



# Regulatory Roundup

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Weekly Webinar for Long-Term Care Professionals

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 [IHCA.org/regulatory-roundup](https://ihca.org/regulatory-roundup)

## PRESENTERS

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Indiana Health Care Association

**Team Members from**

Indiana Department of Health

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# Today's Agenda

- Respiratory Infection Trends, Evidence of Vaccine Effectiveness, New Variants – Dr. Vuppalanchi
- Food Safety Alert, Free COVID Test Kits, Federal monitoring Surveys – Lori Davenport
- Q&A

# Food Safety Alert

- CDC is investigating a Salmonella outbreak linked to cantaloupes.
- Concern for elderly and young
- Illness has been severe
  - Do not eat or serve pre-cut cantaloupes if you do not know whether Malichita or Rudy brand of cantaloupes were used.
  - Do not eat recalled whole or pre-cut cantaloupe products
    - Illness includes
      - Diarrhea and fever higher than 102 Degrees F
      - Diarrhea for more than 3 days
      - Bloody diarrhea
      - Vomiting continuous
      - Signs of dehydration

# Can I Still Get Free COVID-19 Test from HHS?

- Department of Health and Human Services Abbott BinaxNOW Test Kit Program.
- Assisted Living and SNF are eligible for monthly shipments
- Must have active CLIA waiver to be eligible
- Shipments started and stopped, and test quantities can be increased or decreased by emailing [TDX@hhs.gov](mailto:TDX@hhs.gov)
- Email must include the following:
  - Name of facility
  - Facility Address
  - CLIA Waiver #
  - Request – STOP/START, INCREASE, DECREASE

# Federal Monitoring Surveys

- Guidance released Admin Memo 24-05-NH – issued late November
- Long Term Care (LTC) Federal Monitoring Surveys (FMS) = “validation surveys” as referenced in the statute.
  - Requires FMS must be performed by each CMS Location during each fiscal year.
  - Requires 5 percent of the number of skilled nursing facilities surveyed by the State in the year, but no less than 5 SNFs in the State
  - Validation surveys include the health, Life Safety (LSC), and emergency preparedness (EP) parts of the survey.

# Types of FMS's

- Aimed at evaluating and advising State Agency Surveyors.
- Note: An Emergency Preparedness FMS is not conducted during Health FMS.
- There are three types of LTC Health FMSs
  - Resource and Support Surveys
  - Focused Concern Surveys
  - Health Comparative

# Resource and Support Surveys

- Federal Surveyor(s) accompany State Agency (SA) Surveyors on an initial, standard, revisit or complaint survey to assess SA team performance or observe and assess specific areas of concern.
- May provide training and/or technical assistance
- RSS = Resource and Support Survey

# Focused Concern Surveys



- Evaluation
- One or more surveyors
- Independent investigation of the identified concern areas
- Occur within 60 calendar days after a SA standard or complaint survey
- Follow investigative protocols and pathways to assess effectiveness of SA performance.



# Health Comparative



- Full survey in the same facility, after a standard survey is conducted by the SA.
- Monitor and evaluate SA performance
- Should be conducted within 60 calendar days following the SA's standard survey.

# Life Safety Code & Emergency Preparedness Federal Monitoring Survey

- There are four survey processes aimed at advising and evaluating SA surveyors.
  - Life Safety Code (LSC) Resource and Support
  - Life Safety Code (LSC) Comparative
  - Life Safety Code Revisit Resource and Support
  - Life Safety Code (LSC) Comparative

# LSC Resource & Support

- LSC RSS
- Side by side
- Observe and assess performance
- May provide training and/or technical support while on-site

# LSC Comparative



- Full survey conducted by Federal Surveyor in the same facility, after a standard survey is conducted by the SA.
- Monitor and assesses performance of the SA.
- An Emergency Preparedness survey will be conducted with all LSC comparative surveys.
- Will occur within 60 calendar days following the SA's standard survey.
- Surveyor follows all investigative protocols and assess the effectiveness of the SA survey performance.

# LSC Revisit Resource & Support Survey

- LSC Revisit RSS
- Federal Surveyor will observe and assess the SA Survey team performance.
- Training and/or technical support may occur while on-site.

# LSC Revisit Comparative

- Conducted by a Federal Surveyor in the same facility, after a revisit survey is conducted by the SA.
- Monitor and assesses SA performance.
- An Emergency Preparedness Survey will be conducted with all LSC revisit comparative surveys.
- Will occur within 60 calendar days following the SA's revisit survey.
- The Federal Surveyor will evaluate compliance with the requirements cited during the SA's standard survey.
- The Federal Surveyor will follow all investigative protocols.

