

Centers for Medicare & Medicaid Services
Questions and Answers
Open Door Forum: SNF/LTC Open Door Forum
Tuesday, October 17, 2024

1. Question: As the new section of the MDS has been added for social determinants of health, health-related factors, is there any consideration because it is such an important piece of what has happened in the proposed and final rule-making process in the last couple of years in relationship to how that fits into health equity and all of the kind of press towards social determinants of health and health equity to move some of the other items that are considered to be social determinants of health like health literacy, social isolation, those kinds of things, into Section R to make that more evident that those are also important things to consider in terms of social determinants of health. In relationship to the new discharge function score quality measure, which of course, will affect our five-star rating this month, we are all waiting to see those reports, as we have seen the provider preview reports we have seen this show up on our iQIES reports and so forth, the question I have and the request to CMS is to consider in the iQIES reporting that there be some way for us to, as a provider community, to be able to make that data that comes from that discharge function score actionable in our facilities. What I mean by that is to know that it triggered or didn't trigger is one thing. To understand why is that actionable piece of the quality measure. That's a very complex quality measure with the co-variant interactions and coefficients impacting the expected discharge function score. It would be super helpful to providers to have some sort of reporting capacity within iQIES to see why that triggered or didn't trigger to make that information actionable. That is just a continued request on my part and a lot of other people. There's only one software product that I know out there, at least at this point, that actually does something, but you have to purchase that, so it is a separate stand-alone thing. Also, could you repeat the location where the November training is going to be?
 - a. Answer: Currently, you can see on the October 1, 2025, MDS we have not relocated any of those other health-related social needs items. Your point is well taken, and we can take that under consideration now that we have so many we are highlighting. Obviously, CMS is dedicated to highlighting the importance of health-related social needs, and part of that is we have finalized a new transportation item. We took that opportunity to move that out of Section A into this new Section R. So, I think you possibly will see in future versions a consolidation of those items that would fall under that health-related social need umbrella to highlight the importance of those. I can think of social isolation as well as the health literacy item. I can see that possibly going into that section. Your question about the training...that is a vendor call. It's going to be for the vendor community on the 14th. That is on the QTSO (QIES Technical Support Office) website.

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2. Question: My question is about disclosure requirements. I was under the impression that the deadline was going to be—to give the facilities 90 days to respond. We have facilities and providers receiving letters of revalidation that require a response in 30 days, which is quite impossible given the amount of information you are requesting. So, some clarification on the time frame in which they are supposed to respond to the SNF attachment.
 - a. Question back to participant from CMS: Were these revalidation requests, or did you have a pending application, and the MAC is requesting just a submission of the SNF attachment?
 - i. Answer from participant: One was a change of information that the MAC converted to revalidation on its own doing and requested that they respond in 14 days outside the deadline of 30 days to complete the SNF attachment—again, almost impossible to do. Another one was a pending CHOW. They are making the provider respond in 60 days to the CHOW. But again, I thought the deadline was going to give us 90 days to allow for a response.
3. Question: I have a question about the October 1, 2024, updates. It is specific to additional items required by states. So, we are seeing that Minnesota is now asking for some additional questions to be added to the quarterly in Section I. I have not seen any updates on the QTSO websites. However, IQIES is giving us a validation warning message. So, how has that process of communicating to the vendors changed? Can we confirm that we do need to add those to the quarterly?
 - a. Answer: The “Additional Items Required by States for Nursing Home MDS 3.0 Assessments” document will be updated to include MN and posted on QTSO the week of 10/28/2024. As for the -1070 that the clients are receiving, yes, this guide will also be updated with this error code.
4. Question: My question is on the revalidation section. It relates to providers who would undergo a change of ownership during that period of time before the revalidation request would be due. My question is, since the incoming provider will be submitting a new application, these would be post October 1 changes of ownership submitted since the new provider will be submitting the SNF attachment with the relevant disclosures for the facility. Am I correct in that the outgoing provider, if the change of ownership is completed prior to the sale, would not then complete the revalidation that was requested by the MAC?
 - a. Question back to participant from CMS: Are you saying that the revalidation happened first and then the CHOW, or is it the reverse?
 - i. Answer from participant: Let’s assume the revalidation request was received by the provider, but the provider then subsequently had a transaction during the period of time in which they would have otherwise submitted the revalidation request.
 - ii. Question: With the extension in the states that are affected by the storms, do they need to do anything in terms of corresponding with the MAC if

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they have gotten the letters, or will it just be assumed that that deadline is in place?

