

CMS FINAL RULE CALLS FOR ONGOING RESPIRATORY ILLNESS REPORTING THROUGH NHSN FOR NURSING HOMES

On November 1, 2024, the Centers for Medicare & Medicaid Services (“CMS”) released a final **rule** (“Final Rule”) that calls for Medicare-certified and Medicaid-certified nursing homes (“LTC Facilities”) to electronically report information on acute respiratory illnesses, including influenza (“flu”), severe acute respiratory syndrome coronavirus 2 (“SARS-CoV-2”)/coronavirus 2019 (“COVID”) and respiratory syncytial virus (“RSV”).

EFFECTIVE DATE

The Final Rule is scheduled to be published on November 7, 2024, with an effective date of January 1, 2025.

REVISED 42 CFR SECTION 483.80(G)

Sections 1819(d)(3) and 1919(d)(3) of the Social Security Act (“Act”) explicitly require that LTC Facilities develop and maintain an infection control program that is designed, constructed, equipped and maintained in a manner to protect the health and safety of residents, personnel and the general public. In addition, sections 1819(d)(4)(B) and 1919(d)(4)(B) of the Act explicitly authorize the Secretary of Health and Human Services (“HHS Secretary”) to issue any regulations he deems necessary to protect the health and safety of residents.

The COVID data reporting through the National Healthcare Safety Network (“NHSN”) was first required of nursing homes in May 2020 through an interim final rule.

Due to the nature of interim final rules, this requirement would have expired in May 2023. CMS took regulatory action through the Calendar Year 2022 Home Health Prospective Payment System rule to extend those requirements through December 31, 2024. In response to the proposed rule, CMS received 73 total comments from industry commenters, such as national associations, leadership and facility staff.

In the Final Rule, CMS extends NHSN reporting requirements indefinitely as part of the Requirements of Participation with which all LTC Facilities must comply under [42 CFR Section 483.80\(g\)](#).

NHSN REPORTING

The Final Rule also contains a modification of reporting requirements that would expand required elements to include data on the flu and RSV. Under the Final Rule, LTC Facilities would be required to report the following data elements:

1. Facility census;
2. Resident vaccination status for respiratory illnesses including but not limited to COVID, flu and RSV;
3. Confirmed resident cases of respiratory illness including but not limited to COVID, flu and RSV, reported as overall numbers and with breakdowns by vaccination status; and
4. Hospitalized residents with confirmed respiratory illness including but not limited to COVID, flu and RSV, reported as overall numbers and with breakdowns by vaccination status.

PUBLIC HEALTH EMERGENCY (“PHE”) REPORTING

In the Final Rule, CMS sets out that if the HHS Secretary has declared a national, state or local PHE for an acute infectious illness, LTC Facilities must also electronically report all of the following data elements in a standardized format and frequency specified by the HHS Secretary, including: (1) relevant confirmed infections for staff; (2) supply inventory shortages; (3) staffing shortages; and (4) relevant medical countermeasures and therapeutic inventories, usage or both.

PRACTICAL TAKEAWAYS

- LTC Facilities should update their policies and procedures to be consistent with the updated requirements.
- LTC Facilities should continue to ensure proper health data is reported through NHSN.

- LTC Facilities should review their required emergency preparedness plans and policies and procedures under [42 CFR Section 483.73](#) to promote readiness and actions that could reduce the burden during a resource-intensive time, including during a PHE.

If you have questions or would like additional information about this topic, please contact:

- [Sean Fahey](#) at (317) 977-1472 or sfahey@hallrender.com;
- [Brian Jent](#) at (317) 977-1402 or bjent@hallrender.com;
- [Todd Selby](#) at (317) 977-1440 or tselby@hallrender.com; or
- Your primary Hall Render contact.

Hall Render blog posts and articles are intended for informational purposes only. For ethical reasons, Hall Render attorneys cannot—outside of an attorney-client relationship—answer specific questions that would be legal advice.