

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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Center for Clinical Standards and Quality/Quality, Safety & Oversight Group

Ref: QSO-23-01-NH

DATE: October 21, 2022

TO: State Survey Agency Directors

FROM: Director, Quality, Safety & Oversight Group (QSOG)

SUBJECT: Revisions to Special Focus Facility (SFF) Program

Background:

Sections 1819(f)(8) and 1919(f)(10) of the Social Security Act require CMS to conduct a Special Focus Facility (SFF) program which focuses on nursing homes that have a persistent record of noncompliance leading to poor quality of care. CMS' SFF program requires the persistently poorest performing facilities selected in each state to be inspected no less than once every six months and that increasingly severe (progressive) enforcement actions are taken when warranted. CMS expects that selected facilities will rapidly make and sustain improvements so that they graduate from the program.

While the SFF program has helped facilities improve their compliance and quality, there are some facilities that have not seen the same results. Some facilities fail to demonstrate the improvements needed to graduate from the program and can therefore remain in the program for a prolonged period of time. Additionally, there are some that graduate from the program only to see their compliance and quality regress later (commonly known as "yo-yo" noncompliance). Both of these scenarios place nursing home residents' health and safety at risk. Therefore, CMS is revising the SFF program to protect and improve the quality of care that residents living in these facilities receive. This action is being taken as part of the Administration's priority to improving the safety and quality of care in nursing homes, as outlined in a [White House Fact Sheet](#). These changes aim to address facilities remaining in the SFF program for too long and facilities with "yo-yo" noncompliance after graduating. Additionally, because of the importance of nursing home staffing, CMS is informing State Survey Agencies (SAs) to consider a facility's staffing levels data when selecting SFFs from the SFF candidate list.

SECTION I: SFF CANDIDATE LIST

Each SA selects new SFFs from a list of candidates that CMS issues monthly. The number of nursing homes on the candidate list is based on five candidates for each SFF slot in a state, with a minimum candidate pool of five nursing homes and a maximum of 30 per

State. A list of the number of SFF slots and candidates by State is included in Appendix A.

Note: The number of SFFs (88) is based on the amount of funding received to conduct standard health surveys once every six months in these facilities (which is approximately twice the frequency of other nursing homes).

Nursing homes are identified as SFF candidates based on their last three standard health survey cycles and the last three years of complaint survey performance. Each facility is given a numerical score based on the health inspection rating methodology (facilities with the worst scores in a state become candidates). More information about this methodology can be found at <https://www.cms.gov/medicare/provider-enrollment-and-certification/certificationandcompliance/downloads/usersguide.pdf>.

CMS informs SFF candidates of their inclusion on the SFF candidate list in the monthly preview of the *Five-Star Quality Rating* updates. CMS will continue to provide the monthly *Five-Star Quality Rating* preview to nursing home providers via their electronic connection to their state servers for submission of Minimum Data Set (MDS) data. Providers must log into the CASPER (Certification and Survey Provider Enhanced Reports) System to retrieve their preview, as described in policy memorandum S&C 09-17 available on the CMS website at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/SCLetter09-17.pdf>

To inform consumers of the serious quality issues that exist with SFFs, CMS does not display star ratings for SFFs on the Care Compare website. Instead, these facilities are identified with an icon and text that indicates their status as an SFF.

SECTION II: INITIAL SELECTION OF SFF

Selection Process

SFFs are selected from the list of SFF candidates sent to SAs, which is also posted on [cms.gov](https://www.cms.gov). When an SFF slot becomes available due to the discretionary termination or graduation of a facility from the SFF program, the SA must select a new facility from the candidate list for the SFF program within 21 calendar days from the date the slot opens. The SA recommends a candidate from the SFF candidate list to be selected for the SFF program to the CMS location for approval.

Given the importance of staffing and its relationship to quality, CMS is informing SAs to consider a facility's staffing when selecting an SFF. For example, if a SA is considering two SFF candidates with a similar compliance history, CMS recommends selecting the facility with lower staffing (staffing star rating or staffing ratio) as the SFF. SAs may also take into consideration other relevant findings, like previous complaint findings or enforcement actions.

Notification to Facility of Initial Selection

Upon selection of a new SFF, the SA must provide notice **within 5 business days** to the facility

and all accountable parties (e.g., administrator, chairperson of the governing body, holder of the provider agreement, any party who owns more than a five percent interest in the facility, the management company [if applicable], facility landlord(s), the mortgage holder, and corporate owner(s) for chain-operated nursing homes) in writing and by any additional means chosen by the SA.

