



Center for Medicaid and State Operations / Survey & Certification Group

Ref: S&C-08-02

DATE: November 2, 2007

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Improvements to the National Special Focus Facility (SFF) Program for Nursing Facilities—Notice Requirements

Memorandum Summary

This memo amends S&C Memorandum 05-13 to improve the national “Special Focus Facility (SFF)” initiative. The SFF is designed to increase the probability that nursing homes which have consistently exhibited serious quality problems will significantly improve their quality of care and safety of residents in the near future. The revisions emphasize:

- **Improved notification** - so that administrators, owners, and boards of directors are all fully apprised of the seriousness of the issue and the imperative for action;
- **Public notice** – to provide a list of nursing homes that have been designated as a SFF and, after one survey, continue to provide poor care. This information will be made available on the Centers for Medicare & Medicaid Services Web site with a link from Nursing Home Compare; and
- **Focus on Quality of Care & Quality of Life Deficiencies** – Life Safety Code deficiencies will not be used in calculations.

A. Background

The SFF program, as strengthened in 2005^a:

1. Identifies the nursing homes whose quality of care has consistently demonstrated failure to maintain compliance and a history of facility practices that have resulted in harm to residents (as measured by the most recent three State recertification surveys). Federal law and regulations require nursing homes to meet nursing home requirements at the time of survey and to maintain compliance continuously;
2. Ensures that SFFs are surveyed with twice the frequency of health surveys than other nursing facilities; and

^a See S&C Memo 05-13 of December 16, 2004. The memo may be accessed on the CMS website at:
<http://www.cms.hhs.gov/SurveyCertificationGenInfo/PMSR/list.asp>

3. Ensures that effective action is taken, during and after a structured period of 3 standard surveys (approximately 18 months), so that facilities:
 - a. Graduate^b from the list if they have significantly improved (so as to make room for other nursing facilities that are not performing as well), or
 - b. Are provided additional time as an SFF nursing home due to promising developments and a recent trendline of improvement, or
 - c. Terminate from Medicare and/or Medicaid if they have not significantly improved.

Refinements described in our SFF procedures will increase the probability that significant improvements in quality of care will be made in the identified nursing homes. State Survey Agencies (SAs) will apply the procedures to both newly-identified SFF nursing homes and those nursing homes that are currently in the SFF program but have failed to improve significantly. Significant improvement means that a SFF is able to demonstrate that its practices have caused no actual harm, i.e., no deficiencies greater than “E” in terms of scope and severity.

The SFF program was initiated because a number of facilities consistently provided poor quality of care, but periodically instituted enough improvement in the presenting problems that they would pass one survey only to fail the next (for many of the same problems as before). Such facilities with a “yo-yo” history rarely addressed underlying systemic problems that were giving rise to repeated cycles of serious deficiencies.

B. Improvements

Improved Notification

Initial Notice -- The changes described in the SFF procedures begin with the initial notification process. The previous Centers for Medicare & Medicaid Services (CMS) procedures did not ensure that all accountable parties were notified of the facility’s history of inadequate care, the reasons for the facility’s selection in the SFF program, what to expect as a result of such SFF selection, and the serious consequences that will occur in the event of a failure to improve. We believe it is particularly important that governing bodies, owners and operators, in addition to the nursing home administrators, be fully apprised of these facts at the beginning of their SFF period.

Removal from SFF Designation – Once a SFF has successfully met the criteria for removal, the SA will notify the SFF and all accountable parties that the facility is no longer designated as a SFF.

Public Notice

CMS will make public a list of nursing homes that have been designated as a SFF and, after one survey, fail to significantly improve care^c. SFFs that on a subsequent survey make significant progress will have their name removed from the list when the list is updated. This information will be made available on the CMS website with a link from Nursing Home Compare.

^b A SFF can graduate from the designation of a SFF when it demonstrates two consecutive standard surveys that it has deficiencies cited at a scope and severity level of no greater than “E” and no intervening complaint-related deficiencies cited greater than “E.”

^c Significant improvement means that a SFF is able to demonstrate that its practices have no deficiencies greater than “E” or have caused no Substandard Quality of Care.

Focus on Quality of Care and Quality of Life Deficiencies -- So that States can focus more on quality of care and quality of life concerns in SFFs, we have removed Life Safety Code (LSC) deficiencies from the formula used to calculate the SFF candidate list. However, LSC surveys must still be completed with the same frequency as health care surveys, and any LSC finding of actual harm on the most recent survey will preclude graduation from the SFF initiative.

