

Coronavirus In Senior Care Facilities: Tips For Navigating This New Territory With Residents And Employees

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The World Health Organization has recently identified the COVID-19 Coronavirus as a pandemic. Many senior care facilities (assisted living, skilled nursing, independent living, sub-acute rehabilitation facilities) find themselves in uncharted territory as it relates to their obligations to residents and their staff, not to mention potential exposure, both from the perspective of liability and health concerns.

Healthcare workers do not have the luxury of being able to work from home. Facilities are overwhelmed with information from the CDC, WHO, and various health care associations throughout the United States, and it is recommended that senior care facilities follow the recommendations of those organizations. However, there are important legal issues that have come up as we navigate infectious disease prevention.

Below is a list of common questions and information to help address issues that senior care facilities are seeing, relating to staffing and employment.

What can senior care facilities do to protect residents and staff?

It is vital to strictly adhere to recommendations and protocol provided by the CDC, WHO, departments of health, and application licensing boards. For facilities, it is vital to provide training to staff now, with frequent reminders, about protocol during this time. Also critical is the need for the facilities to communicate information with the residents and members of their families.

What if an employee comes to work and appears sick? How can we check the symptoms?

There are many symptoms that may be exhibited by residents or employees, and they could be associated with the flu, upper respiratory infections and/or coronavirus. It is most important to focus on flu-like symptoms. If an employee appears ill, you can require that he/she stay home and seek medical attention. However, you cannot take matters into your own hands by taking his/her temperature or in any way examining the employee. Providers must be careful not to run afoul of the Americans with Disabilities Act or various State statutes.

What should we do if one of our residents, employees, or someone who has visited our facility has tested positive for coronavirus?

First, you should contact the State and your local department of health.

For employees, you should promptly send that employee home for a period of not less than 14 days, or as recommended by the department of health. You can require medical clearance for that employee to return.

As to residents, determination must be made whether the resident needs to be hospitalized. Restriction of the resident's movement throughout the facility is permissible and recommended.

Also, you should investigate to determine who may have been most at risk by assessing the level of exposure and being mindful of those that have been identified as a higher level of risk to contract the virus. This investigation must include a look at other employees, residents or outside vendors. It is also advisable that you notify everyone who has been present in your facility and may have been exposed to the employee. Take all reasonable efforts to disinfect the facility immediately. Follow all procedures from the CDC and applicable department of health.

Can an employee refuse to come to work?

Generally, employees may only refuse to work if they believe they are in "imminent danger". The Occupational Safety and Health Act (OSHA) defines imminent danger to include "any conditions or

practices in any place of employment which are such that a danger exists which can reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act.” It is also important to be familiar with the applicable statute or regulations in your state, particularly for licensed individuals. If an employee refuses to come to work and does not have a reasonable threat of imminent harm, he or she may be terminated, unless there are regulations in your state that provide otherwise. Before doing so, particularly in a time such as this pandemic, it is suggested that you consult with counsel.

Can a nurse be threatened with abandonment if they refuse to work or treat a patient?

The answer depends on the circumstances and the state in which you are operating. Generally, to be considered abandonment, the nurse must have first accepted the assignment and then severed the relationship without notice to an appropriate person.

Is the company required to protect an employee's position if he/she asks to care for a close family member who is infected, or if he/she is infected, or if he or she is quarantined as a result of exposure to coronavirus?

If you employ more than 50 employees, you may be required to provide an employee with family leave to care for themselves or a close member of his/her family. The Family and Medical Leave Act (federal statute) requires employers with 50 or more employees to provide leave to an employee for up to 12 weeks to care for themselves or a close member of his/her family.

Is the business required to pay employees for sick time?

Your business must adhere to your company policies regarding paid time off. Many states, like New Jersey, now have an earned sick leave law, entitling employees to a certain minimum amount of leave in a calendar year. Given the current media and extensive use of social media, a bit of flexibility is advisable. You do not want your healthcare facility to be in the headlines for what appears to be callous disregard of employee health or solely motivated by the bottom line. Employees may also be

eligible for temporary disability insurance from the State or any private disability policy.

Where can I turn for assistance dealing with coronavirus?

Healthcare facilities should rely on trained human resources professionals and legal counsel in this situation. In addition, the Center for Disease Control recently issued guidance for businesses, which can be found at www.cdc.gov. OSHA also released guidance, which can be located at <https://www.osha.gov/SLTC/covid-19/>. It is recommended that you also contact an appropriate licensing board or the department of health where your facility is located.

Unfortunately, these are troubling times with a great deal of uncertainty. It is important to take prudent steps to minimize exposure to your residents and employees. Do not panic, but remember to be sensible and follow health guidelines.