

# State Operations Manual

## Chapter 8 - Standards and Certification

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(Rev. 1, 05-21-04)

### Table of Contents

#### **State Performance Standards**

8000 - State Performance Standards

8000A - Introduction

8000B - Purpose

8000C - Definition of Inadequate State Survey Performance

8000D - Performance Standards Include, but Are Not Limited to the Following

8000E - Performance Measures

8000F - Performance Criteria

8000G - Available Sanctions/Remedies

8000H - Imposing Sanctions Other Than Federal Financial Participation  
Reduction

8000I - Reducing Federal Financial Participation for Pattern of Failure to Identify  
Deficiencies in Nursing Facilities

8000J - Federal Financial Participation Reduction Formula

8000K - Termination of the §1864 Agreement, in Whole or in Part

8000L - Informal Dispute Resolution

8000M - Appeal of Federal Financial Participation Reduction

## **State Performance Standards**

### **8000 - State Performance Standards**

**(Rev. 1, 05-21-04)**

#### **8000A - Introduction**

**(Rev. 1, 05-21-04)**

The [§1864 Agreement, Article II \(J\), §§1819 and 1919](#) of the Social Security Act (the Act); [Title 42 of the Code of Federal Regulations \(CFR\), Parts 488 and 489](#); and the State Operations Manual (SOM) contain the regulatory authority for the State Performance Standards and protocols. This section outlines the definition of inadequate survey performance, lists the performance standards as required in the §1864 Agreement, and explains CMS' evaluation process to determine if performance standards have been met. This section also sets out the sanctions available and the State's appeal rights, both formal and informal, when CMS has imposed sanctions.

#### **8000B - Purpose**

**(Rev. 1, 05-21-04)**

The sanctions described in subsection D represent two categories of enforcement responses. The first category is “remedies/alternative sanctions” which is intended to assist States in improving their survey and certification program performance. The second category is “sanctions” which would generally be employed after remedies/alternative sanctions have been tried and a State has not been successful in adequately performing its survey functions. The purpose of remedies/alternative sanctions and sanctions is to work with States having difficulty in correcting problems, resorting to reduction in funding and contract responsibilities only as a last resort.

#### **8000C - Definition of Inadequate State Survey Performance**

**(Rev. 1, 05-21-04)**

CMS considers survey performance to be inadequate if the State:

1. Demonstrates a pattern of failure to:
  - Identify deficiencies, and the failure cannot be explained by changed conditions in the facility or other case specific factors;
  - Cite only valid deficiencies (i.e., the State cites unfounded deficiencies);

- Conduct surveys in accordance with the requirements of this Chapter;
- Use Federal standards, protocols, and the forms, methods, procedures, policies and systems specified by CMS in instructions;
- Utilize enforcement actions to assure continued compliance;
- Input online data timely and accurately;
- Conduct surveys in accordance with required timeframes;
- Respond to complaints in accordance with requirements;
- Lead in the implementation by providers of Federally required patient assessment instruments or data sets; and/or
- Operate Federally required systems for the collection of patient assessment data.

2. Fails to identify an immediate jeopardy situation.

### **8000D - Performance Standards Include, but Are Not Limited to the Following**

**(Rev. 1, 05-21-04)**

1. Organization and staffing of the State survey agency to enable fulfillment of the functions required under the §1864 Agreement;
2. Surveys are planned, scheduled, conducted, and processed timely;

[42 CFR 488.307](#)

[SOM, Chapter 7, §7207.B.2](#)

[§§1819\(g\)\(2\)\(A\)\(iii\) and 1919\(g\)\(2\)\(A\)\(iii\) of the Act](#)

[42 CFR 488.308](#)

[§1891\(c\)\(2\)\(A\) of the Act](#)

[§1864\(c\) and 1865 of the Act](#)

[42 CFR 488.7](#)

3. Survey findings are supportable;

[42 CFR 488.318](#)

[Principals of Documentation of the SOM, Exhibit 7A](#)

4. Certifications are fully documented, and consistent with applicable law, regulations, and general instructions;

[§§1819\(g\)\(3\)\(A\) and 1919\(g\)\(3\)\(A\) of the Act](#)

5. Current written internal operating procedures and policies are consistent with program requirements;

6. A plan of correction is requested from a provider/supplier;

7. When certifying noncompliance, adverse action procedures set forth in regulations and general instructions are adhered to;

[§1819\(h\)\(2\)\(A\)\(1\) of the Act](#)

[§§1919\(h\)\(1\)\(A\) and 1919\(h\)\(3\)\(B\)\(1\) of the Act](#)

[§1866\(b\) of the Act](#)

[42 CFR 488.410](#)

[42 CFR 489.53](#)

8. Supervisory reviews and evaluations of surveyor performance are made routinely;

9. Required financial and budget reports are submitted on time and completed in accordance with general instructions;

[§§1864 and 1902 of the Act](#)

10. All expenditures and changes to the program are substantiated to the Secretary's satisfaction;

[§§1864 and 1902 of the Act](#)

