



**Center for Clinical Standards and Quality/Survey & Certification Group**

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**DATE:** June 14, 2013

**TO:** State Survey Agency Directors

**FROM:** Director  
Survey and Certification Group

**SUBJECT:** FY2013 Sequester Adjustments for Special Focus Facility (SFF) Nursing Homes  
**\*\*Revised to make minor modifications and clarify time frames\*\***

**Memorandum Summary**

**Special Focus Facility (SFF) Program Changes:** The Centers for Medicare & Medicaid Services (CMS) is modifying the programmatic oversight of those nursing facilities that have exhibited a persistent pattern of poor quality and have been enrolled in the SFF initiative. The modifications include:

- Schedule a final “last chance” onsite survey for those facilities that have been on the SFF list for more than 18 months and have failed to improve;
- Review the progress of all other facilities that have been on the SFF list for more than 12 months; and
- Until further notice, do not, select a replacement SFF nursing home when a current SFF facility has been terminated from Medicare participation or has improved to the point of graduating from the SFF list, unless directed to do so by the CMS Regional Office (RO).

**Background**

We **have been** making certain programmatic adjustments to the SFF program for nursing homes that are currently enrolled in the program and have been for some time. These changes were outlined in a Survey and Certification memorandum (13-23-ALL) released on April 5, 2013. The purpose of this adjustment is to (a) speed final resolution (preferably significant improvement) of the issues with these nursing **facilities** where serious **compliance** problems have persisted for a considerable time, and (b) continue the SFF initiative (as required by Sections 1819(f)(8) and 1919(f)(10) of the Social Security Act), but with a temporarily reduced number of facilities.

**SFF Graduation Criteria Remains the Same:** All of the criteria for a nursing facility to graduate from the SFF program will remain the same (i.e., two consecutive standard surveys with no deficiencies cited at a Scope and Severity (S/S) greater than “E” and no intervening

complaints with a S/S greater than “E”). In addition the facilities may not graduate if there is any Life Safety Code (LSC) deficiencies of a S/S of a “G” or greater.

**Determination of Nursing Facility Improvement:** Throughout this memorandum, we reference that CMS and the State Survey Agency (SA) will determine the extent to which the nursing facility’s quality of care has improved. In making this determination, individuals may reference CMS’ guidance issued September 17, 2010 (S&C 10-32-NH). In this guidance, we define significant improvement in a nursing facility as the ability to demonstrate that its practices have resulted in no deficiencies with a S/S rating above an “E”. The nursing home must also be able to demonstrate in its practices that it systems in place to identify and correct all present as well as potential deficiencies.

**Programmatic and Operational Adjustments:** CMS and the SA will make the following policy and operational adjustments effective immediately:

**A. For Nursing Homes on the SFF list more than 18 months: Schedule a final “last chance survey for those facilities that have been in the SFF program for over 18 months and have failed to improve.** The scheduling of the survey may coincide with the next planned onsite survey, or be advanced in accordance with the extent to which SA monitoring continues to indicate a lack of significant progress. After discussion with the CMS Regional Office (RO), a Medicare termination notice may be issued if the onsite survey does not reveal appropriate improvement (i.e., there is a deficiency at a S/S of “F” or greater) unless there is a major new development that CMS concludes is very likely to eventuate in timely and enduring improvement in the quality of care or safety.

The summary above will be operationalized via the following steps:

1. Discuss progress: Before the initiation of the next survey the SA must discuss with the CMS RO, at a minimum, the following points to assess the extent to which the nursing facility has improved:
  - a. What other contact if any **occurred** with the facility besides the onsite surveys?
  - b. Is there a pattern of repeat deficiencies since the nursing home became a candidate and was selected as a SFF?
  - c. What if any progress towards improvement has the nursing home accomplished, and what evidence do you have indicating **it** can sustain improvement?
  - d. Based on the SA’s interviews with nursing home staff responsible for Quality Assurance, has the facility instituted a system to address all present and potential deficiencies?

If the nursing facility had a S/S of “E” or below in its last standard survey, the facility is considered to have made improvement and would not move to the “last chance” survey as described in Step 2. If any subsequent survey indicates a **deficiency at** an “F” or higher for these facilities, the SA would then move to Step 2 at that time.

If the nursing facility had a S/S finding of “F” or greater in its last standard survey, move to step 2 to schedule the “last chance” survey.

