



Center for Clinical Standards and Quality/Survey & Certification Group

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DATE: November 13, 2015
TO: State Survey Agency Directors
FROM: Director
Survey and Certification Group

SUBJECT: Fiscal Year (FY) 2016 Minimum data Set (MDS) 3.0/Staffing Focused Surveys
****Revised to adjust State assignments. Due to the current budget constraints, revisions were made to adjust State assignments on the attachment for CA, FL, IL, OH, PA, and TX.****

Memorandum Summary

This memo provides specific details related to the MDS 3.0/Staffing Surveys for FY 2016:

- In November 2015, the Centers for Medicare & Medicaid (CMS) *sent* a list of candidate facilities to States for them to start scheduling and conducting surveys. A copy of the candidate lists *was sent* to the applicable CMS Regional Office (RO).
- In the Spring 2016, CMS will release a revised survey process and send new lists to States.
- States may choose to conduct surveys in the facilities that are on the first list sent in November, or wait until the new process and lists are sent out in the Spring of 2016.
- For States that choose to begin conducting their surveys prior to a new process being rolled out, States must use the existing survey process and protocols (“as-is” with no changes).
- The minimum number of required surveys to be completed by each State is included in the Attachment.
- Clarifications related to transferring cases for enforcement are included in this memo.

Background

In FY 2015, CMS rolled out the MDS 3.0/Staffing Focused Surveys nationwide. These surveys focused on assessing facility MDS coding practices as compared to the residents’ medical record and actual health status. These surveys also included a review of facility compliance with the requirements for nurse staffing posting.

FY 2016 Update

These focused surveys will continue to be conducted throughout FY 2016, and States are required to complete the number of surveys as noted in the Attachment by September 30, 2016. We are taking a number of steps to enhance the process such as soliciting feedback from States and Regional Offices (ROs) (conference calls, emails, web-based survey), analyzing the survey findings as uploaded into CASPER, and analyzing the survey worksheets submitted by the survey teams. After conducting these steps, we intend to alter the survey process to increase efficiency and effectiveness. We expect this process to take three to four months.

Additionally, the most common request CMS has received from States is that they would like to receive a list of candidate facilities to survey as soon as possible, so that they can begin completing the required surveys as early as possible. With this in mind, we are providing the following information:

- In November 2015, CMS *sent* a list of candidate facilities to States for them to start scheduling and conducting surveys. A copy of the candidate list *was also sent* to the applicable CMS RO.
- In early Spring 2016, CMS intends to release a revised survey process and send new lists to States.
- States may choose to conduct surveys in the facilities that are on the first list sent in November, or wait until the new process and lists are sent out in the Spring. CMS has no position on when a State conducts their required surveys, just that they are completed by September 30, 2016. However, we recommend spreading out the surveys over the year. States should select facilities that did not receive a MDS 3.0 Staffing Focused Survey in FY 2015.
- For States that opt to begin conducting their surveys prior to a new process being rolled out, States must use the existing survey process and protocols per the training provided (“as-is” with no changes). For example, the MDS 3.0/Staffing Focused Surveys must be conducted independent of the annual recertification survey, and shall not be combined with complaint surveys.
- States are to email their MDS 3.0/Staffing survey schedules to MDSStaffingSurvey@cms.hhs.gov and send a copy of the schedule to the applicable CMS RO.
- If a State would like to substitute a facility on their candidate list with a facility that they have concerns about, please send an e-mail to MDSStaffingSurvey@cms.hhs.gov with a copy to the CMS RO. CMS supports States’ efforts in this regard.
- MDS 3.0 surveys conducted by CMS CO contractors do not count towards the total number of surveys listed in the Attachment. Contract MDS 3.0 surveys are additional surveys. State Agencies and CMS ROs will be notified of any contract surveys conducted in their states.

Survey Process and Training

The surveys are designed to be conducted by two surveyors over approximately two days onsite (with additional time for pre/post activities). As with the previous year, States will need to maintain at least three surveyors who have completed the training. At least one of the onsite (primary) surveyors must be a Registered Nurse. Another one of the three surveyors trained should be a supervisor. However, the supervisor does not need to be one of the onsite surveyors. States should provide the names of the supervisors to CMS RO. Also, ROs should allocate at least one individual to complete the training and serve as a point of contact for States and CMS Central Office (CO). Staff who are currently trained do not need to retake the training, however, States may opt to have more surveyors trained to conduct these surveys. Training can be found at:

https://surveyortraining.cms.hhs.gov/pubs/ClassInformation.aspx?cid=0CMSMDSSTAFFFOCUSurvey_ONL

We are also providing the following updates to the survey process:

- With the addition of the special survey types in ASPEN 10.2, States will now create survey shells using the MDS survey type in ACO / ARO.
- States and ROs should follow their normal procedures for sending out survey findings to facilities.
- At minimum, any surveys with findings of an “E” level deficiency or higher are to be transferred to the RO for enforcement consideration based on the guidance below. At their discretion, ROs may also request other surveys to be transferred for enforcement consideration.
- For processes related to accepting plans of correction, Informal Dispute Resolution /Independent Informal Dispute Resolution, or other issues, States and ROs should use their discretion and processes they would normally follow.

