



Introduction to COVID-19 Risk Management for SNFs

This Article is Part 1 of 5 in EVOLVE's series on COVID-19 risk management for SNFs. In this Article of the series, we look at the realities of the COVID-19 pandemic, the resulting increased risks to SNFs, and the importance of a proactive risk management strategy.

The COVID-19 pandemic has changed daily life for the entire world.

Since March 2020, our country, and the entire world, has been going through a collective experience unlike anything experienced in most of our lifetimes. While everyone has felt the effects of the COVID-19 pandemic in some nature or other, clearly the health care industry, and SNFs in particular, have been among the hardest hit by the pandemic. SNFs have not just been serving on the frontline of the pandemic, but our residents are those most at risk for COVID-19 complications and death.

SNFs on the frontline have been hardest hit by the pandemic.

Despite this fact, SNFs have been called upon to both admit and treat COVID-19 patients and to stop the spread of COVID-19 within their facilities. While this would be a daunting task in *any* communal living setting, SNFs are being asked to accomplish this herculean effort while facing staffing issues, a lack of personal protective equipment (PPE), inadequate testing resources, and insufficient funding. Not to mention, facilities are also being hit financially through decreased census as rehabilitation stays are curtailed and older adults seek to avoid nursing facilities where they may be restricted from visiting loved ones.

In addition, it is worth noting that the SNF model was simply not geared towards responding to a pandemic in the way that SNFs have been asked to respond to COVID-19. SNFs were not constructed or equipped like hospitals to isolate and respond to a pandemic that involves a potentially airborne infectious agent. Unlike hospitals that are designed to have true "isolation" units, SNFs are constructed for residential living, with some modifications. While SNFs can limit visitors, they cannot remove the threat of spread caused by staff, physicians, vendors, and others who come in and out of the facility on a daily basis.

We have seen the consequences of these circumstances from the very early days of the pandemic. Since COVID-19 went through a Seattle nursing facility, sickening two-thirds of its residents and nearly 50 staff members in March, we have been inundated with story after story in the news and social media about COVID-19 "ravaging" nursing facilities. And yet, through all of this, long-term care workers have continued to show up and put their health – and sometimes their lives – on the line to continue caring for our country's seniors and most vulnerable population.

We have also witnessed over the past months that the world in general was unprepared for the chaos and turmoil that COVID-19 has brought. Across all industries, organizations have struggled to operate and to respond adequately in order to address the myriad of risks and complications caused by COVID-19. Guidance from the government has rapidly changed over the course of the pandemic as we have learned more about this disease.

Despite SNFs best efforts, there will unfortunately be fall-out resulting from COVID-19.

In light of these challenges and realities, we certainly hope that when the COVID-19 storm passes, people will look favorably upon the heroism, dedication, and commitment that SNFs have shown in caring for

their residents during this emergency. We hope that people will look back at this period and recognize the challenges surmounted and the sacrifices made by long-term care providers. We hope that they will understand that bad outcomes are not necessarily caused by bad practices and that this disease simply could not have always been prevented.

Unfortunately, however, we recognize that this may not be the case. Rather, we see the more likely future as one in which regulators, residents, and others second guess what SNFs could or should have done to better respond to the pandemic. We see the more likely future as one in which the threat of COVID-19 is replaced with a new threat: litigation, investigation, and government enforcement.

Undoubtedly, SNFs are going to face additional scrutiny over the coming months and years with respect to their COVID-19 response. This scrutiny may come in the form of resident and family lawsuits, employment claims, survey enforcement, and government oversight. Indeed, we have already started to see claims being filed and investigations commence. We believe it is important to face the potential realities of this coming storm now. Smart risk management means planning and preparing for a worst-case scenario.

EVOLVE wants to help your organization prepare and plan for additional scrutiny.

EVOLVE's goal is to help SNFs understand their potential exposure in various key risk areas so that they can begin building their defense arsenals *now*. The guidance in these articles highlights four key areas of risk for SNFs and ideas on how to begin preparing your organization for scrutiny with respect to:

1. Survey and regulatory enforcement;
2. Civil litigation;
3. Employment claims; and
4. Government investigations and enforcement.

We understand that this is a challenging period and that your time is valuable. We hope that this series will provide your organization some practical steps to position you to better withstand future review.

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