1. Answer: Should the SNFs assume that the May 1, 2025, date will apply?
 - a. Answer: Correct.
 - i. Answer: Yes, they should. In those five states, they will probably not get any additional notice that they have received a revaluation letter that it is extended. We have already made that public through the various CMS resources as well as the sub-regulatory guidance. No, they don't need to do anything.
5. Question: I was wondering and proposing if, in addition to posting the time discharge function score, if CMS would consider posting the expected score post five-day assessment submission. So that was my first question and suggestion. And my second is, do we happen to have a timeline on when we think the PBJ (Payroll Based Journal) might be moving over to iQIES?
 - a. Answer: As far as providing after the five-day score what the expected discharge function score would be, we are not considering providing that at this time.
6. Question: We have received a letter from First Coast in Florida with a pending CHOW three-quarters of the way through to complete Attachment 1. I just want to make sure is that now automatically extended to May 1, 2025, because there is a 30-day deadline of November 5 right now according to the letter.
 - a. Answer: Yes, it is extended to May 1, 2025. Number one, you are in one of the five affected states that I mentioned before. Number two, you had a pending application as of October 1. But you said that the due date that was given was 30 days originally?
 - i. Answer: Yes. For the Attachment 1.
 1. Answer: Yes, you're extended to May 1, 2025.
 - a. Question: My second part or question is in completing previous revalidations in years past, I've gone into PECOS (Provider Enrollment, Chain, and Ownership System). On the home page, there is a revalidation notification center and it's been very helpful with the provider's name, the due date of the revalidation. It's tracking as to the status of the issuance of the revalidation notice letter and if it's been submitted. As of yesterday, I didn't see anything in the revalidation notification center field as before. My question is, are there going to be—I've already received three revalidation notices, and there is still nothing in the revalidation notice center so I can track what revalidations are coming up and try to hunt down the revalidation notice letter that is sent to the community.

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- i. Answer: The SNF revalidation tool is not going to be updated for SNFs that are a part of that revalidation effort.
- 7. Question: I was wondering, looking at the latest guidance as of yesterday or the day before actually, there was additional clarification on additional disclosable parties. The PII, personally identifiable information, that needs to be disclosed. I was wondering if you could help us differentiate between ADPs from an ownership perspective or ADPs of vendors who may complete this. The sub-regulatory guidance talks about ADPs of the SNF, and it seems like we need more information on what we're required to disclose and the vendors that would qualify in there as well.
 - a. Answer: We have updated the sub-regulatory guidance to help clarify the ADPs that must be reported.
- 8. Question: My question is related to the MDS changes for Section N that went into effect on October 1 of this year regarding the new requirement to code anticonvulsants. There seems to be a lot of chatter and confusion in the industry about which medications should or should not be counted as anticonvulsants. And the links in the RAI (Resident Assessment Instrument) manual, there is a discrepancy between the different sources, and the vendor that we use uses the Medi-Span library from the FDA (U.S. Food and Drug Administration). I would like to rely on that and auto-populate into Section N, but there doesn't seem to be a standard in the way people are doing it, and there is still confusion around that. I would love to see the RAI provide us with a list of common medications and which classification they should be counted in so that everyone is doing it the same way. I feel like the way it is now, people are making their own personal cheat sheet or their subjective interpretations going into the coding of it. It really feels like it should be more standard, especially the benzodiazepines like lorazepam, valium, primidone. There's some that are on some lists but not on other lists. The example in the RAI manual on page N12 specifically for lorazepam, there is an example in the RAI manual for a resident that takes lorazepam, and it is not being counted as anticonvulsant, but I see some experts saying you should count lorazepam as an anticonvulsant.
 - a. Answer: We offer some resources in the REI manual. We don't have a single resource that we say is the definitive resource. If you have questions, as always, we recommend that you should consult with the pharmacist at your facility in terms of these medication classifications.
- 9. Question: My question is something I've been hearing a great deal of angst from our members about. It has to do with lenders or financing partners of the facilities. The concern is how far you go up in the chain in terms of reports. Say, for example, you have a financing company of one type or another. Clearly, they are an additional disclosable party. They may have complex ownership structures themselves. Say, for example, if a company, a financing company, has several LLCs that are the owners of that company and then those LLCs have other people or entities that have ownership of the LLCs, how far does that reporting go? Is it to the first layer? Or does it have to go beyond that until you have kind of tracked down everybody, which would be frankly impossible for a

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provider to do because this is information that is held by an outside company and maybe several layers deep?