# CMS Concern Areas FY24 & FY25

- Concern areas were identified by CMS data sources, OIG recommendations, and the White House Initiative to Improve Care in Nursing Homes.
- CMS Locations may identify additional concern areas for States within their jurisdiction.
- One or more concern areas may be identified at the discretion of the Federal Surveyor.

#	Focus Concern	Regulatory Grouping(s)	F-Tags	Critical Element Pathways
1 <sup>st</sup>	Nurse Staffing	Administration (§483.70)	<ul style="list-style-type: none"> <li>• <b>F851:</b> Payroll Based Journal</li> </ul>	Sufficient and Competent Nurse Staffing
		Nursing Services (§483.35)	<ul style="list-style-type: none"> <li>• <b>F725:</b> Sufficient Nurse Staffing</li> <li>• <b>F727:</b> RN 8 Hrs/7 days/WK, Full Time DON</li> </ul>	
2 <sup>nd</sup>	Unnecessary Psychotropic Medication	Resident Assessments (§483.20)	<ul style="list-style-type: none"> <li>• <b>F641:</b> Accuracy of Assessments</li> </ul>	<ul style="list-style-type: none"> <li>• Unnecessary Medications</li> <li>• Psychotropic Medications</li> <li>• Medication Regimen Review</li> </ul>
		Comprehensive Resident Centered Care Plan (§483.21)	<ul style="list-style-type: none"> <li>• <b>F658:</b> Services Provided Meet Professional Standards</li> </ul>	
		Pharmacy Services (§483.45)	<ul style="list-style-type: none"> <li>• <b>F758:</b> Free from Unnecessary Psychotropic Meds/PRN Use</li> </ul>	
3 <sup>rd</sup>	Facility-Initiated Discharge	Admission, Transfer, and Discharge (§483.15)	<ul style="list-style-type: none"> <li>• <b>F622:</b> Transfer and Discharge Requirements</li> <li>• <b>F624:</b> Preparation for Safe/ Orderly Transfer/ Discharge</li> <li>• <b>F626:</b> Permitting Residents to Return to Facility</li> </ul>	Discharge



# Areas of Focus Concern

## **CMS Location Areas of Concern**

- CMS may identify areas of concern for one or more states.
- The Federal Surveyor should investigate the identified concern via the optional area of concern.

## **Optional**

- The Federal Surveyor will have the option of selecting an additional area(s) of concern that is unique to the survey and that does not fall into concerns already identified.

# (FCS) Survey



- Focused Concern Survey
  - One of the evaluative components of the Federal Monitoring Process of State Agency Surveyors .
  - Completed by one Federal Surveyor conducting an independent investigation of the identified concern area.
  - Occur within approximately 60 working days, after a State standard or complaint survey.
  - Included in the FCS is at least two of the identified concern areas for a given state and should include the three concern areas on at least 50% of the surveys conducted.

# (FCS) Survey



- Survey sample used will be 60% of the SA survey sample of residents who were investigated for the concern area but will not exceed five (5) residents per care area.
- Federal Surveyor will make compliance decisions related to the areas of focus and conduct an exit with the administrator and other staff at the facility.
- During the exit the facility will be notified if Federal findings have been determined to be SQC, Harm or Immediate Jeopardy.

# Will I get a 2567 after an FCS Survey?

- For Nursing Staffing (F851, F725, F727), Unnecessary Psychotropic Medications (F641, F658, F758), and Facility Initiated Discharge (F622, F624, F626) a 2567 will only be drafted if noncompliance was identified by the Federal Surveyors at the IJ, Harm or SQC ;eve; and was not identified by the SA at the level of severity and scope.
- Other tags associated, tags that are not at the SQC or higher level may be included if required to address the full breadth of the noncompliance.

Create a 2567 only under the following conditions:

<b>Identify Noncompliance</b>	<b>Create a 2567</b>
Noncompliance at SQC, Harm (Level 3), or IJ (Level 4)	Yes
Noncompliance cited at level 4 by Federal Surveyors and the SA cited at level 3	Yes
Noncompliance cited at Level 3 and SA cited at level 2	Yes
Noncompliance cited at Level 3 or Level 4 by the Federal Surveyor and the SA did not cite	Yes
Independent or associated tags that are not SQC or higher	No

# SQC Findings on an FCS

- SQC is discovered while conducting an FCS – a Partial Extended Survey will be conducted immediately after the FCS, but delayed, no later than 14 calendar days after completion of the abbreviated FCS which found that the facility had SQC.

