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Dear Ms. Bonner and Ms. Lash:

The National Consumer Voice for Quality Long-Term Care (Consumer Voice) thanks you for the opportunity to submit recommendations on the survey process. These recommendations are based on input from a series of Consumer Voice workgroup meetings as well as an in-depth online survey to our entire network of over 8,000 advocates. Our suggestions reflect the direct experience and first-hand observations of nursing home residents, their family members, long-term care ombudsmen, individual advocates and members of citizen advocacy groups.

While we support improvements to the survey process that would increase identification and documentation of deficient practices, there are many aspects of the current process that should be retained. One of these is the annual standard survey. Conducting a survey annually is vital to ensuring the welfare of residents. We are all aware of how quickly the care in a nursing home can decline. A nursing home that provides excellent care one year may not do so the next. Even a facility that performs well several years in a row can deteriorate rapidly. Reducing the frequency of surveys so they are no longer conducted on an annual basis would leave residents vulnerable to poor care for months before another standard survey occurred.

Another critical strength of the annual survey process is that it looks at all aspects of the nursing home. We understand that the idea of giving priority to complaint surveys rather than standard surveys has been raised. Complaint surveys certainly can identify serious deficiencies, but many residents and families are far too fearful of retaliation to file a complaint or may be unable to do so. As a result, there may be few to no complaints in a poor performing facility. When would a survey be conducted in such a facility?

For these reasons the Consumer Voice supports preserving the standard annual survey and opposes extending the time between standard surveys and/or refocusing the survey protocol on complaint surveys.

We also urge you to retain the role of surveyors as representatives of an agency whose mandate is to monitor and oversee nursing homes. The state survey agency is the sole entity with the authority and responsibility to assess compliance with the Requirements of Participation. The idea that surveyors should provide technical assistance and serve as consultants should be rejected. We echo the statement of Dr. William Scanlon in his testimony on behalf of the GAO at the 2003 Finance Committee hearing on “Nursing Home Quality Revisited: The Good, the Bad, and the Ugly.”

“The nursing home industry is a \$100 billion a year industry, employing tens of thousands of health professionals. It is incongruous to me to think that it needs the consultative assistance of a government surveyor to correct problems that every non-health professional in this room would instantly agree involved care that was simply and woefully lacking.”

Technical assistance to nursing homes is readily available. There are thousands of consultants for hire, and the Quality Improvement Organizations and initiatives such as the Advancing Excellence in America’s Nursing Home Campaign also provide assistance and resources. Furthermore, serving in a consultative role would create an insurmountable conflict of interest. Imagine a surveyor determining whether a facility had corrected a problem using recommendations that the surveyor or a colleague had suggested. Money from shrinking budgets should not be used to carry out tasks that take away from and undermine the ability of CMS and state survey agencies to fulfill their legally mandated duties to ensure “basic levels of quality and safety for Medicare and Medicaid beneficiaries by monitoring nursing home compliance with Federal and State requirements.” (Testimony, Alice Bonner, Director, Division of Nursing Homes, CMS, July 2, 2012; <http://www.hhs.gov/asl/testify/2012/07/t20a120702a.html>.)

It is significant that this Survey Efficiency and Effectiveness Initiative was started in 2012 – which was the 25th anniversary of the passage of the Nursing Home Reform Law. In commemorating this event in December, the Consumer Voice noted that “we need a survey process that adequately detects deficiencies and assigns scope and severity levels in a way that truly reflects harm to residents.”

To that end, we make the following recommendations regarding the traditional survey process:

General Recommendations

1. Revise how scope and severity works.

Advocates have long been concerned about the “undercoding” of deficiencies. We hear frequently from ombudsmen and other advocates that no matter how egregious the violation and how many residents are affected, deficiencies are usually cited only at a “D” level. In

addition, residents' rights and quality of life violations are systematically undercoded, thereby devaluing their importance. Because enforcement actions are tied to scope and severity determinations, the net result is little to no enforcement and the continuation of substandard care, poor quality of life, and resident suffering.

