



Center for Clinical Standards and Quality/Quality, Safety & Oversight Group

Ref: QSO-20-20-All

DATE: **March 20, 2020**

TO: State Survey Agency Directors

FROM: Director
Quality, Safety & Oversight Group

SUBJECT: Prioritization of Survey Activities

Memorandum Summary

- *The Centers for Medicare & Medicaid Services (CMS) is committed* to taking critical steps to ensure America's health care facilities are prepared to respond to the threat of the 2019 Novel Coronavirus (COVID-19).
- On Friday, March 13, 2020, the President declared a national emergency, which triggers the Secretary's ability to authorize waivers or modifications of certain requirements pursuant to section 1135 of the Social Security Act (the Act). Under section 1135(b)(5) of the Act, CMS is prioritizing surveys by authorizing modification of timetables and deadlines for the performance of certain required activities, delaying revisit surveys, and generally exercising enforcement discretion for three weeks.
- During this three-week timeframe, **only** the following types of surveys will be prioritized and conducted:
 - Complaint/facility-reported incident surveys: State survey agencies (SSAs) will conduct surveys related to complaints and facility-reported incidents (FRIs) that are triaged at the Immediate Jeopardy (IJ) level. A streamlined Infection Control review tool will also be utilized during these surveys, regardless of the Immediate Jeopardy allegation.
 - Targeted Infection Control Surveys: Federal CMS **and State** surveyors will conduct targeted Infection Control surveys of providers identified through collaboration with the Centers for Disease Control and Prevention (CDC) and the HHS Assistant Secretary for Preparedness and Response (ASPR). They will use a streamlined review checklist 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.
 - Self-assessments: The Infection Control checklist referenced above will also be shared with all providers and suppliers to allow for self-assessment and attestation of their Infection Control plan and protections.

Memorandum Summary Continued

- During the prioritization period, the following surveys will not be authorized: Standard surveys for long term care facilities (nursing homes), hospitals, home health agencies (HHAs), intermediate care facilities for individuals with intellectual disabilities (ICF/IIDs), and hospices. This includes the life safety code and Emergency Preparedness elements of those standard surveys; and revisits that are not associated with IJ.
- Furthermore, for Clinical Laboratory Improvement Amendments (CLIA), we intend to prioritize immediate jeopardy situations over recertification surveys, and generally intend to use enforcement discretion, unless immediate jeopardy situations arise.
- Finally, initial certification surveys will continue to be authorized in accordance within current guidance and prioritization.

Background

CMS is committed to taking critical steps to ensure America's health care facilities, providers, and clinical laboratories are prepared to respond to the threat of the COVID-19 and other respiratory illness. Specifically, under section 1135(b)(5) of the Act, CMS is prioritizing and suspending certain federal and SSA surveys, and delaying revisit surveys, pursuant to federal requirements for the next three weeks, beginning March 20, 2020, for all certified provider and supplier types. Also, for Clinical Laboratory Improvement Amendments (CLIA), we intend to prioritize immediate jeopardy situations over recertification surveys, and generally intend to use enforcement discretion, unless immediate jeopardy situations arise. During this three-week timeframe, SSAs and CMS surveyors will prioritize and conduct surveys (including revisit surveys) related to complaints and facility-reported incidents (FRIs) that are triaged at the Immediate Jeopardy (IJ) level, for all allegations, in addition to a review with a Focused Infection Control survey. Federal surveyors will perform targeted Infection Control surveys of facilities in those areas most in need of additional oversight, as identified through collaboration with the CDC and ASPR.

If state or federal surveyors are unable to meet the Personal Protective Equipment (PPE) expectations outlined by the latest CDC guidance to safely perform an onsite survey due to lack of appropriate PPE supplies, they are instructed to refrain from entering the /provider, and obtain information necessary remotely, to the extent possible. Surveyors should continue the survey once they have the necessary PPE to do so safely.

