

# **NOVEL CORONAVIRUS (COVID-19) PREPAREDNESS MISSION CRITICAL FOR WISCONSIN LONG-TERM CARE AND ASSISTED LIVING FACILITIES**

## *Executive Summary*

Long-term care and assisted living facilities face significant challenges in containing and treating COVID-19. Based in large part upon the guidance issued at the time of this writing from the Wisconsin Department of Health Services<sup>1</sup> (“WIDHS”), the Centers for Disease Control and Prevention<sup>2</sup> (“CDC”), and the Centers for Medicare & Medicaid Services<sup>3</sup> (“CMS”), below are the key items for Wisconsin assisted living and long-term care health care providers to consider:

1. Facilities need to engage in a candid and comprehensive assessment of the adequacy of their current infection control capabilities and health care worker protection programs.
2. Facilities are encouraged to support hand and respiratory hygiene and cough etiquette by employees, residents and visitors.
3. Facilities should have an aggressive system in place to screen residents, visitors, staff and volunteers for signs of COVID-19 and restrict individuals showing such signs.
4. Facilities should consider identifying dedicated employees to care for COVID-19 residents and provide infection control training to staff.
5. Facilities should provide the right supplies to ensure easy and correct use of personal protective equipment (“PPE”).
6. Facilities transferring residents should notify the receiving facility prior to transferring a resident with an acute respiratory illness, including suspected or confirmed COVID-19.
7. Non-emergency surveys of nursing homes, home health agencies, hospices, and ICF/IIDs are temporarily suspended in order to focus on the most serious health and safety threats like infectious disease and abuse.
8. Facilities should address special procedures in their COVID-19 protocols to protect the privacy and confidentiality of COVID-19 patients and exposed health care workers in compliance with HIPAA and Wisconsin privacy and confidentiality laws.
9. Licensees, administrators, owners, operators and governing bodies should be aware of the facility’s efforts to develop a COVID-19 response plan and ensure the general adequacy of that plan.
10. Facilities should review and update their health care worker protection programs and employment-related policies to plan for the potential impact of COVID-19 on their employees.

We discuss these key items in greater detail below.

## Discussion

Long-term care and assisted living facilities should have an effective COVID-19 response plan in place. Events at Life Care Center in Kirkland, Washington underscore the need for such a plan.<sup>4</sup> As indicated by the experience of Life Care Center, a facility may or may not be able to fulfill its mission of serving its residents' health care needs if it is not prepared for such an emergency. The current data on COVID-19 indicates that the elderly and individuals with serious chronic medical conditions are among those more at risk to contract COVID-19 and, if contracted, are at a greater risk of serious illness.<sup>5</sup>

### **1. Perhaps most importantly, facilities need to evaluate the adequacy of their current infection control strategies.**<sup>6</sup>

Senior leaders need to ensure that CDC and WIDHS updates and training materials are reviewed on a daily basis. Facilities should educate staff members on the signs and symptoms of COVID-19, which include a fever, coughing and shortness of breath. Facilities must also plan for immediate isolation, prepare rapid response teams, and obtain sufficient stocks of appropriate PPE. Facilities should ensure their sick leave policies allow employees to stay home if they have symptoms of respiratory infection.

Facilities should keep both residents and employees informed by describing the actions the facility is taking to protect them and answering their questions and explaining what they can do to protect themselves.

On March 9<sup>th</sup>, 2020, the Wisconsin Division of Public Health (WIDPH) issued a memorandum (March 9<sup>th</sup> WIDPH Memo) announcing that COVID-19 testing was becoming more widely available, health care practitioners could now obtain a test for COVID-19 without prior approval from WIDHS or the Milwaukee Health Department, and COVID-19 remained a Category I reportable condition in Wisconsin.<sup>7</sup> WIDPH identified symptomatic adults 65 years of age and older to be among the priority groups for COVID-19 testing. If residents present with respiratory symptoms, WIDPH recommends first testing for common causes of respiratory illness whenever possible, and if negative, consider testing for COVID-19. The Wisconsin State Laboratory of Hygiene and the Milwaukee Health Department Laboratory offer fee-exempt COVID-19 testing. Facilities may send specimens for testing to commercial or public health laboratories, but commercial lab testing is not fee-exempt.

