

Special Report

Infection Control Surveys at Nursing Facilities: It Looks Like Business as Usual

When the Centers for Medicare & Medicaid Services (CMS) suspended the regular survey system for nursing facilities during the COVID-19 crisis, it reported that, for a three-week prioritization period (beginning March 20) and since extended until further notice, it would suspend regular survey activities and conduct only two types of surveys: (1) complaints and facility-reported incidents that are triaged by the state survey agency as immediate jeopardy and (2) infection control surveys.¹ CMS has provided residents' advocates with survey reports for 169 infection control surveys conducted in 20 states between March 25 and April 21, 2020 and two infection control surveys conducted earlier in March in Washington State (including the March 16 survey at the Life Care Center of Kirkland, which was revised April 4).

Survey Process

When state or federal surveyors identify noncompliance in standard (annual) or complaint surveys, CMS classifies deficiencies into four levels of seriousness (or severity). From least serious to most serious, these levels are:

- No actual harm with a potential for minimal harm (substantial compliance)
- No actual harm with the potential for more than minimal harm that is not immediate jeopardy (“no harm”)
- Actual harm that is not immediate jeopardy (“harm”)
- Immediate jeopardy to resident health or safety (“immediate jeopardy”)²

The overwhelming majority of deficiencies are classified as no harm; actual harm and immediate jeopardy deficiencies account for less than 4% of all deficiencies nationwide.³ The federal enforcement system generally limits fines (called civil money penalties) to deficiencies cited as harm or jeopardy.

¹ CMS, “Prioritization of Survey Activities,” QSO-20-20-All (Mar. 20, 2020), at <https://www.cms.gov/files/document/qso-20-20-all.pdf>.

² 42 C.F.R. §488.404(b)(1)(i)-(iv), 59 Fed. Reg. 56116k 56143 (Nov. 10, 1994), <https://www.govinfo.gov/content/pkg/FR-1994-11-10/pdf/FR-1994-11-10.pdf>.

³ CMS, *Nursing Home Data Compendium 2015 Edition*, Figure 2.5. Distribution of Scope and Severity of Health Deficiencies: United States, 205-2014 (3.2% of deficiencies in 2014 were classified as harm or jeopardy), https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/nursinghomedatacompendium_508-2015.pdf.

Infection Control Deficiencies, Historically

Infection control deficiencies are cited at nearly two out of three nursing facilities in the country,⁴ making infection prevention and control the most frequently-cited problem in nursing homes nationwide. However, less than one percent of the deficiencies are classified as actual harm or immediate jeopardy; more than 99% are called “no harm.”

Infection Control Surveys, March-April 2020

As discussed below, CMS sent advocates 169 infection control surveys that were conducted in 20 states between March 25 and April 21 and two additional infection control surveys that were conducted earlier in March. CMS has directed surveyors “to spend as little time onsite as possible, and review as much as possible offsite, such as a facility’s infection control or emergency preparedness policies.”⁵ As a result, the survey reports are generally quite abbreviated.

- 130 of the 171 infection control surveys (76%) did not identify an infection control problem at all.
- Of the 41 surveys that cited an infection control deficiency, 30 surveys (73%) described the deficiency as “no harm.”
- 8 surveys (.05%) initially cited the infection control deficiency as immediate jeopardy, but jeopardy was removed or reduced to a no-harm deficiency during the course of the survey (although one of the surveys, conducted in Washington State, was earlier than March 20).
- Only 3 of 171 surveys (.02%) cited immediate jeopardy (although one of the surveys, conducted in Washington State on March 16, was the Life Care Center of Kirkland, the first nursing facility in the country where coronavirus was identified).

It is possible, of course, that facilities did not actually have problems with their infection prevention and control programs. However, since the facilities were selected because of their history of infection control problems and the lack of sufficient staff and personal protective equipment is reported to be a nationwide problem, what is far more likely is that we are seeing business as usual.

⁴ Jordan Rau, “As Coronavirus Cases Grow, So Does Scrutiny Of Nursing Home Inspection Plans,” *Kaiser Health News* (Mar. 4, 2020), (61% of nursing homes, 9372 facilities, with one or more infection control deficiencies in past three years) <https://khn.org/news/as-coronavirus-cases-grow-so-does-scrutiny-of-nursing-home-infection-plans/>; Jordan Rau, “Coronavirus Stress Test: Many 5-Star Nursing Homes Have Infection-Control Lapses” (Mar. 4, 2020) (63% of nursing homes, 9697, cited with infection control deficiency during past two standard surveys), <https://khn.org/news/coronavirus-preparedness-infection-control-lapses-at-top-rated-nursing-homes/>.

⁵ CMS, “Nursing Home Five Star Quality Rating System updates, Nursing Home Staff Counts and Frequently Asked Questions,” QSO-20-28-NH (Apr. 24, 2020), FAQ #15, <https://www.cms.gov/files/document/qso-20-28-nh.pdf>.

