

Regulatory Update

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Abbreviations

- CMP: Civil money penalty
- CMS: Centers for Medicare and Medicaid Services
- DON: Director of Nursing
- DPNA or MDPNA: denial of payment for new admissions (mandatory)
- DDPNA: Discretionary denial of payment for new admissions
- DPOC: Directed plan of correction
- IDR: Informal dispute resolution
- IIDR: Independent informal dispute resolution
- IJ: Immediate jeopardy
- MA: Medicaid or Medical Assistance
- MC: Medicare
- NATCEP: Nurse aide training and competency and evaluation program
- NHA: Nursing Home Administrator
- POC: Plan of correction
- SNF: Skilled nursing facility
- SOM: State Operations Manual, Appendix PP
- SQC: Substandard Quality of Care

Myth Busters



Licensure And Enforcement



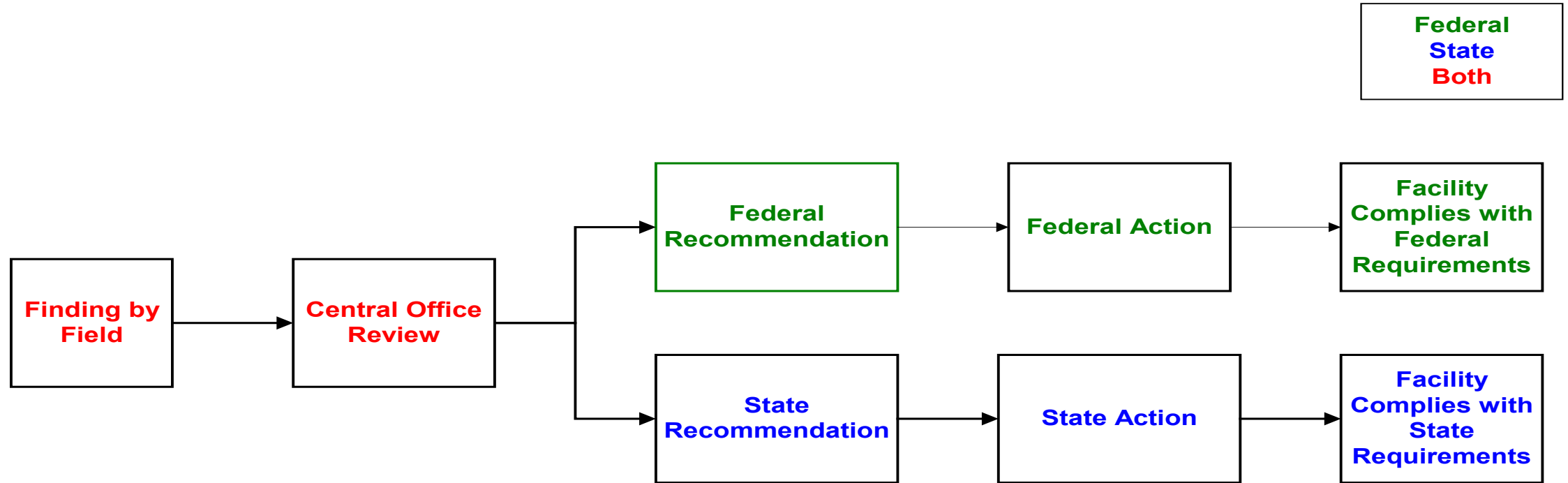
Types Of Surveys

- Licensure Survey
- Initial Certification Survey
- Standard Survey
- Abbreviated Standard Survey
- Complaint Survey
- Expanded Survey
- Partial and Extended Survey
- Revisits
- Validation Surveys
 - New guidance from CMS
 - Admin Info: 22-09-ALL *Revised April 7, 2023*
 - Federal monitoring surveys (FMS)

