



Ref: S&C-02-28

DATE: April 29, 2002

FROM: Director
Survey and Certification Group
Center for Medicaid and State Operations

SUBJECT: State Agency Performance Standards for Fiscal Year (FY) 2002 - **REVISED**

TO: Associate Regional Administrator, DMSO
State Survey Agency Directors

The purpose of this memorandum is to transmit revised State Performance Standards for FY 2002.

Background – On October 26, 2001 we released the final 2002 State Performance Standards, and solicited your help in finalizing the review protocol guidance requisite to implementation. Since their release, we have received feedback from the protocol development workgroups and the Alliance for Consistency requesting changes to the standards to correct factually incorrect information, and provide clarification. As a result, the joint Centers for Medicare & Medicaid Services (CMS) and Association of Health Facility Survey Agencies (AHFSA) workgroup has revised the standards.

The revised 2002 State Performance Standards are attached. A summary of changes from the October 26, 2001 release follows is as follows:

- Standard 1 – No revisions.
- Standard 2 – Emphasis (A), Method of Evaluation
Revised to clarify sample. (75% recertification and 25% complaint surveys)
- Standard 3 – Emphasis (A), Threshold Criterion
Changed the word “adequately” to “satisfactorily” for consistency with the SOM.
- Standard 4 – Emphasis (A), Threshold Criterion
Referenced the CFR rather than the SOM to measure the process outcomes rather than individual steps within the process.
- Standard 5 – Emphases (A) and (B), Threshold Criterion, Data Sources, and Statutes/Citations
Completely revised to provide further clarity and consistency.

Standard 6 – Emphasis (A) *New Emphasis*. (Other emphases re-lettered accordingly.)
Triage emphasis added to separate time to investigate from triage functions.

Emphasis (D) *Formerly Emphasis (C)*

Revised to clarify this emphasis is only for accredited hospital non-immediate jeopardy complaints alleging non-compliance with conditions of participation.

Standard 7 – Emphases (A) and (B), Threshold Criterion, Data Sources
Changed all references to OSCAR to OSCAR/ASPEN Central Office to reflect data entry system changes.

Thank you for your participation in the development, implementation, and continued enhancement of these performance standards. Your commitment to this process has resulted in a meaningful set of standards.

/s/
Steven A. Pelovitz

Attachment

cc: Regional Administrators

2002 STANDARDS FOR ADEQUATE STATE SURVEY AGENCY PERFORMANCE

Standard 1: Surveys are planned, scheduled and conducted timely.

Emphasis (A)

The state agency (SA) begins no less than ten percent (10%) of its standard surveys of nursing homes during weekends, holidays, or “off hours.”

- Threshold Criterion: In no less than ten percent (10%) of the standard surveys a SA conducts during a twelve month period, the time of day that surveyors begin should extend beyond the business hours of 8:00 am to 6:00 pm and should either incorporate evening hours after 7:00 pm or morning hours before 7:00 am, unless they are started during weekend days i.e., Saturdays, Sundays, and holidays. To count towards the ten percent, once begun, a survey must be conducted on consecutive calendar days, even if those days encompass Sundays and holidays.
- Data Source: User-defined OSCAR reports and state agency survey schedules.
- Statutory/Regulatory Citations: 42 CFR 488.307 and Section 7207 B. 2. of the State Operations Manual (SOM).

Emphasis (B):

The SA complies with requirements for conducting standard surveys of nursing homes within prescribed time limits.

- Threshold Criterion: No less than one hundred percent (100%) of the consecutive standard surveys of nursing homes conducted by the SA are conducted within fifteen (15) months between surveys. The average statewide interval between consecutive standard surveys is no greater than twelve (12) months.
- Data Source: User-defined OSCAR reports and OSCAR Report #27 for long term care (LTC) survey intervals.
- Statutory/Regulatory Citations: Sections 1819(g)(2)(A)(iii) and 1919(g)(2)(A)(iii) of the Social Security Act (SSA) and 42 CFR 488.308.