The scope and severity grid is also not structured to achieve the goal of the Nursing Home Reform Law – to ensure that facilities provide the care and services necessary for each resident to attain or maintain his/her highest practicable level of well-being. Although appropriate and meaningful remedies should be imposed when a facility fails to improve or maintain each resident's well-being, this rarely happens. Instead, remedies are generally only imposed when residents are severely harmed physically.

CMS should:

- Completely redesign the scope and severity scale.
- Develop better definitions and guidance, with additional clear examples for surveyor use.
- Require states, as recommended by the GAO, “to have a quality assurance process that includes, at a minimum, a review of a sample of survey reports below the level of actual harm to assess the appropriateness of the scope and severity cited and to help reduce instances of understated quality-of-care problems.” (General Accountability Office, Nursing Home Quality: Prevalence of Serious Problems While Declining, Reinforces Importance of Enhanced Oversight; July 2003.)

Problems in the survey system such as the failure to identify and/or cite deficiencies and undercoding of scope and severity levels have continued for far too long. In addition to the suggestions above, CMS should take a more active role in monitoring the performance of state survey agencies. This should include:

- Increasing the number of federal monitoring surveys conducted as comparative surveys to ensure that state surveyors are appropriately identifying, citing and coding deficiencies.
- Tracking trends in the citations issued by states.
- Monitoring D-level deficiencies issued by states to determine if the scope/severity level is appropriate. This could include requiring supervisory review at the state level.

2. Increase the size and representation of the survey sample and the number of interviews.

The current survey sample consists of only about 20% of the current resident census. Nursing home residents and consumer advocates continue to report that the size of the sample in the traditional survey does not adequately convey a complete picture of care in each facility. Furthermore, too few residents and family members are interviewed during the survey process. Hearing directly from residents and families is essential for identifying problems that would otherwise not come to the surveyors' attention. Interviews allow

surveyors to learn what the resident's or family member's experience has been and to hear what is really happening in the facility.

To address this issue, CMS should:

- Require the sample to include residents with a range of different conditions. See recommendations for *Task 4 – Sample Selection* below.
- Require surveyors to ask the local long-term care ombudsman if there are residents or family members that should be included in the sample.
- Incorporate more interviews with residents and families into the survey protocol to better ensure that sufficient information will be gathered to identify and substantiate a deficiency.
- Develop an “outreach protocol” to be carried out by surveyors to make residents and families throughout the facility aware of opportunities to provide feedback to surveyors in a confidential and safe way (to avoid retaliation). This might include announcements and personal invitations from surveyors.

3. Reduce the predictability of the survey process.

Residents, families, ombudsmen and other advocates from around the country report that surveys continue to be too predictable. Below are just a few of the comments we received from our network describing this situation:

“Nursing home administrators ... begin preparing for those visits several days in advance. This... happens regularly, not just once in awhile.”

“Once a particular area has seen a survey, the other facilities in the area know they are next and prepare with more staffing, etc.”

“Visits are rarely or never... unannounced and that skews the results. We have been told time after time from staff the facilities “beef up” staffing numbers when they know State is coming.”

To reduce the predictability, CMS should:

- Require more than 10% of surveys to begin on weekends and evenings and vary even further the sequencing of surveys in a geographical area to avoid alerting other homes that the surveyors are in the area. The GAO report, HEHS-98-202, indicates that in 2004, CMS provided states with an automated scheduling and tracking system (AST) to assist in scheduling surveys. The report notes that CMS officials stated AST can be used to address survey predictability but states appeared to be unaware of this feature and use of AST was optional. If AST is still available, CMS should require its use by states.

4. Give more weight to what residents and family members say.

We frequently hear from residents, families, ombudsmen and consumer advocates that information from residents and family members is discounted or dismissed. As a result, problems are not cited, poor care continues, and confidence in the survey process is undermined.

