The New Survey Process — What To Expect

Paula G. Sanders, Esq.
DEPARTMENT OF HEALTH ENFORCEMENT TRENDS
# How to Read State Tags

<table>
<thead>
<tr>
<th>ID PREFIX TAG</th>
<th>SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)</th>
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[Link to the Post & Schell, P.C. website](http://www.postschell.com)
# DOH CMPs Per Year

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## DOH CMPs Per Quarter

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Total Number of DOH CMPs Per Year

Total # CMPs per Year

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# Days Between Exit And Sanction

## Days Between Exit And Sanction

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<td>Max 345</td>
<td>56</td>
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<tr>
<td>Avg 84</td>
<td>31</td>
<td>34</td>
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DOH CMPs  12/2017

• 7 SNF CMPs = $1,204,250

• 288% more than all CMPS in 2016

• 1,942% more than all CMPs in 2014
CHANGES IN THE CMS SURVEY PROCESS
Revision to CMP Policies and Analytic Tool

- CMS S&C: 17-37-NH (eff date July 17, 2017)
  - Per instance CMP for all past noncompliance
  - Per instance CMP is default for noncompliance that existed before the survey and is ongoing (except IJ w/ actual harm; abuse with actual harm; repeat tag at s/s “G” or higher; s/s H or I)

- Facilities with good survey history may avoid daily CMP if G or J involves a singular event
Revision to CMP Policies and Analytic Tool

• Like under previous tool, facilities with repeats, pattern of G or above, or with more than five deficiencies will receive higher fines

• Regional Office cannot adjust a penalty more than 35% without Central Office’s approval

• If fine >$250,000, Central Office must approve

• Hardship request must be timely
Survey Status, ROPs & SOM

• New State Operations Manual (SOM) for Phases One and Two revised Nov. 22, 2017, effective Nov. 28, 2017

• Surveyors trained on “new” survey process
  ▪ New survey forms continue to be generated

• November 28, 2019 – Phase Three implementation
New Survey Process

• Combines the “best” of the traditional and QIS surveys

• All surveys will be automated
  ▪ Surveyors will have laptops or tablets
  ▪ Surveyors’ on-line training available to the public
New Computer-Based Survey Process

• Three parts to new survey process:
  ▪ Initial pool process: (70% computer driven–MDS)
  ▪ Sample selection
  ▪ Investigation: Observations, interviews, mandatory facility tasks, critical element pathways, record review
New SOM and Enforcement Delay

• Imposes an 18 month moratorium on imposing Civil Money Penalties (CMPs), Denial of Payment for New Admissions (DPNA) or termination for failure to implement certain Phase Two provisions for one year

• CMS holding the 5-Star ratings constant for one year during the moratorium

S&C: 18-04-NH issued Nov. 24, 2017
Temporary Enforcement Delays

- Phase 2 F-tags affected:
  - F655 (Baseline Care Plan); §483.21(a)(1)-(a)(3)
  - F740 (Behavioral Health Services); §483.40
  - F741 (Sufficient/Competent Direct Care/Access Staff-Behavioral Health); §483.40(a)(1)-(a)(2)
  - F758 (Psychotropic Medications) related to PRN Limitations §483.45(e)(3)-(e)(5)
  - F838 (Facility Assessment); §483.70(e)
  - F881 (Antibiotic Stewardship Program); §483.80(a)(3)
Temporary Enforcement Delays

- Phase 2 F-tags
  - F865 (QAPI Program and Plan) related to the development of the QAPI Plan; §483.75(a)(2)
  - F926 (Smoking Policies). §483.90(i)(5)
Mandatory Survey Tasks

- Dining
- Infection control
- SNF Beneficiary Protection Notification review
- Resident Council meeting
- Kitchen
- Medication administration
- Medication storage
- Sufficient and competent nurse staffing
- QAA/QAPI
Critical Element Pathways

Beneficiary Notice
Dining
Infection Prevention
Control and Immunization
Kitchen
Med Admin
Resident Council
QAA and QAPI
Abuse
Environment
Sufficient and Competent Staff

Personal Funds
Activities
Activities of Daily Living
Behavioral-Emotional
Urinary Catheter or UTI
Comm-Sensory
Dental
Dialysis
General
Hospice and End of Life
Death
Critical Element Pathways

Nutrition
Pain Management
Physical Restraints
Pressure Ulcer
Rehab and Restorative
Respiratory Care
Unnecessary Medications
Medication Storage
PASARR
Extended Survey

Hydration
Tube Feeding
Positioning, Mobility, ROM
Hospitalization
Bladder & Bowel Incontinence
Accidents
Neglect
Resident Assessment
Discharge
Dementia Care

https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Nursing-Homes.html
CMS Surveyor Training

