



Hot Button Topics in SNF

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MOMENTUM 2023 ANNUAL MEETING & EXPO

Renaissance Schaumburg
Convention Center - Schaumburg, IL

Overview

- Identify the recent challenges communities face during the survey process and in meeting regulatory requirements.
- Develop solutions in how to best prepare to overcome these challenges.
- Determine best next steps in responding to violations.
- *Plus* current landscape with CMS remedies and IDPH violations

Nursing Homes

- Holds a license per its State's nursing home licensure statute
- Participates in Medicare by virtue of CMS certification per federal regulations (42 CFR 483.1, et seq.)
 - Skilled Nursing Facilities (SNF) = Medicare- or dually-certified
 - Nursing Facilities (NF) = Medicaid-only certified
- CMS interpretive guidance for the Nursing Home requirements is found at the State Operations Manual, Appendix PP

Surveys

- Nursing Homes have Annual, incident report investigation, and complaint surveys.

Annual Survey

- Each Nursing Home must have an Annual survey by its State Survey Agency.
- Should occur in a window between 9 and 15 months after the Nursing Home's previous Annual survey.
- Consists of an evaluation with the federal certification requirements of 42 CFR 483 as well as evaluation of Life Safety Code compliance.

Incident Report Investigation

- Nursing Homes are required to self-report certain incidents to the State Survey Agency.
- The State Survey Agency has discretion to conduct a survey in response to a Nursing Home's incident reporting.

Complaint Surveys

- The State Survey Agency has an intake process for Nursing Home complaints, typically a hotline call-in number.
- Usually the State Survey Agency is required to conduct an on-site survey on every complaint lodged against a Nursing Home, regardless of whether the complaint seems credible or not.

Survey Findings

- Noncompliance with a Nursing Home standard is cited as a deficiency, and then assigned a Scope and Severity.
- Scope = isolated → widespread
- Severity = potential for no more than minimal harm → Immediate Jeopardy

	Isolated	Pattern	Widespread
Immediate Jeopardy	J	K	L
Actual Harm	G	H	I
The Potential for more than Minimal Harm	D	E	F
The potential for no more than minimal harm	A	B	C



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Immediate Jeopardy

- If an Immediate Jeopardy deficiency is cited, the Nursing Home must submit a ‘Plan of Abatement’ (a/k/a ‘Plan of Removal’) to the State Survey Agency.
- An ‘unabated’ Immediate Jeopardy puts a Nursing Home on a 23-day fast track for termination from the Medicare program.

Immediate Jeopardy

- If the State Survey Agency determines that the Immediate Jeopardy is abated or removed, the Nursing Home must still provide a separate POC for the deficiency once the full survey findings are issued.

Survey Cycle

- Once the State Survey Agency has determined that a Nursing Home is not in “substantial compliance” with *all* federal certification requirements (i.e., the Nursing Home has been cited with a deficiency), the Nursing Home is in “cycle”.

Survey Cycle

- Once in, a Nursing Home stays in a “cycle” until the State Survey Agency certifies that the Nursing Home has regained substantial compliance with all requirements.
- CMS “remedies” (i.e., enforcement sanctions) against the Nursing Home flow from and run the duration of the “cycle”.

Survey Cycle

- Once a survey cycle is open, a Nursing Home's top priority should be to close the cycle.
- Arguments about survey findings or remedies may be pursued after the cycle is closed.

POC

- A Nursing Home must submit a POC for each deficiency cited by the State Survey Agency.
- The POC is due to the State Survey Agency within 10 days of the Nursing Home's receipt of the survey findings.

IDR

- Informal Dispute Resolution (IDR)
 - method for Nursing Home to contest the survey findings with the State Survey Agency
 - same due-date as the POC, within 10 days of the Nursing Home's receipt of the survey findings.

IDR

- Submit written arguments against the deficiency, including supporting documents and exhibits
 - some States allow in-person arguments or outsource the IDR to a private agency

IDR

Organize arguments around **themes**

- Survey findings are factually wrong.
 - Here are the correct facts.
- Surveyor missed important info.
 - Here it is (documented).
- Surveyor made an improper conclusion.
 - Here is what really happened or what those documents really mean.
- Surveyor thinks the regulation requires certain action.
 - The regulation requires this, but not that.
- This was not an Immediate Jeopardy.

Revisit Survey

- After the Nursing Home submits a POC—and after the latest “completion date” listed on the POC—the State Survey Agency decides if the POC is acceptable and prepares to conduct a revisit survey to re-evaluate compliance.
- Desk-review vs. On-site

DeskReview Revisit Survey

- The State Survey Agency evaluates compliance by review of the written POC and examination of documents that show corrective actions were accomplished.
- Available for low Scope & Severity deficiencies (D, E, Fs) and Nursing Homes with good compliance histories
- No need for surveyors to return for an on-site inspection.
 - Quicker determination of compliance.
 - No danger of surveyors stumbling into another deficiency.

On-Site Revisit Survey

- The State Survey Agency sends surveyors back out to facility for in-person inspection.
- Must have an on-site revisit to high Scope & Severity deficiencies and for poor compliance history
- Takes time for State Survey Agency to re-schedule a survey team, likely weeks.
 - Cycle remains open and remedies accrue during the meantime
- Should be limited to deficiencies addressed by POC, but surveyors will cite other deficiencies for obvious noncompliance.