Facilities should monitor residents and employees for fever or respiratory symptoms. In the March 9<sup>th</sup> WIDPH Memo, the WIDPH addressed, in part, the isolation of symptomatic individuals and quarantine of potentially exposed individuals with respect to Wisconsin's communities in general and touched on individuals in health care settings, but did not clearly address how these guidelines interact with Wisconsin's statutes and regulations governing assisted living and long-term care facilities.<sup>8</sup> According to WIDPH:

a. Asymptomatic persons considered to have **high risk** exposure to COVID-19 are recommended to be quarantined, either voluntarily or under public health orders, for a period of

14 days. Symptomatic individuals with this level of risk should be placed in immediate isolation, with diagnostic evaluation guided by CDC’s “Person Under Investigation” definition.

b. Individuals in the **medium risk** exposure category (e.g., travel to an area with known sustained community transmission, or close contact with a laboratory confirmed case) are recommended to remain at home and practice social distancing and monitor themselves for symptoms for 14 days. Symptomatic individuals who are tested for COVID-19 should continue self-isolation (if at home) or appropriate isolation within health care settings for the full observation period.

c. Individuals considered at **low risk** for exposure to COVID-19 (e.g., being in the same indoor environment as a confirmed case without meeting the definition of close contact) do not need to restrict movement or contact with others. Low risk individuals may be tested for COVID-19 at the discretion of their medical provider, and should be isolated while the testing is pending. If COVID-19 testing is negative, providers should recommend usual infection control measures for patients with respiratory infections, but prolonged isolation is not required.

The CDC has issued specific guidance for long-term care facilities that should also be practiced by Wisconsin assisted living facilities.<sup>9</sup> The CDC recommends that facilities restrict residents with fever or acute respiratory symptoms to their room and if they must leave the room for medically necessary procedures, the resident should be required to wear a facemask (if tolerated).<sup>10</sup>

Facilities should also keep in mind the prior WIDPH guidance regarding reporting, prevention and control of acute respiratory illness outbreaks in long-term care facilities (DPH 2017 ARI Guidance).<sup>11</sup> Applying the DPH 2017 ARI Guidance to the current situation, ideally, an ill resident should be in a private room, if available. If a single-resident room is unavailable, ill residents could be kept in a multi-bed room following consultation with infection control personnel to assess risks associated with resident placement options (at least 3 feet of spatial separation will be particularly important in multi-bed rooms, perhaps more to account for the unknown aspects of COVID-19). Residents with acute respiratory symptoms should be put on droplet and contact precautions.<sup>12</sup>

In general, WIDPH is directing health care workers to follow the procedures and guidance issued by the CDC.<sup>13</sup> On March 7, 2020 the CDC updated its guidance for health care workers with potential exposure to COVID-19 (<https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assesment-hcp.html>) and will continue to do so periodically. Facilities should follow the CDC’s monitoring protocols if any staff or residents present with symptoms of COVID-19.

## **2. Facilities are encouraged to support hand and respiratory hygiene and cough etiquette by employees, residents and visitors.**

Facilities should ensure that employees wash their hands according to their internal infection control programs and CDC guidance.<sup>14</sup> To the extent they are able, facilities should put alcohol-based hand rub in every resident room (ideally both inside and outside of the room), make tissues available and keep well-stocked any sink with soap and paper towels.

**3. Facilities should have an aggressive system in place to screen residents, visitors, staff and volunteers for signs of COVID-19 and should post signs at the entrance to the facility instructing visitors not to visit if they have symptoms of respiratory infection.**<sup>15</sup>

According to CMS, facilities should **actively screen and restrict visitation** by those who meet any of the following criteria:

- a. international travel within the last 14 days to countries with sustained community transmission (<https://www.cdc.gov/coronavirus/2019-ncov/travelers/index.html>);
- b. signs or symptoms of a respiratory infection, such as a fever, cough, shortness of breath, or sore throat;
- c. residing in a community where community-based spread of COVID-19 is occurring; or
- d. within the last 14 days, has had contact with someone with a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or are ill with respiratory illness.<sup>16</sup>

CMS instructs facilities not to allow any visitors meeting any of the above criteria into the facility until such individual no longer meets any of the above criteria. If a visitor does not meet any of the above criteria, facilities may allow the visitor to enter but should educate the visitor on proper hand hygiene and cough etiquette, provide a face mask to the visitor (as supplies allow) and require the visitor wear the mask at all times while on the grounds of the facility. Although CMS recommends a strict restriction policy, Wisconsin facilities should weight a visitor's potential detrimental impact to residents of the facility against a resident's rights to visitors under applicable federal and state statutes and regulations, especially residents electing hospice.<sup>17</sup>

Facilities should also review and revise their policies and procedures regarding how they interact with volunteers, vendors and receiving supplies, agency staff, EMS personnel and equipment, transportation providers, other practitioners (e.g., hospice workers) and take necessary actions to prevent any potential transmission.