11. Actual survey and certification activities are consistent with the annual activity plan and workload estimate approved by CMS;

12. The performance of agencies utilized to perform specific functions under this Agreement are monitored;

13. Ongoing surveyor training programs develop and maintain surveyor proficiency;
14. Results of complaint investigations against providers and suppliers are considered in making certification decisions;
15. Scope and severity decisions for nursing home deficiencies are accurate and supportable;
16. Updates, training, and technical assistance about patient assessment instruments/data sets are supplied to providers as appropriate;
17. Federally supplied hardware and software for the system to collect patient assessments/data sets are operated in accordance with instructions;
18. The conduct and reporting of complaint investigations is timely and accurate;

[SOM, Chapter 5](#)

[§1819\(g\)\(4\) of the Act](#)

[§1919\(g\)\(4\) of the Act](#)

[42 CFR 488.332](#)

Article II (A)(2) of the §1864 Agreement.

Article II (J) of the §1864 Agreement

19. Survey teams include surveyors with required qualifications and/or certifications;
20. Accurate and timely data is entered into online survey and certification data systems; and

Article II (J) of the §1864 Agreement

21. Information on certification findings is provided to the public as required in instructions.

## **8000E - Performance Measures**

**(Rev. 1, 05-21-04)**

The refinement of performance measures will occur as a function of field experience. CMS expects this to be a dynamic process and measures will not only need to be

reassessed in terms of actual experience, but also to reflect major program changes and/or areas of emphasis. Accordingly, One Time Notices will be issued, as needed, to communicate expectations and performance measures.

## **8000F - Performance Criteria**

**(Rev. 1, 05-21-04)**

All standards for **adequate** State performance will be measured against “threshold” criteria that may be expressed in quantifiable terms, or in some cases, narrative descriptors. Threshold criteria describe the point at which CMS will impose a sanction or remedy/alternative sanction on the State. By way of example, the threshold for failure to identify deficiencies could be expressed (quantified) as a 20 percent disparity rate between Federal and State deficiency citations on any given Federal Survey, or the failure of a State to identify any single (one) instance of “Immediate Jeopardy” would be another quantifiable threshold. An example of threshold criteria explained in narrative terms would be applied to the standard: “The State uses the results of complaint investigations in making certification decisions.” An appropriate descriptor in this instance could be: “State provider files do not reflect the appropriate documentation of complaints.”

## **8000G - Available Sanctions/Remedies**

**(Rev. 1, 05-21-04)**

CMS will take one or more of the following actions when there is inadequate State survey performance. When selecting remedies or sanctions, CMS will consider the degree of culpability of a State's ability to perform due to circumstances beyond the control of the State Governor.

1. Remedies/Alternative Sanctions:
  - a. Provide for training of survey teams;
  - b. Directed Quality Improvement Plan;
  - c. Provide technical assistance on scheduling and procedural policies;
  - d. Require the State to undertake improvements specified in a plan of correction;  
and
  - e. Provide CMS directed scheduling.
2. Sanctions:
  - a. Place State on compliance for failure to follow the Medicaid State Plan;

- b. Meet with the Governor and other responsible State officials;
- c. Reduce Federal financial participation for survey and certification of nursing facilities, as specified in subsections H and I; and
- d. Initiate action to terminate the agreement between the Secretary and the State under §1864 of the Act, either in whole or in part.

## **8000H - Imposing Sanctions Other Than Federal Financial Participation Reduction**

**(Rev. 1, 05-21-04)**

The regional office may use the results of Oversight and Monitoring survey activities, which include Federal monitoring surveys, Federal Observational and Support surveys, monitoring surveys, conducted through contractors, or focused Federal reviews to identify inadequate State performance. Generally, the regional office will consider that there is inadequate State survey performance when enough survey data have been analyzed to indicate that there is a systemic problem in some aspect of State performance. However, even a single failure to identify an immediate jeopardy situation will be considered inadequate State survey performance. The regional office will select one or more sanctions appropriate to the inadequacy, but may not select Federal financial participation reduction to respond to any inadequacy other than a pattern of failure to identify deficiencies in nursing facilities. The regional office will notify the State in writing of the sanctions it plans to impose and the reasons for their imposition.

## **8000I - Reducing Federal Financial Participation for Pattern of Failure to Identify Deficiencies in Nursing Facilities**

**(Rev. 1, 05-21-04)**

Federal financial participation will only be reduced when the State demonstrates a pattern of failure to identify or accurately classify deficiencies in nursing facilities. The Act does not allow for imposition of this sanction when the failure to identify or accurately classify deficiencies occurs in Medicare-only facilities when the nature of the inadequacy is anything other than a failure to identify deficiencies. The regional office should use the following process to determine whether a pattern of failure to identify deficiencies in nursing facilities exists:

1. After each Federal survey/review of a nursing facility (and of a dually participating facility), the regional office should calculate the percentage of the discrete tags that were identified by the regional office but that did not appear on Form CMS-2567. The regional office should average all percentages calculated in the State at the end of the each quarter of the fiscal year.