Revisit Outcomes

Possible outcomes:

- 1) Finds the facility to be in substantial compliance, clears all tags.
 - State Survey Agency will issue a 2567B (“Post-certification Revisit Report”); this is a good document!
 - Note the completion dates
 - Remedies are discontinued

Revisit Outcomes

Possible outcomes (continued):

- 2) Re-citation of deficiencies
 - Cycle stays open
 - Remedies continue to run (getting closer to termination)
 - Start over again with the process: get another 2567, submit a POC, need another revisit
 - Will you get another revisit before termination?

Revisit Outcomes

Possible outcomes (continued):

- 3) Intervening surveys – a complaint or incident report investigation
 - All deficiencies must be corrected and cleared, in addition to preexisting surveys, in order to close the cycle
 - *Additional* deficiencies to totally clear before termination
 - Time-crunch

Revisit Outcomes

- Nursing Home is entitled to *two revisits* in a survey cycle; to get a *third* revisit, the State Survey Agency must get permission from CMS.
- Sometimes revisit surveys are packaged with Annual surveys or complaints.
 - Danger of “wasting” a revisit that does not close the cycle.
 - Try to work with the State Survey Agency to manage revisits (although all will be unannounced).

Remedies

- “Proposed” remedy – still an opportunity to correct the deficiency before the remedy goes into effect.
- “Recommended” remedy – the State Survey Agency suggests, but it is up to CMS to impose.
- “Imposed” remedy – remedy is in effect, and Nursing Home has an appeal right.

Remedies

Intermediate Sanctions

- Remedies accrue and accumulate throughout the survey cycle, up until the date of Medicare termination
- Category 1
 - Directed Plan of Correction
 - Directed in-service
 - State Monitor

Remedies

- Category 2
 - **Civil Money Penalty**~~(\$50-\$3,000 per day)~~ [\$120-\$7,195 per day (2022)]
 - **Denial of Payments for New Admissions**
 - Denial of Payments for all admissions
- Category 3
 - Temporary management
 - **Termination**
 - **Civil Money Penalty**~~(\$3,050-\$10,000 per day)~~ [\$7,317-\$23,989 per day (2022)]
- Other
 - *Per instance* Civil Money Penalty (~~\$1,000-\$10,000~~) [\$2,400-\$23,989 (2022)]

Remedies

Mandatory Remedies

- 90 days into the survey cycle = Denial of Payments for New Admissions (DPNA)
- 180 days into the survey cycle = Termination from Medicare program
- These deadlines cannot be extended.
 - (Only discretion is to impose them sooner.)

Remedies

- **DPNA** mandatory at 90 days into cycle; State Survey Agency or CMS can impose Discretionary DPNA, effective even earlier.
- Typically has a cumulative effect:
 - A few days of DPNA do not cause huge financial loss
 - Weeks or months of DPNA can put \$100,000s of Medicare/Medicaid reimbursement at stake
 - Back-dating compliance to POC completion date shrinks DPNA

Remedies

- **CMP.** Per-day levels can fluctuate during cycle:
- Example:
 - \$500/day from beginning of cycle on March 1
 - \$7,500/day from March 15 through March 31 for an Immediate Jeopardy citation;
 - Return to \$500/day from April 1;
 - Increase to \$1,200/day from April 10 due to complaint survey citing a “G” Scope and Severity deficiency;
 - Discontinued on May 1 with successful revisit survey, closing cycle.
 - [Total = \$162,500]

Remedies

- **Termination** If the survey cycle remains open upon day 180, Nursing Home is automatically terminated from Medicare
- Game over
 - Automatically triggers Medicaid termination too
 - May automatically trigger a State licensure revocation
 - Once terminated, re-certification requires an initial survey, a period of “reasonable assurance”, and a follow-up survey; often a ~6 month process

Appeals

- 60 days from receipt of notice
- Request for appeal must outline the issues to be considered at appeal.
- Should appeal *all* notices.
- Filing appeal wipes out “automatic” 35% reduction in CMP.
- Appeal does not stay most remedies (CMP is escrowed).

Decision Not To Appeal

- 35% reduction of CMP
- Must affirmatively waive right to appeal by letter to CMS.

Issues for Appeal

- Were any remedies imposed? No remedies, no appeal.
 - Recent cases suggest a change due to compliance history's effect on 5-Star Rating
- Immediate Jeopardy – due to its effect on remedies
- Date of Compliance – affirmative evidence showing correction prior to date selected by surveyors

State Licensure Enforcement Actions

- Frequently, the State Survey Agency will cite a Nursing Home with “me-too” licensure violations that are word-for-word identical to cited federal certification deficiencies.
- This especially happens with Immediate Jeopardy determinations and allegations of serious noncompliance.

State Licensure Enforcement Actions

- States also vary widely in their enforcement mentality and aggressiveness with imposing fines and other sanctions.
- A Nursing Home often has to defend two parallel cases (CMS certification and State licensure), with separate sanctions, based on the same survey.

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