a. Answer: We discussed this in the sub-regulatory guidance. So, if I can give you an example. ADPs are required, or SNFs are required to report the organizational structures of their ADPs. So, you mentioned this financing company being an ADP. The question is, what owners and managers of that ADP have to be reported? If this ADP were, let's say, a corporation, all 5% or greater direct or indirect owners have to be reported. The term indirect can go up the chain. It is not necessarily limited to that first level. So, let's say you have an indirect owner that owns 50% of the ADP and that is on the second level. If you go above that, and let's say there are other entities and people that have at least a 5% ownership interest that flows down several levels to the ADP, they would have to be reported as well. So, it is not just the first level, it goes beyond that as well. That's very similar to what we require today. So, in Sections 5 and 6 of the 855-A, the SNF has to report all of their direct and indirect owners of at least 5%. Now we understand in the ADP world, it is a little bit different. You're talking about the ownership structures of the ADPs. Let me take a step back here. What we can say is that in terms of how far you go, SNFs are basically expected to use the maximum feasible efforts to secure the required data. Again, this really isn't any different from today when providers and suppliers sometimes have difficulties obtaining information. It is critical that SNFs make all attempts possible, even multiple ones, if need be, to acquire the SNF data. With that said, the point you raised is a valid one. We understand that SNFs are concerned about how far they go in terms of getting this data. We are considering the matter internally, and we will issue updated sub-regulatory guidance on that topic. So, there are two parts. Number one is your specific, narrow question and the much larger question of how far a SNF needs to go to collect this information.

i. Question: I was using that scenario as an example of the larger question. It is the larger question that is at play: how far do you go with an ADP as distinguished from the ownership structure of the facility itself, which is more within their control?

1. Answer: It is a little bit different in terms of ownership because ownership is a specific numerical figure, whereas issues such as control and the types of services involved can be somewhat more nebulous. But at least in terms of ownership and the specific example you cited, it is a little bit more clear-cut.

10. Question: My question is regarding the 855. We have an unusual circumstance. We have a corporation that owns one SNF. We are governed by a board. No one has any controlling interest. So, we struggle with filling out those Sections 4 and 5. I'm wondering if you have any insights on that.

a. Answer: Are you speaking just specifically to SNFs or to providers in general? And the reason why I ask that is because the question of government-owned entities has come up before. Right now, on the 855, government-owned entities

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are only required to report their managing employees as well as directors and officers if they happen to be a corporation. And that's because they basically don't have owners. Now, there is some information about having to report the government body that owns the entity. But for the most part, it is only managing employees. I should mention with respect to SNFs, we did update the sub-regulatory guidance to address what to report if you are a government owned SNF. If I'm not mistaken, I believe it is the very, very last item on the very last page of the sub-regulatory guidance. So, you may want to take a look at that. However, I will say again the issue of government-owned entities has come up before. So, hopefully, the guidance that's now in the sub-regulatory guidance will assist you in that.

11. Question: I had a two-part question. Earlier, you mentioned that the sub-regulatory guidance will be updated weekly. We understand that, given the unprecedented nature of the request, that it is relatively a fluid moving information, but can we, as providers, expect latitude and chances to correct the information in a non-penalizing way as information is provided, given that the information and guidance is so fluid? A follow-up to the gentleman's questions earlier; it is very similar. It can be very challenging for us as SNFs to disclose all partners of ADPs that are vendors of which we have zero direct or indirect ownership. For example, large CPA firms, including the ones we use, are LLCs. The regulatory guidance does state that LLCs, regardless of percentage of ownership, even if it is not 5%, must be disclosed given that it is in this particular case, this firm has 300 plus partners, and we have zero ownership. What would we consider the maximum feasible effort to obtain this, and what do we do if we can't get that information, or they don't participate? Some of that seems like an impossible task.

a. Answer: The first issue is with respect to, again, how far you go in getting this information, particularly with respect to ADPs. We're not really able, on this forum, to define what maximum feasible efforts is because every factual situation is going to be different. For the same reason, we are not really able to establish on this call a threshold of the number of attempts you have to make to get the data. So, for instance, if you tried to get the data and you can't, do you need to make a follow-up? We're not really able to do that on this call. We do have one recommendation and that is that we do recommend that you thoroughly document all of the efforts you made to secure any information that you weren't able to get. So, if you document those efforts, that would probably be helpful.

i. Question: The first one was based on the fact that you are updating the sub-regulatory guidance. We all understand this is new, and as things come up and you are feeling your way through this, there may be reasons and needs for up-to-date guidance. That can be challenging for us as providers to be compliant in our following of the guidance. Given that it is updated on a weekly basis, can we as providers be expected to have chances to update or correct information in a non-penalizing way as information is updated? If, for example, we may submit information to the best of our ability and due diligence to be compliant and notice that the

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sub-regulatory guidance was updated, and we might have done it differently, but that point has already been submitted and closed.

