

Proposed Legislation Nursing Home Survey Reform

Issue:

The implementation of the Nursing Home Survey System assumes a one size fits all approach and fails to provide incentives and disincentives to encourage better performance by nursing homes. In addition, variation within the survey process makes it extremely difficult to provide information that would allow for meaningful comparisons of individual homes within and across states. When all of this is considered in the context of a confluence of shrinking resources, increased availability of quality data and a public demand for more useful, timely and reliable data, there is the opportunity to streamline and improve the current survey system.

Proposal:

The legislative changes that we are proposing would provide for a quarterly offsite review of a set of quality markers across all nursing homes and provide an incentive for the top tier of performing nursing homes to have a full onsite survey every 36 months, with a 1/2 day onsite survey during the two intervening years. Other homes would continue with the annual full onsite survey. This would free up additional time for surveyors to provide more oversight for homes which are showing the poorest performance. The changes also call for the development of acuity adjusters to incorporate differences in populations being served across homes. The Secretary of Health and Human Services would also be required to take steps to improve the consistency of the conduct and documentation of individual surveys in order to allow for the public to compare the performance of homes when making a choice for themselves or their loved ones. It is important that this consistency be within and across states since families often are spread across the country and may need to compare homes in several states. The Secretary would be required to post this data and update same on a quarterly basis.

These proposed changes would also require the Secretary to report to Congress on an annual basis on progress in achieving these goals. There are also a number of other minor conforming changes.

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Modifications to Sections of the Social Security Act related to Nursing Home Survey

(2) Surveys.—

(A) Annual standard survey.—

(i) In general.—Each nursing facility shall be subject to a standard survey, to be conducted without any prior notice to the facility. Any individual who notifies (or causes to be notified) a nursing facility of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed \$2,000. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a). The Secretary shall review each State's or other contractors, as chosen by the Secretary procedures for scheduling and conduct of standard surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

(ii) Contents.—Each standard survey shall include, for a case-mix stratified sample of residents—

(I) a standard survey for a facility in the Top Tier shall consist of a quarterly off-site review of acuity adjusted quality indicators as identified by the Secretary and a half day on-site review of quality of life and safety issues. These facilities will have a full standard onsite survey once every three years.

(II) other facilities will continue to have a full on-site survey each year and also have quarterly off-site reviews of acuity adjusted quality indicators as defined by the Secretary.

(III) a survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment,

(a) A full on-site standard survey shall be conducted in Top Tier Facilities at statewide intervals not to exceed 39 months. All other facilities will have a full on-site standard survey at statewide intervals not to exceed 15 months.

(b) Quarterly offsite quality indicator review

i. Every facility shall be subject to a quarterly offsite review of quality indicators as identified by the Secretary in section (FILL IN HERE) on a quarterly basis. All necessary data will be submitted to the Secretary by facilities on a schedule set by the Secretary.

- ii. The Secretary shall report to the Congress annually, by October 30, on the actions taken during the previous fiscal year to achieve these goals, including data that reflects the consistency of the survey process and the status of appeals.

(IV) written plans of care provided under subsection (b)(2) and an audit of the residents' assessments under subsection (b)(3) to determine the accuracy of such assessments and the adequacy of such plans of care, and

(V) a review of compliance with residents' rights under subsection (c).

(iii) Frequency.—

(I) In general.—Each nursing facility shall be subject to a standard survey not later than 15 months after the date of the previous standard survey conducted under this subparagraph. The statewide average interval between standard surveys of a nursing facility shall not exceed 12 months.

(II) Special surveys.—If not otherwise conducted under subclause (I), a standard survey (or an abbreviated standard survey) may be conducted within 2 months of any change of ownership, administration, management of a nursing facility, or director of nursing in order to determine whether the change has resulted in any decline in the quality of care furnished in the facility.

(B) Extended surveys.—

(i) In general.—Each nursing facility which is found, under a standard survey, to have provided substandard quality of care shall be subject to an extended survey. Any other facility may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey).

(ii) Timing.—The extended survey shall be conducted immediately after the standard survey (or, if not practicable, not later than 2 weeks after the date of completion of the standard survey).

(iii) Contents.—In such an extended survey, the survey team shall review and identify the policies and procedures which produced such substandard quality of care and shall determine whether the facility has complied with all the requirements described in subsections (b), (c), and (d). Such review shall include an expansion of the size of the sample of residents' assessments reviewed and a review of the staffing, of in-service training, and, if appropriate, of contracts with consultants.

