CMS Ratchets Up Enforcement For States And Long Term Care Facilities

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Chair, COVID-19 Taskforce
A Word of Thanks . . .

- As a nation and as a state, we have lost sight of you and your staff’s dedication and commitment to your residents and families

- National focus on protecting the nation’s hospitals from the “surge” without a concomitant emphasis on helping long term care facilities protect their residents, has had unintended, but predictable consequences

- You are the heroes…with gratitude
Nursing homes (SNFs) do not deserve to be blamed for the pandemic or the spread of COVID-19

“When a facility fails to prevent any infectious disease from spreading, they are cited for noncompliance with CMS’ infection control requirements” (CMS FAQs, June 4, 2020)
Skilled Nursing News Report (6/5/2020)

• “’I think this idea of trying to finger-point, and blame the federal government, is absolutely ridiculous,’ ... Seema Verma said on a Thursday call with reporters.

• Verma was . . . responding to a question about the view, ...that long-term care facilities did not receive sufficient support — such as the provision of personal protective equipment (PPE), priority access to testing, and supplemental staffing — to meet stringent COVID-19 safety measures.”

June Has Been A Busy Week!

- June 1, 2020: CMS releases QSO-20-31-All, requiring on-site surveys, creating financial risk for states, and increasing sanctions for infection control deficiencies. [Link](https://www.cms.gov/files/document/qso-20-31-all.pdf)

- June 4, 2020: CMS posts National Health Safety Network (NHSN) nursing home (SNF) data, infection control survey results, and FAQs.
Results of 5,700 infection control and complaint surveys since March 4, 2020 *updated monthly*

NHSN reported data, including number of cases and number of deaths, *updated weekly*

Data downloadable
NHSN Reported Data Update Weekly

- Resident beds and census
- Suspected and confirmed COVID-19 infections among residents and staff
- Total deaths and COVID-19 deaths among residents and staff
- Access to COVID-19 testing
- Staffing shortages
- Personal protective equipment and
- Ventilator capacity and supplies in the facility
CMS Posting of COVID-Related Surveys (QSO 20-33-NH, 6/4/2020)

- Spreadsheet listing each health inspection conducted, the SNF’s demographic information, and citations

- File with the 2567 from each inspection

- Spreadsheet showing number and percentage of surveys each state has conducted

- Survey results from March 4, 2020 forward will not impact 5 Star Ratings
CMS FAQ: Why Do Some SNFs Have Outbreaks But No Deficiencies?

- Adherence to longstanding infection control practices is best defense against spread

- Fact that SNF has a case of any infectious disease is not necessarily indicative of noncompliance

- Proper reporting helps access the support needed to control spread and ensures prompt assistance and guidance
Why Do Some SNFs Have Outbreaks But No Deficiencies?

• With the appropriate resources, it is possible to prevent further spread

• Some SNFs “willingly accepted” patients from hospitals or were dedicated to COVID-19 cases
  - These cases were not the result of poor infectious control practices
Does 5 Star Rating Correlate With COVID Cases?

- CMS’ early analysis shows statistically significant relationship between inspection star rating and SNFs with large number of cases.

- Other research suggests the opposite:
SNFs Still Not A Priority in PA

- Governor Wolf’s May 28, 2020 Press Release touting commitment to testing supplies:
  - 42,000 to county and municipal health departments
  - 9,640 to laboratories, testing teams, state agencies and medical practices
  - 8,542 to hospital and health systems
  - 7,070 to long-term care facilities

- https://www.governor.pa.gov/newsroom/wolf-administration-distributes-testing-supplies-to-hospitals-more-than-67000-patients-tested-since-march/
WHAT LIES AHEAD FOR PA DOH AND SNFS?
On-Site Focused Infection Control Surveys

- State survey agencies (SSAs) must complete 100% of on-site focused infection control surveys by July 31, 2020 (CMS QSO 20-31-All, 6/1/2020)

- Failure requires Corrective Action Plan to CMS explaining how it will complete the remaining focused infection control surveys within 30 days

- Failing again causes loss of 10% of state’s CARES Act Fiscal Year (FY) 2021 allocation
On-Site Focused Infection Control Surveys

- SSA’s continued failure to hit 100% completion rate for focused infection control surveys could result in another 5% reduction.

- States that have hit 100% completion benchmark by July 31, 2020 eligible to receive a proportion of the funds forfeited by the delinquent states.

- Starting in FY 2021, conduct annual focused infection control surveys of at least 20% SNFs or risk loss up to 5% of CARES Act allocation.
Pennsylvania At Risk?

- PA has only completed 113 (16.3%) on-site focused infection control surveys
- National average is approximately 54%
- PA ranks 46th of all states
- PA needs to conduct 582 on-site focused infection control surveys at 582 to qualify for its full CARES Act allocation by July 31, 2020
Pennsylvania At Risk?

- SSAs must also conduct on-site COVID-19 focused surveys at SNFs with “previous COVID-19 outbreaks” by July 1, 2020 or risk losing up to 5% of CARES Act allocation.
On-Site COVID-19 Focused Surveys

• CMS defines “previous COVID-19 outbreak” 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
On-Site COVID-19 Focused Surveys

• SSAs must do on-site surveys within 3-5 days of identification of any SNF with three or more new COVID suspected and confirmed cases reported in National Healthcare Safety Network (NHSN) COVID-19 Report and/or

• At any SNF that reports one confirmed resident case in a facility that was previously COVID-19 free
Admissions Implications?

- NHSN reporting system does not distinguish between facility-acquired and facility-admitted COVID-19 cases

- Admitting COVID-19 positive patients may create risk of increased survey scrutiny

- PA hospitals only required to swab and test before discharge
Surveyors Need to Be Prepared, But Are They?