Emphasis (C):

The SA conducts all legislatively mandated surveys within the timeframes established by law.

- Threshold Criterion:
 - All HHAs are recertified every thirty-six months.
 - All ICFs-MR are recertified before the expiration date of the existing time-limited agreement. If a survey is conducted after the original expiration date, the state survey agency must have given the state Medicaid agency written notice that it should extend the agreement and the recertification survey must have occurred before the expiration date of the extension.
 - Validation surveys are conducted on hospitals selected as part of the 5% sample.

- Data Source: User defined OSCAR reports and SA survey schedules.

- Statutory/Regulatory Citations:
HHAs – 1891(c)(2)(A)
ICF/MRs – 42 CFR 442.109, 442.10 and 442.16
Validation Surveys – Sections 1864c and 1865 of the SSA and 42 CFR 488.7.

Standard 2: Survey findings are supportable.

Emphasis (A):

The SA explains and properly documents all deficiencies on the CMS Form 2567, Statement of Deficiencies (SOD).

- Threshold Criterion: No less than eighty-five percent (85%) of deficiencies cited on SODs reviewed meet the Principles of Documentation for deficiency citation.

- Method of Evaluation: Review at least ten percent (10%) or a maximum of forty (40) CMS Form 2567s, of which seventy-five percent (75%) must be recertification surveys and twenty-five percent (25%) must be complaint surveys, following the “Standard Review Protocol” in Attachment B.

- Statutory/Regulatory Citations: 42 CFR 488.318 and the Principals of Documentation of the SOM.

Standard 3: Certifications are fully documented, and consistent with applicable law, regulations, and general instructions.

Emphasis (A):

The SA conducts surveys of nursing homes in accordance with CMS instructions.

- Threshold Criterion: One hundred percent (100%) of nursing home surveys are satisfactorily conducted by effectively achieving the desired outcomes of the survey using Federal standards, protocols and procedures, policies and systems specified in CMS instructions.
- Data Source: Federal Monitoring Survey (FMS) results.
- Statutory/Regulatory Citations: Section 1819(g)(3)(A) and 1919(g)(3)(A) of the SSA.

Standard 4: When certifying noncompliance, adverse action procedures set forth in regulations and general instructions are adhered to. (Excludes CLIA)

Emphasis (A):

“Immediate Jeopardy” cases involving LTC and non-long term care (NLTC) Providers and Suppliers are processed timely. (Includes ICF/MR and EMTALA)

- Threshold Criterion: In ninety-five percent (95%) of the SA’s determinations that there is Immediate Jeopardy to patient health and/or safety in a provider or supplier that was not abated on-site (prior to the end of the survey), the SA adheres to the termination process as outlined in 42 CFR 488.410 and 42 CFR 489.53.
- Data Source: SA Provider certification files and OSCAR reports.
- Statutory/Regulatory Citations: Sections 1819(h)(2)(A)(1), 1919(h)(1)(A), 1919(h)(3)(B)(1), 1866(b) of the SSA; and 42 CFR 488.410 and 42 CFR 489.53.

Emphasis (B):

Denial of Payments for New Admissions (DPNA) must be imposed by the third month when a long term care facility is not in substantial compliance for 3 months after the date of the original survey. SA adheres to the enforcement processing timeframes.

- Threshold Criterion: In ninety-five percent (95%) of the cases, revisits are conducted by the 60th day and the enforcement packet is sent to the RO or notice is sent by the state to the provider by the 70th day.
- Data Source: Enforcement tracking system reports, and/or SA provider certification files.
- Statutory/Regulatory Citations:
Section 1819(h)(2)(D) & (E) and 1919(h)(2)(C) & (D) of the Act; and
42 CFR 488.417(b)

Emphasis (C)

Noncompliance with one or more Conditions of Participation or Conditions of Coverage and cited deficiencies limit capacity of the provider/supplier to furnish adequate level or quality of care. (NLTC – includes ICF/MR and EMTALA)

- Threshold Criterion: In ninety-five percent (95%) of the cases which cite condition-level noncompliance on the part of a provider or supplier the SA adheres to the ninety (90) day termination process described in Section 3012 of the SOM.
- Data Source: The RO/SA provider survey and certification files, and RO tracking systems.
- Statutory/Regulatory Citations: Section 1866 (b) of the SSA and 42 CFR 489.53.

