



Center for Clinical Standards and Quality/Survey & Certification Group

Admin Info: 16-24-NH

DATE: May 20, 2016

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Fiscal Year (FY) 2016 and 2017 Minimum data Set (MDS) 3.0 Focused Surveys

Memorandum Summary

The Centers for Medicare & Medicaid Services (CMS) is releasing an enhanced MDS 3.0 Focused Survey process and sending new lists to States of facilities to be surveyed during FY 2016 and FY 2017.

- States are required to complete the assigned surveys for the FY 2016 by September 30, 2016 and September 30, 2017 for the FY 2017 surveys.
- The contents of this letter supports activities or actions to improve resident safety and increase quality and reliability of care for better outcomes.

Background

The October 2015 *Government Accountability Office (GAO) Report: Nursing Home Quality* (GAO-16-33) recommended that CMS continue to improve data and oversight, analysis of deficiencies cited on standard surveys, consumer complaints, staffing levels, and a subset of clinical quality measures. Based on their research, the GAO recommended CMS establish and implement a clear plan for ongoing auditing to ensure reliability of data self-reported by nursing homes, including payroll based staffing data and data used to calculate clinical quality measures based on the MDS 3.0.

In FY 2015, CMS rolled out the MDS 3.0 Staffing Focused Surveys nationwide. These surveys focused on assessing facility MDS coding practices as compared to the residents' medical records and actual health status. These surveys also included a review of facility compliance with the requirements for nurse staffing posting. Below is a summary of the top deficiencies cited from those surveys.

Top Cited Deficiencies in FY 2015

F278 -MDS Accuracy
F356 -Posted Staffing Information

F279 -Develop Comprehensive Care Plan
F329 -Free from unnecessary drugs
F314 -Pressure Ulcers
F315 -No catheter/prevent UTI/restore bladder
F274 -Comprehensive Assessment after a Significant Change

These focused surveys will continue throughout FY 2016 and FY 2017. Lists of facilities for the FY 2016 were sent out in October 2015. CMS will send out new lists by June 15, 2016 for States to use for the remainder of FY 2016. The lists for FY 2017 will be sent out in October 2016. All lists must remain confidential.

Survey Process Enhancements

CMS took a number of steps to enhance the survey process after receiving feedback from Regional Offices (ROs) and States, and analyzing the survey findings and worksheets submitted by the survey teams. After conducting these steps, we altered the survey process to increase efficiency and effectiveness. Some of the enhancements are:

- Removed collection of CMS Form-671 and review of posted staffing information;
- Removed request of facilities to provide hand written information which caused delays in completing the survey;
- Simplified and shortened the survey process and tools;
- Revised sample selection process; and,
- Created a web-based application to aide surveyors in submission of information and version control.

The MDS 3.0 Staffing Focused Survey is not to be included in the recertification survey process. The MDS 3.0 Focused Survey can be done in coordination with a complaint survey as long as the two surveys are completed as two separate surveys with two separate 2567's.

If your State elected to complete their FY 2016 surveys prior to the release of the enhanced survey process and have done so, you do not need to conduct any more focused surveys for FY 2016. However, you will need to train and use the revised process for surveys conducted in FY 2017. If you have not completed all of the required surveys for FY 2016, you are required to complete all surveys and utilize the new survey process effective August 1, 2016.

- If a State would like to substitute a facility on their candidate list with a facility that they have concerns about, please send an e-mail to MDStaffingSurvey@cms.hhs.gov with a copy to the CMS RO. CMS supports States' efforts in this regard.
- MDS 3.0 surveys conducted by CMS Central Office (CO) contractors do not count towards the total number of surveys. Contract MDS 3.0 surveys are additional surveys. State Agencies (SAs) and ROs will be notified of any contract surveys conducted in their States.

Survey Process and Training

The surveys are designed to be conducted by two surveyors over approximately two days onsite (with additional time for pre/post activities). As with the previous year, States will need to maintain at least three surveyors who have completed the training. At least one of the onsite (primary) surveyors must be a Registered Nurse (RN). Another one of the three surveyors trained should be a supervisor. However, the supervisor does not need to be one of the onsite surveyors. States should provide the names of the supervisors to the ROs and ROs should allocate at least one individual to complete the training and serve as a point of contact for States and CO. All staff conducting, overseeing, or supervising the enhanced survey must take the new training for the MDS 3.0 Focused Survey. As of August 1, 2016, all staff must have completed the enhanced training and SAs must convert to the new process. Additionally, as of August 1, 2016 all 2015 Survey Process paperwork (Worksheet #4v2) will no longer be accepted. Training for the new enhanced 2016 Focused Survey will open on May 26, 2016 and can be found at: <https://surveyortraining.cms.hhs.gov/User/Logon.aspx> (click “MDS 3.0 Focused Survey”).

Training for the MDS 3.0 Staffing Focused Survey (2015) process will be discontinued on May 26, 2016 when the enhanced training is opened. If your staff has a need to utilize the 2015 training please email MDSStaffingSurvey@cms.hhs.gov.

