

SNF Surveys in the Time of COVID-19

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Surveys as we knew them are temporarily a thing of the past, and according to the Centers for Medicare and Medicaid Services (CMS) on their April 15, 2020 national call, the new normal will continue until further notice. Here are a few things skilled nursing facilities (SNFs) need to know about surveys and enforcement during the Coronavirus (COVID-19) pandemic emergency.

I. NEW SURVEY PRIORITIES AS OF MARCH 23, 2020

On March 23, 2020, CMS instructed all state survey agencies, including the Pennsylvania Department of Health (DOH) to follow a new survey hierarchy. [CMS, QSO-20-20-ALL](#)

A. Only The Following Surveys Will Be Conducted:

1. Complaints and facility reported incidents identified at the immediate jeopardy level. These will also include a focused Infection Control survey.
2. Targeted focused Infection Control surveys.
3. Initial Medicare certification surveys.
4. Revisits or follow-up surveys associated with immediate jeopardy.

B. What Surveys Are Not Allowed?

1. Standard recertification surveys, including life safety and emergency preparedness elements.
2. Revisit or follow-up surveys not associated with immediate jeopardy.

C. What Is DOH Doing?

1. DOH issued guidance on March 31, 2020, setting forth the CMS guidance and also indicating that all facility or agency licenses that have expired from March 6, 2020, through the duration of the disaster emergency proclamation, will be extended as needed for 90 days. "[State and CMS Survey Activity Guidance for Health Care Facilities during the COVID-19 Pandemic](#)," (March 31, 2020)

2. DOH is conducting almost all surveys remotely, with surveyors asking for remote access to electronic medical records. In many cases, surveyors are asking to keep the remote access for 30 days or longer. If there are concerns, talk to the field office about time limitations. Some surveyors are asking for paper records to be scanned or faxed. Some state agencies are beginning to express concerns about paper records being sent to inspectors' homes because of the potential for privacy violations.

3. Note that DOH complaint surveys have not been limited to immediate jeopardy, despite CMS's announcement of a "targeted enforcement plan" that limits "focused inspection on *urgent patient safety threats* (called 'immediate jeopardy') and infection control." See, [CMS QSO-20-28-NH](#) (April 24, 2020) (emphasis added).

D. Be Prepared For The Infection Control Survey

1. CMS has issued an [Infection Control checklist](#) to guide surveyors and facilities through infection control surveys. CMS strongly encourages facilities to use the Infection Control checklist as a tool for conducting self-assessments. It is likely that surveyors may ask to see copies of facility-completed self-assessments if selected for survey, even though CMS describes use of the Infection Control checklist for self-assessments as "voluntary."

2. CMS has stated that they intend Infection Control surveys to be "streamlined . . . to minimize the impact on provider activities, while ensuring providers are implementing actions to protect the health and safety of individuals to respond to the COVID-19 pandemic." [QSO-20-20-ALL](#) (March 23, 2020). Unfortunately, this has not been the experience for many SNFs to date.

3. At this time, different field offices appear to ask for different information. While the industry continues to ask for a standardized list of documents and necessary information, the following table provides a brief listing of some recent survey requests.

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| <ul style="list-style-type: none">• Current census and number of residents and/or staff who are COVID-19 positive• Name of IC Practitioner, and qualifications• Policy on Contact Precautions• Policy on Droplet Precautions• Policy on Infection Control Surveillance• Copies of contracts for supplemental (agency staffing)• Emergency Preparedness Plan for supplemental staffing. If so, provide a copy of that part of your plan.• Nursing schedules | <ul style="list-style-type: none">• Key list of personnel, and location phone numbers• Surveillance logs from the beginning of COVID monitoring• Your Outbreak Plan• Have you had any employees test positive? When? What positions?• Current practice is for the monitoring and/or restriction or suspension of visitors?• Monitoring staff for symptoms- please get specifics. Provide a copy of the questionnaire• Access to PCC for remote clinical record review |
|---|---|

4. Most of the COVID-19 focused surveys are being conducted remotely. Now is the time to prepare. One of the first things the surveyors will ask for is access to electronic medical records; establish a surveyor link and password to allow for off-site access, just for this emergency period. The surveyors are supposed to be using Commonwealth-supplied equipment, each of which should have a unique identifier.

