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FOCUS POINT NEWSLETTER SPECIAL FOCUS COVID ALERT 6/2/2020



Ref: QSO-20-31-COVID-19 Survey Activities, CARES Act Funding, Enhanced Enforcement for Infection Control deficiencies, and Quality Improvement Activities in Nursing Homes, effective immediately. On 6/1/2020, CMS published the above notice to survey agencies, listed below are key highlights. The memo includes three main areas of focus:

- Survey prioritization
- Enforcement actions for nursing facilities and survey agencies
- Utilization of the Quality Improvement Organizations

The entire document may be found at: <https://skillednursingnews.com/wp-content/uploads/sites/4/2020/06/6.1.2020COVID-CAREs20Survey20and20Enforcement20Memo-FINAL20pdf.pdf>

Survey Prioritization

Focus Surveys for Infection Control - CMS believes further direction is needed to prioritize completion of focused infection control surveys in nursing homes; this plan supersedes the March 2020 memos re: prioritization of surveys.

- 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 surveying 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.
- 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 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 on 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.

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.

Other 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

Enforcement Actions for Nursing Facilities and Survey Agencies

Due to the heightened threat to resident health and safety for even low-level, isolated infection control citations (such as proper handwashing 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.

Utilization of the Quality Improvement Organizations

QIOs provide education and training to every certified nursing home in the country. As part of their ongoing work, they provide 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. 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 Quality Improvement and Innovation Group at CMS:

<mailto: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.qioprogam.org/locate-your-qio>.



In Virginia, our QIO, HQI [Health Quality Innovators] may be reached at <https://www.hqi.solutions/> or 804-289-5320 [phone] or you may contact:

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