

CMS Ratchets Up Enforcement For States And Long Term Care Facilities

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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

. . . And An Apology

- 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.”

<https://skillednursingnews.com/2020/06/seema-verma-defends-cms-response-to-covid-19-in-nursing-homes-blaming-feds-absolutely-ridiculous/>

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
<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

CMS Posts SNF Specific COVID-19 Data June 4, 2020

- 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
 - <https://skillednursingnews.com/2020/06/during-a-pandemic-boosting-infection-control-fines-on-nursing-homes-may-do-more-harm-than-good/>

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 assistance 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

Scope & Severity	No Infection Control Deficiencies in Past Year	Infection Control Deficiencies Cited Once In Past Year	Infection Control Deficiencies Cited Twice or More In Past Two Years	Cited for Current Non-Compliance with Infection Control Deficiencies Regardless Of Past History
D/E Not wide-spread potential for harm	<ul style="list-style-type: none"> Directed Plan of Correction 	<ul style="list-style-type: none"> Directed Plan of Correction DDPNA with 45-days to demonstrate compliance Per Instance CMP up to \$5000 (at State/CMS discretion) 	<ul style="list-style-type: none"> Directed Plan of Correction DDPNA, 30-days to demonstrate compliance with Infection Control deficiencies \$15,000 Per Instance CMP (or per day CMP, as long as the total amount exceeds \$15,000) 	
F Widespread	<ul style="list-style-type: none"> Directed Plan of Correction DDPNA with 45-days to demonstrate compliance 	<ul style="list-style-type: none"> Directed Plan of Correction, DDPNA with 45-days to demonstrate compliance, \$10,000 Per Instance CMP 	<ul style="list-style-type: none"> Directed Plan of Correction DDPNA, 30-days to demonstrate compliance \$20,000 Per Instance CMP (or per day CMP, as long as the total amount exceeds \$20,000) 	

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G/H/I Harm				<ul style="list-style-type: none"> • 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				<ul style="list-style-type: none"> • 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



https://www.freepik.com/free-vector/thank-you-doctors-nurses_7509779.htm;
Medical vector
created by pikisuperstar - www.freepik.com

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

- Overview of nursing COVID-19 data
<https://www.cms.gov/files/document/covid-nursing-home-reporting-numbers-5-31-20.pdf>
- View the Nursing Home COVID-19 data
<https://data.cms.gov/Covid19-nursing-home-data>
- 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
- CMS FAQs on the nursing home COVID-19 data and the inspection results: <https://www.cms.gov/files/document/covid-nursing-home-data-release-external-faqs.pdf>

Questions??

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