A model letter to facilities selected for the SFF program is included in Appendix B. The SA must include the information stated in the model letter but may make additions to the letter to accommodate for any special features based on state law or licensure. The official date of enrollment of an SFF is the date on the Initial Selection Notice.

Meeting to Discuss Significance of SFF Selection

In conjunction with the notification of selection as an SFF, the SA must conduct a teleconference with the nursing home's accountable parties. This call should also include the owner, administrator, director of nursing, medical director, other facility leaders, and the CMS location. The purpose of the meeting is to explain the SFF program, the steps necessary for a facility to graduate from the program, and the conditions by which the facility may be terminated from Medicare and/or Medicaid participation. Topics to be covered include the following:

- The seriousness of the designation as an SFF;
- The importance of organizational culture¹, for example, values or norms involving leadership behaviors, staff approach, and system processes to drive sustained compliance and protect the health and safety of residents. Organizational culture is conventionally defined as the ensemble of beliefs, assumptions, values, norms, artifacts, symbols, actions, and language patterns shared by all members of an organization.
- The resources available to SFFs to support quality improvement and the expectations CMS has for the facility to demonstrate a good faith effort for systemic change to improve quality. Examples of actions a facility can take to demonstrate a good faith effort include, but are not limited to:
 - Regular engagement with the CMS Quality Improvement Organization (QIO)²
 - Hiring an external consultant(s) to support performance improvement
 - Implementation of evidence-based interventions to improve quality
 - Measurable and sustained operational changes (e.g., leadership or other key staffing changes, increased staffing levels, etc.)

CMS may impose enforcement actions for failure to demonstrate sustained improvement or demonstrate a good faith effort to improve quality. CMS will continue to explore how to use all actions to improve performance or terminate SFFs from the Medicare and/or Medicaid programs for those SFFs that fail to demonstrate compliance. In our decisions for discretionary termination, CMS will consider a facility's good faith effort to improve.

[Organizational culture](#)¹

² The QIOs may offer QI support but cannot require participation from the facility. Success is wholly dependent on the facility implementing the QI project and obtaining and sustaining improvement.

SECTION III: PROGRESSIVE ENFORCEMENT

While a nursing home is in the SFF Program, the SA will conduct a standard health survey at least once every six months, as required by §1819(f)(8) and §1919(f)(10) of the Act, and recommend progressively stronger enforcement actions in the event of continued failure to meet the requirements for participation with the Medicare and/or Medicaid programs. The timing of these standard health surveys must be as *unpredictable* as possible.

All survey outcomes for an SFF must be reported to the CMS locations. If the results of any survey reveal that the facility continues to practice a level of care that has resulted in harm to residents (scope and severity of G, H, I) or put residents in Immediate Jeopardy (IJ) (scope and severity of J, K, L) then the SA must notify the CMS locations immediately.

Pursuant to the Immediate Imposition of Federal Remedies policy ([Chapter 7](#) of the State Operations Manual (SOM)), remedies must be imposed immediately, without an opportunity to correct, any time an SFF has a standard health survey or complaint survey with deficiencies cited at a S/S level of “F” or higher, or LSC/EP surveys with deficiencies cited at “G” or higher. Further, if subsequent surveys also result in the citation of deficiencies at these levels, the enforcement remedies imposed must be of increasing severity. Increasing severity can mean a higher CMP than was imposed for the earlier noncompliance or it can mean increasing from one remedy to more than one remedy being imposed. For example, if a CMP was imposed for an “F” level deficiency cited in the first standard health survey, and a subsequent survey finds another deficiency of “F” or higher, the CMS location could impose a CMP **and** a Discretionary Denial of Payment for New Admissions (DDPNA). The CMS location could also impose a CMP **and** a Directed Plan of Correction (DPOC). The CMS location should use their discretion to determine what remedies are most appropriate given the survey results, but the remedies must be of increasing severity under this policy. Discretionary termination will be considered if any two surveys (standard health, complaint, LSC, or EP) result in deficiencies that pose IJ to one or more residents while the facility is in the SFF program. For more information on enforcement remedies, see Section 7400 of the SOM.

