



Center for Clinical Standards and Quality/Quality, Safety & Oversight Group

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DATE: June 1, 2020

TO: State Survey Agency Directors

FROM: Director
Quality, Safety & Oversight Group

SUBJECT: COVID-19 Survey Activities, CARES Act Funding, Enhanced Enforcement for Infection Control deficiencies, and Quality Improvement Activities in Nursing Homes

Memorandum Summary

- ***CMS is committed*** to taking critical steps to protect vulnerable Americans to ensure America's health care facilities are prepared to respond to the Coronavirus Disease 2019 (COVID-19) Public Health Emergency (PHE).
- ***CMS has implemented*** a new COVID-19 reporting requirement for nursing homes and is partnering with CDC's robust federal disease surveillance system to quickly identify problem areas and inform future infection control actions.
- ***Following the March 6, 2020 survey prioritization***, CMS has relied on State Survey Agencies to perform Focused Infection Control surveys of nursing homes across the country. We are now initiating a performance-based funding requirement tied to the Coronavirus Aid, Relief and Economic Security (CARES) Act supplemental grants for State Survey Agencies. Further, we are providing guidance for the limited resumption of routine survey activities.
- ***CMS is also enhancing the penalties for noncompliance*** with infection control to provide greater accountability and consequence for failures to meet these basic requirements. This action follows the agency's prior focus on equipping facilities with the tools they needed to ensure compliance, including 12 nursing home guidance documents, technical assistance webinars, weekly calls with nursing homes, and many other outreach efforts. The enhanced enforcement actions are more significant for nursing homes with a history of past infection control deficiencies, or that cause actual harm to residents or Immediate Jeopardy.
- ***Quality Improvement Organizations*** have been strategically refocused to assist nursing homes in combating COVID-19 through such efforts as education and training, creating action plans based on infection control problem areas and recommending steps to establish a strong infection control and surveillance program.

Background

The coronavirus presents a unique challenge for nursing homes. Therefore, CMS is using every tool at our disposal to protect our nation's most vulnerable citizens and aid the facilities that care for them. Since the pandemic began, CMS, in coordination with the Centers for Disease Control and Prevention (CDC), has provided ongoing technical guidance and assistance to all Medicare and Medicaid certified providers and suppliers, including nursing homes. Nursing homes have been ground zero for COVID-19. As the data from our required COVID-19 reporting from nursing homes indicates, additional immediate action is necessary to safeguard the health and safety of residents.

Further, to complement our technical assistance efforts, States and CMS have completed Focused Infection Control surveys in approximately 53% of the nation's nursing homes. We are calling on States to ensure that all Medicare and Medicaid certified nursing homes receive this onsite, targeted review and access to the new CARES Act funding will be tied to a state's progress on completing these surveys.

Guidance

Focused Infection Control Nursing Home Surveys and CARES Act Supplemental Funding

Currently, States receive over \$397 million to perform oversight surveys and certification of Medicare and Medicaid certified providers and suppliers.

On March 4, 2020, CMS called for States to focus surveys on infection control and on March 23, 2020 provided a streamlined tool to facilitate these efforts. There is currently wide variation in the number of Focused Infection Control surveys of nursing homes performed by States, between 11%-100% (with a national average of approximately 54.1%). Based on the COVID-19 nursing home data being reported to the CDC, CMS believes further direction is needed to prioritize completion of focused infection control surveys in nursing homes.

Therefore, States that have not completed 100% of their focused infection control nursing home surveys by July 31, 2020 will be required to submit a corrective action plan to their CMS location outlining the strategy for completion of these surveys within 30 days. If, after the 30-day period, States have still not achieved surveys in 100% of their nursing homes, their CARES Act FY2021 allocation may be reduced by up to 10%. Subsequent 30-day extensions could result in an additional reductions up to 5%. These funds would then be redistributed to those States that completed 100% of their focused infection control surveys by July 31.

Access to FY 2020 CARES Act allocations will be based on the following:

- All States may request FY 2020 CARES Act supplemental funding, up to their FY 2020 proportional allocation cap.
- States that have completed 100% of their nursing home focused infection control surveys will be able to request their entire FY 2020-FY2023 CARES ACT funding allocation (at their discretion) and can also apply for redistributed funding from States that failed to meet performance goals.