The Focused Infection Control Survey is available to every provider in the country to make them aware of Infection Control priorities during this time of crisis, with the expectation that providers and suppliers will perform a self-assessment of their ability to meet these priorities. This document may then be requested by surveyors, if an onsite investigation takes place.

This shift in approach will allow health care providers time to implement the most recent infection control guidance from both CMS and the Centers for Disease Control and

Prevention (CDC). At the same time, we are doing our duty to protect patients from harm, and ensuring providers are implementing actions to prevent the spread of COVID-19.

Therefore, during the prioritization period, the following surveys will **not** be authorized:

- Standard surveys for long term care facilities (nursing homes), hospitals, home health agencies (HHAs), intermediate care facilities for individuals with intellectual disabilities (ICF/IIDs), and hospices. This includes the life safety code and Emergency Preparedness elements of those standard surveys;
- Revisits that are not associated with IJ. As a result, the following enforcement actions will be suspended, until revisits are again authorized:
 - For nursing homes – Imposition of Denial of Payment for New Admissions (DPNA), including situations where facilities that are not in substantial compliance at 3 months, will be lifted to allow for new admissions during this time;
 - For HHAs – Imposition of suspension of payments for new admissions (SPNA) following the last day of the survey when termination is imposed will be lifted to allow for new admissions during this time;
 - For nursing homes and HHAs – Suspend per day civil money penalty (CMP) accumulation, and imposition of termination for facilities that are not in substantial compliance at 6 months.
- For CLIA, we intend to prioritize immediate jeopardy situations over recertification surveys.

This announcement follows previous action to focus survey activity on infection control. On March 4, 2020, CMS announced a suspension of inspections for federal and state inspectors (<https://www.cms.gov/medicareprovider-enrollment-and-certificationsurveycertificationeninfopolicy-and/suspension-survey-activities>). This earlier announcement focused on immediate jeopardy complaints, complaints alleging infection control concerns – especially COVID-19 – statutorily required surveys, revisit surveys to resolve enforcement actions, initial certifications, inspections for facilities with histories of infection control deficiencies in the last three years, and inspections of facilities with histories of infection control deficiencies at low levels of severity. This action supersedes the March 4th announcement, and prioritizes surveys related to complaints and FRIs triaged at the IJ level, while suspending the other types of surveys.

Prioritization of Surveys

When conducting surveys related to complaints and facility-reported incidents (FRIs) that are triaged at the Immediate Jeopardy (IJ) level, and revisit surveys necessary to verify removal of IJ which has been previously cited, surveyors and CMS Regional Offices should adhere to the following guidelines:

1. SSAs follow their normal process for triaging complaints and FRIs:
 - a. If a complaint or FRI is triaged at the IJ level, the state should follow the normal policies and procedures for surveying the provider. For example, a survey of a long term care facility (LTC) would be conducted within two

