

May 6, 2020

Gov. Tony Evers
Room 115 East
Wisconsin State Capitol
Madison, WI 53702

Electronically Delivered

Secretary-Designee Andrea Palm
Wisconsin Department of Health Services
1 W. Wilson Street, Room 650
Madison, WI 53703

Dear Gov. Evers and Secretary Palm:

We hope that this email reaches you as well as can be expected in these challenging times. On behalf of the hard-working long-term caregiving heroes that we have the honor of representing across the State of Wisconsin, we want to take this opportunity to express Wisconsin's skilled nursing facility provider community's strong disagreement with the decision of the Wisconsin Department of Health Services and the Evers Administration to publicly disclose the names of nursing facilities with positive cases of COVID-19 in their building. Singling out nursing homes is not only unfair compared to the way that other professions are being treated, but it raises the specter of privacy violations of the residents our facilities serve. As Secretary Designee Palm mentioned in her interview with Milwaukee Public Radio just last week:

"Long-term care facilities are people's residence, and so we are interested in protecting the privacy of the residents of those facilities," Palm said. "We want to make sure we are being as transparent as we can without exposing individuals and their privacy in a way that does not advance the public health." (Source: <https://www.wuwm.com/post/wisconsin-dhs-identifies-187-facility-based-covid-19-outbreaks#stream/0>)

It is important to note that since the beginning of the COVID-19 crisis, LTC providers have been ready and willing to work with the state to find solutions that balance public health priorities and also protect the health, safety, and privacy of long-term care residents and staff. We respectfully ask that the provider community's perspective be solicited and listened to in advance of the implementation of decisions such as this one, as our member facilities and their staffs are the ones who are directly responsible for providing the care to Wisconsin's frail older adults. Accordingly, we urge you to reconsider the timetable of this decision so that there is adequate opportunity for the perspective of providers to be heard on the concerns that they have.

Our members fear the decision to publicly identify COVID-positive providers will lead to a *de facto* public shaming of facilities; will cause undue stress on residents, staff, and families; and will make the already challenging task of recruiting new caregivers even more difficult. This policy may also create the unintended consequence of disincentivizing nursing homes from admitting COVID-positive or COVID-unknown patients for fear of being stigmatized via public disclosure. Thus, this proposed disclosure policy very well could run counter to a current public health goal of addressing potential hospital capacity issues.

WHCAWiCAL and LeadingAge Wisconsin do not see a compelling public health interest for this proposed policy, and we respectfully request that state officials provide the public policy basis for this decision. The only reason we can think of for this policy would be for "consumer information" to *prospective* residents. Couldn't this goal be achieved in a more meaningful fashion by directing all skilled nursing facilities to provide the same information to prospective residents as they must provide to current residents and families?

However, if the state determines to move forward with a public disclosure policy regardless of providers' concerns, we offer these thoughts and suggestions:

1. The public posting of the facility names should include a prefatory statement stating that a facility's inclusion on this list should not be interpreted by the public as an indicator of poor care by the facility. COVID-19 is a particularly insidious virus and can be found in most areas of the State of Wisconsin. Even the very best nursing homes and hospitals may experience COVID-19, since many people who test positive for this virus are asymptomatic and may have unknowingly caused others to contract the virus. In fact, inclusion of a facility on this list may be an indicator of the facility's willingness and ability to provide a critical service to older adults within their community.
2. As we understand it, the current proposed policy would not list or announce whether the positive case was an employee or resident; would not announce the number of cases in a facility, simply if the facility has a positive test; and would not disclose COVID positive cases in nursing homes of 10 or fewer residents. We appreciate the considerations taken in this approach, as it helps address some of providers' concerns about protecting patient privacy.
3. If this public disclosure policy is going to move forward, we believe it is unreasonable and arbitrary to limit it just to nursing homes. For example, why was it decided that this policy only pertains to nursing homes, and not hospitals as well?
4. If this public disclosure policy is going to move forward, we believe it is necessary to include some lag time between a) when a facility fulfills its state reporting requirement, and b) when the state publicly discloses the information. A lag in public disclosure is necessary so the facility has time to report to residents and families. We must allow providers time to fully share this information with residents and families and thoroughly engage in incredibly important conversations often necessary to help ease concerns and maintain, an incredibly important conversation to help ease concerns and maintain strong lines of communication between providers, their residents, and residents' loved ones.