COVID-19 Survey Activities

In addition to completing the Focused Infection Control surveys of nursing homes, CMS is also requiring States to implement the following COVID-19 survey activities:

1. Perform on-site surveys (*within 30 days of this memo*) of nursing homes with previous COVID-19 outbreaks, defined as:
 - Cumulative confirmed cases/bed capacity at 10% or greater; **or**
 - Cumulative confirmed plus suspected cases/bed capacity at 20% or greater; **or**
 - Ten or more deaths reported due to COVID-19.
2. Perform on-site surveys (*within three to five days of identification*) of any nursing home with 3 or more new COVID-19 suspected and confirmed cases in the since the last National Healthcare Safety Network (NHSN) COVID-19 report, **or** 1 confirmed resident case in a facility that was previously COVID-free. State Survey Agencies are encouraged to communicate with their State Healthcare Associated Infection coordinators prior to initiating these surveys.
3. Starting in FY 2021, perform annual Focused Infection Control surveys of 20 percent of nursing homes based on State discretion or additional data that identifies facility and community risks.

States that fail to perform these survey activities timely and completely could forfeit up to 5% of their CARES Act Allocation, annually.

Additional COVID Activities

CARES Act funds may also be used for State-specific interventions (such as Strike Teams, enhanced surveillance, or monitoring of nursing homes). In addition, in August 2020, State Survey Agency priorities may also be informed by recommendations from the *Coronavirus Commission for Safety and Quality in Nursing Homes*.

Expanded Survey Activities

Finally, to transition States to more routine oversight and survey activities, once a state has entered Phase 3 of the Nursing Homes Re-opening guidance (<https://www.cms.gov/files/document/nursing-home-reopening-recommendations-state-and-local-officials.pdf>), or earlier, at the state's discretion, States are authorized to expand beyond the current survey prioritization (Immediate Jeopardy, Focused Infection Control, and Initial Certification surveys) to perform (**for all provider and supplier types**):

- Complaint investigations that are triaged as Non-Immediate Jeopardy-High
- Revisit surveys of any facility with removed Immediate Jeopardy (but still out of compliance),
- Special Focus Facility and Special Focus Facility Candidate recertification surveys, and
- Nursing home and Intermediate Care Facility for individuals with Intellectual Disability (ICF/IID) recertification surveys that are greater than 15 months.

When determining the order in which to schedule more routine surveys, States should prioritize providers based on those with a history of noncompliance, or allegations of noncompliance, with the below items:

- Abuse or neglect;
- Infection control;
- Violations of transfer or discharge requirements;
- Insufficient staffing or competency; or
- Other quality of care issues (e.g., falls, pressure ulcers, etc.).

Accrediting organizations may resume normal survey activities based on state reopening criteria. Any variations from the approved reaccreditation survey process must receive CMS-approval prior to implementation

Enhanced Enforcement for Infection Control Deficiencies

While CMS infection control deficiencies have been an ongoing compliance concern, the COVID-19 pandemic highlights the imperative that nursing home staff adhere to these fundamental health and safety protocols. Due to the heightened threat to resident health and safety for even low-level, isolated infection control citations (such as proper hand-washing and use of personal protective equipment (PPE), CMS is expanding enforcement to improve accountability and sustained compliance with these crucial practices. In addition to enhanced enforcement, CMS is also providing Directed Plans of Correction, including use of Root Cause Analysis, to facilitate lasting systemic changes within facilities to drive sustained compliance.

Therefore, substantial non-compliance (D or above) with any deficiency associated with Infection Control requirements will lead to the following enforcement remedies:

- Non-compliance for an Infection Control deficiency when none have been cited in the last year (or on the last standard survey):
 - Nursing homes cited for current non-compliance that is not widespread (Level D & E) - *Directed Plan of Correction*
 - Nursing homes cited for current non-compliance with infection control requirements that is widespread (Level F) - *Directed Plan of Correction, Discretionary Denial of Payment for New Admissions with 45-days to demonstrate compliance with Infection Control deficiencies.*
- Non-compliance for Infection Control Deficiencies cited once in the last year (or last standard survey):
 - Nursing Homes cited for current non-compliance with infection control requirements that is not widespread (Level D & E) -*Directed Plan of Correction, Discretionary Denial of Payment for New Admissions with 45-days to demonstrate compliance with Infection Control deficiencies, Per Instance Civil Monetary Penalty (CMP) up to \$5000 (at State/CMS discretion)*
 - Nursing Homes cited for current non-compliance with infection control requirements that is widespread (Level F) -*Directed Plan of Correction, Discretionary Denial of Payment for New Admissions with 45-days to*

demonstrate compliance with Infection Control deficiencies, \$10,000 Per Instance CMP