**4. Facilities should consider identifying dedicated employees to care for COVID-19 residents and provide infection control training.**

Facilities should take advantage of the CDC's free continuing education courses for infection prevention training.<sup>18</sup>

**5. Facilities should provide the right supplies to ensure easy and correct use of PPE.**

Facilities should:

- a. post signs on the door or wall outside of a resident’s room that clearly describe the type of precautions needed and the type of PPE needed;
- b. make PPE, including facemasks, eye protection, gowns and gloves available immediately outside of the resident’s room; and
- c. position a trash can near the exit inside any resident room to make it easy for employees to discard PPE.

If a facility faces PPE supply shortages, it should try reaching out to local and state health departments for help finding supplies.

**6. Facilities transferring residents should notify receiving facilities prior to transferring a resident with an acute respiratory illness, including suspected or confirmed COVID-19, to a higher level of care.**

At the time of this writing, COVID-19 is a Category I reportable disease within the State of Wisconsin.<sup>19</sup> Once a facility orders COVID-19 testing, the facility must (i) submit a web report to the Wisconsin Electronic Disease Surveillance System (“WEDSS”) for a suspected case of COVID-19, and (ii) complete the patient information form, and upload the completed Person Under Investigation (“PUI”) form to the WEDSS case file cabinet.<sup>20</sup> If the facility cannot upload the completed patient information form to the WEDSS file cabinet, the facility should fax the PUI form to the patient’s local health department. If the facility is unable to submit a web report to WEDSS, the facility should complete the patient information form and call the patient’s local health department to notify them of the pending test and make arrangement to share the PUI form and demographic information with the local public health department. The CDC also recommends reporting possible COVID-19 illness in residents and employees to the Wisconsin Healthcare Associated Infection/Antibiotic Resistance coordinator.<sup>21</sup>

**7. CMS issued a memorandum on March 4, 2020 (the “March 4th CMS Memo”) in which it directed state survey agency directors to temporarily suspend non-emergency inspections of nursing homes, home health agencies, hospices, and ICF/IIDs in order to focus on the most serious health and safety threats like infectious disease and abuse.**<sup>22</sup>

The state agencies must follow this CMS directive. As such, survey activity for nursing homes became temporarily limited to the following (in priority order starting with the highest):

- a. all immediate jeopardy complaints;
- b. complaints alleging infection control concerns, including facilities with potential COVID-19 or other respiratory illness;
- c. statutorily required recertification surveys (nursing homes, home health agencies, hospice, and ICF/IID facilities);

- d. any re-visits necessary to resolve current enforcement actions;
- e. initial certifications;
- f. surveys of facilities/hospitals that have a history of infection control deficiencies at the immediate jeopardy level in the last three years; and
- g. surveys of facilities/hospitals/dialysis centers that have a history of infection control deficiencies at lower levels than immediate jeopardy.

Reinhart reached out to Alfred Johnson, Chief of the Bureau of Assisted Living (“BAL”). Mr. Johnson relayed that he and his staff are discussing whether BAL will follow these same or similar survey procedures.

The March 4th CMS Memo also included inspection protocols for facilities in which COVID-19 is suspected or identified.<sup>23</sup> Such protocols require surveyors to notify the facility administrator of the limited nature of the planned survey upon entry to the facility. They also state that surveyors will focus on concerns with the following:

- (i) improper transmission precautions procedures;
- (ii) lack of staff knowledge of transmission precautions;
- (iii) improper staff use of PPE and/or inadequate hand hygiene;
- (iv) high-risk, significant environmental cleaning issues;
- (v) ineffective and/or improper laundering of linens; and
- (vi) possible infection control surveillance program issues.