Infection Control Surveys, March 25-April 21, 2020

State	Total number of infection control surveys conducted	Number of facilities with no infection control deficiencies cited	Number of facilities with “no harm” deficiencies cited	Number of facilities with “immediate jeopardy” deficiencies cited, but removed or reduced to no harm during survey	Number of facilities with immediate jeopardy deficiencies cited
Alabama	3	3	0	0	0
California	14	10	4 (4 F)	0	0
Colorado	4	2	2 (1 D, 1 E)	0	0
Florida	23	17	4 (1 D, 1 E, 2 F)	1 K (reduced to E during survey)	1
Georgia	5	3	1 (1 E)	1 jeopardy reduced to E during survey	0
Illinois	20	4	14 (1 D, 7 E, 6 F)	2 (jeopardy removed during survey)	0
Indiana	2	2	0	0	0
Kansas	3	3	0	0	0
Kentucky	3	3	0	0	0
Louisiana	7	7	0	0	0
Massachusetts	19	19	0	0	0
Missouri	7	6	1		
North Carolina	7	3	2	2	0
Oklahoma	3	3	0	0	0
Pennsylvania	7	7	0	0	0
Rhode Island	6	6	0	0	0
South Dakota	2	2	0	0	0
Tennessee	3	3	0	0	0
Texas	25	25	0	0	0
Washington	8	2	2 (2 F)	2	2 (1 K)
Total	171	130	30	8	3

What else do the data show about the states?

- Illinois, with 20 surveys, cited an infection control deficiency in 16 surveys (80%); these 16 surveys represented 42% of the surveys nationwide that cited an infection control deficiency.
- Twelve states (Alabama, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, and Texas), with 73 surveys (43% of the infection control surveys conducted), cited zero infection control deficiencies.
- Only two states (Florida and Washington State) cited immediate jeopardy deficiencies in infection control and one of those surveys was actually conducted March 16 (with the survey report revised April 4) at the Life Care Center of Kirkland (Washington) where the coronavirus pandemic was first seen.

What Survey Reports Citing Deficiencies Record

Most of the infection control surveys citing “no harm” deficiencies are short and abbreviated, reflecting CMS’s direction that surveyors spend as little time as possible on-site.

- On April 2, surveyors cited a Florida facility with a no-harm deficiency for failing to take the temperature of two residents who were readmitted from the hospital.

Other “no harm” infection control surveys cite multiple staff and residents and multiple infection prevention and control problems:

- On March 26, surveyors cited an Illinois nursing facility with a no-harm deficiency for failures in hand hygiene, to clean/disinfect blood pressure cuff and pulse oximeter used with multiple residents, to use personal protective equipment, and to keep clean linens free from contamination involving six residents and seven staff members (three nurse aides, a physical therapy assistant, an LPN, a laundry staff members, and one “concierge” staff).
- A California nursing facility was cited with a no-harm deficiency on April 1 for problems including the failure of the infection preventionist to implement a process to ensure staff followed infection prevention and control practices; the failure of an LVN to disinfect a resident’s bedside table or treatment tray or to do appropriate hand hygiene; failure to ensure staff had access to alcohol based handrubs; and failure to screen visitors.

Sometimes surveyors spend multiple days at facilities that they cite with immediate jeopardy deficiencies; immediate jeopardy is removed during the survey.

- A five-day survey at an Illinois nursing facility, April 9-13, found that staff failed to separate multiple residents who had tested positive with COVID-19 from their roommates, some of whom themselves later tested positive for the virus. Registered nurses were unaware of elevated temperatures of various residents and the Assistant Director of Nursing could not produce documentation that the facility was documenting and tracking the virus in

the facility. Jeopardy was removed on April 13 when surveyors confirmed that residents with COVID-19 test results pending or suspected of having COVID-19 and “residents presenting with respiratory symptoms or elevated temperatures are separated/isolated and placed on contact and droplet precaution until symptoms are cleared or test results become available.”

- A three-day survey at a Florida nursing facility, April 1-3, found that staff failed to clean medical equipment used with multiple residents, failed to follow precautions for a resident who had been infected by another resident, failed to implement isolation, failed to accurately complete a transfer form when sending a resident to the hospital, and failed to ensure that its infection control surveillance tool was completed accurately. “The Infection Control Nurse was unable to determine after review of the tracking tool utilized, the specific residents listed on contact isolation, or the associated diagnoses.”⁶ Jeopardy was removed on the third day of the survey after surveyors confirmed that the facility’s “removal plan” to remove jeopardy had been implemented.

Discussion

First, and most troubling, infection control problems, if cited at all, continue to be called “no harm.” Under current federal guidance, surveyors will not return to any facility to do a revisit unless they classified the deficiency as “immediate jeopardy” – just two of 169 infection control surveys conducted since late March. (Jeopardy was removed during the survey at eight other surveys, making those facilities ineligible for a revisit.) CMS is essentially treating infection prevention and control deficiencies as unimportant.