Licensure And MC/MA Participation

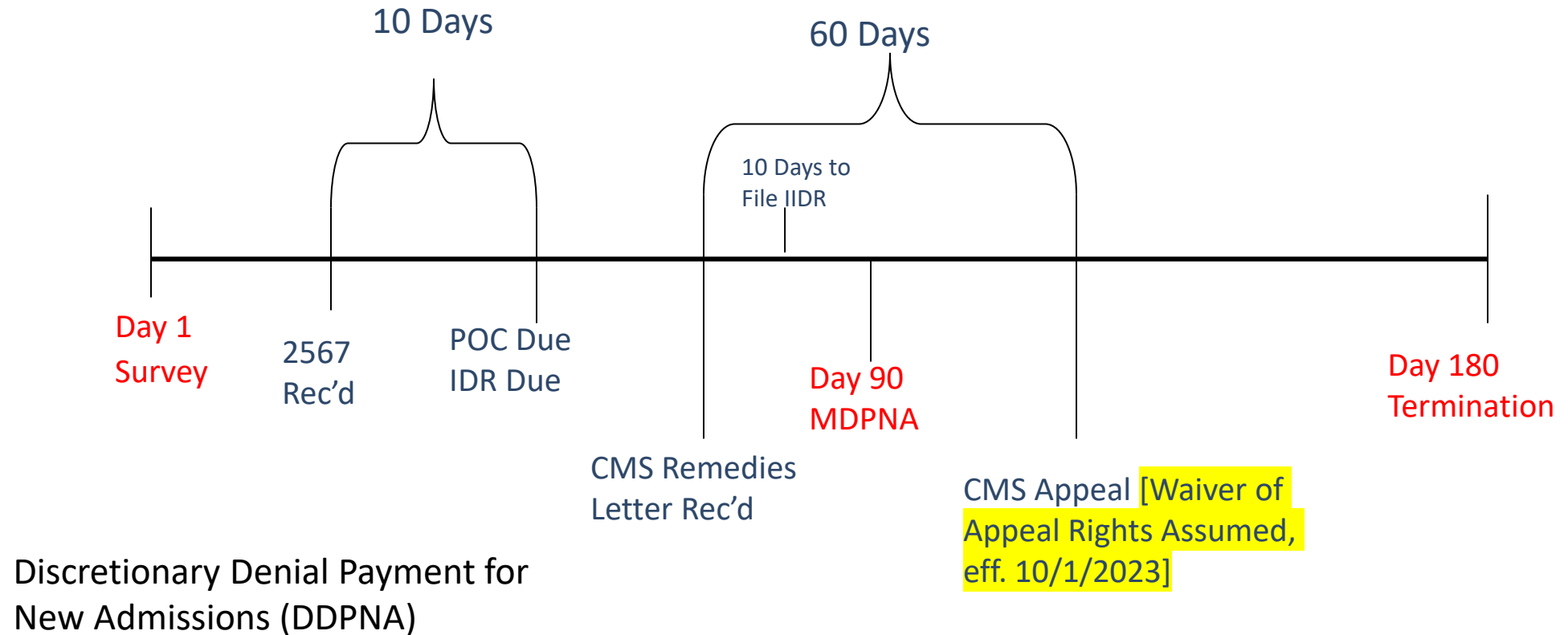
- State agency makes state licensure determinations
- Recommends MC certification to CMS (SOM)
- Certifies MA compliance to state Medicaid agency (SOM)
- Recommends federal MC sanctions to CMS (Federal Grid)
- Recommends MA sanctions to state Medicaid agency
- Issues state sanctions based on:

Sanctions Process Overview



Critical Federal Timelines

DDPNA for F880



Federal Scope And Severity Grid

Immediate Jeopardy To Resident Health Or Safety	PoC J Required: Cat. 3 Optional: Cat. 1 Optional: Cat. 2	PoC K Required: Cat. 3 Optional: Cat. 1 Optional: Cat. 2	PoC L Required: Cat. 3 Optional: Cat. 1 Optional: Cat. 2
Actual Harm That Is Not Immediate Jeopardy	PoC G Required: Cat. 2 Optional: Cat. 1	PoC H Required: Cat. 2 Optional: Cat. 1	PoC I Required: Cat. 2 Optional: Cat. 1 Optional: Temporary Mgmt
No Actual Harm With Potential For More Than Minimal Harm That Is Not Immediate Jeopardy	PoC D Required: Cat. 1 Optional: Cat. 2	PoC E Required: Cat. 1 Optional: Cat. 2	PoC F Required: Cat. 2 Optional: Cat. 1
No Actual Harm With Potential For Minimal Harm	No PoC A No remedies Commitment to Correct Not on CMS-2567	PoC B No remedies	PoC C No remedies

