

CORONAVIRUS (COVID-19) NEW YORK STATE NURSING HOME GUIDANCE

New York State's rapidly evolving response to COVID-19 has resulted in a number of new Executive Orders ("Orders") from Governor Cuomo, as well as various regulatory waivers and guidance from the Centers for Medicare and Medicaid Services, the New York State Department of Health and other state agencies. We understand that nursing homes are on the front lines of this unprecedented health crisis, and that you may not have time to keep up with all of the regulatory changes. **Please know that Garfunkel Wild stands ready to assist you at this critical juncture.**

For your convenience, we have summarized the most relevant information and guidance below. We will continue to post updates as new directives are issued, so please monitor our web site or call the Garfunkel Wild attorney with whom you work for more information.

Staffing

- Physicians licensed and in current good standing in any state are permitted to practice medicine in New York without civil or criminal penalty related to lack of licensure.
- Physicians licensed and in current good standing in New York, but not registered in New York, are permitted to practice in New York without civil or criminal penalty related to lack of registration.
- Physician assistants, registered nurses, licensed practical nurses, and nurse practitioners licensed and in current good standing in any state are permitted to practice in New York without civil or criminal penalty related to lack of licensure.
- Staff with the necessary professional competency and who are privileged and credentialed to work in a facility in compliance applicable laws and regulations, or who are privileged and credentialed to work in a facility in another state in compliance with the applicable laws and regulations of that other state, are permitted to practice in a facility in New York.
- CMS has also temporarily waived requirements that out-of-state providers be licensed in the state where they are providing services when they are licensed in another state. This applies to Medicare and Medicaid.
- Requirements concerning the practice of medicine and nursing (Sections 6521 and 6902 of the Education Law, respectively) are suspended to the extent necessary to permit unlicensed individuals, upon completion of training deemed adequate by the Commissioner of Health, to collect throat or nasopharyngeal swab specimens from individuals suspected of being infected by COVID-19, for purposes of testing; and to the extent necessary to permit non-nursing staff, upon completion of training deemed adequate by the Commissioner of Health, to perform tasks, under the supervision of a nurse, otherwise limited to the scope of practice of a licensed or registered nurse.

Admissions, Discharges and Qualifying Stays

- CMS has waived the requirement for a 3-day prior hospitalization for coverage of a skilled nursing facility stay, which provides temporary emergency coverage of SNF services without a qualifying hospital stay for individuals who need to be transferred as a result of the disaster.
- For certain beneficiaries who recently exhausted their SNF benefits, CMS has authorized renewed SNF coverage without first having to start a new benefit period.
- CMS has waived compliance with the resident assessment requirements set forth at 42 CFR 483.20, in order to provide relief to skilled nursing facilities on the timeframe requirements for Minimum Data Set assessments and transmission.
- Nursing homes receiving individuals affected by COVID-19 are permitted to: (i) perform comprehensive assessments of residents temporarily evacuated to such nursing homes as soon as practicable following admission, or to forego such assessments for individuals returned to facilities from which they were evacuated; (ii) obtain physician approvals for admission as soon as practicable following admission, or to forego such

approval for individuals returned to facilities from which they were evacuated; and (iii) comply with admission procedures as soon as practicable following admission, or to forego such procedures for individuals returned to facilities from which they were evacuated.

- 10 NYCRR Sections 400.9 and 405.9 are suspended to the extent necessary to permit general hospitals and nursing homes that are treating patients during the pandemic to rapidly discharge, transfer, or receive such patients, as authorized by the Commissioner of Health, provided such facilities take all reasonable measures to protect the health and safety of such patients and residents, including safe transfer and discharge practices, and to comply with the Emergency Medical Treatment and Active Labor Act (42 U.S.C. § 1395dd) and any associated regulations.

Expanded Telehealth Services

With respect to the expansion of telehealth services, we encourage you to view our webinar entitled “Implementing and Expanding Telehealth to Address COVID-19,” which is available for viewing online at:

<https://youtu.be/CdxOi4Axy1s>

Temporary Provision of Home Hemodialysis to Nursing Home Residents

The Department of Health has indicated it will issue emergency approvals for nursing home residents for the temporary provision of home hemodialysis. Facilities that previously submitted a Limited Review Application (LRA) must submit a written notice addressed to the Director, Division of Nursing and ICF/IID Surveillance. SNFs that wish to request emergency approval for nursing home hemodialysis, but have not yet submitted an LRA, may wish to reach out to End State Renal Disease (ESRD) providers that have already been approved by DOH to provide HHD and execute a contract with them to provide services on site. Note that the project MUST comply with the most current state and federal guidance related to treatment of patients with known or suspected COVID-19. Requests should be submitted to Sheila McGarvey at Sheila.mcgarvey@health.ny.gov.

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Finally, we encourage you to be familiar with Federal, State and local on-line resources. Here are a few:

<https://www.cms.gov/newsroom/press-releases/cms-takes-action-nationwide-aggressively-respond-coronavirus-national-emergency>

<https://coronavirus.health.ny.gov/home>

<https://www1.nyc.gov/site/doh/health/health-topics/coronavirus.page>

<https://www.nj.gov/health/cd/topics/ncov.shtml>

<https://portal.ct.gov/DPH/Public-Health-Preparedness/Main-Page/2019-Novel-Coronavirus>

<https://www.cdc.gov/coronavirus/2019-ncov/index.html>

<https://asprtracie.hhs.gov/MasterSearch?qt=coronavirus&limit=20&page=1&CurTab=0>

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As this situation unfolds, recommendations and requirements are being updated and changed at a rapid pace. If you need any assistance in understanding or addressing these concerns, please contact the [Garfunkel Wild attorney](#) with whom you regularly work.

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