• “A review of sufficient and competent nurse staffing will be conducted on every survey. This task is required to be investigated on every survey since surveyors are always considering whether staffing issues can be linked to resident complaints, or quality of life (QOL) and care (QOC) concerns. In addition, Phase 2 of the new rule puts a lot of emphasis not only on sufficient numbers of staff, but also the competence of staff.”
Focus on Sufficient Competent Staff and Resident-Centered Care

- Quality issues trigger many questions about staffing: Sufficiency, competency, evaluations
- Was the issue the subject of QA and PI?
- Are the care plans individualized? (Automatic “F” SQC in Region V if just the typical E record)
- Does everyone on the team know and understand the residents’ care needs consistent with their roles
- Does the resident have a “voice”
Facility Assessment

- Facility assessment contains a description of:
  - Resident population and care required
  - Staff competence (including outside contractors and volunteers consistent with their roles)
  - Physical environment and equipment
  - Ethnic, cultural and religion considerations
Facility Assessment

- Type of services provided
- Contracts with third parties to provide services or equipment during normal operations and emergencies
- Health information technology resources
- Facility and community-based risk assessment using an all-hazards approach (e.g. emergency preparedness plan)
Facility Assessment Is Integrated Throughout the Regulations

- Examples:
  - Sufficient staff
  - Specialized Training
  - Neglect Guidance references “structures” (or lack thereof) that promote neglect
  - Admission Policy – Limitations and Special Characteristics
  - QAPI should be tailored to services and population identified in the Facility Assessment
  - Compliance Programs
Facility Assessment Tips

- CMS Tool: Not mandatory

- Will need to be produced in the Entrance Conference

- Must review and update annually and any time "substantial change" indicates
Responsibility of Governing Body for QAPI

• Ensuring QAPI Program exists and is operational
• Ensuring adequate resources to support the Program
• Ensuring Program sets priorities that reflect resident and staff input
• Ensuring that corrective action is taken to address gaps in systems
• Outlining clear expectations for resident safety, quality, rights, choice and respect
Areas of Focus: Admissions; Resident Grievances

• Admission Processes
  ▪ Handling responsibility for lost items
  ▪ Communicating visitation policy up front
  ▪ Identifying special characteristics and limitations of the facility and abiding by them in admission procedures

• Grievances and Resident Council
  ▪ Complaints vs. Communication
  ▪ Written Grievances Decisions
  ▪ Facility response to resident council documented/communicated?
Areas of Focus: Discharge Practices

- Review discharge forms and practices (including bed holds)
  - Hospital transfers – Need to provide notice and appeal rights (Guidance says up to 24 hours for emergencies/up to a month for Ombudsman copy)
  - Bed hold information necessary at admission and at time of transfer
  - Private pay failure to hold bed will not allow facility to treat return as a new admission
Areas of Focus: Restraints; Resident Representatives

- Restraints – F604, 483.12(a)(2)
  - Position change alarms
  - Side rail enablers

- Understanding the authority and limits or authority of Guardian, Powers of Attorney, Resident Representatives –

- F551, 483.10(b)(6)
  - Must report to state if resident representative is making decisions not in the best interest of resident
Areas of Focus: Office of Inspector General (OIG) on Abuse

• Analyzing diagnoses from inpatient and outpatient facilities for conditions that may be result of abuse of neglect (Work Plan (1/2018))

• Assess the incidence of SNF unreported incidents of abuse and neglect to determine if properly investigated & reported; and interview states to determine if incident was properly reported, investigated by state and subsequently prosecuted by state if appropriate (Work Plan (10/2017))
Areas of Focus: Office of Inspector General (OIG) on Abuse

• “Early Alert: The Centers for Medicare & Medicaid Services Has Inadequate Procedures to Ensure that Incidents of Potential Abuse or Neglect at Skilled Nursing Facilities Are Identified and Reported in Accordance With Applicable Requirements” (A-01-17-000504 (8/24/2017))
  ▪ CMS has not imposed any sanctions under Elder Justice Abuse Act reporting
  ▪ CMS should compare Medicare hospital emergency room claims with SNF claims
# Abuse Reporting Guidelines

<table>
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<tr>
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<tbody>
<tr>
<td></td>
<td>42 CFR 483.12(b)(5) and Section 1150B of the Act (ELDER JUSTICE ACT)</td>
<td>42 CFR 483.12(c)</td>
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### What?
- Any reasonable suspicion of a crime against a resident
- 1) All alleged violations of abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property
- 2) The results of all investigations of alleged violations