2. If the quarterly disparity rate is less than 20 percent, the regional office may impose those remedies and/or sanctions that do not result in a reduction of Federal financial participation.
3. If the quarterly disparity rate is greater than 20 percent in at least three of the last four quarters for which disparity rates were calculated, the regional office should confer with the State to seek the root causes of the disparities. The State will have the remainder of the quarter in which the root causes were identified as well as the succeeding quarter to correct the root causes. Federal surveys performed in the quarter following the correction period will ascertain whether the State has been successful.

If the Federal survey/review(s) yield a disparity rate of less than 20 percent, the regional office should not conclude that the State demonstrated a pattern of failure to identify deficiencies in nursing facilities and should not reduce Federal financial participation.

If the disparity rate is again greater than 20 percent, the regional office should advise the State that unless it can rebut the findings used to calculate the disparity rate, or can offer compelling reasons for the regional office to excuse the rate, the regional office intends to consider there to be a pattern of failure to identify deficiencies in nursing facilities, and to reduce the Federal financial participation made to the State during this quarter of the fiscal year as it is the quarter in which the determination of inadequate State survey performance is actually made. The regional office will calculate the amount of the Federal financial participation reduction in accordance with subsection G, and will forward this information to the Center for Medicaid and State Operations, Central Office, for processing.

## **8000J - Federal Financial Participation Reduction Formula**

**(Rev. 1, 05-21-04)**

To calculate the reduction in the Federal financial participation made to the State under §1903(a)(2)(D) of the Act for the survey and certification of nursing facilities, the regional office uses the formula specified in §1919(g)(3)(C) of the Act, which is 33 percent multiplied by a fraction:

1. The numerator of which is equal to the total number of Medicaid residents in those nursing facilities that CMS found to be noncompliant during validation surveys in the quarter, but that the State found to be in substantial compliance; and
2. The denominator of which is equal to the total number of Medicaid residents in all of the nursing facilities (in the State) in which CMS conducted validation surveys during the quarter.

**NOTE:** For the purposes of the formula, only Federal Oversight and Support Surveys will be considered “validation surveys.” Only Medicaid beneficiaries in the nursing facilities are counted; private pay residents are excluded.

**EXAMPLE:** The regional office reduces a State's Federal financial participation for the first quarter of the fiscal year as a result of its failure to demonstrate during this quarter that it had remedied the root causes of failures to identify deficiencies that the regional office directed the State to correct two quarters ago.

The regional office conducted two Federal Oversight Support Surveys to evaluate the success of the State's corrective efforts during this quarter, one in a nursing facility with 100 Medicaid residents, and one in a skilled nursing facility/nursing facility with 90 Medicaid and 20 Medicare residents.

The regional office found the skilled nursing facility/nursing facility out of compliance while the State found it in substantial compliance. The regional office's compliance decision matched the State's in the nursing facility.

The regional office would reduce the State's Federal financial participation for the quarter by the following percentage:

$$\frac{.33}{100} \times \frac{90}{90} = \underline{16\%}$$

In this case, the numerator of the multiplier would be the number of Medicaid residents in the skilled nursing facility/nursing facility (90), because this is the one facility containing Medicaid residents that the State incorrectly found to be in substantial compliance. The denominator would be the number of Medicaid residents in both the nursing facility and skilled nursing facility/nursing facility (100+90), because these are the two facilities containing Medicaid residents in which Federal Oversight Support Surveys were conducted during the quarter. The number of Medicare residents in the skilled nursing facility/nursing facility does not figure into the calculation at all.

## **8000K - Termination of the §1864 Agreement, in Whole or in Part**

**(Rev. 1, 05-21-04)**

The §1864 Agreement may be terminated at any time by mutual written consent of the parties to the Agreement. States may terminate the Agreement at any time upon 180 days written notice to CMS. If CMS determines that the State is not able or willing to carry

out part or all of the functions under this Agreement (including a determination that the State has fails to meet the performance standard(s) detailed in [Section D](#)), CMS may unilaterally terminate the Agreement in whole or in part or otherwise limit or decrease its scope.

### **8000L - Informal Dispute Resolution**

**(Rev. 1, 05-21-04)**

In the regional office's notice to the State of its determination of inadequate State survey performance and its intent to impose sanctions, the regional office will offer the State an opportunity to dispute the determination. The State must submit its request in writing along with information that refutes the apparent inadequacy. The informal dispute resolution process will be conducted by one level above the decision-maker. When sanctions are imposed as described in [G.2 of this section](#), a State is entitled to Consortium Administrator review.

### **8000M - Appeal of Federal Financial Participation Reduction**

**(Rev. 1, 05-21-04)**

When a State is dissatisfied with CMS' determination to reduce Federal financial participation, the State may appeal the determination to the Departmental Appeals Board, using the procedures specified in [45 CFR Part 16](#).