



Center for Clinical Standards and Quality

Ref: QSO-22-12-ALL

DATE: February 9, 2022

TO: State Survey Agency Directors

FROM: Directors
Quality, Safety & Oversight Group (QSOG) and Survey & Operations
Group (SOG)

SUBJECT: State Obligations to Survey to the Entirety of Medicare and Medicaid Health and Safety Requirements under the 1864 Agreement

Memorandum Summary

- The 1864 Agreement is the agreement between CMS and the State survey agency to carry out the provisions of Sections 1864, 1874, and related provisions of the Social Security Act (Act). This 1864 Agreement specifies the functions to be performed by the State. The requirements for survey and certification procedures are provided in 42 CFR Part 488.
- Specifically, under Article II, A.1.(c), the State duties include “surveying for the purpose of certifying to the Secretary the compliance or non-compliance of providers and suppliers of services and resurveying such entities, at such times and manner as the Secretary may direct.”
- CMS, as delegated by the Secretary, designates the content of the survey process to be followed by States.

Background

The Department of Health and Human Services entered into agreements with States under Section 1864 of the Act. Each 1864 Agreement stipulates the functions of the State to, among other things, certify whether or not providers and suppliers within the state comply with all applicable definitions and requirements under the Act and implementing regulations. See 42 CFR 488.11. Specifically, the State is responsible for “surveying for the purpose of certifying to the Secretary the compliance or non-compliance of providers and suppliers of services and resurveying such entities, at such times and manner as the Secretary may direct.” (Article II.A.1(c)) Furthermore, in making such certifications (as defined in §488.1), each state must apply the appropriate Conditions of Participation, Conditions for Coverage, and Requirements for Participation in accordance with CMS regulations and instructions.

CMS allocates funding to each state for the reasonable costs of performing the functions specified in the 1864 Agreement and for Medicare’s fair share of costs related to Medicare facilities. The process for CMS to make these awards are described within the agreement and the State Operations Manual.

States that fail to perform survey and certification functions in a manner sufficient to assure the CMS of the full certification of compliance with all Conditions of Participation, Conditions for Coverage, and Requirements for Participation for providers and suppliers, may, among other things, receive a revised Survey and Certification budgetary allocation. The Medicare and Medicaid certification of providers and suppliers in a State whose oversight process is substantially deficient may be jeopardized if CMS cannot ensure that the regulatory minimum health and safety standards have been met. Also, CMS will provide additional information to providers in such states clarifying the expected process to demonstrate compliance with federal requirements.

Discussion

CMS has consistently worked with states to identify and mitigate State Performance and/or resource issues. However, a state that unilaterally acts to reduce or suspend survey and certification activities in a manner inconsistent with the Act, regulations and Secretary's direction does not support their full budgetary Survey and Certification allocation as federal oversight activities would be added to ensure compliance with the minimum standards.

In making the Survey and Certification budgetary allocation, CMS may, among other things, adjust the amount allocated to States that refuse to survey and certify compliance with all applicable Medicare and Medicaid health and safety regulations. These state allocations would be reduced for the current fiscal year and each successive year until the state resumes full oversight of the entirety of Medicare and Medicaid regulations. These funds would be used by CMS to support federal oversight alternatives in the state (including contractor support) to safeguard the health and safety of those receiving care from Medicare and Medicaid certified providers and suppliers. The scope of the allocation reduction will be commensurate with the impact of the State actions and the federal resources needed to provide appropriate oversight of providers and suppliers.

Despite a decision by a State Survey Agency to restrict their compliance reviews, Accrediting Organizations with deeming authority are required to continue surveying for compliance with all Medicare and Medicaid regulations.

Medicare and Medicaid certified providers and suppliers within every State continue to be responsible for compliance with the federal requirements for all Conditions of Participation, Conditions for Coverage, and Requirements for Participation.

Individuals with a quality of care complaint related to a Medicare or Medicaid health and safety regulation that the state is not surveying for may contact the CMS location, directly, at the email below:

- ROATLHSQ@cms.hhs.gov : Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
- RODALDSC@cms.hhs.gov : Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
- ROPHIDSC@cms.hhs.gov : Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia, New York, New Jersey, Puerto Rico, Virgin Islands, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

- ROCHISC@cms.hhs.gov : Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.
- ROkcmSCB@cms.hhs.gov: Iowa, Kansas, Missouri, and Nebraska.

- DenverLTC@cms.hhs.gov: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

- ROSFOSO@cms.hhs.gov : Alaska, Idaho, Oregon, Washington, Arizona, California, Hawaii, Nevada, and the Pacific Territories.

Contact:

States should contact their CMS Location for any questions.

Effective Date: This policy should be communicated with all survey and certification staff, their managers, and the State/CMS Location training coordinators immediately. The effective dates of the specific actions are specified above.

/s/

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David R. Wright
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cc: Survey and Operations Group Management