

October 6, 2020

## CMS Releases Interpretative Guidance on Mandatory COVID-19 Data Reporting for Hospitals

*Guidance includes new reporting requirements, enforcement provisions*

The Centers for Medicare & Medicaid Services (CMS) today released [guidance](#) on how it will implement an Aug. 25 [interim final rule](#) that makes collecting and reporting COVID-19 data a condition of participation (CoP) for hospitals that participate in Medicare. The guidance includes new reporting requirements for hospitals, as well as enforcement provisions. Highlights of the interpretive guidance and AHA's reaction are below.

**AHA Take:** In a [press statement](#) this afternoon, AHA President and CEO Rick Pollack said, "Tying data reporting to participation in the Medicare program remains an overly heavy-handed approach that could jeopardize access to hospital care for all Americans. The impact of barring hospitals from Medicare and Medicaid has the potential to harm more than those program's enrollees, and threatens more than just the life-saving care hospitals are providing to COVID-19 patients. The reality is many hospitals could not keep their doors open should they no longer receive payment from Medicare and Medicaid, affecting care for all Americans in the midst of a global pandemic."

"Today's interpretive guidance on COVID-19 data reporting does answer some of the questions hospitals and health systems have been asking about compliance since the interim final rule was released six weeks ago. In particular, the Administration will provide hospitals with information on whether their data are making it into HHS Protect and they will give hospitals the necessary time to adjust their data collection to come into compliance if need be. The guidance also reduces the reporting burden on psychiatric hospitals, which generally do not treat COVID-19 patients."

"America's hospitals and health systems remain focused on patient care and battling COVID-19, while also providing the government with the public health data it needs, in spite of ever-changing requests. The federal agencies have specified that data can only get into HHS Protect if it goes through a private contractor or through the department of health for the state in which the hospital is located. We have observed errors in data processing and confusion about exactly what was being requested at the hospital, state, contractor, and federal level and have worked diligently with the federal agencies to identify and correct those problems. This has resulted in at least 94% of hospitals submitting data. This level of success was made possible by partnership, not mandates."

"The entire hospital field remains fully committed to ensuring that the federal government gets the data it needs and urges HHS to only request data that are essential to critical

decisions so that hospital staff can remain focused on their primary responsibility -- caring for patients.”

## HIGHLIGHTS OF THE GUIDANCE

### Applicability and Data Submission Timing

The reporting requirements apply to all Medicare and Medicaid hospitals and critical access hospitals (CAHs) throughout the duration of the public health emergency (PHE). **Hospitals are expected to report all required data sets completely. Daily reporting** will be required for most hospitals, including short-term, long-term, CAHs, children’s, distinct part psychiatric hospitals, Medicaid only short term, Medicaid only children’s and Medicaid only long-term hospitals. **Weekly reporting** will be required for psychiatric and rehabilitation hospitals. CMS expects hospitals to report their data within one business day, but will allow those facilities unable to report on weekends and holidays to do so on the next business day.

### Data Elements Required

**Daily Reporting.** As detailed in the interpretive guidance chart, hospitals (except psychiatric and rehabilitation hospitals, which will submit weekly) will be required to report 25 data sets daily. Those sets include hospital information, various bed occupancy and capacity information, ventilator utilization and capacity, various elements around COVID-19 hospitalizations, admissions and emergency department information and critical staffing shortage data. *While data around remdesivir utilization and staffing shortages are required, those reporting requirements will become optional on Nov. 4.*

**Weekly Reporting.** The following data sets require data submission once per week on Wednesday. These data include personal protective equipment (PPE), testing and ventilator on-hand supply, information around the ability to acquire necessary supplies, information on re-use or extended use of certain PPE, the ability of the facility to maintain a three-day supply of necessary items and critical medical or pharmaceutical supply shortages.

**Optional Daily Influenza Reporting Requirements That Will Become Mandatory.** Starting Oct. 19, hospitals (except psychiatric and rehabilitation hospitals, which will report weekly) will have the option to report several data elements focused on influenza. Those elements include confirmed cases of influenza, admissions, ICU utilization, confirmed cases of patients with both influenza and COVID-19, and previous day’s deaths. CMS indicates that more information will be provided in the near future about these requirements, **but hospitals should expect the reporting of these data sets to become mandatory.**

### Enforcement Process for Non-Compliance

In the guidance, CMS outlines the enforcement process for a hospital’s failure to report. The timeline spans 14 weeks and includes:

1. Beginning Oct. 7, an initial notification from CMS informing a hospital that it is not in compliance with the reporting requirements
2. If reporting requirements remain unmet, the hospital will receive another notice informing the facility of non-compliance and indicating that additional enforcement actions may be necessary.
3. If a hospital remains non-compliant after six weeks, the hospital will receive the first in a series of weekly enforcement letters.
4. Failure to come into compliance after receiving the first weekly enforcement letter will result in a second enforcement letter.
5. Failure to come into compliance after receiving the second weekly enforcement letter will result in a third and final enforcement letter.
6. Failure to meet the reporting requirements after receiving the third enforcement letter will result in a notice of termination, which provides the hospital a final 30 days to come into compliance with the requirements. Failure to do so **can result in termination of the Medicare provider agreement.**

This process will be ongoing throughout the duration of the PHE. Please note that steps 1-2 of the above process are only applicable from Oct. 2 through Nov. 13. Should a hospital fail to demonstrate compliance and face termination from participation in the Medicare program, appeal and reasonable assurance options remain intact.

For those hospitals having difficulty meeting the reporting requirements, CMS indicates that those entities will have the opportunity to work with HHS to develop a plan to successfully meet the requirements. Hospitals or CAHs may contact the HHS Protect Service Desk at [protect-servicedesk@hhs.gov](mailto:protect-servicedesk@hhs.gov) to make those arrangements.

### **Further Questions**

If you have questions, please contact AHA at 800-424-4301.