compliance with these critical protocols. Substantial non-compliance with any deficiencies noted will be subject to directed plans of correction, discretionary denials of payments for new admissions with a window of opportunity to demonstrate compliance, and/or per-instance civil monetary penalties. Assistance from Quality Improvement Organizations (QIOs) will be made available accordingly for purposes of offering education, training, and technical assistance to nursing facilities with a targeted need.

Finally, nursing facilities in Indiana should be aware that the Indiana State Department of Health (ISDH) was tasked with contacting all facilities on June 3, 2020 informing them of instructions for testing all nursing facility staff in the month of June. Facilities will not be required to pay for the staff testing and will have the opportunity to select one of the following testing scenarios:

- Option 1: ISDH delivers test kits and PPE to the nursing facility. Nursing facility performs the test using its own staff and specimen storage. ISDH then would pick up the specimen for transport to a laboratory for testing.
- Option 2: ISDH schedules a date and time to perform on-site testing at the facility using their own resources. This option requires all facility staff to be on-site during a 4-hour window for testing.



If you have any questions or would like additional information about this topic, please contact Andrew W. Breck or Meghan M. Linvill McNab.