Surveyors' reluctance to base deficiencies on the word of a resident or family member - no matter how credible they are - is contrary to what is required under the State Operations Manual:

Pub. 107, State Operations Manual, Appendix P, Task 6 – Section E. - Information Analysis for Deficiency Determination: *“If the resident is the primary source of information, the team should conduct further information gathering and analysis. This may include additional interviews with family and staff or record reviews to supplement or corroborate the resident’s report. If additional sources of information are not available, determine if the interviewees are reliable sources of information and if the information received is accurate. If so, citation of a deficiency may be based on resident information alone.”*

We strongly support this language in the SOM. CMS should:

- Issue a survey and certification memo to state survey agency directors clarifying that a deficiency may be cited even if the only information supporting it is from a resident. The same should apply to credible family members.
- Ensure that surveyors receive additional training on this issue.
- Uphold deficiencies based solely on resident and/or family information.

5. Incorporate probes and questions related to resident choice, routines and preferences into the entire survey process.

Honoring and upholding residents' choices, preferences and routines is important not only for quality of life, but for quality of care as well. Surveyors should look for documentation and ask residents and family members if care and services are being provided in a way that reflects resident choice and preferences. For instance, if a resident is receiving physical therapy, is the therapy provided at a time that works for the resident and honors his/her daily routines?

CMS should:

- Revise the protocols to ensure that whenever care is being assessed, surveyors evaluate whether residents' choices, preferences and routines have been determined and acted upon.

6. Conduct the investigative protocol for “Nursing Services, Sufficient Staffing” for each standard survey.

Because there are no minimum staffing standards and “sufficient” is a term that is unclear and ambiguous, each facility has its own interpretation of what “sufficient” means. This

interpretation cannot be left to the facility since it is often shaped by the desire of owners and operators to keep staffing levels low in order to maximize profits. The role of surveyors in determining if there is enough staff is therefore essential.

Such a determination using the staffing investigative protocol needs to be made as a regular part of the standard survey process. Because serious deficiencies can be missed during the survey, as reported by the GAO (Nursing Homes: Addressing the Factors Underlying Understatement of Serious Care Problems Requires Sustained CMS and State Commitment. GAO-10-70, Nov 2009; Nursing Home Quality: Prevalence of Serious Problems, While Declining, Reinforces Importance of Enhanced Oversight. GAO-03-561, Jul 15, 2003;), implementing the staffing investigative protocol during a standard survey better ensures that any problems will come to light. Incorporating the staffing investigative protocol into each standard survey can also detect a potential concern before it becomes a problem or a minor problem before it develops into one that harms residents.

7. Develop an investigative protocol for administration and require it to be completed on each annual survey.

There is compelling evidence of a correlation between administrator turnover and quality of care (Administrator Turnover and Quality of Care in Nursing Homes, Nicholas G. Castle, PhD):

“Nursing home administrators have substantial influence over the quality of care provided in nursing homes [Rubin and Shuttlesworth, 1986 citing Smith, 1978]. They are responsible for the overall climate and conditions within the nursing home where they work [Loescher, 1994 citing Hays, 1977]. Nursing home administrators are responsible for the organizational culture and the overall quality of the environment in which direct care nursing staff work. If the nursing workforce is dissatisfied, turnover and vacancy are likely and care is predictably compromised.”

When the administrator is not capable or there is turnover, a “death spiral” can happen, and resident care can suffer. The same can be said of the director of nursing. A “revolving door” of leadership can damage a nursing home because staff needs stable, consistent direction. The governing body, which is responsible for establishing and implementing policies for the management and operation of the facility, also plays a critical role in the facility. These policies can contribute to turnover of leadership.

Given the vital importance of leadership and management for the successful operation of a nursing home, CMS should develop an investigative protocol for administration. Because additional research by Castle indicates that the leadership style of both the nursing home administrator and the director of nursing correlates to quality of care, this protocol might include assessing whether the facility has policies for promoting more effective nursing home leadership (Top Management Leadership Style and Quality of Care in Nursing Homes. Nicholas G. Castle, PhD, MHA, AGSF, and Frederic H. Decker, PhD. 2011). It might also include questions about how upper management is supported.

8. Require an abbreviated survey when there is evidence of repeat turnover of administrators and/or directors of nursing.

