DEPARTMENT OF HEALTH & HUMAN SERVICES Centers for Medicare & Medicaid Services

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DATE: **October 10, 2002**

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

SUBJECT: **Policy and Procedures for Conducting the Federal Comparative Survey, FY 2003**

TO: Associate Regional Administrators, DMSO
State Survey Agency Directors

The purpose of this program memorandum is to provide you with the revised procedure regarding the conduct of federal comparative surveys in long term care facilities during fiscal year 2003.

This policy clarifies several issues that result from the conduct of the comparative survey. They are:

1. The Regional Office team performing the survey will cite all deficient practice and allegations of non-compliance that are found during the comparative survey regardless of whether the practice was previously cited by the State Agency.

2. The enforcement procedures that may result from the comparative survey.

3. The results and all CMS-2567's resulting from comparative surveys shall be shared with the State Agency.

4. The results of comparative surveys for data analysis and performance standard purposes must be input into the FMS (FOSS) database. Additional information may still need to be input into the OSCAR system for tracking purposes.

Effective Date: October 1, 2002

Training: This memorandum should be shared with all survey and certification staff, surveyors, their managers, and the state/regional training coordinators.

/s/
Steven A. Pelovitz

Attachment

PROCEDURES FOR CONDUCTING THE FEDERAL COMPARATIVE SURVEY
FY 2003

This document presents the procedure that Federal surveyors conducting a comparative survey in SNFs and NFs should be using to obtain and document data for evaluating the effectiveness of the State Agency's (SA) survey and certification process. The strategies outlined below make the data obtained more useful and relevant to the monitoring process and help to standardize the process across the Regions.

CRITERIA FOR SELECTING COMPARATIVE SURVEYS

Policy:
Survey selection will be objectively determined using criteria set forth by CMS and in accordance with all applicable laws, guidelines, regulations and policies relevant to Long Term Care programs. All comparative surveys must be performed on a certification or recertification survey conducted by the State Agency.

Purpose:
To assure that surveys are objectively selected by criteria set forth by CMS Central and Regional Office (RO) staff.

Procedure:
CMS has identified selection criteria for conducting comparative surveys. Each comparative survey should be selected for at least one of the reasons listed below:

Special State Agency Focus

1. District Office
2. Team Composition
3. 2567 Process
4. IDR Process
5. Prior FOSS Results
6. Revisit Survey Performance
7. Complaint Survey Performance
8. Comparative Survey Results
9. Specific Portion(s) of the Survey Process
10. Supervisor Request
11. Other Reason

Specific Facility Focus

1. Geographic Location
2. Number of Beds
3. Facility Type
4. Ownership
5. Chain Affiliation
6. Resident Characteristics
7. OSCAR Data
8. MDS Data
9. Quality Indicator Data
10. No Prior Deficiencies
11. S/S Findings
12. Substandard Quality of Care
13. Immediate Jeopardy
14. Enforcement History
15. Cmpl Level Survey G or above
16. Reported Complaints
17. State Ombudsmen Reports

SCHEDULING COMPARATIVE SURVEYS

Policy:

Federal surveyors shall be available on both a scheduled and as-needed basis to conduct comparative surveys.

Purpose:

To ensure that Federal surveyors are available to assess State Survey Agency's (SA) performance in the interpretation, application and enforcement of Federal Long Term Care (LTC) requirements and to evaluate facility compliance with Medicare and Medicaid requirements.

Procedures:

1. Comparative surveys will be initiated no sooner than 10 working days after the survey has been completed by the SA, but not later than 30 working days following the completion of a survey conducted by the State Survey Agency.

2. To assist the Regional Office in developing the survey schedule, the SA will provide the RO with the following:

   Facilities surveyed in the preceding four weeks:

   a) Facility name, location and provider number,
   b) Actual start date and time of the survey (indicating if the survey was conducted during off hours),
   c) Actual type of survey initiated and concluded (initial, recertification, complaint, revisit),
   d) Team size and composition,
   e) Date the State Agency sent the CMS-2567 to the facility.

   Facilities scheduled for surveys in the succeeding four weeks:

   a) Facility name, location and provider number,
   b) Size of the facility,
   c) Projected start date and time (indicating if the survey will be conducted during off-hours) and exit date of the survey,
   d) Anticipated type of survey (initial, recertification, complaint, revisit),
   e) Team size and composition

3. The SA will provide the original four-week schedule by the third week of each month and provide any subsequent schedule changes to the RO.

4. Once the RO selects the survey, the Regional office survey team leader contacts the SA and requests the listed information. The SA should forward the information as soon as possible after the request, but not later than five working days before the comparative survey start date(either by facsimile or overnight mail):

   SA survey information:

   a) Quality Indicator Reports used in the offsite preparation (Facility Characteristics; Facility Quality Indicator Profile; and Resident Level Summary), noting selected areas of concern.

   b) Copy of the SA team's "Offsite Survey Preparation Worksheet" (CMS Form 801), "Offsite Roster Sample Matrix" (CMS Form 802).

   c) Copy of the SA team's "Roster Sample Matrix" (CMS Form 802) listing the residents selected for focused and comprehensive reviews in phase I, and those selected for focused and closed record reviews in Phase 2, ensuring that concern areas were clearly marked when photocopied or faxed.

   d) Copy of any complaint information that pertained to the survey.

   e) Copy of Ombudsman information provided to SA team, with name and number.

