



COMPLIANCE CONSULTING
GROUP, LLC

Memorandum

June 4, 2020

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

Dear Client,

The Centers for Medicare and Medicaid Services (CMS) has traditionally relied on State Survey Agencies to perform Focused Infection Control surveys of nursing homes across the country. CMS had provided State Survey agencies with an Infection Control Tool to streamline these efforts. Due to the fact, however, that the national average of completed Focused Infection Control surveys is approximately 54.1%, CMS has decided that further action is needed to prioritize completion of Focused Infection Control surveys. CMS has announced that, **in order for states to receive full funding from the Coronavirus Aid, Relief, and Economic Security (CARES) Act, each state must complete all Focused Infection Control surveys of facilities by July 31, 2020.** States that do not complete 100% of surveys by that date will be required to submit a corrective action plan to CMS and will have an additional 30 days to complete the surveys, at which point, noncompliant states may have their allocations under the CARES Act reduced.

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 June 1, 2020) of nursing homes with previous COVID-19 outbreaks, which is 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.
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.

Further, to transition states to more routine oversight and survey activities, once a state has entered Phase 3 of the Nursing Homes Re-opening guidance (available at <https://www.cms.gov/files/document/nursinghome-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:

- 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.

States will have individual discretion to schedule the more routine surveys of facilities based on a particular facility's past compliance with the following:

- 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.)

Finally, 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 will be expanding enforcement to improve accountability and sustained compliance with these crucial practices. In addition to enhanced enforcement, CMS will also be 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.

For those facilities in need of additional support, CMS will provide technical assistance through Quality Improvement Organizations (QIO). QIOs will provide support and technical assistance to low performing nursing homes, including a focus on education and training such as weekly infection control training. QIOs will also help small and rural nursing homes and those serving in areas where access to care is limited by providing assistance with understanding and complying with CMS and CDC reporting requirements and, in some cases, providing on-site support to those facilities needing support in infection control.

Lastly, CMS has announced it is ratcheting up penalties for noncompliance with infection control as a tool to help prevent backsliding, improve accountability, and ensure compliance.

<https://www.cms.gov/medicareprovider-enrollment-and-certificationsurveycertificationgeninfopolicy-and-memos-states-and/covid-19-survey-activities-cares-act-funding-enhanced-enforcement-infection-control-deficiencies-and>