- business days of receipt of the allegation (State Operations Manual (SOM), Chapter 5, Section 5075.9).
- b. If a complaint or FRI is triaged at the non- IJ level, the state would enter the allegation into the ASPEN Complaints/Incidents Tracking System (ACTS) per the instructions in the SOM Chapter 5. An onsite survey will not be conducted during the prioritization period. CMS will issue guidance related to these non-IJ complaints or FRIs in the next few weeks.
 - c. This normal complaint triaging process also applies to CLIA complaints.
 - 2. For facilities that have been cited for IJ-level deficiencies and that surveyors have not verified that the IJ has been removed, surveyors would proceed as normal, and conduct a revisit survey to verify the IJ is removed.
 - a. If the revisit survey determines there is continuing noncompliance, but not at the IJ level, surveyors would not conduct another onsite revisit survey. The provider may submit a plan of correction (POC), but an onsite revisit survey will not be conducted during the prioritization period, and these cases will be held. The provider may delay submission of a plan of correction until this prioritization period is over.
 - b. If a survey is conducted because a complaint or FRI was triaged at the IJ level, and the provider is cited for noncompliance, but not at the IJ level (e.g., Level 3 – actual harm), surveyors would not conduct a revisit survey. The provider may submit a plan of correction (POC), but an onsite revisit survey will not be conducted during the prioritization period, and these cases will be held. The provider may delay submission of a plan of correction until this prioritization period is over.
 - c. For level-3 (LTC) or condition level (Non-LTC) citations (for which an onsite revisit survey would normally be conducted), the provider may submit a plan of correction (POC), but an onsite revisit survey will not be conducted during the prioritization period, and these cases will be held. The provider may delay submission of a plan of correction until this prioritization period is over. CMS will issue guidance on how to verify compliance with these citations in the next few weeks.
 - d. For level-2 (LTC) or standard level (non-LTC) citations, the provider may submits a POC, and providers and survey agencies could verify compliance through normal procedures through a desk review. The provider may delay submission of a plan of correction until this prioritization period is over.
 - e. For clinical laboratories, surveyors will conduct a revisit survey to verify removal of IJ once a credible allegation of compliance has been received.
 - 3. Federal CMS and State Surveyors will conduct focused Infection Control surveys in areas deemed necessary through collaboration with CDC and ASPR. *Please note this workload for SSAs is contingent on their ability to perform surveys based on PPE availability and fulfillment of other State Emergency Response responsibilities (such as staffing medical shelters or testing stations).*
 - a. Revisit surveys: Surveyors will follow the same guidance for revisit surveys explained in section 2 above.
 - b. Enforcement actions will also follow the guidance for all other surveys during the prioritization period explained in section 4 below.
 - 4. Enforcement Actions:

- a. For pending enforcement cycles during the prioritization period where the provider is currently not in substantial compliance or has not had a revisit survey to verify substantial compliance, and a per day civil money penalty (CMP), or DPNA (for nursing homes) or SPNA (for HHAs) was imposed for noncompliance that occurred prior to the prioritization date of surveys: These remedies will be suspended (stopped) as of the start of the survey prioritization date. In other words, the CMP will stop accruing and the DPNA/SPNA will end as of the suspension date. Additionally, CMS will not impose any new remedies to address noncompliance that occurred prior to the start of the survey prioritization period. NOTE: This does not apply to unremoved IJs. Enforcement actions will proceed as usual per the SOM for unremoved IJ deficiencies. CMS will issue guidance on how to reconcile these actions in the next few weeks.
- b. For pending enforcement cycles during the prioritization period where the provider is currently not in substantial compliance or has not had a revisit survey to verify substantial compliance, and for pending enforcement cycles with new noncompliance cited after the issuance of this memo, and a per day CMP, or DPNA (for nursing homes) or SPNA (for HHAs) was imposed for IJ level noncompliance (where the IJ has not been removed): Surveyors will follow normal policies and procedures for removing the IJ. CMS will also follow normal policies and procedures for imposing enforcement remedies for remediating the noncompliance. For example, for noncompliance cited at the IJ level, that has not been removed at the time of the survey exit, the CMS Office will impose an enforcement remedy (e.g., CMP, 23 day termination), and the state surveyors will conduct a revisit survey. On the revisit survey, surveyors will either verify substantial compliance, or cite noncompliance at a lower level if warranted.
 - i. If the IJ noncompliance is reduced and cited at level 3 (LTC) or condition level (non-LTC), an onsite revisit survey will not be conducted during the prioritization period, and these cases will be held. CMS will issue guidance on how to impose enforcement and verify compliance with these in the next few weeks (see 2.c.).
 - ii. If the IJ noncompliance is reduced and cited at level 2 (LTC) or standard level (non-LTC), facilities and survey agencies would verify compliance through normal procedures through a desk review (see 2.d.). However, CMS should not impose remedies during the prioritization period for any noncompliance that was identified before or after the start of the survey prioritization period, unless the noncompliance is an unremoved IJ.
- c. The three-month mandatory DPNA and six-month mandatory termination (nursing homes) for not being in substantial compliance (for nursing homes and HHAs) will not take place, and be deferred for an evaluation at a later date. However, enforcement actions related to IJ remain and continue under normal procedures.
- d. If CMS has previously imposed an alternative sanction (e.g., SPNA, CMP) on a HHA for noncompliance identified prior to the suspension, the six-month