5. The RO will use other sources of information as prescribed in Appendix P of the State Operations Manual (SOM).

6. The RO should not review the CMS-2567 issued by the SA prior to determining the facility's level of compliance relative to the comparative survey.

CONDUCTING THE COMPARATIVE SURVEY

Policy:

All comparative surveys will be conducted in accordance with all applicable laws, guidelines, regulations and policies relevant to LTC programs. The Regional Offices shall ensure that survey protocols are used by all Federal surveyors to measure compliance with Federal requirements.

Purpose:

To ensure consistency and comparability of the survey outcome conducted by the Regional Office (RO) and the State Survey Agency (SA), by comparing the findings of the SA with the RO findings. These procedures are intended to ensure consistency within CMS in the conduct of the comparative and assessment of State Agency performance. The procedures identify when and how the comparative survey will modify the Appendix P protocols to allow for survey comparisons.

Procedures:

1. The RO will follow Appendix P of the State Operations Manual (SOM) and all relevant subsequent transmittals.

2. The RO will complete its own offsite preparation, using the offsite information submitted by the SA (QI reports and other relevant data). The RO compares its concerns and sample selection with those of the State team and determines if there are any significant differences in resident selection or identified concerns.

3. After completing the selection of the Phase 1 sample, the RO should compare the residents selected and the concern areas to those of the SA team. Any significant differences in resident selection and concern area identification should be noted in the appropriate FMS database comment field.

4. During Phase I, the RO will amend (by substitution or supplementation), its sample selection to include 50% of the individuals selected by the SA, either for focused or comprehensive review (if those residents are still residing the facility). These individuals may be selected only from the SA's Phase 1 sample. The RO should not review the SA's Phase 2 sample selection until after they have completed their own Phase 2 sample selection. The amended RO sample should incorporate all residents selected for comprehensive review by the SA unless they are no longer in the facility. If none of the SA's Phase 1 comprehensively reviewed residents are still residing in the facility, the RO should select another resident from the SA's Phase 1 sample. If substitution is not possible, the RO may supplement the sample in accordance with the SOM. When the RO substitutes a resident, the RO should document the reason, following the Appendix P procedure and continue with the appropriate sample.

5. The RO may substitute the sample and <u>not</u> include 50% of the SA sample under the following circumstances (and with supporting documentation):

    a. The SA chose an inappropriate Phase 1 sample (e.g. the sample did not satisfy the required WHP selection).

b. The SA failed to select one or more mandatory QIs or sentinel health events.
c. The SA selected inappropriate concerns based on the offsite data.
d. The RO's tour drastically changed the complexion of the identified concerns (thus impacting the appropriateness of the SA's sample).

6. After the RO has selected their Phase 2 sample, the RO should review the SA sample. The RO should amend its Phase 2 sample to include 50% of the SA sample, if the residents are still residing in the facility. In addition, the RO may, if appropriate, review a resident from the SA sample who no longer resides in the facility as part of the closed record review.

7. If the areas of concern selected by the RO for Phase 2 are different from those of the SA, this should be documented in the appropriate FMS database comment field. The RO should review the residents selected by the SA, and incorporate those that best reflect the identified concerns. If other residents need to be substituted, the RO should note the reason and make the substitution.

8. In order to ensure that the facility has identified and met the needs for all residents, the sample should be reflective of the identified concerns. Therefore, the RO should substitute or supplement the sample as necessary.

9. For findings of Immediate Jeopardy (IJ), please follow procedures outlined in Appendix Q

PROTOCOL for PROCESSING Form CMS-2567
(STATEMENT OF DEFICIENCIES)

Policy:

The Regional Office survey team will follow procedures outlined in the Principles of Documentation, to complete Form CMS-2567. This information will be communicated to the SA with instructions. All findings from a survey will be recorded on Form CMS –2567 and will follow survey protocols established to process Form CMS-2567.

Purpose:

1) To clarify the procedures that Regional Office survey teams shall follow to process Form CMS-2567 Statement of Deficiencies.

2) To assure accurate reporting of data collection and analysis.

General Procedures:

1. The Regional Office survey team will utilize the ASPEN computer database program to generate Form CMS-2567, the Statement of Deficiencies.

2. The Regional Office survey team will utilize the SOM, Section 2728 and the Principles of Documentation as a resource for processing the Form CMS-2567. The CMS-2567 resulting from the comparative survey must be issued to the facility 10 working days after the survey has been completed.