KEY

Substandard Quality of Care

Out of Compliance

Substantial Compliance

CMP Inflation: 2016 to 2022

Scope/Severity	Per Day		Per Instance	
IJ: J/K/L Category 3 with IJ	2016	\$3,050 -- \$10,000	2016	\$1,050 -- \$10,000
	2022	\$6,888 -- \$22,584	2022	\$2,259 -- \$22,584
Category 3 without IJ	2016	\$3,050 -- \$10,000	2016	\$1,050 -- \$10,000
	2022	\$6,888 -- \$22,584	2022	\$2,259 -- \$22,584
Category 2: F/G/H/I	2016	\$50 -- \$3,000	2016	\$1,000-- \$10,000
	2022	\$113 -- \$6,774	2022	\$2,259 -- \$22,584

Grounds to waive disapproval of nurse aide training program increases to \$11,292

<https://www.cms.gov/files/document/ltc-hha-clia-specific-cmp-adjustments-2022.pdf>

Loss Of NATCEP Program

- Operating under a waiver for coverage by licensed nurses
- Subject to an extended survey or partial extended survey for substandard quality of care
- $\text{CMP} \geq \$11,292$ (subject to inflation adjustment factor)
- Previous denial of payment, temporary manager, or termination

Requesting Waiver Of Loss Of NATCEP

- State may grant waiver and allow NATCEP program to be offered in (but not by) SNF if the State —
 - Determines that there is no other such program offered within a reasonable distance of the SNF
 - Assures, through an oversight effort, that an adequate environment exists for operating the program in the SNF
 - Provides notice of such determination and assurances to the State Long-Term Care Ombudsman
- Does not require CMS approval

Other NATCEP Waiver Options

- If $CMP \geq \$11,292$ *and* deficiency is not related to Quality of Care for residents – meaning direct hands-on care and treatment that a health care professional or direct care staff furnished to a resident
- State may recommend waiver, but CMS Regional Office makes the determination

