

Memo

To: Reporters and Editors

From: The offices of Senators Casey and Wyden

Subject: Trump Administration slow-walks nursing home COVID-19 transparency rules

The Centers for Medicare & Medicaid Services (CMS) continues to delay the collection and dissemination of data regarding the rapid and tragic spread of COVID-19 in nursing homes across the nation. Simply put, CMS continues to delay implementation and enforcement of measures requiring the disclosure of where COVID-19 has spread in nursing homes, while simultaneously trying to take credit for the agency's inadequate actions.

The agency, which regulates more than 15,000 nursing homes nationwide, issued a new interim final rule that included reporting requirements. On May 6, CMS released a guidance memorandum detailing the requirements under this rule. The guidance document made clear that it will be several weeks, if not longer, until there is COVID-19 cases and deaths at nursing homes are reported to residents, their families, and the public. The new rule goes into effect on Friday. Under this rule and guidance:

- **Slow Implementation:** CMS will not require nursing homes to begin to submit data to the Centers for Disease Control and Prevention (CDC) until May 17, and gives nursing homes an additional three-week grace period to comply. Nursing homes that fail to report the data will not face monetary penalties until after June 7.
- **Slow Public Reporting:** CMS does not anticipate that it will begin publically reporting the data nursing homes submit until late May—nearly three months after the first COVID-19 death at a nursing home in Washington State, and more than two months after Senators Casey (D-PA) and Wyden (D-OR) first requested that CMS and CDC publically report nursing home COVID-19 information.
- **Relaxed Resident Reporting Rules:** CMS relaxed the parameters of the requirements for nursing homes to report COVID-19 cases to residents and their families relative to a memorandum the agency issued on April 19. Nursing homes will be allowed to wait up to 41 hours before reporting new COVID-19 cases to residents and their families or representatives. This represents a significant rollback from April, when the agency said it planned to require nursing homes to make these notifications within 12 hours.

Senator Casey and Senator Wyden have repeatedly urged CMS to release information about the spread of COVID-19 in nursing homes, most recently on a May 6 call with CMS Administrator Seema Verma. During the call, the senators pressed Administrator Verma to begin releasing data immediately, but the Administrator repeatedly declined to make any commitments regarding this timeline on the call. On May 6, CDC Director Robert Redfield told the senators in a letter that his agency had implemented a reporting portal for nursing homes in coordination with CMS. The portal utilizes CDC's existing data collection infrastructure to collect this essential information.

Timeline of key events

April 2: Senators Casey and Wyden send a letter to CMS Administrator Verma and CDC Director Redfield urging the agencies to collect and release information on the incidence of COVID-19 disease and deaths in nursing homes.¹ The letter was sent after the CDC reported earlier in the week 400 nursing home residents have died due to COVID-19. The senators ask that the information be provided by April 16.

April 11: The American Health Care Association, a nursing home industry association, releases a statement recommending that nursing homes report to state survey agencies, as well as to residents and their families. The association, in turn, urges states to share the information with CMS and CDC.²

April 17: Senators Casey and Wyden issue statement condemning the Trump Administration for failing to provide the data and information requested in their letter of April 2.³

April 19: CMS issues a press release stating that it will “now require nursing homes to report cases of COVID-19 directly to the Centers for Disease Control and Prevention.”⁴ In an accompanying memo to state survey agencies, CMS states that it will issue a rulemaking notice detailing the reporting requirements, and that it will require nursing homes to report new cases of COVID-19 to residents and their representatives within 12 hours.⁵

April 23: Press reports estimate 10,000 nursing home residents have died due to COVID-19.⁶

April 30: President Trump says during a press conference that “we’re taking very special care of our nursing homes and our seniors,” adding that “this week we will be finalizing a new rule requiring information to be reported directly to CDC,” as well as nursing home residents and families.⁷

May 1: CMS makes a pre-publication Federal Register filing of the interim final rule with scheduled publication date of May 8.⁸ The rule, which will go into effect on May 8, will require nursing homes to report COVID-19 cases to CDC, but will not enforce the reporting requirement with civil monetary penalties until after June 7. The rule also relaxes the reporting requirements

¹ <https://www.aging.senate.gov/press-releases/casey-wyden-urge-trump-administration-to-release-secret-list-of-nursing-facilities-with-cases-of-covid-19>

² https://www.ahcancal.org/News/news_releases/Pages/AHCANCAL-Issues-Guidance-on-Reporting-COVID-19-Cases-in-Skilled-Nursing-Facilities-and-Assisted-Living-Communities.aspx

³ <https://www.finance.senate.gov/ranking-members-news/wyden-casey-condemn-trump-administrations-refusal-to-identify-nursing-homes-with-covid-19-cases>

⁴ <https://www.cms.gov/newsroom/press-releases/trump-administration-announces-new-nursing-homes-covid-19-transparency-effort>

⁵ <https://www.cms.gov/files/document/qso-20-26-nh.pdf>

⁶ <https://abcnews.go.com/Health/coronavirus-crosses-grim-milestone-10000-deaths-us-nursing/story?id=70321822>

⁷ <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-remains-committed-caring-nations-seniors-coronavirus-pandemic-beyond/>

⁸ <https://www.federalregister.gov/documents/2020/05/08/2020-09608/medicare-and-medicaid-programs-basic-health-program-and-exchanges-additional-policy-and-regulatory>. The rule states that nursing homes must “inform residents, their representatives, and families of those residing in facilities by 5p.m. the next calendar day following the occurrence of either a single confirmed infection of COVID-19, or three or more residents or staff with new-onset of respiratory symptoms occurring within 72 hours of each other.”

to nursing home residents and their families or representatives relative to the standards in the April 19 memo, allowing facilities to wait up to 41 hours before disclosing new COVID-19 cases.

May 3: Press reports estimate 20,000 nursing home residents have died due to COVID-19⁹

May 6: Senators Casey and Wyden press Administrator Verma during a phone call to release data regarding COVID-19 cases and death no later than May 15.¹⁰ Administrator Verma refuses to commit to a date when data will be released. Less than five hours after the call concludes, CMS quietly sends a memo to state survey agencies outlining the new reporting requirements, noting that “CMS anticipates publicly posting [the COVID-19 nursing home data]... by the end of May.”¹¹

⁹ <https://www.nytimes.com/aponline/2020/05/03/business/bc-us-virus-outbreak-nursing-home-lawsuits.html?searchResultPosition=5>

¹⁰ <https://www.finance.senate.gov/ranking-members-news/wyden-and-casey-demand-action-on-covid-19-in-nursing-homes-on-call-with-senior-trump-health-official>

¹¹ <https://www.cms.gov/files/document/qso-20-29-nh.pdf>