

A GRADUAL RETURN TO NORMAL: CMS ISSUES GUIDANCE ON THE EXPANSION AND PRIORITIZATION OF SURVEY ACTIVITIES AND RESOLVING ENFORCEMENT CASES

August 19, 2020

On August 17, 2020, CMS issued revised guidance ([QSO-20-35-ALL](#)) for survey activities and enforcement actions for long-term care facilities, non-long-term care facilities, and laboratories. The memorandum updates guidance previously issued in June 2020 which began to transition states to more routine oversight and survey activities following postponement of many surveys and enforcement actions in March 2020 due to the COVID-19 pandemic.

The new guidance authorizes additional onsite surveys, provides guidance on the prioritization of surveys, updates guidance resolving enforcement cases, and expands desk review for outstanding enforcement actions. Accreditation organizations with Medicare-approved programs (such as Joint Commission) may resume normal activity based on state reopening criteria.

LONG-TERM CARE GUIDANCE

Expansion of Survey Activities

Guidance provided by CMS in June 2020 began to transition states back to more routine oversight and survey activities. CMS has now expanded on that guidance and authorized additional onsite surveys. In addition to Complaint investigations triaged as Non-Immediate Jeopardy-High, revisit surveys of facilities with removed Immediate Jeopardy (but still out of compliance), Special Focus Facility and Special Focus Facility Candidate recertification surveys, and recertification surveys in facilities for individuals with intellectual disabilities, CMS has advised that states should resume performing the following surveys as soon they have the resources to do so:

- Onsite revisits as specified in the revisit policy in the State Operations Manual (SOM) for surveys with end dates on or after June 1, 2020;
- Complaint investigations triaged as Non-Immediate Jeopardy-Medium; and
- Annual recertification surveys which are required to be conducted within 15 months from the last recertification survey.

Enforcement Guidance

CMS locations were previously directed to suspend enforcement actions with the exception of unremoved Immediate Jeopardy (IJ). CMS plans resolve suspended enforcement cases by expanding the Desk Review policy for Plans of Correction. State surveyors can now perform desk reviews for all open surveys, including noncompliance that was cited

at the IJ level, if the IJ finding has been verified as removed to a lower level of noncompliance or corrected. Unremoved IJs do still require an onsite visit. Providers who experience difficulty allocating resources to develop and implement a Plan of Correction (POC) because they are currently experiencing an outbreak of COVID-19 are instructed to contact their state survey agency and/or CMS location to request an extension to submit a POC.

Enforcement Cycles

An enforcement cycle begins on the completion date of a survey with the citation of a noncompliance deficiency and ends when the provider returns to substantial compliance or is terminated (also known as the “6-month termination track”). Until an enforcement cycle is closed or a facility is terminated, any subsequent surveys are part of the original enforcement cycle. To avoid undue consequences to facilities resulting from the inability to conduct revisits earlier in the year, surveys with an exit date after March 23, 2020, that fell into enforcement cycles with start dates prior to March 23, 2020, will be pulled out of the existing cycle and a separate cycle will be established. Specific guidance is provided for enforcement cycles started BEFORE March 23, 2020, enforcement Cycles started ON March 23, 2020, through May 31, 2020, and Enforcement Cycles states ON OR AFTER June 1, 2020.

CMP Collections

For Civil Monetary Penalties (CMPs) which were imposed and became due and payable from March 23, 2020, through May 31, 2020, but were not paid, CMS will reissue the CMP Due and Payable notice with a new date 15 days from the date of the notice. If the facility fails to pay following the new notice, CMS will send the CMP to the Medicare Administrative Contractor to offset, and assess interest beginning on the new due date. CMS will reduce a CMP by 35% for facilities whose 60-day time to appeal has passed but they were unable to notify CMS that they were waiving their right to a hearing.

NON-LONG-TERM CARE GUIDANCE

Expanded Survey Activities

Once a state has entered Phase 3 of reopening (or earlier at the state’s discretion), states should resume normal survey activities while prioritizing their survey backlog as follows (descending in priority):

1. Revisit surveys for past non-compliance that do not otherwise qualify for a desk review;
2. Complaint surveys triaged as non-IJ level or higher that have not been completed;
3. Special Purpose Renal Dialysis Facilities (SPRDFs);
4. Initial surveys of new providers;
5. Past-due recertification surveys with a statutorily required survey interval; and
6. Past-due recertification surveys without a statutorily required survey interval.

Surveyors are advised to continue to use the COVID-19 Focused Infection Control Survey: Acute and Continuing Care as part of any survey conducted.

Expanded Desk Review Policy

To address enforcement cases which were suspended, CMS is also expanding desk review policy for Plans of Corrections for non-long-term care providers. **Providers have 10 calendar days from the issuance of the new guidance to submit their POC for surveys that ended prior to June 1, 2020.** State surveyors can perform desk reviews for all open surveys that cited any level of noncompliance except unremoved IJs, which require an onsite visit. Beginning June 1, 2020, all onsite revisits are authorized and should resume as appropriate.

LABORATORY GUIDANCE

CMS has provided updated guidance to State Agencies on the recommended re-prioritization of the Clinical Laboratory Improvement Amendments (CLIA) with a priority on complaints where immediate corrective action is necessary (noncompliance with one or more condition-level requirements). Any enforcement actions or PT desk reviews that have been on hold can proceed. Validation surveys on accredited laboratory and Provider Performed Microscopy Project surveys will not resume at this time.

For questions, please contact a member of Hancock Daniel's [Accreditation and Certification Surveys](#) Practice or the [COVID-19 Task Force](#).

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