### Who is required to report?
- Any covered individual, including the owner, operator, employee, manager, agent or contractor of the facility
- The facility

### To whom?
- State Survey Agency (SA) and one or more law enforcement entities for the political subdivision in which the facility is located (i.e., police, sheriffs, detectives, public safety officers; corrections personnel; prosecutors; medical examiners; investigators; and coroners)
- The facility administrator and to other officials in accordance with State law, including to the SA and the adult protective services where state law provides for jurisdiction in long-term care facilities

### When?
- Serious bodily injury- Immediately but not later than 2 hours* after forming the suspicion
- No serious bodily injury-not later than 24* hour
- All alleged violations-Immediately but not later than
  - 1) 2 hours- if the alleged violation involves abuse or results in serious bodily injury
  - 2) 24 hours- if the alleged violation does not involve abuse and does not result in serious bodily injury.
Elder Justice Reporting Requirements

- Penalties for covered individual’s failure to notify
  - CMP up to $200,000
  - Possible exclusion from participation
  - If failure exacerbates harm to victim or results in harm to another individual
    - CMP up to $300,000
    - Possible exclusion from participation
- Penalties for retaliation
Elder Justice Act Reporting: Be Prepared For The Media

- Develop a media response for all “crisis” situations

- Identify and train staff about internal procedure for crisis management, including press statements and spokespersons
Areas of Focus: Volunteers

- For purposes of this guidance, “staff” includes employees, the medical director, consultants, contractors, and volunteers. Staff would also include caregivers who provide care and services to residents on behalf of the facility, students in the facility’s nurse aide training program, and students from affiliated academic institutions, including therapy, social, and activity programs. F600 (Abuse, neglect)
Screening Volunteers

“The facility’s policies must also address how pre-screening occurs for prospective consultants, contractors, volunteers, caregivers and students in its nurse aide training program and students from affiliated academic institutions, including therapy, social, and activity programs. The facility should require these individuals to be subject to the same scrutiny prior to placement in the facility, whether screened by the facility itself, the third-party agency, or academic institution. The facility should maintain documentation of the screening that has occurred.”
Volunteers

• “Training of staff, residents, family members and volunteers on the proper use of assistive devices/equipment is crucial to prevent accidents.”

• Compliance program must “set out the consequences for committing violations for the operating organization's entire staff; . . . Including volunteers, consistent with the volunteers' expected roles.”

• Volunteers must be educated about compliance program
Volunteers Must Be Trained

- F940 “A facility must develop, implement, and maintain an effective training program for all new and existing staff; individuals providing services under a contractual arrangement; and volunteers, consistent with their expected roles. A facility must determine the amount and types of training necessary based on a facility assessment . . . .”

- Some requirements implemented in Phase 3
Volunteer Abuse Training: F943
(eff. Nov. 2017)

Training must address:

- Activities that constitute abuse, neglect, exploitation, and misappropriation of resident property
- Procedures for reporting incidents of abuse, neglect, exploitation, or the misappropriation of resident property
- Dementia management and resident abuse prevention
Prepare Now

- Review staffing competency and evaluation processes
- Print the CE Pathways and distribute to appropriate team members
- Talk to residents, families and staff
- Forewarned is forearmed!
Links to Key Documents

• **New SOM:**  [https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Downloads/Advance-Appendix-PP-Including-Phase-2-.pdf](https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Downloads/Advance-Appendix-PP-Including-Phase-2-.pdf)

Links to Key Documents

- CMS S&C: 17-37-NH

- Sample Facility Assessment Tool:
  http://qioprogram.org/sites/default/files/editors/141/Facility_Assessment_2017_08_18_Final.docx
Links to Key Documents

Federal Regulatory Groups for Long Term Care Facilities

* Substandard quality of care = one or more deficiencies with s/s levels of F, H, I, J, K, or L in Red

483.12 Freedom from Abuse, Neglect, and Exploitation

483.24 Quality of Life

483.25 Quality of Care

483.30 Physician Services

483.35 Nursing Services
Federal Regulatory Groups for Long Term Care Facilities

* Substandard quality of care = one or more deficiencies with s/s levels of F, H, I, J, K, or L in Red

483.40 Behavioral Health Services

F740 Behavioral Health Services
F741 Sufficient/Competent Staff-Behav Health Needs
F742 *Treatment/Svc for Mental/Psychosocial Concerns
F743 *No Pattern of Behavioral Difficulties Unless Unavoidable
F744 *Treatment /Service for Dementia
F745 *Provision of Medically Related Social Services