- mandatory termination will not take place, and be deferred for an evaluation at a later date.
- e. For existing CLIA enforcement cases where a civil money penalty (CMP) per day of non-compliance was imposed, accrual of CMP will stop as of the survey COVID-19 suspension date. CMS will issue guidance on how to reconcile these actions in the next few weeks. Other CLIA enforcement actions that have been initiated will be handled on a case-by-case basis with consultation DCLIQ managers and staff.
5. If during an IJ complaint or FRI survey, the surveyor identifies that there is an active COVID-19 case in the facility:
- If the COVID-19 case is, or is not, related to the IJ, surveyors should report the case and facility to their agency, the state health department (to coordinate with the Centers for Disease Control and Prevention (CDC)), and the CMS Regional Office. These agencies should coordinate and decide on any further actions that should be taken. The Infection Control focused survey process can be used to investigate noncompliance and ensure the provider takes steps to minimize transmission.

For onsite surveys that were started prior to the prioritization period and don't fall under this guidance, survey teams should end the survey and exit the facility.

Lastly, any initial certification surveys remain authorized to increase the health care capacity of the country.

Note: While CMS' directive applies to the CMS' federal surveyors and state agency surveyors, CMS also urges other surveyors, including accrediting organizations (AOs), to follow suit. Additionally, CMS' survey prioritization applies to surveys for compliance with federal regulations, not state surveys pursuant to state licensure.

Additional Instructions for Nursing Homes

We are disseminating the Infection Control survey developed by CMS and CDC so facilities can educate themselves on the latest practices and expectations. We expect facilities to use this new process, in conjunction with the latest guidance from CDC, to perform a self-assessment of their ability to prevent the transmission of COVID-19. This document may be requested by surveyors, if an onsite investigation takes place. We also encourage nursing homes to share the results of this assessment with their state or local health department Healthcare-Associated Infections (HAI) Program. Contact information for each state's health departments is identified on the Centers for Disease Control & Prevention's (CDC's) website at: <https://www.cdc.gov/HAI/state-based/index.html>.

Furthermore, we remind facilities that they are required to have a system of surveillance designed to identify possible communicable diseases or infections before they can spread to other persons in the facility, and when and to whom possible incidents of communicable disease or infections should be reported (42 CFR 483.80(a)(2)(i) and (ii)). CDC recommends that nursing homes notify their health department about residents with severe respiratory infection, or a cluster of respiratory illness (e.g., > or = 3 residents or HCP with new-onset respiratory symptoms within 72 hours). Local and state reporting guidelines or requirements may vary. Monitor the CDC website for information and resources to help prevent the

introduction and spread of COVID-19 in nursing homes (CDC Preparing for COVID-19: Long-term Care Facilities, Nursing Homes: <https://www.cdc.gov/coronavirus/2019-ncov/healthcare-facilities/prevent-spread-in-long-term-care-facilities.html>). We urge providers to review the tools and implement actions to protect the health and safety of individuals to respond to the COVID-19 pandemic.

CMS will continue to evaluate the survey prioritization in light of the situation on the ground in areas with large numbers of COVID-19 cases, to determine if CMS needs to continue this past the initial three weeks.

Contact: Questions about this document should be addressed to QSOG_EmergencyPrep@cms.hhs.gov.

Effective Date: Immediately. This policy should be communicated with all survey and certification staff, their managers and the State/Regional Office training coordinators immediately.

/s/

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cc: Survey and Operations Group Management