3. The RO should cite all findings of deficient practice on the CMS-2567, without reviewing the CMS-2567 resulting from the SA's survey. The RO shall ensure that all areas of non-compliance are cited regardless of whether the findings have been previously cited by the SA. In cases where the RO surveys the same areas of concern identified by the SA and finds that the areas of deficient practice cited by the State no longer exists, the RO must confer with the SA to discuss the process for determining compliance. If agreement is reached between the SA and RO that the non-compliance no longer exists, the RO shall be responsible for sending a CMS-2567B to the facility for those areas of non-compliance not cited by the RO. This may result in the issuing of both a CMS-2567 and a CMS-2567B by the RO. The RO cannot issue a CMS-2567B for those tags without discussing the findings with the SA.

4. Informal Dispute Resolutions (IDR) for comparative surveys are to be held in accordance with guidelines in the SOM and must be held at the RO level. Any determinations made in reference to IDRs of comparatives must be communicated to the SA. The SA shall also communicate the result of any IDR of surveys chosen for comparative review to the appropriate RO.

5. Each RO responsible for the comparative survey will be responsible for approving the PoC.

6. When applicable, comparative revisit surveys may be carried out by either the Region or the State, at the discretion of the Regional Office.

There are several enforcement options for the RO to consider when the comparative survey is completed.

Scenario 1A

The State survey determines substantial compliance (below level "D" deficiencies) and the Federal Comparative survey also determines substantial compliance:

1. The RO should cite all findings of deficient practice on the CMS-2567.

2. The RO must send the CMS-2567 to the facility, with a cover letter explaining that if the facility is in the process of implementing a PoC for State survey, the facility should reference this information in their PoC being submitted to the RO, with the current status of the correction and any revised correction dates.

3. The RO will send a copy of the CMS-2567 and the letter to the State Agency (SA).

4. The RO should discuss the differences in findings with the SA.

5. Revisits are discretional for both the State and the RO for surveys where the highest citation is at a D, E or F and there is no SQC. (SOM 7317)

Scenario 1B

The State survey determines substantial compliance (no deficiencies) and the Federal Comparative survey also determines substantial compliance (no deficiencies):

1. The RO must send the CMS-2567 to the facility, noting that the entity is in compliance with all requirements.

2. The RO will send a copy of the CMS-2567 and the letter to the State Agency (SA).

Scenario 2

The State survey determines substantial compliance and the Federal Comparative survey determines non-compliance.

1. The RO should cite all findings of deficient practice on the CMS-2567.

2. The RO must send the CMS-2567 to the facility, with a cover letter denoting that the plan of correction (PoC) be addressed to the Regional Office. The RO will send a copy of the CMS-2567 and the letter to the SA.

3. The RO will follow the enforcement process as delineated at SOM Section 7301, 7304, 7308, and 7310.
4. The RO will determine whether the enforcement action should be “opportunity to correct” or “no opportunity to correct”. The RO will provide the initial notice to the provider regarding the enforcement action to be taken.
5. The RO should discuss the differences in findings with the SA.
6. At the discretion of the RO, the SA will conduct the revisit survey and make additional recommendations to the RO regarding compliance/noncompliance and associated enforcement remedies.
7. The RO will be responsible for all notice letters in accordance with the SOM.

Scenario 3

The SA determines noncompliance and initiates an enforcement action. The RO conducts a Comparative survey and determines non-compliance. The RO will incorporate the Comparative survey into the enforcement process initiated by the State.

1. As soon as the RO schedules the comparative survey, the RO will contact the SA so that the first revisit is delayed until the Federal survey is completed, unless the SA has completed the follow-up to the State survey. If the SA has completed their revisit and determined compliance, the RO will follow the process at scenario 2. If the SA has completed their revisit and determined continuing noncompliance, they should proceed with the enforcement process timeframes.
2. Following completion of the comparative survey, the RO must send the CMS-2567 to the facility, with a cover letter explaining that if the facility is in the process of implementing a PoC for State survey, the facility should reference this information in the PoC being submitted to the RO, with the current status of the correction and any revised correction dates.
3. The RO will send a copy of the CMS-2567 and letter to the SA.
4. The RO will determine the appropriate enforcement action. If substantial compliance is not achieved, the RO must ensure the timely imposition of mandatory Denial of Payment for New Admissions. This may necessitate that the enforcement action initiated by the SA becomes a “No Opportunity to Correct” case.
5. Once an acceptable PoC is submitted and approved by the RO, the RO will contact the SA.
6. At the discretion of the RO, the SA will conduct the revisit survey for both the State survey and the comparative survey.
7. The enforcement process will be followed as stipulated in the SOM Section 7317.

Scenario 4

The SA determines non-compliance and the Federal Comparative survey determines substantial compliance:

1. As soon as the RO schedules the comparative survey, the RO will contact the SA so that the revisit is delayed until the Federal survey is completed, if possible.
2. Following the completion of the comparative survey, the RO must discuss the findings of the survey prior to issuing a CMS-2567 for those areas found non-compliant by the SA but compliant by the RO. Once agreement has been reached between the SA and the RO, the RO will complete the CMS-2567 and send a letter to the facility.
3. The RO will send a copy of the CMS-2567 and letter to the SA.
4. Revisits are discretionary for both the State and the RO for surveys where the highest citation is at a D, E or F and there is no SQC. (SOM 7317)