This survey focus on infection control makes it even more important for facilities to review and update their infection control policies and procedures.

**8. COVID-19 protocols should address special procedures to protect the privacy and confidentiality of COVID-19 patients and exposed health care workers in compliance with HIPAA and Wisconsin privacy and confidentiality laws.**

As noted above, at the time of this writing, COVID-19 is a Category I reportable disease within the State of Wisconsin.<sup>24</sup> While HIPAA does not prevent required public health reporting, facilities need to be proactive about protecting the privacy and confidentiality of health care workers and residents who have been exposed to or are being treated for COVID-19. HIPAA privacy officers may want to have a communication plan in place in advance of an outbreak to facilitate reminders to employees of the facility’s duty to protect the confidentiality of such residents. In addition, HIPAA security officers may want to be prepared to institute special access controls on the records of residents with COVID-19, as well as conduct monitoring of

routine chart access to ensure ongoing HIPAA compliance. Consider preparing a media statement should your facility be identified as a facility with a COVID-19 resident or an outbreak.

**9. Licensees, administrators, owners, operators and governing bodies should be aware of the facility's efforts to develop a COVID-19 response plan and ensure the general adequacy of that plan, even if they are not typically involved with the day-to-day operations of the facility.**

This includes understanding the steps being taken to protect health care workers and verifying that adequate resources are being allocated to this effort. This also includes understanding what testing is being done to verify the adequacy of the preparation efforts.

**10. Facilities should review and update their sick leave and related policies to plan for the potential impact of COVID-19 on their employees and comply with applicable labor and employment laws.**

Reinhart has an article about the [employment issues facilities should consider in connection with COVID-19](#).

The Reinhart Healthcare Group will continue to monitor all federal and state guidance and recommendations regarding COVID-19 in Wisconsin and the surrounding area and will provide periodic updates to this information as appropriate. We stand ready to assist in helping you review or revise your infection control policies and procedures. Please contact a member of our Health Care Practice with any questions you may have.

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<sup>1</sup> *What is COVID-19?*, Wis. Dep't of Health Servs. (rev. Mar. 11, 2020), <https://www.dhs.wisconsin.gov/disease/covid-19.htm>; *Updates to COVID-19 Testing Procedures* (Mar. 9, 2020), <https://www.dhs.wisconsin.gov/dph/memos/communicable-diseases/bcd-2020-03.pdf>; *New Requirements for Reporting Cases and Patients Under Investigation for COVID-19* (Feb. 4, 2020), <https://www.dhs.wisconsin.gov/dph/memos/communicable-diseases/2020-02.pdf>.

<sup>2</sup> *Strategies to Prevent the Spread of COVID-19 in Long-Term Care Facilities (LTCF)*, CDC (rev. Mar. 10, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/healthcare-facilities/prevent-spread-in-long-term-care-facilities.html>; *Interim Additional Guidance for Infection Prevention and Control for Patients with Suspected or Confirmed COVID-19 in Nursing Homes*, CDC (Mar. 10, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/healthcare-facilities/prevent-spread-in-long-term-care-facilities.html>

<sup>3</sup> *Guidance for Infection Control and Prevention of Coronavirus Disease 2019 (COVID-19) in Nursing Homes* (Mar. 9, 2020), <https://www.cms.gov/medicareprovider-enrollment-and-certificationsurvey/certificationgeninfo/policy-and/qso-20-14-nh.pdf>; *CMS Announces Actions to Address Spread of Coronavirus*, CMS.gov (Mar. 4, 2020), <https://www.cms.gov/newsroom/press-releases/cms-announces-actions-address-spread-coronavirus.s>; *Suspension of Survey Activities* (Mar. 4, 2020), <https://www.cms.gov/files/document/qso-20-12-all.pdf>.

<sup>4</sup> *This Nursing Home is at the Center of Washington's Coronavirus. Here's What One First Responder Saw There*, CNN (Mar. 8, 2020), <https://www.cnn.com/2020/03/08/politics/coronavirus-washington-nursing-home-life-care-center-kirkland-cnntv/index.html>; *13 Deaths at Seattle-area Care Facility Connected to Coronavirus*, NBC News (Mar. 7, 2020), <https://www.nbcnews.com/news/us-news/13-deaths-seattle-area-care-facility-connected-coronavirus-n1152306>.

