



Center for Clinical Standards and Quality/Survey & Certification Group

Ref: S&C: 15-06-NH

DATE: October 31, 2014

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Nationwide Expansion of Minimum Data Set (MDS) Focused Survey

Memorandum Summary

MDS / Staffing Focused Surveys: In mid-2014, the Centers for Medicare & Medicaid Services (CMS) piloted a short-term focused survey to assess Minimum Data Set, Version 3.0 (MDS 3.0) coding practices and its relationship to resident care in nursing homes in five states. CMS will expand these surveys in 2015 to be conducted nationwide.

Reported Staffing: The scope of some or all of the focused surveys will also be expanded to include an assessment of the staffing levels of nursing facilities. This assessment will aim to verify the data self-reported by the nursing home, and identify changes in staffing levels throughout the year.

Background

Federal regulations for the Resident Assessment Instrument (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. The regulations relate to 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). The regulation 42 CFR 483.20(i) Certification, requires each individual who completes a portion of the assessment to sign and certify the accuracy of that portion of the assessment, and a registered nurse (RN) must sign and certify that the assessment is completed. The regulation at 42 CFR 483.20(j) Penalty for Falsification states 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 (SA) to the CMS Regional Office (RO) and CMS Central Office (CO).

The primary purpose of the resident assessment and MDS 3.0 is to serve as the clinical basis for individualized care planning and delivery of person-centered care. CMS recognizes that the MDS 3.0 also impacts resource utilization group (RUG) scores and associated Medicare and, in

some cases, Medicaid payment rates, quality monitoring, and more. In addition to being used for quality monitoring through survey activities and facility quality assurance, MDS 3.0 data forms the basis for the facility's quality measures (QMs), including the subset of the publicly-reported measures used in the *Five-Star Quality Rating System* on the *CMS Nursing Home Compare* website. Assessment accuracy has a critical role in all of the aforementioned outputs. The assessments are paramount to optimizing person-centered care planning and to ensuring each resident is able to attain or maintain the highest practicable physical, mental, and psychosocial well-being.

In the 2013 report, *Skilled Nursing Facilities Often Fail To Meet Care Planning and Discharge Planning Requirements*, the Office of Inspector General (OIG) reported that for 37 percent of stays, Skilled Nursing Facilities (SNF) did not develop care plans that met requirements, or did not provide services in accordance with care plans. In addition, for 31 percent of stays, SNFs did not meet discharge planning requirements.¹ Earlier work by the OIG reported that assessment errors are common in nursing homes.^{2,3} In one report, the OIG stated, "SNFs reported inaccurate information, which was not supported or consistent with the medical record, on at least one MDS item for 47 percent of claims" reviewed in the study.³

The OIG reinforced CMS' conclusion that additional steps should be put in place to support the resident assessment process and accurate codification of information in the MDS. In mid-2014, the SAs and CMS piloted a short-term focused survey to assess Minimum Data Set, Version 3.0 (MDS 3.0) coding practices and its relationship to resident care in nursing homes in five states.

The pilot was completed in August 2014 and enabled surveyors (who received specialized training for these surveys) to review the nursing home resident assessment processes in more depth than the annual surveys. For example, findings from the surveys include inaccurate staging and documentation of pressure ulcers, lack of knowledge regarding the classification of antipsychotic drugs, and poor coding regarding the use of restraints. Deficiencies were identified and cited on all but one survey (i.e., 24 of 25 surveys). Therefore, since these surveys enhanced surveyors' ability to identify errors and deficiencies related to MDS coding and resident care, the surveys will be expanded nationwide in 2015.

Nursing Home Staffing

Similar to the need to verify the accuracy of MDS information, assessing the accuracy of information on the staffing of nursing homes is critical in order to assure that a facility has the sufficient nursing staff to meet the needs of the residents (42 CFR 483.30(a) Sufficient Staff). Chapter 7 (section 7200) of the SOM states that skilled nursing facilities and nursing facilities must be in compliance with the requirements in 42 CFR Part 83, Subpart B to receive payment under Medicare or Medicaid, including the completion of the standard survey form CMS-671. This form requires facilities to list the type of staff working in the facility and the number of hours they worked. Surveyors collect this form per Task 2 of the survey process (SOM

¹ OIG, *Skilled Nursing Facilities Often Fail To Meet Care Planning and Discharge Planning Requirements*, OEI-02-09-00201, February, 2103.

² OIG, *Nursing Facility Assessments and Care Plans for Residents Receiving Atypical Antipsychotic Drugs*, OEI-07-08-00151, July 2012

³ OIG, *Inappropriate Payments to Skilled Nursing Facilities Cost Medicare More Than a Billion Dollars in 2009*, OEI-02-09-00200, November, 2012.

Appendix P). However, as this is only collected on the annual survey, we do not have information on how staffing levels may fluctuate throughout the year. Therefore, we intend to assess the staffing levels of nursing facilities by expanding the MDS focused surveys to review this information.

State Agencies to Conduct MDS/Staffing Focused Reviews

MDS/Staffing Focused Surveys will be conducted nationwide and the number of surveys conducted will vary from state to state. As with the pilot Focused Surveys conducted in 2014, States will be expected to allocate two surveyors for each survey, requiring an estimated 2 days on average. Surveyors will also need to complete and submit post-survey information to CMS or its contractor (e.g., questionnaire about the process and findings).

These Focused Surveys are expected to begin in early FY2015. CMS will work with States to determine how many surveys should be conducted, and when they should take place throughout the year. CMS will also collaborate with States to identify the specific facilities to be surveyed, and is developing both the survey protocol and tool for the States' to use. Record review, augmented by resident observations and staff and/or resident interviews, will be used by the surveyors to validate MDS 3.0 coding and staffing levels. Additionally, while on-site, the surveyors will ask a series of questions regarding staffing and MDS related practices of the facility staff, leadership, and others as appropriate.

Training

The information contained in this memorandum should be shared with appropriate survey and certification staff (including the State RAI Coordinator), their managers, and State and Regional Office training coordinators.

CMS will provide a mandatory half day web-based training for the SA staff conducting reviews as well as one manager or trainer within the SA, prior to initiating the surveys. CMS will also work with States to provide the support necessary to conduct the surveys. In addition, on-going phone and email support will be available while SAs are conducting the reviews.

Supplemental Funds Available

States will receive supplemental funds to their Medicare allocation. CMS will issue further guidance to States shortly.

Enforcement Implications

The MDS 3.0 inaccuracies and insufficient staffing noted during the survey will result in relevant citations, including those related to quality of care and/or life, or nursing services. If patterns of inaccuracies are noted, the case will be referred to the CMS RO and CO for follow-up. In the event that care concerns are identified during on-site reviews, the concerns may be cited or referred to the SA as a complaint for further review.

Next Steps: For questions on this memorandum, please contact Shelly Ray or Marianne Culihan via email at MDSFORSandC@cms.hhs.gov. We are issuing this memorandum for State

planning purposes, to be followed by information on the training. We will work with each State to address unique State issues.

Effective Date: Immediately.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management