We are also providing the following updates to the survey process:

- With the addition of the special survey types in ASPEN 10.2, States will now create survey shells using the MDS survey type in ASPEN Central Office/ASPEN Regional Office.
- States and ROs should follow their normal procedures for sending out survey findings to facilities.
- At minimum, any surveys with findings of an “E” level deficiency or higher are to be transferred to the RO for enforcement consideration based on the guidance below. At their discretion, ROs may also request other surveys to be transferred for enforcement consideration.
- For processes related to accepting plans of correction, Informal Dispute Resolution/Independent Informal Dispute Resolution, or other issues, States and ROs should use their discretion and processes they would normally follow.

States are not required to complete a separate CMS Form 435 for MDS targeted surveys – all costs related to such surveys should be included on the main CMS Form 435 report. SAs must notify CO via the dedicated mailbox, MDSStaffingSurvey@cms.hhs.gov of the name(s) of the nursing home surveyed, city, state, CMS certification number (CCN) and survey dates.

Survey websites, passwords, and documents that are marked as confidential are not to be distributed to facilities or other parties, and are to remain strictly confidential. Additionally, the number of surveys to be conducted should not be disclosed and all of these surveys are to be unannounced. CMS may take corrective action, including the imposition of civil money penalties (CMPs), for individuals in noncompliance with this requirement in accordance with 42 CFR §488.307.

Enforcement Guidance

Following the SA quality assurance review, States shall transfer MDS 3.0 Staffing Focused Surveys to the RO per the guidance above. Deficiencies identified during the surveys will result in relevant citations and enforcement actions in accordance with existing CMS policy and regulations. We note that the CMP tool does not currently address the potential findings from these focused surveys. Therefore, we are providing guidance to consider for deficiencies related to the foci of these surveys (F272 - F287, F353 – F356). The RO shall review the Form CMS-2567, the SA's recommendation, and the history of the nursing home in determining the appropriate enforcement remedy. While we are not mandating enforcement, we are requesting ROs strongly consider the following enforcement actions for deficiencies related to these surveys.

Level of Scope and Severity	CMP Per Instance
“E”	\$2,000 - \$4,000
“F”	\$4,050 - \$8,000
“G”	\$8,050 - 10,000

In addition to these enforcement actions, a SA and RO may recommend and impose other enforcement remedies as allowable under statute, regulation, or policy. States and ROs may also consider the following information when determining final remedies or determining the CMP amount within the range for “E”, “F”, and “G” level deficiencies above:

- Previous noncompliance in the same areas (previous surveys with deficiencies for inaccurate coding or sufficient staffing);
- The degree of noncompliance with certain items (e.g., assessment coding that is very inaccurate);
- The number of deficiencies in other areas related to the foci of these surveys (e.g., deficiencies cited for pressure ulcers under F314 in conjunction with inaccurate pressure ulcer coding could warrant a CMP on the higher end of the range).

Assessing Regulatory Compliance

These surveys will focus on assessing compliance with the regulations listed below. We note that facilities are also subject to an assessment of compliance with any applicable regulations based on what surveyors identify during the investigatory process.

MDS Assessment Compliance

The CMS 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. These regulations relate to MDS 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*). In 42 CFR 483.20(i) *Certification*, CMS requires that each individual who completes a portion of the assessment must sign and certify the accuracy of

that portion of the assessment and that a RN must sign and certify that the assessment is completed. Federal regulations state at 42 CFR 483.20(j) *Penalty for Falsification* that those who falsify assessments are subject to CMPs. Additionally, when such patterns or practices are noticed, they should be reported by the SAs to the proper authority (for example, the Center for Program Integrity – CPI).

All other areas identified during the survey process that show regulatory noncompliance will also be cited under the appropriate regulatory group.

In the event that additional care concerns (beyond the MDS and staffing foci of this focused survey) are identified during on-site reviews, those concerns should be investigated during the survey or, if immediate investigation is not possible, registered with the SA as a complaint for further review as soon as possible.

Survey Monitoring and Management

Monitoring the status of the MDS 3.0 Staffing Focused Surveys in FY 2016 and FY 2017 is the joint responsibility of SAs, ROs, and CO. To assure completion of the required number of surveys by September 30, 2016, please include the ROs on all communications related to these surveys. If a State has concerns on their ability to meet the September 30, 2016 deadline, please email MDStaffingSurvey@cms.hhs.gov along with a copy to the CMS RO.

Contact: For questions on this memorandum related to the MDS 3.0 Staffing Focused Survey, please email MDStaffingSurvey@cms.hhs.gov or consult with your CMS RO.

Effective Date: Immediately. The information contained in this memorandum should be communicated with all survey and certification staff, their managers and the State/Regional Office training coordinators within 30 days of this memorandum.

/s/

David R. Wright
Acting Director

cc: Survey and Certification Regional Office Management