States are not required to complete a separate CMS Form 435 for MDS targeted surveys – all costs related to such surveys should be included on the main CMS Form 435 report. State Agencies (SAs) must notify CMS CO via the dedicated mailbox MDSStaffingSurvey@cms.hhs.gov of the name(s) of the nursing home surveyed, city, state, CMS certification number (CCN) and survey dates.

Survey documents that are marked as confidential are not to be distributed to facilities or other parties, and are to remain strictly confidential. Additionally, the number of surveys to be conducted should not be disclosed and all of these surveys are to be unannounced. CMS may take corrective action, including the imposition of civil money penalties, for individuals in noncompliance with this requirement in accordance with 42 CFR §488.307.

Enforcement Guidance

Following State Agency (SA) quality assurance review, States shall transfer MDS 3.0/Staffing surveys to the CMS RO per the guidance above. Deficiencies identified during the surveys will result in relevant citations and enforcement actions in accordance with normal and existing CMS

policy and regulations. We note that the CMP tool does not currently address the potential findings from these focused surveys. Therefore, we are providing guidance to consider for deficiencies related to the foci of these surveys (F272 - F287, F353 – F356). The CMS RO shall review the Form CMS-2567, the State Agency’s recommendation, and the history of the nursing home in determining the appropriate enforcement remedy. While we are not mandating enforcement, we are requesting ROs strongly consider the following enforcement actions for deficiencies related to these surveys.

Level of Scope and Severity	Civil Money Penalty (CMP) Per Instance
“E”	\$2,000 - \$4,000
“F”	\$4,050 - \$8,000
“G”	\$8,050 - 10,000

In addition to these enforcement actions, a SA and RO may recommend and impose other enforcement remedies as allowable under statute, regulation, or policy. States and ROs may also consider the following information when determining final remedies or determining the CMP amount within the range for “E”, “F”, and “G” level deficiencies above:

- Previous noncompliance in the same areas (previous surveys with deficiencies for inaccurate coding or sufficient staffing);
- The degree of noncompliance with certain items (e.g., assessment coding that is very inaccurate);
- The number of deficiencies in other areas related to the foci of these surveys (e.g., deficiencies cited for pressure ulcers under F314 in conjunction with inaccurate pressure ulcer coding could warrant a CMP on the higher end of the range).

Assessing Regulatory Compliance

These surveys will focus on assessing compliance with the regulations listed below. We note that facilities are also subject to an assessment of compliance with any applicable regulations based on what surveyors identify during the investigatory process.

MDS Assessment Compliance

The CMS regulations for the Resident Assessment Instrument, including the MDS 3.0 and the Care Area Assessments (CAAs) are found at 42 CFR 483.20, and the guidance is found in Appendix PP of the State Operations Manual (SOM) at F-Tags F272 through F287. These requirements apply to all residents in Medicare and/or Medicaid certified nursing homes. These regulations relate to MDS assessment accuracy (42 CFR 483.20(g) *Accuracy of Assessment*) as well as completion and timing (42 CFR 483.20(b) *Comprehensive Assessments* and 42 CFR 483.20(c) *Quarterly Review Assessment*). In 42 CFR 483.20(i) *Certification*, CMS requires that each individual who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment and that a registered nurse (RN) must sign and certify that the assessment is completed. Federal regulations state at 42 CFR 483.20(j) *Penalty for Falsification* that those who falsify assessments are subject to civil monetary penalties. Additionally, when

such patterns or practices are noticed, they should be reported by the State Agency to the proper authority (for example, the Center for Program Integrity – CPI).

Staffing Compliance §483.30 Nursing Services

The facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care. 42 CFR §483.30(e) describes specific requirements for the posting of nurse staffing information. The guidance is found in Appendix PP of the SOM at F-Tags F353 to F356.

All other areas identified during the survey process that show regulatory noncompliance will also be cited under the appropriate regulatory group.

In the event that additional care concerns (beyond the MDS and staffing foci of this focused survey) are identified during on-site reviews, those concerns should be investigated during the survey or, if immediate investigation is not possible, registered with the SA as a complaint for further review as soon as possible.

Survey Monitoring and Management:

Monitoring the status of the MDS 3.0/Staffing Focus Surveys in FY 2016 is the joint responsibility of State Agencies, CMS ROs, and CMS CO. To assure completion of the required number of surveys by September 30, 2016, please include the CMS RO on all communications related to these surveys. If a State has concerns on their ability to meet the September 30, 2016 deadline, please email MDStaffingSurvey@cms.hhs.gov along with a copy to the CMS RO.

We sincerely appreciate everyone's efforts related this initiative. Early analysis of the MDS 3.0/Staffing Survey findings indicates that States were very effective at identifying issues and noncompliance. This aids in ensuring the data publicly posted for nursing home is accurate and that residents' needs are being identified and met.

Contact: For questions on this memorandum related to the MDS 3.0/Staffing Focused Survey, please email MDStaffingSurvey@cms.hhs.gov or consult with your CMS RO.

Effective Date: Immediately. The information contained in this memorandum 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

Attachment- MDS 3.0 / Staffing Focused Surveys Minimum State Assignments

cc: Survey and Certification Regional Office Management