# Scoring for the State Agency

Met = 2 points/ Pass	Partially Met = 1 point / Pass	Not Met = 0 points/ Fail
SA properly identifies noncompliance and harm Level SA missed noncompliance at Level 1	SA fails to identify noncompliance at Level 2 SA failed to provide evidence to support the Level of harm cited	SA failed to identify noncompliance at: SQC Level 3 for all tags Level 4 for all tags

# Survey Selection Health RSS and FCS

- Providers based on data indicating a risk of non-compliance
- Providers with a history of non-compliance
- Allegations of noncompliance with the focused concern areas
- Complaints, Media Attention or other justification



## **FY24 and FY25 Estimated Number and Type of FMS for LTC Health**

CMS Must complete the total mandated number of surveys in each state. 20% of the mandated surveys **must** be Comparatives, and 80% of the total mandated surveys are one of the two types of Federal Oversight Support Surveys (FOSS): RSS or FCS. The targeted breakdown of FOSS each is roughly 50% of each type.

### **Column Definitions:**

- 1. State/ CMS Location** - the State where the surveys will be conducted, grouped by CMS Location.
- 2. Total Mandated** - the total FMS statutorily required for each state.
- 3. Comparative** - the minimum number of Comparatives that must be completed for each state.
- 4. FOSS** - the total number of FOSS type surveys that must be completed for each state.
- 5. Targeted Breakdown** - Target counts of both FCS and RSS for each state (roughly 50% of each).

For example, State A requires 46 total FMS. 10 of these must be comparatives and 36 are FOSS Type with a target of 18 FCS and 18 RSS accounting for the total of 36 FOSS.

# Indiana – Required # of FCS (Focused Concern Surveys) and RSS (Resource & Support Surveys)



**FY24 and FY25 Estimated Number and Type of FMS for LTC Health, Continued**

State/CMS Location	Total Mandated	Comparatives 20% of Total Mandated	Federal Oversight Support Surveys (FOSS)		
			FOSS 80 % of Total Mandated	Targeted Breakdown	
				FCS	RSS
Illinois	35	7	28	14	14
Indiana	27	6	21	11	10
Michigan	22	5	17	9	8
Minnesota	18	4	14	7	7
Ohio	46	10	36	18	18
Wisconsin	17	4	13	7	6

### **FY24 and FY25 Estimated Number and Type of FMS for LTC LSC**

CMS Must complete the total mandated number of surveys in each state. While 100% of the mandated surveys can be Comparatives, at least 50% must be Comparatives, the remainder can be RSS. The number of comparatives and RSS that can be completed on a State Agency (SA) Revisit is limited.

#### **Column Definition:**

- 1. State/ CMS Location** - the State where the surveys will be conducted, grouped by CMS Location.
- 2. Total Mandated** - the total FMS statutorily required for each state.
- 3. Comparative** - the minimum number of Comparatives that must be completed. The number of Comparatives that can be completed on a SA revisit is noted in parentheses, e.g., 5(1)
- 4. RSS** - the maximum number of RSS that can be completed. The number of RSS that can be completed on a SA revisit is noted in parentheses e.g., 5(1)

For example, State A has a total mandated count of 10. At least five (or 50%) of those surveys must be Comparatives. One of those Comparative Surveys may be conducted on a SA Revisit. This is noted as 5(1). CMS may elect to conduct up to 5 RSS, with one of the RSS being completed on a SA Revisit 5(1). CMS may also elect to conduct all 10 (100%) of the surveys as Comparatives.

**FY24 and FY25 Estimated Number and Type of FMS for LTC LSC, Continued**

<b>State/CMS Location</b>	<b>Total Mandated</b>	<b>Comparative</b> At least 50% of total mandated, conducted on a SA Standard (or Revisit)	<b>RSS</b> Up to 50% of total mandated conducted on a SA Standard (or Revisit)
Illinois	35	18(3)	17(4)
Indiana	27	14(2)	13(3)
Michigan	22	11(2)	11(2)
Minnesota	18	9(1)	9(2)
Ohio	46	23(4)	23(5)
Wisconsin	17	9(1)	8(2)

# Q & A

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