Standard 5: All expenditures and charges to the program are substantiated to the Secretary's satisfaction.

Emphasis (A):

The SA employs an acceptable process for charging the Federal programs.

- Threshold Criterion: The SA submits its budget request, including proposed workload, its quarterly Title XIX budget estimates, and its expenditure and workload reports in accordance with the requirements contained in the SOM, the budget call letter and other related program instructions.
- Data Source: The CMS Budget Call Letter, the CMS-435 State Agency Budget/Expenditure Report and the CMS-434 State Survey Agency Workload Report.
- Statutory/Regulatory Citations: Sections 1864 and 1902 of the Act provide the basis for agreements and plans with states under which CMS pays states for costs incurred in performing survey and certification functions.

Emphasis (B):

The SA has an acceptable method for monitoring its current rate of expenditures and planned workload.

- Threshold Criterion: The SA monitors and analyzes both its spending and workload progress throughout the fiscal year to ensure that the program priorities are accomplished within its approved budget.
- Data Source: The OSCAR 10, 15 and 25 Reports, the CMS-435 State Survey Agency Budget/Expenditure Report and the CMS-434 State Survey Agency Workload Report.
- Statutory/Regulatory Citations: Sections 1864 and 1902 of the Act provide the basis for agreements and plans with states under which CMS pays states for costs incurred in performing survey and certification functions.

Standard 6: The conduct and reporting of complaint investigations, both long term care and hospital complaints, including hospital federal allegation and EMTALA complaints, are timely and accurate, and comply with general instructions for complaint handling and with the State’s own policies and procedures.

Prior to the review of this standard, appropriate staff from the regional office must meet with each state survey agency. The purpose of the meeting is to discuss and review the state’s complaint triage and prioritization policy for acceptability. This review should include policies and procedures for complaints referred to another agency or entity (e.g., law enforcement, ombudsman, licensure agency, etc). Refer to the October 14, 1999 memorandum from Rachel Block to state survey agency directors.

Emphasis (A):

The SA maintains and follows guidelines for the prioritization of complaints.

- Threshold Criterion: The state agency has and follows written criteria governing the prioritizing and/or categorization for one hundred percent (100%) of complaints.
- Data Source: OSCAR reports and RO and SA complaint logs.
- Statutory/Regulatory Citations:
SOM 3260, SOM 3262, SOM 3280;
Section 1819 (g) (4) and Section 1919 (g) (4) of the Act; and
42 CFR 488.332, and SOM 7700.

Emphasis (B):

The SA investigates all complaints it receives alleging “Immediate Jeopardy” to patient health and safety within prescribed time limits.

- Threshold Criterion: The SA investigates one-hundred percent (100%) of complaints for all providers and suppliers where it determines there is a present or ongoing Immediate Jeopardy to resident and/or patient health and safety, within no more than two (2) working days of receipt by the SA.
- Data Source: OSCAR Reports and Onsite Sample Reviews
- Statutory/Regulatory Citations:
Section 1819(g)(4) and Section 1919(g)(4) of the Act;
42 CFR 488.332; and
Section 7700(G)(1) of the SOM.

Emphasis (C): The SA investigates all EMTALA complaints referred by the regional office within prescribed time limits.

- Threshold Criterion: The SA investigates one hundred percent (100%) of all EMTALA complaints within 5 working days consistent with CMS and state policy.
- Data Source: OSCAR Reports and Onsite Sample Reviews
- Statutory/Regulatory Citations:
Section 1819(g)(4) and Section 1919(g)(4) of the Act;
Section 3406(B) of the SOM; and
Article II(A)(2) of the 1864 Agreement.