483.45 Pharmacy Services

F755 Pharmacy Svcs/Procedures/Pharmacist/Records
F756 Drug Reimtmen Review, Report Irregular, Act On
F757 *Drug Reimtmen is Free From Unnecessary Drugs
F758 *Free from Un nec Psychotropic Meds/PRN Use
F759 *Free of Medication Error Rates of 5% or More
F760 *Residents Are Free of Significant Med Errors
F761 Label/Store Drugs & Biologicals

483.50 Laboratory, Radiology, and Other Diagnostic Services

F770 Laboratory Services
F771 Blood Bank and Transfusion Services
F772 Lab Services Provided On-Site
F773 Lab Svcs Physician Order/Notif/ Results
F774 Assist with Transport Arrangements to Lab Svcs
F775 Lab Reports in Record-LabName/Address
F776 Radiology/Other Diagnostic Services
F777 Radiology/Diat. Svcs Ordered/Notif/Results
F778 Assist with Transport Arrangements to Radiology
F779 X-RAY/Diagnostic Report in Record-Slam/Dated

483.55 Dental Services

F790 Routine/Emergency Dental Services in SNFs
F791 Routine/Emergency Dental Services in NFs

483.60 Food and Nutrition Services

F800 Provided Diet Meets Needs of Each Resident
F801 Qualified Dietary Staff
F802 Sufficient Dietary Support Personnel
F803 Menus Meet Res Needs/Prep in Advance/Followed
F804 Nutritive Value/Appear .Palatable/Prefer Temp
F805 Food in Form to Meet Individual Needs

F806 Resident Allergies, Preferences and Substitutes
F807 Drinks Avail to Meet Needs/Pref/ Hydration
F808 Therapeutic Diet Prescribed by Physician
F809 Frequency of Meals/ Snacks at Bedtime
F810 Assistive Devices - Eating Equipment/Utensils
F811 Feeding Asst -Training/Supervision/Resident
F812 Food Procurement, Store/Prepare/Serve - Sanitary
F813 Personal Food Policy
F814 Dispose Garbage & Refuse Properly

483.65 Specialized Rehabilitative Services

F825 Provide/Obtain Specialized Rehab Services
F826 Rehab Services- Physician Order/Qualified Person

483.70 Administration

F835 Administration
F836 License/Comply w/Fed/State/Local Law/Prof Std
F837 Governing Body
F838 Facility Assessment
F839 Staff Qualifications
F840 Use of Outside Resources
F841 Responsibilities of Medical Director
F842 Resident Records - Identifiable Information
F843 Transfer Agreement
F844 Disclosure of Ownership Requirements
F845 Facility closure-Administrator
F846 Facility closure
F847 Hospice Services
F850 *Qualifications of Social Worker >120 Beds
F851 Payroll Based Journal

483.75 Quality Assurance and Performance Improvement

F865 QAPI Program/Plan, Disclosure/Good Faith Attempt
F866 (PHASE-3) QAPI/QAA Data Collection and Monitoring
F867 QAPI/QAA Improvement Activities
F868 QAA Committee

483.80 Infection Control

F880 Infection Prevention & Control
F881 Antibiotic Stewardship Program
F882 (PHASE-3) Infection Preventionist Qualifications/Role
F883 *Influenza and Pneumococcal Immunizations

483.85 (PHASE-3) Compliance and Ethics Program
F895 (PHASE-3) Compliance and Ethics Program

483.90 Physical Environment

F905 Emergency Electrical Power System
F906 Space and Equipment
F908 Essential Equipment, Safe Operating Condition
F909 Resident Bed
F910 Resident Room
F911 Bedroom Number of Residents
F912 Bedrooms Measure at Least 80 Square Ft/Resident
F913 Bedrooms Have Direct Access to Exit Corridor
F914 Bedrooms Assure Full Visual Privacy
F915 Resident Room Window
F916 Resident Room Floor Above Grade
F917 Resident Room Bed/Furniture/Closet
F919 Resident Call System
F920 Requirements for Dining and Activity Rooms
F921 Safe/Functional/Sanitary/Comfortable Environment
F922 Procedures to Ensure Water Availability
F923 Ventilation
F924 Corridors Have Firmly Secured Handrails
F925 Maintains Effective Pest Control Program
F926 Smoking Policies

483.95 Training Requirements

F940 (PHASE-3) Training Requirements - General
F941 (PHASE-3) Communication Training
F942 (PHASE-3) Resident’s Rights Training
F943 Abuse, Neglect, and Exploitation Training
F944 (PHASE-3) QAPI Training
F945 (PHASE-3) Infection Control Training
F946 (PHASE-3) Compliance and Ethics Training
F947 Required In-Service Training for Nurse Aides
F948 Training for Feeding Assistants
F949 (PHASE-3) Behavioral Health Training
Questions

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