

On November 12, 2021, the Center for Medicare & Medicaid Services (CMS) issued [updated guidance](#) related to state survey processes. The guidance relaxes requirements regarding infection control surveys, clarifies timing on annual recertification surveys, addresses the complaint backlog, and announces increased survey scrutiny in particular areas of care quality. Below, is a summary of the guidance.

Infection Control Surveys

In June 2021, CMS issued [guidance](#) requiring State Survey Agencies (SAs) to perform focused infection control surveys within 3-5 days in nursing homes with new COVID-19 cases. The updated guidance rescinds the requirements. However, SAs will still be required to conduct focused infection control surveys of 20% of nursing homes in the state, focusing on facilities with new cases or low vaccination rates. SAs that fail to meet the 20% requirement could lose up to 5% of their CARES Act money.

Recertification Surveys

Nursing homes must undergo an annual recertification survey within at least 15 months of their last recertification survey, with a state average of 12 months or less. CMS, as part of its initial response to the pandemic, suspended these surveys. In August 2020, CMS issued guidance that annual recertification surveys should resume but made this requirement contingent upon the availability of survey staff and access to personal protective equipment. In the November 12, 2021 guidance, CMS states all recertification surveys must resume.

Additionally, CMS clarified that the fifteen-month requirement will now run from the first recertification survey conducted after the beginning of the pandemic. CMS uses as an example a facility that was due for its recertification survey in April 2020, but because of the pandemic, it was not surveyed until August 2021. Thus, the new deadline for the facility would be October 2022.

CMS also recommends that SA prioritize facilities with histories of noncompliance or allegations of noncompliance in the areas of abuse and neglect, infection control, violations of transfer or discharge requirements, insufficient staffing or competency, Special Focus Facilities (SFF) and (SFF) candidates, and other quality of care issues.

Complaint Back Log

As a result of the COVID-19 pandemic and CMS limiting survey activity to only complaints alleging Immediate Jeopardy (IJ), many SAs have a significant complaint backlog. To address this issue, the new guidance allows SAs to address some complaints during recertification surveys. In summary, the guidance states:

Immediate Jeopardy and Non-Immediate Jeopardy High Complaints/Facility Reported Incidents (FRIs)

- SAs must investigate all IJ complaints/FRIs within two days and Non-IJ High complaints/FRIs within ten days. If the SA cannot meet this deadline, these complaints/FRIs must be investigated as soon as possible.

Non-IJ Medium Complaints/FRIs

- Non-IJ Medium complaints/FRIs may be investigated at the next recertification survey, if:
 - The complaint was received within one year of the scheduled survey date; or
 - The allegation involves staff to resident abuse, neglect, or misappropriation of resident property (regardless of when the complaint was received).
 - If the SA chooses not to investigate one of these complaints during the recertification survey, it may conduct a complaint survey. The resident named in the complaint must be included in the survey.
- For non-IJ Medium complaints/FRIs that were received over one year prior to the scheduled recertification survey, the SA should review the complaint/FRI to see if it indicates a pattern of poor care. If a pattern is indicated, the SA may investigate at the next recertification survey or through a complaint survey. If there is no pattern of poor care, the SA may then close the complaint.

Non-IJ Low Complaints/FRIs

- SAs are not required to investigate these backlogged complaints and may close them at the next standard survey. However, the SA may include the resident who is the subject of the complaint in the standard survey sample.

Increased Oversight

CMS also stated it is increasing oversight of nursing homes and focusing particularly on several areas. These areas include:

Nurse/Certified Nursing Assistant (CNA) Competency

At the beginning of the pandemic, CMS waived the requirement that a nursing home may not employ a CNA for more than four months if the CNA has undergone 75 hours of training and passed a certification exam. This waiver is still in place today. As a result, nursing home residents have been receiving care from untrained workers (TNAs) for months. CMS has charged SAs with surveying for nurse competency, including certified nursing assistants (CNAs), and TNAs.

Inappropriate Use of Antipsychotic Medications

During the pandemic, the use of antipsychotics and the diagnosis of schizophrenia has climbed considerably. It appears that many nursing homes have sought to address staffing problems through the inappropriate use of medications to sedate residents, which is illegal. CMS has charged SAs with paying particular attention to this issue during surveys.

Identifying Other Areas of Concern

CMS has also directed SAs to pay particular attention to resident health areas that may indicate poor care, including unexpected weight loss, loss of mobility and functioning, depression, abuse, and neglect, or pressure ulcers.