



Center for Clinical Standards and Quality/Survey & Certification Group

Admin Info: 15-24-NH

DATE: March 27, 2015

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: National Rollout of Minimum Data Set (MDS) 3.0 Focus/Staffing Surveys

Memorandum Summary

Nationwide rollout of MDS 3.0 Focus/Staffing Surveys: This memo provides specific details related to the national rollout of the MDS 3.0 Focus/Staffing Surveys:

- Surveys will be rolled out in two phases with Regions and States assigned to one of two groups:
 - Phase 1 will consist of States in Regions 3, 4, and 5.
 - Phase 2 will consist of States in all other Regions (1, 2, 6, 7, 8, 9, and 10).
- Web based Training for the surveys will occur on the following schedule:
 - Phase 1 training will begin April 13, 2015.
 - Phase 2 training will begin May 13, 2015.
- Surveys are expected to begin no later than 30 days after training starts.
- The minimum number of required surveys to be completed by each State is included in Attachment #1. We note that States may conduct more than the minimum number, and the Centers for Medicare & Medicaid Services (CMS) will conduct additional surveys through contractor support.
- These surveys focus on compliance with MDS accuracy and staffing regulations.
- Enforcement guidance will be provided for deficiencies related to these surveys.

Background

In 2014 the CMS, together with five volunteer States, piloted a short-term focused survey to assess Minimum Data Set, Version 3.0 (MDS 3.0) coding practices and their relationship to resident care in nursing homes. We appreciate the work of the five States that volunteered to conduct these surveys and provide us with useful feedback (MD, PA, VA, IL, and MN). Each of the five States dedicated at least two surveyors to the effort, plus the State Resident Assessment Instrument (RAI) Coordinator. Each State completed five Surveys which were each conducted over approximately two days.

After completing the pilot, the CMS announced that these surveys would be conducted nationwide in 2015 (see S&C 15-25-NH). The surveys are also being conducted in conjunction with CMS' efforts strengthen the Nursing Home Five-Star Quality Rating System (see press

release at <http://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2014-Press-releases-items/2014-10-06.html>).

Nationwide Survey Rollout

These surveys will be rolled out in two phases with Regions and States assigned to one of two groups:

- Phase 1 will include States in Regions 3, 4, and 5.
- Phase 2 will include States in Regions 1, 2, 6, 7, 8, 9, and 10.

States will be asked to provide a primary contact to CMS to communicate information related to these surveys. If a State in Phase 2 would like to begin training and surveys earlier (e.g., for scheduling purposes), please contact MDSStaffingSurvey@cms.hhs.gov.

Surveyor Training

The surveys are designed to be conducted by two surveyors over approximately two days onsite (with additional time for pre/post activities). The training timeframe for each phase is as follows:

- Phase 1 training will begin April 13, 2015.
- Phase 2 training will begin May 13, 2015.

States will need to allocate at least three surveyors to complete the training (e.g., two primary surveyors and one alternate). 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 name of the supervisor to Regional Offices. Also, Regional Offices should allocate at least one individual to complete the training and serve as a point of contact for States and CMS Central Office.

Upon completion of the training, surveyors will be required to complete a post-test to ensure comprehension of the survey process. Questions about the training can be submitted to the survey mailbox MDSStaffingSurvey@cms.hhs.gov. The CMS will ensure that surveyor training will remain accessible throughout the survey period. Additionally, in contrast to the pilot, these surveys do not need to be conducted by State RAI Coordinators. We restructured the survey so that it would not be dependent on the use of State RAI Coordinators in every survey. Such restructuring enables the survey to be more scalable and decreases the burden on States.

Training will be provided via recorded webinars so surveyors will be able to complete their training at a time that fits within their schedules. The total time needed for training is expected to be approximately two hours. To complete the training, surveyors need to log on to the surveyor training website starting on the dates listed above for their respective phase. Surveyors will have 30 days from the dates listed above to complete their training. Support will be provided for questions and technical assistance for surveyors throughout the training and survey period. The CMS will also host live Question and Answer (Q&A) sessions throughout the training and survey period. Call-in information for these sessions will be included in the training materials.

Facility Selection and Quantity of Surveys to be Completed by Each State

Attachment #1 contains the information regarding the minimum number of facilities to be surveyed per state. States may conduct more than the minimum number, and CMS will work with a contractor to supplement States' efforts to conduct surveys. States will receive supplemental funds to their Medicare allocation to conduct these surveys. States will receive a list of facilities from CMS to choose from to conduct the surveys.