Timing considerations

- Current reporting requirements:
 - Upon confirmation of a COVID infection, facilities are directed by DHS to "immediately contact the local public health department."
 - [Current CMS interim guidance](#) requires facilities to inform residents, their representatives, and families by 5 p.m. of the next calendar day following a confirmed COVID-19 infection.
 - Since this crisis began, facilities have received conflicting orders on the local, state and federal level. Any effort to publicly identify facilities should take any regulatory inconsistencies into appropriate consideration.
 - Given the need for lag time and provider preference for a weekly update, we would ask that public disclosures occur weekly, with the reporting period ending 48 hours before the disclosure. Thus, if the public disclosure occurred on Friday, May 15, we would ask that the update include information on new COVID cases reported from Wednesday, May 6 - Wednesday, May 13. This would ensure that even for cases reported by providers to the state on Wednesday, May 13, resident/family notifications would have been completed by 5 p.m. on Thursday, May 14.

- If a weekly report will not be considered, we would ask for the same timing lag conducted on a daily basis – so, daily updates would have up to a 48-hour lag time to allow appropriate time for providers to communicate directly with residents and families.

WHCA/WiCAL and LeadingAge Wisconsin members believe the best approach for timing would be a weekly update to the list of COVID-19 positive facilities. It would be very stressful for nursing home residents, and demoralizing for nursing home staff across the state, to see stories of nursing homes having COVID-19 dominating the news on a daily basis. A weekly update would also provide relief to facilities who may otherwise be singled out on any given daily update. We can imagine a situation where on a single day, one nursing home in Sheboygan or Superior is the only new facility with COVID in the state, and it gets inundated with calls from local, regional, and statewide media.

5. If there is a trigger for how a facility is placed on the list, there should be a vehicle through which a facility is able to come off the list. For example, in the event that there is no longer someone in a facility who is COVID-19 positive.
6. The disclosure of a facility's COVID-19 status should be exclusively limited to the measure of whether there is currently an individual who has been confirmed to have COVID-19 in the building.
7. There should be some special designation for facilities that have created dedicated COVID-19 units/wings to help treat COVID-19 positive patients.

As has been raised with several officials within the Department and the Evers Administration, WHCA/WiCAL and LeadingAge Wisconsin members believe that if facilities are going to be expected to undergo the significant public pressure of public labeling of their facilities, it is long past time for there to be a conversation about what state resources must be made available for facilities to deal with positive cases of COVID-19 in their buildings. Up to this point there has been no additional state funding and very limited federal funding provided to nursing homes despite experiencing a 500% increase in their spending on PPE and sometimes double the labor costs they experienced before this devastating virus.

Ultimately, if providers don't get financial relief soon, we are concerned that we could see some facilities forced to shut down right now due to a lack of cash flow and staff. Wisconsin has already seen [40 nursing facilities close since 2016](#). The simple fact is that if the State and Federal Government do not act quickly to provide increased reimbursement for long-term care providers, facilities may be forced to close, causing the need to transfer residents, exposing residents to greater risk of COVID-19, and creating further access issues during this public health emergency. Without emergency funding from the state, providers fear we will see an uptick in long-term care facility closures, and Wisconsin's frail elderly will have reduced access to care, which is the last thing we should allow to happen during a public health crisis.

A [study conducted by Wipfli LLP](#), an auditing and accounting firm, released last year shows that the average Wisconsin nursing facility had just 39 days cash on hand. Recently, CliftonLarsonAllen has found that SNF providers in Wisconsin are experiencing a revenue shortfall of between \$110M - \$160M, and up to 66 percent of SNFs in Wisconsin will be in a negative cash position within the next 90 days.

As you know, the state policy decisions that you are making do not happen in a vacuum. The decision to publicly label facilities in this way without providing them with the resources that they

need to deal with this crisis is setting facilities up to fail. LTC providers look forward to being a part of the conversation moving forward, so that we can help our frontline caregiving **heroes** who are doing everything that they can to protect to the health and safety of the residents that they serve.

As always, we are happy to visit with you anytime regarding any of the issues we raise.

Sincerely,

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