Additionally, the CMS location will consider a facility’s efforts to improve performance (or lack thereof) when considering applicable enforcement remedies. For example, an SFF with continued noncompliance and little or no demonstrated efforts to improve performance will have more severe enforcement remedies than facilities that have taken aggressive actions to bring systemic change and improve performance. CMS will also consider facilities’ efforts to improve when considering discretionary termination from Medicare and/or Medicaid programs.

The SFF program does not supplant the three-month mandatory DPNA required under §1819(h)(2)(D) or §1919(h)(2)(C), or six-month mandatory termination required under §1819(h)(2)(C) or §1919(h)(3)(D) of the Act. In other words, CMS will impose a DPNA if a facility does not achieve substantial compliance within three months of the date of the first

findings of noncompliance, and the facility cannot continue to participate in Medicare and/or Medicaid programs if it does not achieve substantial compliance within six months of the date of the first findings of noncompliance.

SECTION IV: GRADUATION FROM THE SFF PROGRAM

The facility will graduate from the SFF program once it has met the following criteria³ (*these surveys must have occurred after the facility has been selected as an SFF*):

- Two consecutive standard health surveys with 12 or fewer deficiencies cited at scope and severity level (S/S) of “E” or less on each survey.

SFFs will not graduate if the following occurs:

- Any standard health survey results in deficiencies cited at an S/S level of “F” or higher, or
- Any LSC or EP survey results in deficiencies cited at an S/S level of “G” or higher; or
- 13 or more total deficiencies cited on any survey (standard health, LSC, EP, or complaint)
- Intervening complaint surveys with 13 or more total deficiencies, or any deficiencies cited at an S/S level of “F” or higher.

Additionally, an SFF cannot graduate with pending complaint surveys triaged at IJ, or Non-IJ High, or until it has returned to substantial compliance.

Note: CMS locations retain discretion on decisions regarding graduation based on unique factors (refer to Section VI).

SECTION V: TERMINATION

To avoid situations where a facility remains an SFF for a prolonged period of time, CMS is establishing criteria that may result in the facility’s discretionary termination from the Medicare and/or Medicaid programs. SFFs with deficiencies cited at S/S of IJ on any two surveys (standard health, complaint, LSC, or EP) while in the SFF program will be considered for discretionary termination.

SECTION VI: FACTORS CONSIDERED FOR GRADUATION OR TERMINATION

The SFF program provides a mechanism for the SA and the CMS location to provide additional attention and resources to these facilities for the purpose of improving their

³ CMS may use discretion to allow graduation when the only deficiencies preventing graduation are deficiencies cited at S/S of “F” at F-tags F812 (Food Procurement, Store/Prepare/Serve), F813 (Personal Food Policy), or F814 (Dispose Garbage & Refuse Properly); or citations at F884 (COVID-19 Reporting to CDC). For example, CMS may allow graduation if the SFF did not meet the graduation criteria only because it had an “F” cited at F812 (or any one of the other carve out tags listed).

quality of care and protecting residents. However, the CMS location may consider using its longstanding authority to terminate an SFF's provider agreement when the RO believes it is appropriate to use this remedy. The CMS location retains discretion on decisions regarding graduation and termination based on factors unique to each facility and CMS' authority to terminate a provider's participation with the Medicare and/or Medicaid programs. These factors include:

- An evaluation of a facility's efforts to improve performance;
- The circumstances or details of any noncompliance that occurred (e.g., a facility that technically meets the criteria to graduate, but due to some of the details related to noncompliance, CMS remains concerned about the facility's quality and does not grant graduation);
- Situations when discretionary termination may potentially cause issues related to access to care.

Once the facility has successfully met the criteria for graduation from the SFF program, the SA should notify: (1) The CMS location; (2) the facility; (3) the accountable parties; (4) the State LTC Ombudsman; and (5) the State Medicaid Director. The official graduation date is the date of the notice letter informing the facility and its accountable parties of the nursing home's removal from the SFF program.

SECTION VII: POST-GRADUATION

CMS will closely monitor graduates from the SFF program for a period of three years to ensure improvements are sustained. For SFFs that graduate but continue to demonstrate poor compliance identified on any survey (e.g., actual harm, substandard quality of care, or immediate jeopardy deficiencies), CMS may use its authority to impose enhanced enforcement options, up to, and including discretionary termination from the Medicare and/or Medicaid programs.

