

CMS TARGETS INADEQUATE REGISTERED NURSE STAFFING IN SKILLED NURSING FACILITIES - MORE WEEKEND SURVEYS AND F-TAG DIRECTIVE

On November 30, 2018, CMS issued a **Memorandum** to State Survey Agency Directors (QSO-19-02-NH), announcing its concerns about adequate registered nurse staffing in skilled nursing facilities and that it will provide CMS Regional Offices and State Survey Agencies with a list of facilities with potential staffing issues to support survey activities for evaluating sufficient staffing and improving resident health and safety.

BACKGROUND

The Affordable Care Act requires facilities to electronically submit direct care staffing information (including agency and contract staff) based on payroll and other auditable data. CMS then added a provision to the Requirements for Participation for facilities. Since July 2016, nursing homes have been submitting data electronically through the Payroll-Based Journal ("PBJ") system as required under section 1128I(g) of the Social Security Act and 42 CFR §483.70(q). Under the PBJ program, facility staffing information is submitted each quarter and represents the number of hours staff are paid to work each day of that quarter. It is also auditable back to payroll and other verifiable sources. The data, when combined with census information, can then be used to report the level of staff in each nursing home and report on employee turnover and tenure.

In April 2018, CMS began using PBJ data to calculate staffing levels and star ratings on the Nursing Home Compare website and in the Five Star Quality Rating System. In an April 2018 **Memorandum**, CMS reminded nursing homes of the importance of Registered Nurse ("RN") staffing and the requirement to have an RN onsite eight hours a day, seven days a week. CMS also announced that nursing homes reporting seven or more days in a quarter with no RN hours will receive a one-star rating in the staffing domain, which will drop their overall (composite) star rating by one star for a quarter. In April, CMS announced its concerns about the patterns of days with no RN onsite and the data that showed that approximately six percent of facilities had seven or more days where no hours for RNs were reported and approximately 80 percent of all days with no RN hours were weekend days.

CMS TO IDENTIFY FACILITIES WITH INADEQUATE STAFFING ISSUES AND NOTIFY STATE AND CMS REGIONAL OFFICES

The Memorandum details CMS's concerns about some of the findings from the new PBJ data. Specifically, some facilities are reporting several days in a quarter without an RN onsite and/or significantly low nurse staffing levels on weekends. CMS believes that nurse staffing is directly related to the quality of care that residents experience and is very concerned about the risk to resident health and safety that these situations may present.

To address its concerns, CMS will begin informing state survey agencies of facilities with potential staffing issues: (1) facilities with significantly low nurse staffing levels on weekends; and (2) facilities with several days in a quarter without an RN onsite.

Weekend Surveys to Increase for Facilities with Low Staffing on Weekends

In the Memorandum, CMS announced that for facilities identified as having low staffing on weekends, states will be required to conduct at least 50 percent of the required off-hours surveys on weekends using the list of facilities provided by CMS.

CMS Urges F-Tag for Noncompliance with RN staffing Requirement

For facilities identified as having reported days with no RN onsite, CMS will assist surveyors' investigations by identifying facilities who have higher risk of noncompliance with the RN staffing requirement. CMS directs that when conducting a scheduled standard or complaint survey (regardless of the type of complaint), surveyors should investigate compliance with the requirement for a facility to provide the services of an RN seven days a week, eight hours a day. If a surveyor confirms that this requirement has not been met, the Memorandum directs that the facility shall be cited for noncompliance under deficiency F-Tag 727.

REVIEW OF FACILITY ASSESSMENT NEEDED

Part 483.70(e) to Title 42 of the Code of Federal Regulations, the Requirements for States and Long-Term Care Facilities ("Final Regulations")

added a facility assessment requirement for long-term care facilities. When the Final Regulations were published, CMS wrote that it did not believe that all facilities perform as thorough an assessment of their resident population or the facility's resources as is required by the Final Regulations. The assessment may be used by surveyors to assess facility staff levels, competencies and resources in the instance of an adverse event, which underscores the importance of preparing the assessment in accordance with forthcoming guidance. Accordingly, facilities with staffing or scheduling issues should review and revise their facility assessment.

PRACTICAL TAKEAWAYS

- Facilities need to address staffing inadequacies by aggressively reviewing scheduling practices and actively pursuing hiring to fill positions and avoid staffing lapses.
- If a facility has RN staffing inadequacies or consistent staff scheduling issues, the facility should review and revise its facility assessment.
- Facilities should review data submitted under the PBJ program to ensure that data is being submitted correctly and accurately to match the facilities actual staffing circumstance and inadvertent errors do not cause the facility to become classified as a inadequately staffed facility.

If you have questions or would like additional information about this topic, please contact:

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