1. Answer: What I can say with respect to that is that most of the updates that we've had have been fairly minor. I'm not really sure that the updates would be so substantive that you would have to go back and necessarily correct anything. Certainly, if there is data that did need to be updated, that would be part of the application development process, and the MAC would request that information. So that's really the best way I can answer that question. Like I said, the updates will probably be weekly. Maybe a little more frequently. But, again, they are mostly going to be tinkering on the edges. We are not going to be talking about massive updates.
 - a. Question: Since we were a little fluid on how we define maximum feasibility, as we submit our ADPs for those providers that either refuse to participate or simply can't provide the information we need, we should provide the documentation of our efforts to obtain it with a statement saying "after diligent efforts of these instances, this is the maximum information we were able to provide."
 - i. Answer: What I can say is we do recommend that you retain documentation of your efforts. That's pretty much what I can say on that. It's certainly not a requirement, but it is a recommendation.
12. Question: Back to the original question about the change of ownership. I do have a situation where a change of ownership is expected to close early in December. I have a revalidation that is not due until January. So, does that negate the requirement for us as the outgoing provider to submit that revalidation, given that the new provider obviously will be submitting their Change of Ownership 855 with the disclosure for the new owning entity?
 - a. Answer: We can take a look at that, and we can update the sub-regulatory guidance.
13. Question: The first has to do with the ADPs...specifically as it relates to organizations that provide management and administrative services, clinical consulting...those are, there are many of these out there, and I guess the two parts is some of these providers that provide clinical consultation to us are Medicare-certified providers already. Think of institutional pharmacy as an example. You have ownership information on them. I guess my first question is, why would we have to disclose ownership information related to a Medicare-certified provider? That's part one. Part two, I'm really curious, and I think we're all curious. Why are you asking for so much information related to consultants? We certainly understand ownership information. But we have a variety of entities that come in. Let's just talk about MDS consulting—they can change. We might like this person or company one day, and somebody else comes along six months later, and you say gosh, it

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sounds like they are very talented, we want to bring them in. Do we have to change and update every time we change a consultant? I guess, kind of a two-part, why are we going so far, so deep with consultants? What about the entities that are already certified with Medicare, and you have the ownership information? Shouldn't we exempt those and list that we are using XYZ, which is Medicare certified, and you already have that information?

- a. Answer: That is that the statute Section 1124(c) is very, very clear as to what is required in terms of the scope of the data. Now, admittedly, this data goes far beyond what an SNF normally submits under Section 1124(a) of the act. By that, I mean the current information reported in Sections 5 and 6. Part of the issue was that there was concern about making sure that we understood all of the different ownership layers and all of the associations that SNFs may have. We explained this in the final rule to help beneficiaries make informed decisions as to care. So that's the first thing. It is basically what is in the statute. That's what we have here. The second thing is that because it is outlined in the statute, we're not really able to take data that has already been submitted with respect to a certified provider and not have that data submitted by the SNF. Again, we have to go by what is in the statute and in the regulation. So that is basically the reason why this data is required. Not only because it is in the statute but because we do need to make sure the beneficiaries have robust information when making decisions.

- i. Question: Just as a follow-up just because we'll get questions on this, so if I do have a clinical consultant for MDS services helping my MDS nurses perform better and I disclose to the best of my ability their ownership and in three months, I choose a new one, do I have to disclose again, go back into the 855-A and update this? And number two, how will the beneficiaries be actually going to see what clinical consultants a facility uses for such things as MDS consulting?

1. Answer: in terms of the second question, this data is going to be published. It is going to be made public on [CMSdata.gov](https://cmsdata.gov). This is a statutory requirement whereby the data will be made public so they can see who the clinical consultants are, who the owners are, and who the managers are. So, they and their families will be able to see this information. Could you repeat your first question?

- a. Question: If there is a change for a clinical consultant three months after they complete this.

- i. Answer: We address this in the sub-regulatory guidance. Changes in clinical consultants would have to be reported within 30 days. Information about if you have an ADP organization and the ownership structure of that changes, those would only have to be reported every 90 days. Data that is currently required could be reported every 30 days in Sections 5 and 6 of the form would still be 30

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