Emphasis (D):

The SA investigates all accredited hospital “non-Immediate Jeopardy” complaints that allege non-compliance with conditions of participation within prescribed time limits.

- Threshold Criterion: The SA investigates one hundred percent (100%) of all accredited hospital non-immediate jeopardy complaints that allege non-compliance with conditions of participation within 45 days consistent with CMS policy.
- Data Source: OSCAR Reports and Onsite Sample Reviews
- Statutory/Regulatory Citations: Section 3200 of the SOM.

Emphasis (E):

The SA investigates the LTC complaints it receives alleging “actual harm” to individuals, within prescribed time limits.

- Threshold Criterion: The SA triages and initiates the investigation of one hundred percent (100%) of the complaints it receives alleging or involving actual harm to individuals consistent with CMS and state policy.
- Data Source: OSCAR Reports and Onsite Sample Reviews
- Statutory/Regulatory Citations: Sections 1819(g)(4) and 1919(g)(4) of the Act, and Section 7700 of the SOM.

The term “actual harm” only applies to LTC.

Emphasis (F):

The SA maintains and follows guidelines for the prioritization of complaints, which do not allege or involve immediate jeopardy, or actual harm to individuals.

- Threshold Criterion: The SA has and follows written criteria governing the prioritizing and/or categorization of complaints that minimally incorporates the prescribed time frames for the investigations referenced above, and for the actions and time frames for less serious complaints.
- Data Source: OSCAR Reports and Onsite Sample Reviews
- Statutory/Regulatory Citations:
Section 1819(g)(4) and Section 1919(g)(4) of the Act;
Article II(A)(2) of the 1864 Agreement; and
State Agency Director letters dated March 16, 1999 and October 14, 1999.

Emphasis (G):

The SA enters appropriate (certification-related) complaint data into the OSCAR complaint subsystem.

- Threshold Criteria: No less than one hundred percent (100%) of SA citations from complaint investigations, that are violations of Federal requirements, are encoded into OSCAR in accordance with SOM 3281-3284. The average time from the latest date of either the completion of the investigation by the SA or the Informal Dispute Resolution (IDR) to entry into OSCAR does not exceed twenty (20) calendar days.
- Data Source: OSCAR Reports and Onsite Sample Reviews
- Statutory/Regulatory Citations: Article II (J) of the 1864 Agreement

Standard 7: Accurate and timely data is entered into online survey and certification data systems. (Excludes CLIA)

Emphasis (A):

Certification kits for recertified non-accredited hospitals and nursing homes are entered into the OSCAR\ASPEN Central Office system on a timely basis.

- Threshold Criterion: The average time from the latest date of either the SA approval or IDR decision date (in the case of LTC) to entry into OSCAR\ASPEN Central Office does not exceed twenty (20) calendar days.
- Data Source: OSCAR\ASPEN Central Office reports and Oversight Monitoring Reports (OMRs).
- Statutory/Regulatory Citations: Article II (J) of the 1864 Agreement.

Emphasis (B):

The SA enters data accurately into OSCAR\ASPEN Central Office for recertified non-accredited hospitals and nursing homes.

- Threshold Criterion: No less than eighty-five percent (85%) of cases reviewed demonstrate that data is entered into OSCAR\ASPEN Central Office accurately.
- Method of Evaluation: Use a statistically valid sample of certification cases and determine accuracy rate (percentage) by comparing data on OSCAR REPORT 4 (Full Facility Profile) with hard copy data in the certification kits reviewed.
- Data Source: OSCAR\ASPEN Central Office reports and OMRs
- Statutory/Regulatory Citations: Article II (J) of the 1864 Agreement.

Note: data entry and its associated aspects for “complaints” are referenced separately in Standard 6 above.