CMS: Substandard Quality Of Care

Federal Regulatory Groups for Long Term Care

***Substandard Quality of Care = one or more deficiencies with s/s levels of F, H, I, J, K, or L in Red**

**** Tag to be cited by Federal Surveyors Only**

F540	Definitions	483.12	Freedom from Abuse, Neglect, and Exploitation	483.24	Quality of Life
483.10	Resident Rights	F600	*Free from Abuse and Neglect	F675	*Quality of Life
F550	*Resident Rights/Exercise of Rights	F602	*Free from Misappropriation/Exploitation	F676	*Activities of Daily Living (ADLs)/ Maintain Abilities
F551	Rights Exercised by Representative	F603	*Free from Involuntary Seclusion	F677	*ADL Care Provided for Dependent Residents
F552	Right to be Informed/Make Treatment Decisions	F604	*Right to be Free from Physical Restraints	F678	*Cardio-Pulmonary Resuscitation (CPR)
F553	Right to Participate in Planning Care	F605	*Right to be Free from Chemical Restraints	F679	*Activities Meet Interest/Needs of Each Resident
F554	Resident Self-Admin Meds-Clinically Appropriate	F606	*Not Employ/Engage Staff with Adverse Actions	F680	*Qualifications of Activity Professional
F555	Right to Choose/Be Informed of Attending Physician	F607	*Develop/Implement Abuse/Neglect, etc. Policies	483.25	Quality of Care
F557	Respect, Dignity/Right to have Personal Property	F609	*Reporting of Alleged Violations	F684	Quality of Care
F558	*Reasonable Accommodations of Needs/Preferences	F610	*Investigate/Prevent/Correct Alleged Violation	F685	*Treatment/Devices to Maintain Hearing/Vision
F559	*Choose/Be Notified of Room/Roommate Change			F686	*Treatment/Svcs to Prevent/Heal Pressure Ulcers
F560	Right to Refuse Certain Transfers	483.15	Admission, Transfer, and Discharge	F687	*Foot Care
F561	*Self Determination	F620	Admissions Policy	F688	*Increase/Prevent Decrease in ROM/Mobility
F562	Immediate Access to Resident	F621	Equal Practices Regardless of Payment Source	F689	*Free of Accident Hazards/Supervision/Devices
F563	Right to Receive/Deny Visitors	F622	Transfer and Discharge Requirements	F690	*Bowel/Bladder Incontinence, Catheter, UTI
F564	Inform of Visitation Rights/Equal Visitation Privileges	F623	Notice Requirements Before Transfer/Discharge	F691	*Colostomy, Urostomy, or Ileostomy Care
F565	*Resident/Family Group and Response	F624	Preparation for Safe/Orderly Transfer/Discharge	F692	*Nutrition/Hydration Status Maintenance
F566	Right to Perform Facility Services or Refuse	F625	Notice of Bed Hold Policy Before/Upon Transfer	F693	*Tube Feeding Management/Restore Eating Skills
F567	Protection/Management of Personal Funds	F626	Permitting Residents to Return to Facility	F694	*Parenteral/IV Fluids
F568	Accounting and Records of Personal Funds	483.20	Resident Assessments	F695	*Respiratory/Tracheostomy care and Suctioning
F569	Notice and Conveyance of Personal Funds	F635	Admission Physician Orders for Immediate Care	F696	*Prostheses
F570	Surety Bond - Security of Personal Funds	F636	Comprehensive Assessments & Timing	F697	*Pain Management
F571	Limitations on Charges to Personal Funds	F637	Comprehensive Assmt After Significant Change	F698	*Dialysis
F572	Notice of Rights and Rules	F638	Quarterly Assessment At Least Every 3 Months	F699	*Trauma Informed Care
F573	Right to Access/Purchase Copies of Records	F639	Maintain 15 Months of Resident Assessments	F700	*Bedrails
F574	Required Notices and Contact Information	F640	Encoding/Transmitting Resident Assessment	483.30	Physician Services
F575	Required Postings	F641	Accuracy of Assessments	F710	Resident's Care Supervised by a Physician
F576	Right to Forms of Communication with Privacy	F642	Coordination/Certification of Assessment	F711	Physician Visits- Review Care/Notes/Order
F577	Right to Survey Results/Advocate Agency Info	F644	Coordination of PASARR and Assessments	F712	Physician Visits-Frequency/Timeliness/Alternate NPPs
F578	Request/Refuse/Discontinue Treatment/Formulate Adv Di	F645	PASARR Screening for MD & ID	F713	Physician for Emergency Care, Available 24 Hours
F579	Posting/Notice of Medicare/Medicaid on Admission	F646	MD/ID Significant Change Notification	F714	Physician Delegation of Tasks to NPP
F580	Notify of Changes (Injury/Decline/Room, Etc.)	483.21	Comprehensive Resident Centered Care Plan	F715	Physician Delegation to Dietitian/Therapist
F582	Medicaid/Medicare Coverage/Liability Notice	F655	Baseline Care Plan	483.35	Nursing Services
F583	Personal Privacy/Confidentiality of Records	F656	Develop/Implement Comprehensive Care Plan	F725	Sufficient Nursing Staff
F584	*Safe/Clean/Comfortable/Homelike Environment	F657	Care Plan Timing and Revision	F726	Competent Nursing Staff
F585	Grievances	F658	Services Provided Meet Professional Standards	F727	RN & Hrs/7 days/Wk, Full Time DON
F586	Resident Contact with External Entities	F659	Qualified Persons	F728	Nursery Hiring and Use of Nurse
		F660	Discharge Planning Process	F729	Nurse Aide Registry Verification, Retraining
		F661	Discharge Summary	F730	Nurse Aide Perform Review – 12Hr/Year In-service
				F731	Waiver-Licensed Nurses 24Hr/Day and RN Coverage
				F732	Posted Nurse Staffing Information