This “revolving” door can cause a facility to go into a tailspin, with rapid deterioration of care. Knowing that an abbreviated survey will be conducted if there is ongoing turnover of administration/management could create an incentive for facility owners and operators to make systems changes to address the problem.

9. Ensure that the survey protocols regarding sharing of information between ombudsmen and surveyors are followed.

Long-term care ombudsmen have important information to share with surveyors, including problems they have identified in the facility, trends, and the names of residents and family members for surveyors to interview. They also want to learn what surveyors have observed and what they have learned about resident concerns. While there are states in which this sharing of information between ombudsmen and surveyors is working well, there are still many states in which ombudsmen are not even contacted by surveyors when there is a survey. Emphasizing the importance of connecting with the ombudsman will help surveyors be more effective during the survey and allow ombudsmen to better serve residents.

STATE OPERATIONS MANUAL – APPENDIX P

Recommendations for Tasks 1-7 of the Traditional Survey Protocol

II.B. TRADITIONAL SURVEY

Task 1 - Offsite Survey Preparation

Information Sources for Offsite Survey Preparation

Quality Measure/Indicator Reports

CMS should:

- Flag facilities on a QM/QI when the facility is at or above the 75th percentile instead of the 90th percentile. This would help to detect more possible problems.

Information from the State Ombudsman Office

Surveyors should:

- Gather this information prior to entering the facility. A significant number of ombudsman programs report that they are often not contacted at all by surveyors or contacted late in the process – when it may be too late to utilize ombudsman information.

Preadmission Screening and Resident Review Reports

Surveyors should:

- Review all Preadmission Screening and Resident Review (PASSR) documentation for timely completion. Two studies by the Office of the Inspector General (OEI-05-05-00220 and OEI-07-05-00230) concluded the PASSR process was not fully followed and that PASSR results were underutilized for recommendations.

Offsite Survey Preparation Team Meeting

Surveyors should:

- Contact the long-term care ombudsman in accordance with the protocol determined by the state survey agency and the State Long-Term Care Ombudsman Program. Notification should be given at least twenty-four hours prior to when an inspection is scheduled, so that the state and/or local ombudsmen will have adequate time to prepare.
- Obtain from the ombudsman any information the ombudsman wants to share, the names of residents for possible inclusion in the survey sample, and the names of family members to interview.
- Ask the ombudsman about complaint trends, general concerns and systemic issues.

Task 2 - Entrance Conference/Onsite Preparatory Activities

Onsite Preparatory Activities

Surveyors should:

- Identify a room in which to work while conducting the survey that is located in an area that is easily accessible to residents.
- Post notices of the survey on each individual floor and/or wing of the facility. This would inform more residents that the survey is taking place. Far too often notices are only posted on the doors into the facility.
- Contact the family council president as well as the resident council president. A family council can inform surveyors about concerns and problems they have experienced and/or observed.

CMS should:

- Require states to provide each survey team with at least one business cell phone so anyone who wishes to talk to the surveyors does not have to go through the state survey agency office. Routing calls through the office delays the connection between the surveyor and the caller, who may have very important information to share.

Task 3 - Initial Tour

Surveyors should:

- Determine which, if any, of the pre-selected Phase 1 sample residents are interviewable by talking with the resident and making an independent assessment. Survey time would be reduced by not asking facility staff if residents are interviewable. Surveyors would also obtain better information since residents, families and advocates report that staff often steer surveyors away from residents who have concerns they might want to share.

CMS should:

- Prohibit facility staff from accompanying surveyors on the initial tour. Surveyors need time to observe by themselves because what they see may be influenced by the presence of staff. They should make notes of any questions they have and ask staff after the tour. This would reduce the time it takes to conduct the initial tour.
- Require family members of *interviewable* residents as well as non-interviewable residents to be included in the sample. These family members may be no less involved in the resident's care than families of non-interviewable residents and could have a great deal to share with surveyors.

Task 4 - Sample Selection

Surveyors should:

- Consult with the long-term care ombudsman to learn of possible residents and family members to include in the sample before completing the survey sample.