- Non-compliance that has been cited for Infection Control Deficiencies twice or more in the last two years (or twice since second to last standard survey)
 - Nursing homes cited for current non-compliance with Infection Control requirements that is not widespread (Level D & E) -*Directed Plan of Correction, Discretionary Denial of Payment for New Admissions, 30-days to demonstrate compliance with Infection Control deficiencies, \$15,000 Per Instance CMP (or per day CMP may be imposed, as long as the total amount exceeds \$15,000)*
 - Nursing homes cited for current non-compliance with Infection Control requirements that is widespread (Level F) -*Directed Plan of Correction, Discretionary Denial of Payment for New Admissions, 30-days to demonstrate compliance with Infection Control deficiencies, \$20,000 Per Instance CMP (or per day CMP may be imposed, as long as the total amount exceeds \$20,000)*
- Nursing Homes cited for current non-compliance with Infection Control Deficiencies at the Harm Level (Level G, H, I), regardless of past history -*Directed Plan of Correction, Discretionary Denial of Payment for New Admissions with 30 days to demonstrate compliance with Infection Control deficiencies*. Enforcement imposed by CMS Location per current policy, but CMP imposed at highest amount option within the appropriate (non-Immediate Jeopardy) range in the CMP analytic tool.
- Nursing Homes cited for current non-compliance with Infection Control Deficiencies at the Immediate Jeopardy Level (Level J, K, L) regardless of past history –In addition to the mandatory remedies of Temporary Manager or Termination, *imposition of Directed Plan of Correction, Discretionary Denial of Payment for New Admissions, 15-days to demonstrate compliance with Infection Control deficiencies*. Enforcement imposed by CMS Location per current policy, but CMP imposed at highest amount option within the appropriate (IJ) range in the CMP analytic tool.

Quality Improvement Organization Support

While we have taken these important actions at a regulatory level, we have also strategically refocused the approach of the Quality Improvement Organizations (QIO) to assist in combating COVID-19 within these facilities.

In November 2019, CMS took a major step toward improving quality for Medicare beneficiaries in nursing homes as well as rural and underserved communities by awarding contracts to 12 experienced, community-based organizations to serve as QIOs and focus on areas of immediate need as well as urgent healthcare priorities. With varying degrees of intensity, QIOs provide education and training to every nursing home in the country. All nursing homes across the country can take advantage of weekly National Infection Control Training that focuses on all aspects of infection control, prevention and management to help nursing homes prevent the transmission of COVID-19 in facilities and keep residents safe. Additionally, as part of their ongoing work, the

QIOs provide more direct assistance to around 6000 small, rural nursing homes and those serving vulnerable populations in areas where access to care is limited with helping them understand and comply with CMS and CDC reporting requirements, sharing best practices related to infection control, testing and patient transfers.

Lastly, the QIOs are being deployed to provide technical assistance to nursing homes, which includes a targeted focus on approximately 3,000 low performing nursing homes who have a history of infection control challenges. Further, States may request QIO technical assistance specifically targeted to nursing homes that have experienced an outbreak. These requests should be sent to Anita Monteiro, Acting Director of the iQuality Improvement and Innovation Group at CMS: anita.monteiro@cms.hhs.gov. The QIOs help nursing homes identify what their greatest areas of infection control problems are, then create an action plan, and implement specific steps to establish a strong infection control and surveillance program in the nursing home. For instance, they train staff on proper use of personal protective equipment (PPE), cohorting residents appropriately and transferring residents safely. They monitor compliance with infection control standards and practices in the nursing home.

Nursing homes can locate the QIO responsible for their state here:
<http://www.qioprogram.org/locate-your-qio>.

Contact

Questions about this memorandum should be addressed to DNH_Enforcement@cms.hhs.gov.

Effective Date

Effective immediately. This policy should be communicated with all survey and certification staff, their managers and the State/Regional Office training coordinators immediately. This guidance will cease to be in effect when the Secretary determines there is no longer a Public Health Emergency due to COVID-19. At that time, CMS will send public notice that this guidance has ceased to be effective via its website.

/s/
David R. Wright

cc: Survey and Operations Group Management