2. Schedule a “last chance” onsite survey: The scheduling of **this full** survey may coincide with the next planned onsite survey, or be conducted earlier in accordance with the extent to which SA monitoring continues to indicate lack of significant **improvement**. If a complaint allegation requiring an onsite survey arises before the “last chance” onsite, it is advised to move up the “last chance” onsite so the complaint survey can be rolled into a full survey. The SA is not required to seek advance permission for moving the survey up, but must communicate with the RO when the survey will occur. All surveys **must** be unannounced. CMS does not expect that providers would specifically be notified of an upcoming “last chance” survey. However, CMS and the SA may reference in communications with providers the information contained in S&C 13-23-ALL (“FY2013 Sequestration Adjustments for Survey & Certification (S&C) which is already publicly-available.
  - a. If the “last chance survey” **results in** a deficiency with a S/S findings of “E” or less: No more than ten days from the exit date of the “last chance” survey and before the 2567 is issued to the facility, for that visit it must be reviewed by CMS RO on a conference call to determine if a 6 month termination letter would be issued, or if another remedy such as a directed plan of correction, temporary manger, or Systems Improvement Agreement (SIA) would be warranted. **Deficiencies at Scope and Severity level A, B, or C are still considered “substantial compliance”**. Based on the questions and answers from (A.1.a-d) and the past history that indicates a “yo-yo” performance, does the SA feel **confident** with the likelihood that the nursing home will be able to graduate on the next survey?
  - b. If the “last chance” survey indicates a deficiency with a S/S finding of “F” or greater: No more than ten days from the exit date of the “last chance” survey and before the 2567 is issued to the facility, it must be reviewed by CMS. There will be a joint conference call with the SA, Central Office (CO), and CMS RO who may work with their Division

of Quality Improvement to review the 2567 and any other information necessary to determine **when** termination will **occur following the time frames set forth in federal regulation (42 CFR 489.53)**. Generally, the finding of “F” greater indicates that there is not significant improvement, and a termination notice would be issued unless there is evidence of a major development that CMS concludes is very likely to eventuate in a timely and enduring improvement in the quality of care or safety (change of ownership, leadership).

If the nursing home is not issued a termination notice, the RO **must** use the available “enforcement **remedies/ options**” to establish an extensive quality improvement regimen for the facility to address the underlying issues (i.e., directed plan of correction, temporary manager, or SIA). This plan should also include onsite revisits to monitor that deficiencies have been corrected. With this extensive quality improvement regimen the RO will issue a 6 month termination notice.

For reference a Systems Improvement Agreement (SIA) is a legally binding agreement between CMS and the provider/supplier that requires the provider/ supplier to engage in a mandatory regiment of quality improvement that includes a root cause analysis of the systemic issues that are preventing the provider/supplier from attaining/maintain compliance, an action plan to address these issues, and ongoing reporting and communication with CMS. CMS only offers a provider/supplier an SIA under certain conditions and provider/supplier whose termination is imminent should not expect to be offered an SIA. The SIA is evaluated case by case with CO concurrence.

- B. For Nursing Homes on the SFF list for more than 12 months:** The SA must discuss with the CMS RO the survey history of the facility and develop a coordinated plan outlines further action to be taken by the SA and/or the RO. If it has not already occurred, part of this plan must include a conference call between the CMS RO, SA, and nursing home’s accountable parties (i.e. Administrator, Director of Nursing, Medical Director, Owner/Executive Officer of the Corporation if applicable) to address the seriousness of the SFF designation and the nursing facility’s plan to effectuate improvement.
- C. Replacement of SFF nursing home:** Until further notice do not select a replacement nursing home when a current SFF facility has been terminated from Medicare participation or has improved to the point of graduating from the SFF list, unless directed to do so by the CMS RO. For example, the RO may determine that a State may select a replacement if there are no other SFF nursing facilities in that state (i.e., all have graduated or have been terminated).

**Tracking Results of Programmatic Adjustments:** CMS CO routinely seeks SFF status updates from the ROs. We will be amending that worksheet to include additional fields that assist in tracking the status and resolution of the SFF facilities described in this memorandum.

**Effective Date:** Immediately. This policy should be communicated with all survey and certification staff, their managers and the State/Regional Office training coordinators within 30 days of this memorandum.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management