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483.40	Behavioral Health	F811	Feeding Asst -Training/Supervision/Resident	483.90	Physical Environment
F740	Behavioral Health Services	F812	Food Procurement, Store/Prepare/Serve - Sanitary	F906	Emergency Electrical Power System
F741	Sufficient/Competent Staff-Behav Health Needs	F813	Personal Food Policy	F907	Space and Equipment
F742	*Treatment/Svc for Mental/Psychosocial Concerns	F814	Dispose Garbage & Refuse Properly	F908	Essential Equipment, Safe Operating Condition
F743	*No Pattern of Behavioral Difficulties Unless Unavoidable	483.65	Specialized Rehabilitative Services	F909	Resident Bed
F744	*Treatment /Service for Dementia	F825	Provide/Obtain Specialized Rehab Services	F910	Resident Room
F745	*Provision of Medically Related Social Services	F826	Rehab Services- Physician Order/Qualified Person	F911	Bedroom Number of Residents
483.45	Pharmacy Services	483.70	Administration	F912	Bedrooms Measure at Least 80 Square Ft/Resident
F755	Pharmacy Svcs/Procedures/Pharmacist/ Records	F835	Administration	F913	Bedrooms Have Direct Access to Exit Corridor
F756	Drug Regimen Review, Report Irregular, Act On	F836	License/Comply w/Fed/State/Local Law/Prof Std	F914	Bedrooms Assure Full Visual Privacy
F757	*Drug Regimen is Free From Unnecessary Drugs	F837	Governing Body	F915	Resident Room Window
F758	*Free from Unnec Psychotropic Meds/PRN Use	F838	Facility Assessment	F916	Resident Room Floor Above Grade
F759	*Free of Medication Error Rate sof 5% or More	F839	Staff Qualifications	F917	Resident Room Bed/Furniture/Closet
F760	*Residents Are Free of Significant Med Errors	F840	Use of Outside Resources	F918	Bedrooms Equipped/Near Lavatory/Toilet
F761	Label/Store Drugs & Biologicals	F841	Responsibilities of Medical Director	F919	Resident Call System
483.50	Laboratory, Radiology, and Other Diagnostic Services	F842	Resident Records - Identifiable Information	F920	Requirements for Dining and Activity Rooms
F770	Laboratory Services	F843	Transfer Agreement	F921	Safe/Functional/Sanitary/ Comfortable Environment
F771	Blood Blank and Transfusion Services	F844	Disclosure of Ownership Requirements	F922	Procedures to Ensure Water Availability
F772	Lab Services Not Provided On-Site	F845	Facility closure-Administrator	F923	Ventilation
F773	Lab Svcs Physician Order/Notify of Results	F846	Facility closure	F924	Corridors Have Firmly Secured Handrails
F774	Assist with Transport Arrangements to Lab Svcs	F847	Enter into Binding Arbitration Agreements	F925	Maintains Effective Pest Control Program
F775	Lab Reports in Record-Lab Name/Address	F848	Select Arbitrator/Venue, Retention of Agreements	F926	Smoking Policies
F776	Radiology/Other Diagnostic Services	F849	Hospice Services	483.95	Training Requirements
F777	Radiology/Diag. Svcs Ordered/Notify Results	F850	*Qualifications of Social Worker >120 Beds	F940	Training Requirements - General
F778	Assist with Transport Arrangements to Radiology	F851	Payroll Based Journal	F941	Communication Training
F779	X-Ray/Diagnostic Report in Record-Sign/Dated	483.75	Quality Assurance and Performance Improvement	F942	Resident's Rights Training
483.55	Dental Services	F865	QAPI Program/Plan, Disclosure/Good Faith Attempt	F943	Abuse, Neglect, and Exploitation Training
F790	Routine/Emergency Dental Services in SNFs	F867	QAPI/QAA Improvement Activities	F944	QAPI Training
F791	Routine/Emergency Dental Services in NFs	F868	QAA Committee	F945	Infection Control Training
483.60	Food and Nutrition Services	483.80	Infection Control	F946	Compliance and Ethics Training
F800	Provided Diet Meets Needs of Each Resident	F880	Infection Prevention & Control	F947	Required In-Service Training for Nurse Aides
F801	Qualified Dietary Staff	F881	Antibiotic Stewardship Program	F948	Training for Feeding Assistants
F802	Sufficient Dietary Support Personnel	F882	Infection Preventionist Qualifications/Role	F949	Behavioral Health Training
F803	Menus Meet Res Needs/Prep in Advance/Followed	F883	*Influenza and Pneumococcal Immunizations		
F804	Nutritive Value/Appear, Palatable/Prefer Temp	F884	**Reporting – National Health Safety Network		
F805	Food in Form to Meet Individual Needs	F885	Reporting – Residents, Representatives & Families		
F806	Resident Allergies, Preferences and Substitutes	F886	COVID-19 Testing-Residents & Staff		
F807	Drinks Avail to Meet Needs/P references/ Hydration	F887	COVID-19 Immunization		
F808	Therapeutic Diet Prescribed by Physician	F888	COVID-19 Vaccination of Facility Staff		
F809	Frequency of Meals/Snacks at Bedtime	483.85	Compliance and Ethics Program		
F810	Assistive Devices - Eating Equipment/Utensils	F895	Compliance and Ethics Program		

“Required” Plan Of Correction (POC) Elements

- What corrective action(s) will be accomplished for residents affected by the deficient practice?
- How will you identify other residents having the potential to be affected by the same deficient practice and corrective actions?
- What measures will be put in place or system changes will you make to ensure that the deficient practice does not recur?
- How will the corrective action be monitored to ensure the deficient practice will not recur, i.e., what quality assurance programs will be established?
- Dates when the corrective action will be completed

