

PUBLICATION

CMS Rolls Out New Plan for State Survey Agencies to Address Skilled Nursing Facility Survey Backlogs

December 15, 2021

On Friday, November 12, 2021, the Centers for Medicare & Medicaid (CMS) issued QSO-22-02-ALL designed to help State Survey Agencies (SSAs) address the backlog of skilled nursing facility (SNF) annual recertification and complaint surveys which have been delayed during the COVID pandemic. Per the new Quality, Safety & Oversight (QSO), CMS attributes the current survey backlog to its decisions to:

- Limit the instances when surveyors were required to perform onsite surveys at SNFs;
- Forego or delay certain normal survey procedures and tasks; and
- Direct SSAs to focus primarily on:
 - Infection prevention and control surveys;
 - Complaints and Facility Reported Incidents (FRIs) involving allegations of immediate jeopardy (IJ);
 - Revisits to verify removal of IJ citations; and
 - Complaints related to infection control.

SNFs have felt the impact of these decisions. Currently, providers in most states report that state survey teams are arriving onsite for complaint inspections with dozens of allegations to review, often dating back to pre-COVID periods, combined with annual recertification surveys, infection control surveys, or both. This jumble of survey types, coupled with the survey backlog created by CMS's decisions to largely keep surveyors out of SNFs except for IJ citations and its heavy focus on infection control policies, procedures, complaints and surveys, has resulted in large numbers of citations, heavy per-day civil money penalties and confusing periods of compliance and noncompliance in many regions of the country as the SSAs try to catch up.

To address the survey backlog, CMS will work with each SSA to develop a plan and revised timeframe for completing all outstanding and future surveys. CMS also is implementing the following measures and reconfigured survey priorities and procedures:

Elimination Of Mandatory Focused Infection Control (FIC) Surveys

- SSAs are no longer required to conduct FIC surveys at any SNF which has three or more new confirmed COVID cases or which has one confirmed case after being COVID-free.
- Instead, SSAs must conduct FIC surveys at 20 percent of a state's SNFs and should prioritize SNFs reporting new cases or with low vaccination rates.
- To count towards this 20 percent mandate, an FIC must be a stand-alone survey and cannot be combined with a recertification or complaint survey.
- SSAs may still perform FICs that do not fall within the prescribed parameters when concerns regarding COVID infection arise (presumably from complaints or observations).

Recertification Surveys

Many states are woefully in violation of the statutory requirement that all SNFs be surveyed at least every 15 months, with a statewide survey interval average of no greater than 12 months. To help states catch up, CMS is:

- Ending the mandatory survey focus on FIC surveys and immediate jeopardy situations
- Directing SSAs to resume normal recertification surveys on a regular basis
- Directing SSAs to compute a new survey interval for each SNF based on its next survey, whenever that occurs. In other words, regardless of how late an SSA may be in conducting an SNF's next survey, the facility's new 12-month mandatory survey interval begins to run on the date of its next recertification survey. So, if an SNF's normal survey interval previously ran from April to June, if that facility's next survey occurs in December 2021, then its next annual recertification survey would be due in February 2023.
- SSAs are to prioritize recertification surveys as follows:
 - Abuse or neglect situations;
 - Infection control issues;
 - Suspected violations of transfer or discharge requirements;
 - Suspected insufficient staffing or competency;
 - Special Focus Facilities; and/or
 - Other quality-of-care issues.
- Finally, CMS is temporarily suspending the normal mandatory survey tasks for:
 - Resident Council meetings;
 - The dining observation task; and
 - Medication storage.

Investigating Complaints with Recertification Surveys

CMS will permit SSAs to continue bundling complaint investigations with annual recertification surveys. This creates problems when deficiencies cited earlier in a survey cycle are corrected but new complaints are added to revisits resulting in new deficiencies, the correction of which, in turn, require revisits to verify compliance. To address the normal survey sample size restrictions which could otherwise complicate this approach, CMS has relaxed restrictions on the normal maximum number of residents who may be included in the survey sample total.

Complaints and Facility-Reported Incidents

CMS previously directed SSAs to prioritize complaint surveys triaged as IJ or Non-IJ High, resulting in a backlog of other complaints. To address this, CMS is directing SSAs as follows:

- Where the SSA cannot complete all IJ or Non-IJ High complaints within 10 days or two days as required by the State Operations Manual, SSAs should complete those as soon as possible;
- Complaints that are triaged as Non-IJ Medium may be investigated at the next standard survey if the complaint was received within one year of the next scheduled standard survey or if the complaint involves staff-to-resident abuse, neglect or misappropriation of resident property;

- Non-IJ Medium complaints received more than one year before the next scheduled standard survey should be "reviewed" by the SSA. If the complaint involves a pattern of poor care, the SSA should either survey it during the next standard survey or schedule a complaint inspection. In all other cases of Non-IJ Medium complaints, the SSA may close the complaint without a survey; and
- Complaints triaged as Non-IJ Low may be closed in the Automated Surveyor Processing Environment (ASPEN) by the SSA without a survey.

In essence, CMS is waiving its own survey frequency and procedures for all surveys, modifying procedures for some complaints and permitting SSAs to close some complaints that previously required an onsite inspection without a survey.

Areas of Renewed Focus During Upcoming Surveys

CMS states in the QSO that it remains concerned about how residents' health and safety have been impacted by the SSAs' inability to be onsite in SNFs during COVID and by the ability of SNFs to modify how they operated during COVID because of regulatory flexibilities CMS permitted. In response, CMS is directing SSAs to focus on the following areas in upcoming surveys:

- Requirements for nursing services, both staffing levels and competencies of RNs, LPNs and CNAs;
- The inappropriate use of antipsychotic medications; and
- Any other areas of concern where resident health and safety may be implicated, such as unexplained weight loss, loss of function/mobility, depression, abuse/neglect and pressure ulcers.

For more information, contact [Ken Burgess](#) or any Baker Donelson [Long Term Care](#) attorney.