- Surveys for Phase 1 should begin by May 13, 2015.
- Surveys for Phase 2 should begin by June 13, 2015.

All surveys must be completed by September 30, 2015. We note that these surveys are a Tier 2 Priority for survey activities. If a State has concerns on their ability to meet this deadline, please contact MDStaffingSurvey@cms.hhs.gov.

These focused surveys may not be combined with a standard recertification survey. However, these surveys may be done immediately before or after a complaint survey while the surveyors are onsite. In these cases, each survey must be completed and documented separately, and surveyors will still need to follow the focused survey process as instructed through the training.

Survey Process and Materials

The CMS will distribute specific documents to be used to complete these surveys. These include process documents, form letters, training materials, worksheets, and other guidance. While some of these documents are intended to be shared with facilities, others are not. 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. The 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.

These surveys will be treated as complaint surveys with an intake into the ASPEN Complaint Tracking System (ACTS) to allow it to be uploaded into the national database. In July 2015, the survey type in ASPEN will be changed to allow for these surveys to be designated as MDS/Staffing Focused Surveys. We will communicate updated procedures at that time.

State Agencies (SAs) shall forward all findings from these surveys to the Regional Office. Additionally, after a survey is completed, surveyors will email some of the supplemental documents to CMS and its contractor for supplemental analyses. The training modules will describe this process in more detail.

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. SAs must notify CMS CO via the dedicated mailbox MDStaffingSurvey@cms.hhs.gov of the name(s) of the nursing home surveyed, city, state, CMS certification number (CCN) and survey dates.

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 RAI, 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 Page 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.

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. To assure that sufficient qualified nursing staff are available on a daily basis to meet residents' needs for nursing care in a manner and in an environment which promotes each resident's physical, mental and psychosocial well-being, thus enhancing their quality of life. Also, §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.

Enforcement in Accordance with Existing CMS Policy and Regulations

While MDS coding may seem like an administrative task on the surface, it is actually a core component of nursing home care and assurance of quality. The MDS tool is instrumental in the identification and assessment of residents' status and needs that are to be addressed in individualized care plans. Therefore, inadequate coding may reflect inadequate resident assessment, and inaccurate coding can lead to inadequate care plans. Such deficiencies can potentially lead to harm or prevent a resident from reaching his/her highest practical well-being.

As indicated earlier in this memo, State Agencies will forward all findings to the CMS Regional Office for appropriate action. The State Survey Agency may recommend mandatory, discretionary, or alternative remedies. The Regional Office will implement the appropriate enforcement remedy(ies) based on the level of identified non-compliance with the Federal

participation requirements and following section 7304 of Chapter 7 in the State Operations Manual (SOM) regarding criteria for Opportunity to Correct deficiencies before remedies are imposed. In addition to other criteria noted in section 7304, be advised that facilities having noncompliance against which a per instance civil money penalty (CMP) was imposed will not be given an opportunity to correct the noncompliance associated with a per instance CMP (i.e., each tag for which the per instance CMP is used).

Deficiencies identified during the surveys will result in relevant citations and enforcement actions in accordance with normal and existing CMS policy and regulations. Section 7400 of Chapter 7 in the SOM provides guidance and policies related to the selection of enforcement remedies. This includes policies and guidance for imposing required and optional remedies, including CMPs, for each level of deficiency. Regulations for the selection of remedies are found at 42 CFR §488.404, and for CMP amounts at 42 CFR §488.438. We note that the CMP tool does not currently address the potential findings from these focused surveys. We are also providing examples below for potential remedies to consider for three types of deficiencies related to the foci of these surveys (F272 - F287, F353 – F356). This does not preclude remedies for other deficiencies at other levels of scope and severity, and the CMP tool should still be used for those cases if a CMP is selected as a remedy.

| 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 |

These examples are allowable and consistent with the instructions in the SOM. However, this does not prohibit a State Agency and Regional Office from recommending and imposing other allowable enforcement remedies, as they normally would. States and Regional Offices may also consider the following information when determining final remedies (for example, the CMP amount within the range for “E”, “F”, and “G” level deficiencies):

- 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 vs. slightly off);
- 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).

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.

For questions on this memorandum related to the MDS / Staffing Focused Survey, please email MDSStaffingSurvey@cms.hhs.gov or consult with your CMS Regional Office.

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