5. In Pennsylvania, if the surveyors arrive on-site at a building, there is a high possibility that they are investigating a potential immediate jeopardy situation. SNFs should make sure that surveyors undergo the same screening that is provided to staff before they enter the building. Surveyors should have full personal protective equipment (PPE), although it is unclear as to who should be supplying this equipment. CMS seems to expect the surveyors to arrive with their own PPE, while some surveyors expect the facility to provide them with PPE.

***Practice Tip:** SNFs that are having difficulties responding to surveyors' requests because of pressures related to taking care of residents should express concerns to the surveyors. The care of residents, and their health and safety is paramount. If the survey team is not responsive, a call to the supervisor is warranted. If that too is ineffective and facilities need more assistance, they should call the DOH main office or ask for help from their associations or attorney.*

II. IMPACT ON ENFORCEMENT ACTIONS

DOH is keeping surveys open for a much longer period of time, often thirty days or longer. DOH has indicated that the exit date will be reflective of the extended time period.

CMS has suspended the following enforcement actions, until revisits are again authorized. In essence, all survey clocks are in suspended animation.

A. Imposition of Denial of Payment for New Admissions (DPNA)

1. Existing DPNAs have been suspended.
2. CMS will not issue new DPNAs at this time, even for SNFs in a survey cycle that is approaching the 90th day of alleged noncompliance.
3. This will allow facilities to receive payment for new Medicare and Medicaid admissions during this time.

B. Per Day Civil Money Penalties (CMPs)

Federal per day CMPs are suspended, and existing per day CMPs will not accumulate during this period.

C. Termination For Not Regaining Substantial Compliance Within Six Months

The imposition of automatic termination for facilities that are not in substantial compliance at 6 months has been suspended.

D. Immediate Jeopardy During The Pandemic Emergency

Immediate jeopardy surveys will be conducted on site. If the immediate jeopardy is not removed within 23 days, CMS will terminate the facility. Other remedies related to the immediate jeopardy will be suspended during this period.

III. IMPACT ON THE FIVE STAR QUALITY RATING SYSTEM

A. Health Inspection Domain

On April 24, 2020, [CMS announced](#) that the Health Inspection Domain will not change during this time. Results of health inspections on or after March 4, 2020 will be posted, but will not be used to calculate a SNF's health inspection star rating. This will likely pause the special focus facility (SFF) calculations.

B. MDS And PBJ Reporting Timeframes Waived

CMS has waived the timeframe reporting requirements for the resident assessment data (minimum data set (MDS)) and staffing data (Payroll-Based Journal (PBJ)), *but* data must still be submitted. CMS is monitoring whether and how the delayed reporting will affect the quality measures and staffing domains for the next update to the Five Star Quality Rating System.

IV. POSTING OF NURSING HOME STAFFING

CMS will be publishing a list of the average number of nursing and total staff that work onsite in each nursing home, each day. CMS expects states to use this information to help direct adequate personal protective equipment (PPE) and testing to nursing homes. CMS will be releasing information that shows the average number of staff each nursing home has onsite, each day (nursing staff and total staff), and aggregated by state and nationally. *Note that this will not be current data* but is based on data submitted from the 2019 Calendar quarter 4 PBJ submission.

V. DOH MINIMUM STAFFING REQUIREMENTS

There is a *limited waiver* of the minimum staffing requirements of 2.7 Per Patient Day (PPD). On April 19, 2020, DOH released "[Staffing Resources for Nursing Care Facilities During the COVID-19 Pandemic.](#)"

A. Documentation Required

1. Facilities must ensure resident quality of care continues despite shortfalls in the 2.7 PPD.

2. Document on a monthly report only those days when the PPD drops below 2.7 PPD.
 - a. Include the reason behind the decrease.
 - b. Describe how the facility is maintaining quality of care.

B. Filing of the Staffing Reports

The staffing report is to be sent to the appropriate DOH field office by the 10th of each month or until otherwise instructed by the DOH.

***Disclaimer:** This article does not offer specific legal advice, nor does it create an attorney-client relationship. You should not reach any legal conclusions based on the information contained in this article without first seeking the advice of counsel.*

About the Author

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