(iv) Construction.—Nothing in this paragraph shall be construed as requiring an extended or partial extended survey as a prerequisite to imposing a sanction against a facility under subsection (h) on the basis of findings in a standard survey.

(C) Survey protocol.—Standard and extended surveys shall be conducted—

(i) based upon a protocol which the Secretary has developed, tested, and validated within twelve months of enactment of this law

(ii) by individuals, of a survey team, who meet such minimum qualifications as the Secretary establishes by not later than twelve months following enactment and modified at the Secretary's discretion.

The failure of the Secretary to develop, test, or validate such protocols or to establish such minimum qualifications shall not relieve any State of its responsibility (or the Secretary of the Secretary's responsibility) to conduct surveys under this subsection.

(D) Consistency of surveys.—Each State shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors. The Secretary shall take such actions necessary to assure that there is consistent application of the survey process both within states and across states. In addition, the Secretary will assure that there is a fair and timely appeals process in which each state office and regional office provide a timely resolution of disputes. The Secretary shall report to the Congress annually, by October 30, on the actions taken to achieve these goals, including data that reflects the consistency of the survey process and the status of appeals.

(F) Responsibility of the Centers for Medicare & Medicaid Services (CMS) to assure consistency- The Secretary shall report to the Congress annually, by October 30, on the actions taken to ensure consistency, including data that reflects the consistency of the survey process and the status of appeals.

(G) Survey teams.—

(i) In general.—Surveys under this subsection shall be conducted by a multidisciplinary team of professionals (including a registered professional nurse).
INCLUDE LANGUAGE SPECIFYING COMPOSITION OF THE TEAM?

(ii) Prohibition of conflicts of interest.—A State may not use as a member of a survey team under this subsection an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the facility surveyed respecting compliance with the requirements of subsections (b), (c), and (d), or who has a personal or familial financial interest in the facility being surveyed.

(iii) Training.—The Secretary shall provide for the comprehensive training of State and Federal surveyors in the conduct of standard and extended surveys under this subsection, including the auditing of resident assessments and plans of care. No individual shall serve as a member of a survey team unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

(3) Department Responsibilities- It is the responsibility of the Centers for Medicare & Medicaid Services (CMS) to assure consistent application of survey protocol within states and across states. Furthermore, the Secretary must assure a fair and timely appeals process within each state and require a process for timely resolution of disputes arising from the survey process. The Secretary must report to the Congress annually, by October 30, the actions taken to ensure consistency,

including data that reflects the actual consistency of the survey process and the findings and processes in place for appeals.

(A) Validation surveys.—

(i) In general.—The Secretary shall conduct onsite surveys of a representative sample of nursing facilities in each State, within 2 months of the date of surveys conducted under paragraph (2) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under paragraph (2). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under paragraph (2). If the State has determined that an individual nursing facility meets the requirements of subsections (b), (c), and (d), but the Secretary determines that the facility does not meet such requirements, the Secretary's determination as to the facility's noncompliance with such requirements is binding and supersedes that of the State survey.

(ii) Scope.—With respect to each State, the Secretary shall conduct surveys under subparagraph (A) each year with respect to at least 5 percent of the number of nursing facilities surveyed by the State in the year, but in no case less than 5 nursing facilities in the State.

(a) the Secretary shall ensure that the information released to the public via the website is updated in a quarterly basis.

(iii) Reduction in administrative costs for substandard performance.—If the Secretary finds, on the basis of such surveys, that a State has failed to perform surveys as required under paragraph (2) or that a State's survey and certification performance otherwise is not adequate, the Secretary may provide for the training of survey teams in the State and shall provide for a reduction of the payment otherwise made to the State under section 1903(a)(2)(D) with respect to a quarter equal to 33 percent multiplied by a fraction, the denominator of which is equal to the total number of residents in nursing facilities surveyed by the Secretary that quarter and the numerator of which is equal to the total number of residents in nursing facilities which were found pursuant to such surveys to be not in compliance with any of the requirements of subsections (b), (c), and (d). A State that is dissatisfied with the Secretary's findings under this subparagraph may obtain reconsideration and review of the findings under section 1116 in the same manner as a State may seek reconsideration and review under that section of the Secretary's determination under section 1116(a)(1).

(IV) Special surveys of compliance.—Where the Secretary has reason to question the compliance of a nursing facility with any of the requirements of subsections (b), (c), and (d), the Secretary may conduct a survey of the facility and, on the basis of that survey, make independent and binding determinations concerning the extent to which the nursing facility meets such requirements.