CMS should:

- Increase the survey sample to include residents (see General Recommendations, #2):
 - Who are bedfast and totally dependent on staff for care.
 - With dementia.
 - With serious mental health problems and intellectual disabilities.
 - Who have infrequent visitors and/or no family or significant others.
 - Receiving hospice services.
 - Receiving antipsychotics.
 - With end-stage renal disease.
 - Under the age of 55.
 - Who communicate with non-oral communication devices, sign language or who speak a language other than the dominant language of the facility.
 - Who have been admitted within the previous 14 days.
 - Whose Minimum Data Set (MDS) indicates they have expressed an interest in returning to the community. (Surveyors should focus on determining if the facility is adequately working with these residents to return to the community if possible.)

- Who have been issued a notice of transfer/discharge because the facility states it cannot meet the resident's needs or the facility believes the resident is endangering the safety of others.
- In rooms in which variances have been granted for room size or number of beds in room.

Note: There may be facilities in which there are no residents in one or more of these categories.

Task 5 – Information Gathering

Sub-Task 5A – General Observations of the Facility

Surveyors should:

- Observe the facility each day at different times and on different shifts. Many problems occur overnight, so it is critical that observations are made at this time as well as during the day.

Sub-Task 5B - Kitchen and Food Service

Surveyors should:

- Eat a full meal at the facility. This will help surveyors to better judge the quality of the food.

Task 5C – Resident Review

Care Observation and Interviews

Residents, family members, ombudsmen and consumer advocates note that care plans are often not developed with resident and family input and frequently are not carried out.

CMS should:

- Strengthen the survey protocol to ensure that surveyors closely observe and ask residents, family members and legal representatives whether:
 - The care plan meetings include the resident (when possible and if the resident chooses to attend).
 - The care plan meetings are conducted in a way that supports the resident and his/her choices and preferences and allows adequate time to discuss concerns/experiences.
 - The elements of a sampled resident's care plan have been implemented.
 - The care plan is implemented in a way that honors the resident's choices and preferences.

Record Review

Surveyors should:

- Review the care plan to determine whether the facility identified the sampled resident's likes/dislikes, choices, preference and routines and incorporated those preferences and choices into care plan interventions.
- Evaluate whether there has been resident and family involvement in assessment and care planning. For instance, is there documentation that the resident was invited to the care plan? Often facilities send notices to family members and do not tell the resident until the day of the care plan meeting, if at all.
- Determine if each component of a resident's care plan is being followed.
- Review care plans for residents with mental illness or intellectual disabilities to ensure that all Level II PASSR mental health service recommendations have been incorporated. As these residents have additional care needs, it is particularly important for surveyors to ensure these needs are being met.
- Note residents' weights upon admission into the facility and residents' weights on the day of the survey.
- Determine if swallowing tests have been conducted and treatment plans implemented for any sampled residents observed to have difficulty swallowing.

CMS should:

- Strengthen the language in this section to include a detailed, careful evaluation of the accuracy of the MDS. At a minimum this evaluation should include:
 - Reviewing a sample of comprehensive resident assessments completed not more than 30 days prior to conducting the survey.
 - Comparing observations of the resident with the facility's assessment.
 - Conducting the number of assessment reviews needed to make a decision concerning the accuracy of the facility's resident assessments.
 - Determining if observations of the resident and interviews with resident/staff/family "match" the facility's assessment (or specific portions of the assessment) of the resident.

Investigative protocol – Hydration

CMS should:

- Strengthen the protocol by requiring surveyors to assess whether residents' choices, routines, and preferences are being honored in terms of what and when they drink.

Investigative protocol – Dining and Food Service

CMS should:

- Strengthen the protocol by:

- Incorporating points raised in the interpretive guidelines under Quality of Life, such as determining if resident independence and dignity in dining are being promoted by avoiding: - *Day-to-day use of plastic cutlery and paper/plastic dishware*; - *Bibs (also known as clothing protectors) instead of napkins (except by resident choice)*; - *Staff standing over residents while assisting them to eat*; - *Staff interacting/conversing only with each other rather than with residents, while assisting residents*.
- Requiring surveyors to assess whether residents' choices, routines, and preferences are being honored at meal times and in-between meals.

