



## COVID-19 Survey Activities and Enhanced Enforcement for Infection Control Deficiencies

On June 1, 2020, the federal Centers for Medicare and Medicaid Services (CMS) issued a [QSO memorandum](#) on COVID-19 survey activities, CARES Act funding, and enhanced enforcement for infection control deficiencies. The memorandum was accompanied by the release of the [nursing facility COVID-19 data](#) collected through the NHSN LTCF Module to date. Highlights from the memorandum are as follows:

- **Infection Control Surveys and Funding:** State survey agencies must complete 100% of their focused infection control surveys for nursing facilities by July 31, 2020, or they will be required to submit a corrective action plan for completion within 30 days. If, after the 30-day period, states have still not achieved 100% of their surveys, their CARES Act allocation may be reduced by up to 10%, with additional reductions of 5% with any subsequent 30-day extensions. Reductions will be redistributed to the states that have completed 100% of their surveys. To date, Indiana has current completed 50.6% of its surveys, with the national average at 54%.
- **New Survey Activities:** In addition to focused infection control surveys, state survey agencies must conduct the following, or risk the loss of their CARES Act allocation by up to 5% annually:
  - Survey within the month of June any nursing facility with a COVID-19 outbreak, which is defined as cumulative cases/bed capacity greater than 10%; cumulative confirmed cases plus suspected cases/bed capacity greater than 20%; or 10 or more COVID-19 deaths.
  - Survey within three to five days of identification of any nursing facility with three or more new COVID-19 suspected or confirmed cases since the last NHSN data report, or one confirmed case in a facility that was previously COVID-free.
  - Starting October 1, 2020, perform focused infection control surveys of 20% of all nursing facilities based on state survey agency discretion or additional data that identifies facility or community risk.
- **Phase 3 Surveys:** Once a nursing facility has entered Phase 3 of CMS's [Nursing Home Reopening Recommendations](#), meaning no new facility-onset COVID-19 cases in the past 28 days, state survey agencies are authorized to expand survey activities beyond the current prioritization, such as complaint investigations that are triaged as Non-Immediate Jeopardy-High. These survey activities will apply to all provider and supplier types, and a state may begin these survey activities earlier at its discretion. Prioritization is to be based on the history or allegations of noncompliance with regard to abuse or neglect, infection control, violations of transfer or discharge requirements, insufficient staffing or competency, and other quality of care issues (i.e., falls, pressure ulcers).

- **Enhanced Enforcement for Infection Control Deficiencies:** Finally, CMS is expanding enforcement of infection control deficiencies, and any substantial non-compliance, meaning D or above, associated with infection control requirements will lead to the following enforcement remedies:
  - Non-compliance for an infection control deficiency when none have been cited in the last year or on the last standard survey:
    - Current non-compliance that is not widespread (Level D & E) - Directed Plan of Correction (POC)
    - Current non-compliance that is widespread (Level F) - Directed POC, Discretionary Denial of Payment for New Admissions with 45 days to demonstrate compliance
  - Non-compliance for infection control deficiencies cited once in the last year or on the last standard survey:
    - Current non-compliance that is not widespread (Level D & E) - Directed POC, Discretionary Denial of Payment for New Admissions with 45 days to demonstrate compliance, Per Instance Civil Monetary Penalty (CMP) of up to \$5,000
    - Current non-compliance that is widespread (Level F) - Directed POC, Discretionary Denial of Payment for New Admissions with 45 days to demonstrate compliance, \$10,000 Per Instance CMP
  - Non-compliance that has been cited for infection control deficiencies twice or more in the last two years or twice since the second to last standard survey:
    - Current non-compliance that is not widespread (Level D & E) - Directed POC, Discretionary Denial of Payment for New Admissions with 30 days to demonstrate compliance, \$15,000 Per Instance CMP
    - Current non-compliance that is widespread (Level F) - Directed POC, Discretionary Denial of Payment for New Admissions with 30 days to demonstrate compliance, \$20,000 Per Instance CMP
  - Current non-compliance at the Harm Level (Level G, H, I) regardless of past history - Directed POC, Discretionary Denial of Payment for New Admissions with 30 days to demonstrate compliance, CMP imposed at highest amount option within the appropriate range in the CMP analytic tool
  - Current non-compliance at the Immediate Jeopardy Level (Level J, K, L) regardless of past history - In addition to the mandatory remedies of Temporary Manager or Termination, imposition of Directed POC, Discretionary Denial of Payment for New Admissions with 15 days to demonstrate compliance, CMP imposed at highest amount option within the appropriate range in the CMP analytic tool

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