

Long-Term Care Survey Alert

Survey Trends: Know the Score: CMS Unveils Its Algorithm for Selecting Special Focus Facilities

Questions and inconsistencies remain -- here's what you need to know.

Ending up on the government's published "Special Focus Facility" list is definitely on nursing home providers' worry list these days.

The good news: A recent Centers for Medicare & Medicaid Services' memo sheds some light on how that might occur. CMS' scoring methodology for selecting an SFF includes a deficiency score and a survey revisit score, according to the survey & cert memo (S&C 09-05-05). CMS looks at health care deficiencies from a facility's most recent three standard survey cycles, and the last three years of complaint surveys.

"The more deficiencies, and the more serious or widespread those deficiencies, the higher the SFF deficiency score," states CMS in the memo. Facilities in the SFF program are supposed to receive more frequent surveys and either improve or get booted from Medicare and/or Medicaid.

5 Steps and You're In

The SFF selection methodology has five steps, according to the memo:

1. CMS scores and weights a facility's health deficiencies (see the chart on the right).
2. The agency adds points if a facility requires more than one survey revisit to demonstrate substantial compliance. A facility racks up 50 points for a second survey revisit, 75 points for a third one **◆◆** and 100 points for a fourth. (Facilities only get revisit points for standard surveys and not for complaint surveys.)
3. CMS totals the results and assigns weights for each of the survey periods; recent survey results carry more weight.
4. CMS groups facilities within each state. It then presents the 15 facilities with the highest SFF scores (i.e., the most serious and persistent healthcare deficiency histories) to the state to consider as SFF facilities.
5. The state reviews the candidate list, bringing its "state-specific knowledge and information to bear (e.g., the results of state licensure surveys), and recommends a final selection to CMS," according to the memo. CMS says it accepts the state's selection in almost all cases but reserves the right to make a different selection in unusual circumstances.

Experts Weigh In

CMS' recent memo is just a part of an evolving saga involving the SFF program. Information about the SFF program has actually been in the State Operations Manual for a significant time, observes attorney **Howard Sollins**, partner with Ober/Kaler in Baltimore. "Then CMS began ramping up the consequences of being in the SFF program, and a number of facilities faced with serious sanctions said they never knew there were on the SFF list." In response, CMS published the SFF list. "And because CMS comes up with a list based on certain factors -- and it's up to the state to select who to add to the SFF list -- people have been pressing for greater transparency in the process," Sollins says.

All is not fair: The SFF formula highlights what Sollins views as a "policy judgment" reflected in the survey grid that he thinks the government should examine and consider changing. And that is "the IJ citations have the highest letter grades and are assigned more points leading to SFF status," he says. Thus, "widespread actual harm of residents has a lower scope and severity score and lower SFF points than a single, isolated citation for IJ" that involved no harm to patients at all.

Potential legal problems: The SFF has a number of legal problems, opines attorney **Fred Miles**, founder and president of **Miles & Peters** in Denver. For one, there's no process for a facility to contest its selection as an SFF, in spite of the significant negative effects of being on the published list, Miles notes.

One facility appearing on the SFF list had received only two G-level deficiencies in two years, reports attorney **Joseph Bianculli** in Arlington, Va. "And neither the state nor the feds can explain how the facility got on the list ... but, of course, no one will take the initiative to take them off," he says.

Another legal issue involves whether CMS has tested and validated the selection process and data in terms of whether it's statistically sound, says Miles, who emphasizes that he doesn't dispute CMS' right to "determine and hopefully help facilities that are having survey difficulties." But he suspects CMS' handling of the SFF may be intended to show Congress how it's bearing down on nursing homes "under the theory that morale will improve if the flogging continues."

Inevitable conclusion? Miles predicts that at some point, a facility challenging termination of its provider status in federal court will bring up legal issues surrounding the SFF program.

What Facilities Can Do Now

Based on how CMS' scoring system methodology works for SFF selection, a facility's number of deficiencies figures into the calculation, cautions attorney **Christopher Puri**, with Boulton, Cummings, Conners & Berry PLC in Nashville, Tenn. For example, every G-level deficiency is 10 points, he notes. And, increasingly, many states hand out a lot of tag-along deficiencies that accompany the primary non-compliance, Puri points out. "So if you're on the borderline in terms of being a special focus facility, knocking out some of those deficiencies [at IDR or appeal] can help," Puri says. In the context of the SFF initiative, every deficiency matters, he emphasizes.

Read the entire survey & cert memo on the SFF at
<http://www.cms.hhs.gov/SurveyCertificationGenInfo/PMSR/list.asp#TopOfPage>.