Investigative Protocol: Nursing Services, Sufficient Staffing

Surveyors should:

- Use MDS data to determine which non-sampled residents are “heavy” care and ask several of them and their families if there is enough staff to help them when they need assistance.
- Ask residents (including those not in the sample), family members and legal representatives if residents get the help they need when they need it.
- Drill down when asking residents if they receive “the care they need when they need it.” This includes asking specific questions such as:
 - How long does it take for staff to answer your call light?
 - When you ring your call light, does staff turn it off and tell you they’ll get to you as soon as they can?
 - Do you receive a bath or shower as frequently as you are supposed to or would like?
 - Do you receive assistance walking as often as you need or request?
 - Do you receive assistance turning and repositioning your body on a regular basis?
 - Does staff assist you to the bathroom when you need to go?
 - Are your teeth brushed when you want them to be?
 - If you want to rest during the day, is staff available to help you go lie down?
 - Is there staff to take you to activities if you want to participate?

Similar questions should be asked of family/legal representatives.

- Review resident and family council minutes to identify any staffing concerns. Ask individual residents, family members and legal representatives questions pertaining to those concerns.
- Observe each shift.

CMS should:

- Require the staffing protocol to be conducted for each standard survey (see General Recommendations, #6).

- Strengthen the protocol by requiring surveyors to assess whether residents' choices, routines, and preferences are being honored on a daily basis.
- Revise the protocol to better assess if there is sufficient staff at meal times.

Closed Record Review

Surveyors should:

- Include facility residents that were hospitalized in the past 30 days.
- Review the record of residents who were transferred/discharged because the facility claimed it could not meet the resident's needs or for safety reasons to determine:
 - If the facility reassessed the resident, revised the care plan accordingly and tried various interventions before deciding to transfer/discharge the resident.
 - If the resident received a proper notice of transfer/discharge with information about how to contact the ombudsman program.
- Contact the transferred/discharged resident and any family member/legal representative to assess if proper transfer/discharge procedures were followed.
- Evaluate whether residents or family members/legal representatives were informed about the side effects and risks of antipsychotics and other medications and consented before they were administered.
- Determine whether medications were being administered at the right times.
- Assess whether alternatives to antipsychotics and physical restraints, including bed rails, were tried first.

CMS should:

- Require facilities to provide surveyors with a list of all residents transferred/discharged within the last 6 months and then have surveyors choose from that list. Consumers and advocates have observed that under the current process staff members have too much influence in determining which closed records are reviewed by the survey team.

Sub-Task 5D – Quality of Life Assessment

Surveyors should:

- Interview as many residents and family members as possible. These can be both formal and informal interviews.
- Identify the preferences of residents in the sample and ask certified nursing assistants who care for these residents if they know what the residents' preferences are and how the CNAs respect those preferences.

CMS should:

- Provide additional training on interviewing techniques to surveyors.

- Consider having dedicated staff that specialize in interviewing. Since interviews are one of the best ways to gain information, more training and creating surveyors with expertise in this area would make the survey process more effective. It could also reduce survey time since expert staff could obtain the information they need more quickly.
- Require surveyors to complete interviews with residents, resident and family councils and family members by at least 12 pm before the day of the exit conference. This would better ensure that surveyors could use and follow up on the information gained from these interviews.

Resident Interview

CMS should:

- Revise the survey protocol to include more resident interviews (See General Recommendations, #2).
- Revise the resident interview questions to ask residents: 1) about their relationships with their roommates, and 2) if they have observed any resident abuse.

Group Interview

Surveyors should:

- Obtain the resident council and family council (see below) minutes early in the survey process in order to have sufficient time to review them prior to the group interview.
- Make sure to give the resident council president a copy of the group interview questions well in advance of the group interview. Giving residents adequate time to prepare could have a significant impact on the effectiveness of the group interview.
- Invite the ombudsman to the resident group interview (after securing resident permission), discuss observations with the ombudsman (as appropriate), interview the ombudsman and share resident concerns with the ombudsman (after gaining resident permission).