- CMS has advised SSAs that they must ensure surveyors have needed personal protective equipment (PPE) that could be required onsite.

- Surveyors must be medically cleared, and trained in the proper use of respirators, safe removal and disposal, and medical contraindications to respirator use.

- How will PA meet these deadlines given current staff and preparedness?
CMS Gives States Flexibility to Expand Survey Activities

- Complaint investigations triaged as Non-Immediate Jeopardy (IJ)-High
  - PA has already been conducting these

- Revisit surveys of any facility with removed IJ (but still out of compliance)

- Special Focus Facility and Special Focus Facility Candidate recertification surveys
CMS Gives States Flexibility to Expand Survey Activities

- Recertification surveys >15 months overdue for SNFs and Intermediate Care Facility for Individuals with Intellectual Disability (ICF/IID)

- Surveys prioritized based on a facility’s prior survey history and allegations related to abuse or neglect; infection control; transfer/discharge; insufficient staffing or competency; or other quality of care issues
Expanded Role Of Quality Improvement Organizations (QIO)

- QIOs deployed to provide technical assistant to nursing homes
  - Approximately 3,000 low performing nursing homes with history of infection control challenges have been targeted

- States may request QIO technical assistance for a specific nursing home

- QIOs provide weekly national infection control training
“Enhanced Sanctions” For Infection Control Deficiencies

- CMS perceives a “heightened threat to resident health and safety for even low-level isolated infection control citations (such as proper hand washing and use of PPE).”

- CMS believes that expanded enforcement will improve accountability and sustained compliance with fundamental health and safety protocols.
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<th><strong>Scope &amp; Severity</strong></th>
<th><strong>No Infection Control Deficiencies in Past Year</strong></th>
<th><strong>Infection Control Deficiencies Cited Once In Past Year</strong></th>
<th><strong>Infection Control Deficiencies Cited Twice or More In Past Two Years</strong></th>
<th><strong>Cited for Current Non-Compliance with Infection Control Deficiencies Regardless Of Past History</strong></th>
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| G/H/I Harm       |                                             |                                                      |                                                                     | • Directed Plan of Correction  
• DDPNA with 30 days to demonstrate compliance  
• CMP imposed at highest amount option in the CMP analytic tool |
| J/K/L            |                                             |                                                      |                                                                     | • Mandatory remedies of Temporary Manager or Termination  
• Directed Plan of Correction  
• DDPNA, 15-days to demonstrate compliance  
• CMP imposed at highest amount option in the CMP analytic tool |
Facility Action Steps

• Train the greeter/receptionist

• DO NOT LET SURVEYORS IN WITHOUT COMPLETE SCREENING
Facility Action Steps

• Immediately review, complete and/or update the CMS Infection Control checklist

• Surveyors will be using this for focused infection control surveys

• Surveyors may ask to see copies of facility-completed self-assessments
Facility Action Steps

- Gather as much documentation as possible in a survey book
- Conduct monitoring of staff practices every shift
- Remind staff re proper PPE usage
  - PPE rules apply when they cross the threshold
- Enforce social distancing at lunch and on breaks
Facility Action Steps

- Walk the building
- Create a team that includes front line staff to help with monitoring and reinforcing infection control best practices
- Think like a surveyor
Facility Action Steps

- Update facility assessments
  - Staffing
  - Supplies
  - Resident needs

- Update policies to reflect changes in procedures

- Consider resident quality of life issues (worsening ADLs, depression, isolation)
Facility Action Steps

• Review and update emergency plan

• Gather documentation of training and competencies

• Ask staff questions from the survey tools

• Know what standard and transmission based precautions are appropriate and required
Facility Action Steps

• Assign someone to make sure that all required reporting is being done accurately and timely

• Document problems with accessing reporting sites or inconsistencies in data
Facility Action Steps

- Keep documentation of communications with families about COVID-19 updates
  - Periodically test your recorded line to make sure that it is working
  - Maintain copies of the script

- Document attempts to get clarification, guidance and assistance from local, state, and federal agencies
Facility Action Steps

- Gather emails to vendors, as well as contracts, that reflect supply delays or shortages as well as increased costs
- Document, document, document
- Be prepared to file informal dispute resolutions (IDRs) about any inaccuracies as all surveys are being posted within a month’s time
Common DOH Findings

- Staff fatigue causing lax PPE usage
  - Masks below nose

- Improper or no hand hygiene/gloves

- Cleaning of reusable resident devices (thermometers, pulse ox, blood pressure cuffs, glucometers), not following manufacturers’ recommendations
  - Document reasons for alternative methods
Moving Forward

- Identify when first cases happened, and what guidance was in effect at time
  - Masking
  - Cohorting
  - Testing
  - Optimizing PPE

- Shortages or insufficient PPE (N95s but no fit-testing materials or capability)
Moving Forward

• Seize control of your narrative—do not let the government’s negative spin define who you are

• Combat the misstatements with the truth

• Be proud of what you do and celebrate your successes
THANK YOU HEROES

https://www.freepik.com/free-vector/thank-you-doctors-nurses_7509779.htm;
Infection Control Tags 42 C.F.R. §483.80

- F880 Infection Prevention & Control
- F881, Antibiotic Stewardship Program
- F882 Infection Preventionist Qualifications Role
- F883 Influenza and Pneumococcal Immunizations
- F884 Reporting – National Health Safety Network
  - Only cited by federal surveyors
- F885 Reporting – Residents, Representatives & Families
CMS Links

- QSO-20-32 (6/4/2020) re posting of data
- Inspection reports: https://www.medicare.gov/nursinghomecompare/search.html?
- Survey reports: https://www.cms.gov/files/zip/nursing-home-infection-control-surveys.zip
- QSO-20-33 (6/4/2020) re posting of health inspection surveys
Questions??

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