Effective Date: The changes included in the SFF procedures augment current guidance on SFF surveys. The policy for current SFF can be implemented as soon as the SA is ready but no later than 60 days from the date of this memo. The policy for newly selected SFF can be implemented as soon as the SA is ready, but no later than January 1, 2008.

Training: This policy must be shared with all survey and certification staff, surveyors and their managers, and the State and CMS RO training coordinators. This information must be shared with nursing home providers in each State.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management

Attachments:

SFF Procedures

Model letter for notification of SFF status

SPECIAL FOCUS FACILITIES - AMENDMENTS TO S&C MEMORANDUM 05-13

Background -- The SFF program was initiated because a number of facilities consistently provided poor quality of care, yet periodically instituted enough improvement in the presenting problems that they would pass one survey only to fail the next (for many of the same problems as before). Such facilities with a “yo-yo” history rarely addressed underlying systemic problems that were giving rise to repeated cycles of serious deficiencies.

Once selected as a SFF, the State will conduct twice the number of standard surveys and will apply progressive enforcement until the nursing home either (a) graduates from the SFF program or (b) is terminated from the Medicare and/or Medicaid program(s).

Life Safety Code (LSC) -- Because the intent of this initiative is to focus on quality of life and quality of care issues, LSC deficiencies are not used in determining the list of facilities that are candidates for the SFF program. However, LSC surveys will be conducted at the same frequency as the health surveys (i.e., twice the number of standard surveys per year), and any LSC finding of actual harm on the most recent survey will preclude graduation from the SFF initiative during that survey cycle.

SECTION I. SFF CANDIDATE LIST

Quarterly Computation of SFF Candidate List

CMS computes a SFF candidate list each quarter. This computation is based on 3 years of survey history, the severity of deficiencies, and the number of deficiencies. Complaint deficiencies are also included in the computation. Each State selects its SFF from a list of approximately 15 eligible nursing homes in their own State with the worst compliance history based on these computations.

SECTION II. INITIAL SELECTION OF SFF AND EDUCATION

A. Notification

1. **Initial Notice** -- The State notifies the facility and all accountable parties (see section B) by letter (and any additional means chosen by the SA) that:
 - The facility has been selected as a SFF facility;
 - The selection is due to its persistent pattern^d of poor quality on its last three standard surveys and complaints (i.e., 3 years of compliance history);
 - Serious consequences, including termination of the provider agreement, will result if significant improvements^e are not evident within the next three standard surveys (or 18 months, whichever is shorter). Include a description of the SFF program.
 - Irrespective of the SFF designation, advise the accountable parties that:

^d Persistent pattern of poor quality refers to 3 years of compliance history with deficiencies at a scope and severity of “Harm” or higher or history of Substandard Quality of Care.

^e Significant improvement means that a SFF is able to demonstrate that its practices have no deficiencies greater than “E” or have caused no Substandard Quality of Care.

- The Social Security Act requires termination of the Medicare provider agreement no later than 6 months unless substantial compliance is achieved (as defined by the statute); and that
- Termination may occur more quickly than the six-month statutory date if serious deficiencies that evidence harm continue.

A model letter is included in Attachment A. States may tailor the communication to accommodate any special features for facilities in the State.

2. **Removal from SFF Designation** – The State should notify the SFF and all accountable parties that the facility is no longer designated as a SFF once it has successfully met the criteria for removal (See E). A copy should be sent to the additional parties listed in section C below.

B. Accountable Parties

Address or copy the communications to all of the following parties, since they are all accountable and in a position to effect necessary improvements:

- Administrator;
- Chairperson of the Governing Body or full Governing Body (as identified on Survey and Certification documents); and
- Owners and operators: This must include the holder of the provider agreement. If reasonably feasible for the State SA, the notification should also include other clearly identifiable owners (such as the owner of the building and land if separate from the holder of the provider agreement, and corporate owner(s) for chain-operated nursing homes).

A copy of any communication should be sent to the CMS Regional Office (RO) as well.

C. Additional Parties

Provide a copy to the State Ombudsman Office and the State Medicaid Director. If the second standard survey reveals that the facility continues to practice care that have resulted in harm to residents, then the State should notify the CMS-RO.

D. Other Considerations

We encourage face-to-face communications between the SA and the nursing home's accountable parties to the extent that State SA resources permit, as well as communication by additional written means, so as to ensure that the seriousness of being designated as a SFF is adequately understood.