<sup>5</sup> *People at Risk for Serious Illness from COVID-19*, CDC (Mar. 10, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>.

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- <sup>6</sup> See *As Coronavirus Looms, Many Nursing Homes Fall Short on Infection Prevention*, WUWM (Mar. 4, 2020), <https://www.wuwm.com/post/coronavirus-looms-many-nursing-homes-fall-short-infection-prevention#stream/0>.
- <sup>7</sup> *Updates to COVID-19 Testing Procedures* (Mar. 9, 2020), <https://www.dhs.wisconsin.gov/dph/memos/communicable-diseases/bcd-2020-03.pdf>.
- <sup>8</sup> See *id.*
- <sup>9</sup> *Interim Additional Guidance for Infection Prevention and Control for Patients with Suspected or Confirmed COVID-19 in Nursing Homes*, CDC (Mar. 10, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/healthcare-facilities/prevent-spread-in-long-term-care-facilities.html>.
- <sup>10</sup> *Id.*
- <sup>11</sup> *Reporting, Prevention and Control of Acute Respiratory Illness Outbreaks in Long-term Care Facilities* (Oct. 19, 2017), <https://www.dhs.wisconsin.gov/dph/memos/communicable-diseases/bcd-2017-04.pdf>.
- <sup>12</sup> *Id.*
- <sup>13</sup> *Updates to COVID-19 Testing Procedures* (Mar. 9, 2020), <https://www.dhs.wisconsin.gov/dph/memos/communicable-diseases/bcd-2020-03.pdf>.
- <sup>14</sup> Wis. Admin. Code § DHS 83.39(3); *Hand Hygiene in Healthcare Settings*, CDC (Jan. 31, 2020), <https://www.cdc.gov/handhygiene/providers/index.html>.
- <sup>15</sup> For a model sign prepared by the Wisconsin Department of Health Services and Wisconsin Division of Public Health, please visit <https://www.dhs.wisconsin.gov/publications/p02611.pdf> (last updated Mar. 2020).
- <sup>16</sup> *Guidance for Infection Control and Prevention of Coronavirus Disease 2019 (COVID-19) in Nursing Homes* (Mar. 9, 2020), <https://www.cms.gov/medicareprovider-enrollment-and-certificationsurveycertificationgeninfopolicy-and/qso-20-14-nh.pdf>.
- <sup>17</sup> Wis. Stat. § 50.09(1)(a); Wis. Admin. Code DHS § 83.32(3)(e) (CBRF-Freedom from Seclusion); 42 C.F.R. §§ 418.108(a)(2); (b)(1)(ii); 42 C.F.R. § 418.110(f)(4); CMS State Operations Manual, F-tag 563 of App. PP.
- <sup>18</sup> *Infection Prevention Training*, CDC (July 10, 2019), <https://www.cdc.gov/longtermcare/training.html>.
- <sup>19</sup> *New Requirements for Reporting Cases and Patients Under Investigation for COVID-19* (Feb. 4, 2020), <https://www.dhs.wisconsin.gov/dph/memos/communicable-diseases/2020-02.pdf>; *Updates to COVID-19 Testing Procedures* (Mar. 9, 2020), <https://www.dhs.wisconsin.gov/dph/memos/communicable-diseases/bcd-2020-03.pdf>.
- <sup>20</sup> *Updates to COVID-19 Testing Procedures* (Mar. 9, 2020), <https://www.dhs.wisconsin.gov/dph/memos/communicable-diseases/bcd-2020-03.pdf>.
- <sup>21</sup> *State-based HAI Prevention*, CDC (July 26, 2019), <https://www.cdc.gov/hai/stateplans/state-hai-plans/wi.html>.
- <sup>22</sup> *CMS Announces Actions to Address Spread of Coronavirus*, CMS.gov (Mar. 4, 2020), <https://www.cms.gov/newsroom/press-releases/cms-announces-actions-address-spread-coronavirus.s>
- <sup>23</sup> *Suspension of Survey Activities* (Mar. 4, 2020), <https://www.cms.gov/files/document/qso-20-12-all.pdf>.
- <sup>24</sup> *New Requirements for Reporting Cases and Patients Under Investigation for COVID-19* (Feb. 4, 2020), <https://www.dhs.wisconsin.gov/dph/memos/communicable-diseases/2020-02.pdf>.