CMS should:

- Revise the group interview questions so that residents are prompted to talk about any systemic issues or concerns they have experienced and how/if facility practices support resident-centered care.
- Ensure that surveyors compare any systemic issues/concerns identified by residents during the group interview with: current resident council complaints; complaints from other residents; and complaints shared with the surveyors by the ombudsman.
- Provide additional training to surveyors on conducting this interview. A group interview requires different interviewing skills from those needed during an individual interview.

- Ensure that surveyors follow up on any unresolved concerns that the resident council and family council have taken to administration/staff.
- Require that a group interview also be conducted for any family group/council that is not facility-run.

Family Interview

Surveyors should:

- Consider conducting more interviews by phone so that family members feel more comfortable and safe.

CMS should:

- Revise the survey protocol to interview more family members, including families of residents who are interviewable (See General Recommendations, #2).
- Revise family interview questions so that families first identify the resident's preferences and daily routine prior to entering the facility and are then asked if those particular preferences and routines are being honored.

Sub-Task 5E - Medication Pass and Pharmacy Services

Surveyors should:

- Determine if medications are being administered at times that accommodate the preferences and activities of the resident instead of at times that are convenient for staff.

CMS should:

- Strengthen the survey protocol to:
 - Stress surveyor review of the medication records, including prescriber's orders and the medication administration record, for accuracy and completeness.
 - Require surveyors to assess whether residents' choices, routines, and preferences are being honored relative to medication administration.

Sub-Task 5G – Abuse Prohibition Review

CMS should:

- Revise the surveyor protocol to include a determination of whether the facility is complying with the requirement under the Affordable Care Act to report any reasonable suspicion of a crime to law enforcement.

Task 6 – Information Analysis for Deficiency Determination

See comments about scope and severity under General Recommendations, #1.

Task 7 – Exit Conference

Surveyors should:

- Invite the ombudsman, a representative of the resident council, residents, a representative of the family council and family members (see recommendation below about family) to the exit conference at least 24 hours prior to the conference. Often these individuals cannot attend because they are not given enough time to rearrange their schedules.
- Permit the ombudsman and family members to participate by phone.
- Not share their findings with facility administration and staff prior to the exit conference and then provide a much less detailed report at the exit conference when the ombudsman and residents are in attendance. Ombudsmen, residents and family members (see recommendation below about family) should receive the same information as the facility.

CMS should:

- Stress that inviting the ombudsman, a representative of the resident council and residents to the exit conference is required. Ombudsmen report that many times neither they nor residents are invited.
- Revise the survey protocol to invite a representative of the family council, if there is one and it is not facility-run, and one or two family members to attend.

II.B.3. THE TRADITIONAL POST SURVEY REVISIT

CMS should:

- Require that the revisit survey sample include some of the residents with problems cited in the initial survey. This would help determine if the problems have been corrected.

II.B.4 THE TRADITIONAL ABBREVIATED STANDARD SURVEY

A. Complaint investigations

CMS should:

- Require all complaint investigations to be conducted on-site. Surveyors must be physically present to observe, interview and review documents and records.
- Ensure that surveyors contact the ombudsman during offsite preparation for the complaint investigation to discuss the nature of the complaints and potential history of similar complaints.
- Require surveyors to call complainants once they are onsite and before the entrance conference. To properly investigate a complaint, the surveyor must speak

with the complainant to learn if there is additional information regarding the complaint, ask questions or clarify any of the information provided by the complainant. This information must be obtained as early in the complaint investigation process as possible.

B. Substantial Changes in a Facility's Organization and Management

See General Recommendations, #8 regarding repeat turnover in a facility's organization and management.

III. WRITING THE STATEMENT OF DEFICIENCIES

CMS should:

- Ensure that the same confidentiality given to residents in the statement of deficiencies is also given to family members and legal representatives.

IV. DEFICIENCY CATEGORIZATION

See General Recommendations, #1 for comments on scope and severity.

