

MDS Alert

Surveys and Compliance: Be Prepared for Influx of Survey Catch-Ups

A visit may not be on your holiday gift list, but expect surveyors soon, regardless.

The current data available on CASPER shows nursing homes have been more or less on their own, in terms of inspection and regulation, since the pandemic started. As of Nov. 14, 2021, 33.5 percent of nursing homes in the U.S. have not received a standard recertification survey for 24 months - or longer.

"Given that the maximum time allowed between these surveys is 15 months, the State Survey Agencies have a lot of catch-up work to try to accomplish after focusing primarily on conducting Focused Infection Control (FIC) Surveys and conducting limited complaint investigations," says **Linda Elizaitis, RN, RAC-CT, BS**, president and founder of CMS Compliance Group in Melville, New York. "Thus, not only are there over 5,000 nursing homes that haven't been surveyed in over two years, there are also tons of open complaints that surveyors need to address."

In a new QSO memorandum written by **Karen L. Tritz**, directory of survey & operations group, and **David R. Wright**, director of quality, safety & oversight group at the Centers for Medicare & Medicaid Services (CMS), the agency has revealed its plan to catch up on survey certification. Know what you need to do to be prepared for increased scrutiny, as well as what CMS has decided not to include in their focus for now.

FICS Are Paused

Earlier in the pandemic, state surveyors had been required to conduct a Focused Infection Control Survey (FICS) on any nursing home experiencing an outbreak, or more than three new confirmed cases of COVID-19 or one confirmed case of a resident being sick with COVID-19 in a previously infection-free facility. That mandate, part of QSO memorandum 20-31-All has now been removed. If COVID-19 cases are on the rise, state surveyors may still choose to conduct a FICS, but facilities hopefully no longer need to worry about back-to-back FICS visits.



Important: Some of the requirements announced in QSO 20-31-All are still in place, even though the FIC survey requirements have been adjusted. See the original memorandum here www.cms.gov/files/document/qso-20-31-all-revised.pdf.

State survey agencies must still conduct FICS on 20 percent of nursing homes in each state. CMS says states should try to perform these surveys at facilities reporting new COVID-19 cases or experiencing low vaccination rates.

Don't forget that FICS cannot be combined with recertification survey and aren't encompassed by a recertification survey, but they can be conducted in conjunction with a complaint survey, Elizaitis says. This has changed from the prior guidance, where, in order to count toward the annual 20 percent, the survey had to stand alone, she explains.

Know What's at Stake

CMS is using both the carrot and the stick to incentivize states' participation in a timely manner. If states fail to do so, they risk forfeiting some of the money allocated to them in the CARES Act.

Providers with low vaccination rates and new COVID-19 cases are most likely to experience these focused surveys, Elizaitis says, but states with vaccine mandates are still obligated to survey 20 percent of facilities; no one is off the hook entirely.

Understanding why surveyors are knocking is important; remember that they're looking at all kinds of infection control

practices, not just those related to COVID-19. State surveyors have already given out F880 citations for multiple control deficiencies during FICS without any connection to COVID-19, Elizaitis warns.

See more about increased government agency oversight of infection control on page 3.



Understand CMS' Path Forward

CMS instructs surveyors to resume their recertification surveys via their "normal" survey schedule, without having to make up the recertification surveys that weren't conducted due to the pandemic. Tritz and Wright say that state agencies should try to prioritize facilities where evidence suggests residents may be at risk or experiencing quality of care issues, such as history or allegations of noncompliance or abuse/neglect, infection control, violations of transfer or discharge requirements, or insufficient staffing or competency, as well as special focus facilities (SFF) and SFF candidates.

Some otherwise mandatory aspects of the survey may now, temporarily, be conducted at surveyors' discretion, including resident council meetings, dining observation task, and medication storage - or if concerns are raised by respective ombudsmen or due to previous patterns of surveyor citations. However, if surveyors find elements that trigger further investigation (i.e., a resident's situation is being investigated due to nutrition and weight loss) they should complete the respective tasks (i.e., dining observation task) as usual.

CMS is also allowing state survey agencies more leeway to focus on complaints and facility-reported incidents that involve serious allegations, as well as a nudge to investigate the backlog of complaints and facility-reported incidents (FRIs), categorized by triage level. "This guidance would remain in effect only for as long as it takes a State to clear any backlog and resume routine operations. The CMS Location will be working closely with each State on their plans to address the backlog and the expected timeframe," Tritz and Wright say.

Expect Increased Oversight

Tritz and Wright acknowledge that CMS has not been able to have eyes on the ground in facilities during the pandemic in the same way that they used to, and speculate that residents have suffered as a result- noting increased weight loss, pressure ulcers, abuse/neglect, and general quality of care and quality of life issues.

One point of focus: Staffing. Earlier in the pandemic, CMS waived some regulatory requirements for direct care staff, saying that nurse aides could continue working in facilities beyond four months without the usual requisite training and certification.

But Tritz and Wright emphasize that facilities must still make sure that their care staff, including nurses, can demonstrate competency in the skills that constitute direct care and instruct surveyors to look closely at the guidance for F-726 in the State Operations Manual (SOM) Appendix PP when evaluating a facility's staff and staffing. To ensure quality of care - and avoid surveyor citation - make sure your care staff, including registered nurses and nurse aides, can identify and address a change in a resident's condition.