SECTION VIII: OPERATIONAL PROCEDURES

Nursing Homes remaining in the SFF program after three standard surveys:

If the SFF has not met the graduation criteria following the third standard health survey, the SA must schedule a conference call with the CMS location to discuss the efforts made by the facility towards improvement, the reasons for noncompliance, and the likelihood of the facility achieving sustained compliance. CMS has the authority to either use discretionary termination or continue to collaborate with the SA to focus on facility improvement. The SA must discuss with the CMS location, at a minimum, the extent to which the facility has demonstrated improved compliance.

Public Posting of SFFs:

CMS is also revising the monthly SFF postings at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/SFFList.pdf>. These listings are being updated to reflect a listing of all SFFs, including the number of months spent in the SFF program, their most recent standard health survey findings, recent terminations, and facilities that recently graduated from the SFF program. Facilities that have graduated from

the SFF program are included in the downloadable file on the [cms.gov](https://www.cms.gov) website for a period of three years. A facility's SFF designation on [the Medicare.gov Care Compare website](https://www.medicare.gov/care-compare) will be removed in the month following the facility's graduation from the SFF program.

Contact:

For questions or concerns relating to this memorandum, please contact DNH_Enforcement@cms.hhs.gov.

Effective Date:

Immediately. Please communicate to all appropriate staff within 30 days.

/s/

David R. Wright
Director, Quality, Safety & Oversight Group

Attachments:

Attachment 1- Appendix A

Attachment 2- Appendix B

cc: CMS Location Enforcement Management

The contents of this letter support activities or actions to improve patient or resident safety and increase quality and reliability of care for better outcomes.

Appendix A

The number of SFF slots and candidates list for each State (effective May 1, 2014)

State	Required SFF Slots	Size of Candidate List	State	Required SFF Slots	Size of Candidate List
Alabama	1	5	Montana	1	5
Alaska	-	-	Nebraska	1	5
Arizona	1	5	Nevada	1	5
Arkansas	1	5	New Hampshire	1	5
California	6	30	New Jersey	2	10
Colorado	1	5	New Mexico	1	5
Connecticut	1	5	New York	3	15
Delaware	1	5	North Carolina	2	10
District of Columbia	-	-	North Dakota	1	5
Florida	3	15	Ohio	5	25
Georgia	2	10	Oklahoma	2	10
Hawaii	1	5	Oregon	1	5
Idaho	1	5	Pennsylvania	4	20
Illinois	4	20	Rhode Island	1	5
Indiana	3	15	South Carolina	1	5
Iowa	2	10	South Dakota	1	5
Kansas	2	10	Tennessee	2	10
Kentucky	1	5	Texas	6	30
Louisiana	1	5	Utah	1	5
Maine	1	5	Vermont	1	5
Maryland	1	5	Virginia	1	5
Massachusetts	2	10	Washington	1	5
Michigan	2	10	West Virginia	1	5
Minnesota	2	10	Wisconsin	2	10
Mississippi	1	5	Wyoming	1	5
Missouri	3	15	Total	88	440

Appendix B

MODEL LETTER TO PROVIDER SELECTED AS A “SPECIAL FOCUS FACILITY”

IMPORTANT NOTICE – PLEASE READ CAREFULLY

(Date)

Nursing Home Administrator Name

Facility Name

Address

City, State, ZIP Code

Dear (Nursing Home Administrator):

The purpose of this letter is to inform you that your facility has been selected for the Special Focus Facility (SFF) program based on a persistent pattern of poor compliance history for the past three standard health survey cycles, and during the last three years of complaint surveys. More information on this selection is described below.

What Does This Mean?

You will be subject to at least one standard health survey every six months as required under Section 1819(f)(8)(B) and 1919(f)(10)(B) of the Social Security Act (42 U.S.C. §1395-i-3(f)(8)(B) and §1396(f)(10)(B), respectively). The Centers for Medicare & Medicaid Services (CMS) will be closely monitoring your facility with the objective that your facility can attain and maintain substantial compliance with Medicare and/or Medicaid participation requirements.

- You must provide the names, telephone numbers, email addresses, and physical addresses of the accountable parties (e.g., the administrator, chairperson(s) of the Governing Body, holder of the facility’s provider agreement, any party who owns more than a five percent interest in the facility, the management company (if applicable), facility landlord(s), the mortgage holder, and corporate owner(s) for chain-operated nursing homes) **within 5 business days** of receipt of the SFF selection notice to the SA;

How Does A Facility Get Removed from the SFF Program?