(A) Follow up surveys will be made after the following actions: (1) complaint made by a resident or family member; (2) self- reporting by a facility to the state

agency of a reportable incident; and (3) follow-up after quarterly review of quality indicator data that suggests that there may be a problem.

(B) investigate complaints of violations of requirements by nursing facilities, and

(C) monitor, on-site, on a regular, as needed basis, a nursing facility's compliance with the requirements of subsections (b), (c), and (d), if— (NOT SURE IF THESE LETTERS ARE STILL CORRECT)

(i) the facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;

(ii) the facility was previously found not to be in compliance with such requirements, has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or

(iii) the State has reason to question the compliance of the facility with such requirements.

A State may maintain and utilize a specialized team (including an attorney, an auditor, and appropriate health care professionals) for the purpose of identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against substandard nursing facilities.

(5) Disclosure of results of inspections and activities.—

(A) Notice to facility –

(i) a written Report of Survey must be given to the facility within 15 calendar days following the survey team exit from the facility. The Report of Survey must include all the positive aspects of care and facility life as well as the aspects of care that are performed less well.

(B) Public information.—Each State, and the Secretary, shall make available to the public—

(i) information respecting all surveys and certifications made respecting nursing facilities including the Report of Survey, within 14 calendar days after the Report is given to the facility

(ii) copies of cost reports of such facilities filed under this title or under title XVIII,

(iii) copies of statements of ownership under section 1124, and

(iv) information disclosed under section 1126.

All information and data that is released to the public through the CMS Web site on Nursing Home Compare and its successors must be updated on a quarterly basis.

(B) Notice to ombudsman.—Each State shall notify the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965¹¹⁵⁸¹ in accordance with section 712 of the Act) of the State's findings of

noncompliance with any of the requirements of subsections (b), (c), and (d), or of any adverse action taken against a nursing facility under paragraphs (1), (2), or (3) of subsection (h), with respect to a nursing facility in the State.

(C) Notice to physicians and nursing facility administrator licensing board.—If a State finds that a nursing facility has provided substandard quality of care, the State shall notify—

(i) the attending physician of each resident with respect to which such finding is made, and

(ii) any State board responsible for the licensing of the nursing facility administrator of the facility.

(D) Access to fraud control units.—Each State shall provide its State medicaid fraud and abuse control unit (established under section 1903(q)) with access to all information of the State agency responsible for surveys and certifications under this subsection.

(h) Enforcement Process.—

(1) In general.—If a State finds, on the basis of a standard, extended, or partial extended survey under subsection (g)(2) or otherwise, that a nursing facility no longer meets a requirement of subsection (b), (c), or (d), and further finds that the facility's deficiencies—

(A) immediately jeopardize the health or safety of its residents, the State shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(A)(iii), or terminate the facility's participation under the State plan and may provide, in addition, for one or more of the other remedies described in paragraph (2); or

(B) do not immediately jeopardize the health or safety of its residents, the State may—

(i) terminate the facility's participation under the State plan,

(ii) provide for one or more of the remedies described in paragraph (2), or

(iii) do both.

Nothing in this paragraph shall be construed as restricting the remedies available to a State to remedy a nursing facility's deficiencies. If a State finds that a nursing facility meets the requirements of subsections (b), (c), and (d), but, as of a previous period, did not meet such requirements, the State may provide for a civil money penalty under paragraph (2)(A)(ii) for the days in which it finds that the facility was not in compliance with such requirements.

(2) Specified remedies.—

(A) Listing.—Except as provided in subparagraph (B)(ii), each State shall establish by law (whether statute or regulation) at least the following remedies:

(i) Denial of payment under the State plan with respect to any individual admitted to the nursing facility involved after such notice to the public and to the facility as may be provided for by the State.

(ii) A civil money penalty assessed and collected, with interest, for each day in which the facility is or was out of compliance with a requirement of subsection (b), (c), or (d). Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty for activities described in subsections (b)(3)(B)(ii)(I), (b)(3)(B)(ii)(II), or (g)(2)(A)(i)) shall be applied to the protection of the health or property of residents of nursing facilities that the State or the Secretary finds deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost. Civil money penalty funds collected by the Secretary shall be used for development of acuity adjusters that will provide more accurate information to the public, residents, and facilities, about the quality of care that is provided by each facility.