Strategies For Preparing Effective POCs

- Less is more
- Read the F Tags and the state tags
- Don't be afraid to have your POC rejected
- Be responsive and responsible
 - Don't overpromise
 - Don't admit liability

Strategies For Preparing Effective POCs

- Don't go overboard with policies, procedures and plans of correction
- Keep your date of compliance as short as possible
 - Begin implementing corrective action during the survey and document corrections (e.g., inservicing of staff)

Consider POC Disclaimer Language

Preparation and submission of this plan of correction is required by state and federal law. This plan of correction does not constitute an admission for purposes of general liability, professional malpractice or any other court proceeding.

What Is Past Noncompliance?

- Past noncompliance generally means a facility has sufficient evidence to show that it corrected a deficient practice before the survey
- Past noncompliance is best supported by an effective and well documented internal POC

How Does CMS Define Past Noncompliance?

- Deficiency identified during a current survey with a S/S at "G" or above, or Substandard Quality of Care (SQC) findings at a S/S at "F" that meets all of the following three criteria:
 - Not in compliance with the specific regulatory requirement(s) at the time the situation occurred
 - Noncompliance occurred after the exit date of the last standard (recertification) survey and before the survey (standard, complaint, or revisit) currently being conducted
 - There is *sufficient evidence* to support that the facility corrected the noncompliance and is in substantial compliance at the time of the current survey for the specific regulatory requirement(s)

Respond Quickly To Serious Events

- The key to meeting past noncompliance is to treat all serious incidents as one would respond to an immediate jeopardy situation
 - Assessing the resident(s) involved in the incident
 - Removing the perpetrator pending investigation
 - Reporting to all applicable agencies and law enforcement (if applicable)
 - Assessing and protecting other residents



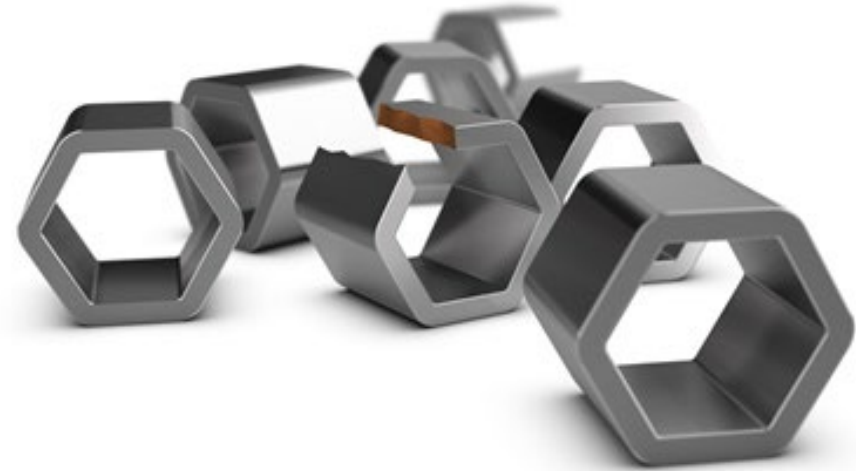
Respond Quickly To Serious Events

- As appropriate, educating staff and volunteers (if applicable), ensuring they will not work with residents until they have been educated
- Implementing corrective measures
- Monitoring and auditing
- Reviewing the incident at the Quality Assurance and Process Improvement (QAPI) committee to assess root causes and needed system improvements
- Documenting all of the above so that when the surveyors investigate the self-reported incident, they will have the “sufficient evidence” to support citation as past noncompliance



What Is Sufficient Evidence To Prove Past Noncompliance?

- Resident?
- Other residents?
- Prevention?
- Monitoring?