The facility will graduate from the SFF program once it has met graduation criteria of completing two consecutive standard health surveys, with no intervening complaint, LSC, or EP surveys with 13 or more total deficiencies, or any deficiencies cited at scope and severity (S/S) of “F” or higher; CMS may terminate the facility’s provider agreement if the facility is not in substantial compliance, in accordance with 42 CFR §488.456(b) and §489.53.

The facility will not graduate if the following occurs:

- Any standard health survey results in deficiencies cited at a S/S level of “F” or higher, or
- Any LSC or EP survey results in deficiencies cited at a S/S level of “G” or higher; or
- 13 or more total deficiencies cited on any survey (standard health, LSC, EP, or

complaint).).

- Intervening complaint surveys with 13 or more total deficiencies, or any deficiencies cited at an S/S level of “F” or higher.
- Additionally, an SFF cannot graduate with pending complaint surveys triaged at Immediate Jeopardy (IJ), or Non-IJ High, and/or until it has returned to substantial compliance.

Involuntary Termination

SFFs with deficiencies cited at S/S of Immediate Jeopardy (IJ) on any two surveys (standard health, complaint, LSC, or EP) while in the SFF program, will be considered for discretionary termination. Additionally, CMS may terminate the facility’s provider agreement if the facility is not in substantial compliance, in accordance with 42 CFR §488.456(b) and §489.53.

The CMS location retains discretion on decisions regarding graduation from the SFF program and discretionary termination based on factors unique to each facility and CMS’ authority to terminate a provider’s participation with the Medicare and/or Medicaid programs. These factors include:

- A facility’s good faith efforts to improve performance;
- The circumstances or details of any noncompliance that occurred (e.g., a facility that technically meets the criteria to graduate, but due to some of the details related to noncompliance, CMS remains concerned about the facility’s quality and does not grant graduation);
- Situations when discretionary termination may potentially cause issues related to access to care.

Progressive Enforcement for Lack of Significant Improvement

CMS will impose immediate sanctions on an SFF that fails to achieve and maintain significant improvement in correcting deficiencies on the first and each subsequent standard health, complaint and LSC/EP survey after a facility becomes an SFF. See 42 CFR §488.400 Subpart F for enforcement remedies under CMS authority. Enforcement sanctions will be of increasing severity for SFFs demonstrating continued noncompliance and failure to demonstrate good faith efforts to improve performance.

Per §§1819(h)(2)(D) and 1919(h)(2)(C), and §§1819(h)(2)(C) and 1919(h)(3)(D) of the Social Security Act (the Act), respectively, CMS is required to impose Denial of Payment for New Admissions if substantial compliance is not achieved within three months, and terminate the provider agreement if substantial compliance is not achieved within six months. In addition to the remedies required by the Act, CMS may terminate the facility’s provider agreement at any time if the facility is not in substantial compliance, in accordance with 42 CFR §488.456(b) and §489.53.

Good Faith Efforts

The CMS location will consider a facility’s good faith efforts to improve performance (or lack thereof) when considering enforcement remedies. For example, an SFF with continued noncompliance and little or no demonstrated effort to improve performance will have more severe enforcement remedies than facilities with continued noncompliance but have taken aggressive actions to improve performance. CMS will also consider facilities’ good faith efforts to improve

when considering discretionary termination from Medicare and/or Medicaid programs. Examples of actions a facility can take to demonstrate a good faith effort include, but are not limited to:

- Regular engagement with the Quality Improvement Organization (QIO)
- Hiring an external consultant(s) to support performance improvement
- Implementation of evidence-based interventions to improve quality
- Measurable and sustained operational changes (e.g., leadership or other key staffing changes, increased staffing levels, etc.)

Where can I find a list of the Special Focus Facilities and how often is the SFF list updated?

The SFF list can be found at: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/SFFList.pdf>. The SFF list is updated and posted on [cms.gov](https://www.cms.gov) monthly.

If you have any questions, please contact (name, title, address, phone number, fax number, and e-mail address of the appropriate survey agency official).

Additionally, the SA will provide a copy of this notice of your facility SFF selection to the following parties:

- CMS location;
- State Ombudsman's Office;
- State Medicaid Director, and
- The applicable Quality Improvement Organization (QIO).

Sincerely,

(Name and Title)

cc: CMS location

(Name of Quality Improvement Network or Organization)

(Name of Owner)