STATE OPERATIONS MANUAL – CHAPTER 7

CMS should require states to:

- Ensure surveyors are legally represented in instances where facilities pursue legal action against a surveyor following the completion of a survey and/or investigation (if such representation is not already in place).
- Provide the survey team with a cell phone to use while conducting the survey on-site. The cell phone number should be included on the notice of the survey that is posted in the nursing home. Family members, with resident permission, and/or legal representatives of residents should be provided with the survey team phone number in order to contact the surveyors about any pressing concerns.

7201 - Survey Team Size and Composition

CMS should:

- Include new surveyors in addition to, but not as part of, the required number of surveyors on the team.

7202 - Conflicts of Interest

CMS should:

- Prohibit a surveyor from surveying any facility that is part of the chain or corporation that owned the facility in which she or he worked within the past two

years. Since facilities run by a corporation or the same owner often bring staff together for training or other events, the surveyor could have formed relationships with staff at other facilities. These relationships would make it difficult to be objective when surveying those facilities.

- Investigate situations in which facilities are continuously not cited with any deficiencies to ensure that no conflicts of interest exist within the state survey and certification agency and that these facilities are being adequately investigated during the survey process.

7205 - Survey Frequency

See comments at beginning of letter.

7207 - Unannounced surveys - Variance in Timing

CMS should:

- Increase the percentage of surveys that are scheduled to be conducted during off-hours and on weekends. Ten percent is not enough to reduce the predictability of surveys. Furthermore, conducting surveys outside of business hours gives surveyors a better picture of the quality of care.

7212 - Informal Dispute Resolution

See comments previously submitted by the Consumer Voice.

PILOT PROJECTS

We understand that CMS may conduct pilot projects to test different approaches /changes to the survey process. Below we have identified several ideas for possible demonstrations:

- Analyze what works best in the traditional and QIS surveys and develop and test a hybrid survey process.
- Contract with pharmacists, dietitians, and social workers to conduct the parts of the survey relevant to their discipline.
- Divide the standard survey into several smaller reviews to be conducted throughout the 9-to-15 month period. Each smaller review would require fewer surveyors and take less time. This would also provide more opportunities for surveyors to observe problematic homes and initiate broader reviews when warranted.
- Notify family members (with resident consent) and legal representatives of residents through a type of “robocall” system once a survey begins. Include a phone number should a family member/legal representative need to report any

issues in confidence. Each survey team should have at least one business cell phone to receive these calls.

The Consumer Voice believes that the recommendations outlined in this letter will improve surveyors' ability to identify deficiencies. To counterbalance the additional time that might be needed to incorporate some of these recommendations, we support the creative use of technology to reduce survey time, such as the suggestion from frontline surveyors of a "surveyor button" on the different electronic medical records systems that would automatically pull the information needed for each sampled resident. We also support the following solutions presented by the surveyors:

- Develop an algorithm/protocol (or decision tree) on when to stop documenting.
- Create electronic, cloud-based survey documentation that all members of the survey team could access in real-time, so that individual members of the survey team could record deficient practices wherever they are observed and other team members could view each other's findings in real time.
- Re-organize protocols to make them more user-friendly.
- Reduce protocols to an algorithm-like decision-tree to guide surveyors through.
- Develop a work tool that provides guidelines for each important F-tag area that improves the likelihood that a citation will be able to hold up on appeal.

As noted in the summary of the surveyors' ideas regarding the Long Term Care Survey Efficiency and Effectiveness Initiative, "the information gathered from these stakeholders will be used to identify shared concerns among and across stakeholders that will enable CMS to efficiently target survey tasks to improve and/or clarify in the second stage of the project." Once the shared concerns are identified, we urge you to bring together all the stakeholders in order to discuss and strive for consensus on how those survey tasks can best be improved.

Thank you for your consideration of these recommendations. We look forward to continuing to work with you on increasing the effectiveness of the survey and enforcement process.

Sincerely,



Sarah Wells
Executive Director



Robyn Grant
Director, Public Policy and Advocacy

The National Consumer Voice for Quality Long-Term Care (formerly NCCNHR) is a 501(c) (3) nonprofit membership organization founded in 1975 by Elma L. Holder that advocates for quality care and quality of life for consumers in all long-term-care settings.