Please maintain up-to-date communication with your CMS RO after surveys of SFF nursing homes.

E. Removal from the SFF Initiative

Once a SFF has completed 2 standard surveys with no deficiencies above a scope and severity of "E", and has no complaints with a scope and severity above an "E" during that time period, the nursing home is eligible for removal from the SFF Initiative.

**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)

This is to advise that [name of facility] has been designated by CMS as a “Special Focus Facility” (SFF) due to its history of noncompliance with quality of care and safety requirements under Medicare over the past three years. Such poor quality of care has been evident through standard survey results as well as deficiencies identified during complaint surveys. The purpose of this letter is to notify you of the seriousness with which we view such poor quality and to explain what such history means for your facility as it participates in the SFF initiative.

CMS began the SFF initiative to address the problem facilities that consistently provide poor quality of care but periodically make enough improvement in the presenting problems to pass one survey, only to fail the next (for many of the same problems as before). Facilities with such a “yo-yo” history rarely address the underlying systemic problems that give rise to repeated cycles of serious deficiencies.

What Does This Mean?

The SFF initiative is intended to promote more rapid and substantial improvement in the quality of care in identified nursing homes, and end the pattern of repeated cycles of non-compliance with quality of care requirements. SFF nursing homes are provided with more frequent survey and certification oversight. CMS’ policy of progressive enforcement means that any nursing home that reveals a pattern of persistent poor quality is subject to increasingly stringent enforcement action, including stronger civil monetary penalties, denial of payment for new admissions, and/or termination of the Medicare provider agreement.

In light of your facility’s recent history of poor quality, the State survey agency (SA) will conduct two standard surveys per year in your facility, instead of the one required by law. We will also pay close attention to the proper application of CMS’ progressive enforcement policy. The progressive enforcement policy applies to all nursing homes, but is particularly important in the case of SFF nursing homes because such nursing homes have demonstrated such a serious and persistent pattern of poor quality.

How Does A Facility Get Removed From the SFF Program?

A nursing home may graduate from the SFF program when it demonstrates at two consecutive standard surveys that it has deficiencies cited at a scope and severity level of no greater than “E” and no intervening complaint-related deficiencies cited greater than “E.” However, if a facility has been unable to achieve survey results at a level of ‘no actual harm’ after three standard surveys (approximately 18 months), CMS may also remove a facility from the SFF program through termination of the Medicare provider agreement.

Enforcement for Lack of Significant Progress

CMS will impose an immediate sanction(s) with respect to your facility if it is cited with any deficiency(ies) on the first and each subsequent survey after it was designated as a SFF.

Enforcement remedies will be of increasing severity. These will include, at a minimum, a Civil Money Penalty and/or a Denial of Payment for New Admissions. If, after 3 standard surveys (approximately 18 months) subsequent to being selected as a SFF, the nursing home fails to have made significant progress (i.e., unable to achieve a survey with ‘no actual harm’ and ‘no substandard quality of care’), CMS will issue a notice of termination from the Medicare and Medicaid program unless there are substantial, new developments that indicate a high probability of improvement in the systems of care at the nursing home. If the provider agreement is terminated, CMS will consider the facility’s status and progress (or lack of progress) as a SFF in setting a reasonable assurance period before a facility may be reinstated to participate in Medicare.

Can This Be Appealed?

Your selection as a SFF is not subject to appeal. However, you still have the right to informal dispute resolution regarding the findings of a survey (see 42 Code of Federal Regulations §488.331) and the right to appeal the noncompliance that led to a remedy through an Administrative Law Judge of the Department of Health and Human Services. Specific requirements for requesting a formal hearing are contained in the notice of the imposition of the remedy.

We encourage you to take this communication seriously, as it is based on serious and persistent quality of care problems for which you have responsibility. Most importantly, we hope you will take this opportunity to redouble efforts to improve the quality of care provided to residents in your nursing home.

We are also sending a copy of this notice to other accountable parties to give them notice of the designation of SFF for your facility^f.

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

Sincerely,

(Name and Title)

cc: Chairperson, Governing Body
Not-for-Profit or For-Profit Owner & Operator
State Ombudsman
Quality Improvement Organization
CMS Regional Office

^f These may include the Governing Body, owner and operator. Notice may also be provided to the State Ombudsman, the State Medicaid Director, and the State Quality Improvement Organization.