Second, some of the “no harm” deficiency reports cite multiple staff members – nurses, certified nurse assistants, housekeeping staff, dietary staff, social workers, infection preventionists – as making numerous errors – failure to wash their hands and change their gloves, failure to isolate with suspected or confirmed COVID-19, failure to implement appropriate precautions for residents in isolation, failure to have or use personal protective equipment, failure to track residents who have or are suspected of having COVID-19, and more. These violations of infection prevention and control requirements endanger residents’ lives.

Third, surveyors are focused on residents with high temperatures and coughs. However, many residents who have COVID-19 do not have these symptoms. A study of residents at the Washington State nursing facility where the coronavirus was first identified found that more than half the residents who tested positive did not have any symptoms.⁶ Other studies have also found that older people may be lethargic, sleep more, stop eating, become dizzy, or become disoriented and unable to speak, but do not have more typical symptoms of COVID-19.⁷ How many other residents are being overlooked in these infection control surveys? Until there is testing of every

⁶ Melissa M. Arons, et al, “Presymptomatic SARS-CoV-2 Infections and Transmission in a Skilled Nursing Facility,” *The New England Journal of Medicine* (Apr. 24, 2020), https://www.nejm.org/doi/full/10.1056/NEJMoa2008457?query=featured_home.

⁷ Judith Graham, “Seniors With COVI-19 Show Unusual Symptoms, Doctors Say,” *Kaiser Health News* (Apr. 24, 2020), <https://khn.org/news/seniors-with-covid-19-show-unusual-symptoms-doctors-say/>.

resident and staff member, there is no way to know how widespread the coronavirus is in any nursing facility.

Conclusion

In October 2016, in the first comprehensive revisions of federal Requirements of Participation for nursing homes, the Obama Administration addressed the serious problem of infection control in nursing homes. The preamble to the final 2016 rules reported that each year, 1.6 to 3.8 million health care associated infections occur in nursing facilities and other long-term care facilities. These infections lead, each year, to an estimated 150,000 hospitalizations and 388,000 deaths, at a cost of \$673 million to \$2 billion.⁸ *Kaiser Health News* reported in 2017 that its analysis of four years of federal survey data found that 74% of facilities nationwide received an infection control deficiency, but that most of these deficiencies were cited at a low level of severity,⁹ making enforcement unlikely.

In the 2016 regulations, CMS created a new position called infection preventionist (IP),¹⁰ a staff person who is assigned responsibility for a facility's implementation of a broadly defined "infection prevention and control program" (IPCP). The 2016 rules require that the staff person be qualified by education, training, experience, or certification¹¹ to implement IPCP and also have completed specialized training in infection prevention and control.¹² In March 2019, CMS and the Centers for Disease Control and Prevention (CDC) made available a "Nursing Home Infection Preventionist Training Program,"¹³ which they jointly developed, to enable IPs to get the specialized training they need to oversee their facilities' IPCP.

Last April, the Center for Medicare Advocacy wondered whether the Administration would listen to the nursing home industry and dilute or eliminate new standards of care that, if effectively implemented and enforced, could reduce residents' infections and hospitalizations, save residents' lives, and save Medicare billions of dollars.¹⁴

The answer came in July 2019, when the Administration, under the guise of burden reduction, proposed eliminating the requirement that the infection preventionist be on-site at least part-time in

⁸ 81 Fed. Reg. 68688, 68808 (Oct. 4, 2016).

⁹ Jordan Rau, Kaiser Health News, "Infection lapses are rampant in nursing homes but punishment is rare," *Los Angeles Times* (Dec. 21, 2017), <https://www.latimes.com/business/la-fi-nursing-home-infections-20171221-story.html>.

¹⁰ 42 C.F.R. §483.80(b).

¹¹ 42 C.F.R. §483.80(b)(2).

¹² 42 C.F.R. §483.80(b)(4).

¹³ CMS, "Specialized Infection Prevention and Control Training for Nursing Home Staff in the Long-Term Care Setting is Now Available," QSO-19-10-NH (Mar. 11, 2019), <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO19-10-NH.pdf>.

¹⁴ CMA, "Nursing Homes Requirements of Participation: Will the Administration Overturn 2016 Rules for Infection Control?" (CMA Alert, Apr. 11, 2019), <https://www.medicareadvocacy.org/nursing-home-requirements-of-participation-will-the-administration-overturn-2016-rules-for-infection-control/>.

each nursing facility.¹⁵ The Administration has not issued final rules and allowed the infection preventionist requirement to go into effect in November 2019.

Clearly, the infection control surveys show that we can and must do better at identifying infection prevention and control deficiencies and treating them seriously.

¹⁵ 84 Fed. Reg. 34737, 34746-34747 (Jul. 18, 2019), “Medicare and Medicaid Programs; Requirements for Long-Term Care Facilities: Regulatory Provisions To Promote Efficiency, and Transparency” (Proposed Rule) (using the word “burden” 102 times in 32 pages).