Elopement And Other Risks



Elopement F689 Guidance

- A situation in which a resident leaves the premises or a safe area *without the facility's knowledge and supervision*, if necessary, would be considered an elopement
- Policies that clearly define mechanisms and procedures for assessing or identifying, monitoring and managing residents at risk for elopement can help to minimize risk of a resident leaving a safe area without the facility's awareness and/or appropriate supervision

Survey Trends

- Resident to resident abuse
 - Consensual ????
- Elopements
- Staffing

IPRO

PA DOH

FSA

F689 Free of accident hazards/supervision/devices	F656 Development/implement comprehensive care plan	F880: Infection prevention & control
F880: Infection prevention & control	F686 Treatment/services to prevent/heal pressure ulcers	F689 Free of accident hazards/supervision/devices
F880: Infection prevention & control	F689 Free of accident hazards/supervision/ devices	F684 Quality of Life
F684 Quality of Life	F756 Drug regime review, report irregularities and act on them	F656 Development/implement comprehensive care plan
F812 Food procurement, storage, prepare, service sanitary	F758 Free from unnecessary psychotropic meds/prn use	F812 Food procurement, storage, prepare, service sanitary
F656 Dev/Imp Comp Care Plans	F804 Nutritive value/appearance/palatable/preferred temperature	F585 Grievances
F677 ADL Care	F812 Food procurement, storage, prepare, service sanitary	F699 Trauma Informed Care

Issues To Watch

- ADA compliance
 - Substance abuse disorders/medication treatment for opioid use disorders (“MOUD”)
 - Hearing impaired/vision impaired/mobility impaired [secret shoppers]
 - Resident-initiated racial discrimination
 - Website accessibility
- Department of Justice/Office of the Attorney General/State AGs
 - Quality of care
 - Related party transactions/kickbacks
- Internal Revenue Service
 - COVID funds and recoveries

Options To Challenge

- First level IDR or IIDR
 - Must be filed 10 days after receiving 2567 (same day POC is due)
 - IDR reviewed at DOH Central Office by a team
 - IIDR goes to the QIO but is then reviewed by DOH
 - BOTH CAN BE REVERSED BY CMS
- Second level IIDR
 - Must be filed 10 days after receiving CMS Sanction Letter
 - Reviewed by DOH Division of Hospice and Home Health
 - Does not affect ability to waive formal appeal rights for 35% CMP reduction

Administrative Appeals

- DOH Sanctions
 - Appeal and Answer must be filed within 30 days
 - No automatic stay pending appeal
 - Appeal is filed with the Health Policy Board
- CMS Sanctions
 - Appeal within 60 days or otherwise assumed to waive right to hearing and get 35% CMP reduction effective October 1, 2023
 - Must file electronically to Departmental Appeals Board (DAB)
 - Cases go first to an administrative law judge (ALJ)
 - Next level of appeal is to the DAB

Court Appeals

- Court appeals from DOH cases are filed with the PA Commonwealth Court
- Court appeals from the DAB decisions are filed with the U.S. Court of Appeals

Don't Ignore Timely Reporting Regulations



- CMS is cracking down on providers that do not update 855 information timely or accurately
- Medicaid revalidations are hitting roadblocks
- Who is completing your information?

Medicare Requires SNFs To Report

- Within 30 days: change of ownership or control, including changes in authorized official(s) or delegated official(s)
- Within 90 days: all other changes to enrollment [42 CFR §424.516(e)]
- CMS may revoke for failing to report considering
 - Whether the data in question was reported
 - If the data was reported, how belatedly
 - The materiality of the data in question
 - Any other information CMS deems relevant to its determination [42 CFR §424.535(d)]

Medicaid Enrollment, Screening And Revalidation

- All providers must be screened in accordance with their risk level (limited, moderate, high)
- States must revalidate enrollment of all providers at least every 5 years
- States must terminate enrollment of any provider where any person with a 5% or greater direct or indirect ownership interest did not submit timely and accurate information and cooperate with any screening method

Revalidation: “Moderate” Categorical Risk

- Verifies that SNF meets all applicable Federal regulations and State requirements
- Conducts license verifications, including licensure verifications across State lines
- Conducts database checks on a pre- and post-enrollment basis to ensure that SNF continues to meet enrollment criteria
- Conducts an on-site visit

SNF CHOWs And New Owners: High Categorical Risk

- Requires submission of a set of fingerprints for a national background check from all individuals who maintain a ≥ 5 percent direct or indirect ownership interest in the SNF
- Conducts a fingerprint-based criminal history record check of the Federal Bureau of Investigation's Integrated Automated Fingerprint Identification System on all individuals who maintain ≥ 5 percent direct or indirect ownership interest in the SNF
- Currently causing significant delays

Practice Tips

- Prepare now to respond quickly
- Educate your Board and your leadership team
- Review PECOS data
- Consider new ways to document and take credit for all you and your staff do

Questions And Contact

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