

## **CMS SUSPENDS MOST NON-EMERGENCY INSPECTIONS ACROSS THE UNITED STATES WITH GOAL TO FOCUS ON INFECTIOUS DISEASES AND ABUSE**

On March 4, 2020, the Quality, Safety & Oversight Group at the Centers for Medicare & Medicaid Services ("CMS") issued a **memorandum** entitled "Suspension of Survey Activities" ("QSO Memo") to announce that it is suspending non-emergency inspections across the United States so that inspectors may focus on infectious diseases and abuse. CMS states this will allow inspectors to focus on addressing the spread of the coronavirus disease 2019 ("COVID-19"). The QSO Memo also detailed important guidelines for the State Survey Agencies' inspection process in situations in which a COVID-19 case is suspected.

### **SUSPENSION OF MOST SURVEY INSPECTIONS**

The QSO Memo directs that state survey agencies immediately limit survey activity to the following, in the priority listed:

1. All immediate jeopardy complaints and allegations of abuse and neglect;
2. Complaints alleging infection control concerns, including facilities with potential COVID-19 or other respiratory illnesses;
3. Statutorily required recertification surveys for skilled nursing facilities, home health, hospice, and Intermediate Care Facilities for Individuals with an Intellectual Disability;
4. Re-visits necessary to resolve current enforcement actions;
5. Initial certifications;
6. Surveys of facilities/hospitals that have a history of infection control deficiencies at the immediate jeopardy level in the last three years;
7. Surveys of facilities/hospitals/dialysis centers that have a history of infection control; and
8. Deficiencies at lower levels than immediate jeopardy.

### **SURVEY PLANNING GUIDANCE**

The QSO Memo also details survey protocols and planning in providers with active or suspected COVID-19 cases. Specifically, when a COVID-19 confirmed case or presumptive case is identified in a Medicare/Medicaid certified provider or supplier, CMS recommends that:

- Surveyors notify the appropriate CMS Regional Office;
- Wait for Center for Disease Control ("CDC") to clear the provider's facility for survey;
- Ensure surveyors have all necessary personal protective equipment; and
- Suspend enforcement actions until CMS Regional Office approves the action, to allow CMS to ensure consistent enforcement.

CMS emphasized that immediate jeopardy cases and cases of abuse and neglect allegations from complaints shall receive high priority for survey.

### **SURVEY PLANNING IN FACILITIES WITH ACTIVE OR SUSPECTED CASES OF COVID-19**

The QSO Memo details that when a COVID-19 confirmed case or presumptive case is identified in a Medicare/Medicaid certified provider or supplier, state surveyors must notify the appropriate CMS Regional Office with the details. Before initiating any complaint or recertification survey, CMS will coordinate with the CDC to approve the facility for the survey. The CMS Regional Offices will:

- Authorize an on-site survey if reported conditions at the facility are triaged at immediate jeopardy; and
- Authorize on-site surveys where the complaint or facility reported incident involves infection control concerns in the facility.

If conditions at a facility do not rise to the immediate jeopardy level, then CMS calls for desk audits to be performed, and on-site

investigations may be authorized once all active or suspected cases of COVID-19 have been cleared from the facility.

## **NUMBER OF ONSITE SURVEYORS**

The QSO Memo provides that the survey team should identify the minimal number of surveyors required to effectively conduct the required onsite observations.

## **PERSONAL PROTECTIVE EQUIPMENT**

The QSO Memo requires that survey teams ensure that members have needed personal protective equipment that may be required onsite to observe resident care in close quarters. If the facility has gowns, gloves, face shields or other eye protection that may be used by surveyors, such equipment may be used onsite by surveyors.

## **ONSITE SURVEY ACTIVITIES**

The QSO Memo provides that, unless there are extenuating circumstances, the survey team should plan to complete all onsite observations and corresponding interviews within two days. If symptomatic patients/residents are able to tolerate wearing face masks for interviews, this will reduce the need for surveyors to wear respirator masks.

During onsite observation and investigation, the QSO Memo directs that surveyors focus on concerns with:

- Improper transmission precautions procedures;
- Lack of staff knowledge of transmission precautions;
- Improper staff use of personal protective equipment and/or inadequate hand hygiene;
- High-risk, significant environmental cleaning issues;
- Ineffective and/or improper laundering of linens; and
- Consider how influenza and pneumococcal programs are managed.

CMS recommends that the surveyors conduct needed interviews with patients/residents onsite, as these may be difficult to obtain offsite.

## **CONDUCTING AND COMPLETING SURVEY OFFSITE**

The QSO Memo makes recommendations for many actions to occur offsite. CMS recommends that:

- All interviews should be conducted by phone (except for interviews that are conducted concurrently with observations);
- Medical record review may be conducted offsite;
- Requests and reviews of facility policies and procedures take place offsite;
- Investigations of the governing body and quality assurance performance improvement requirements that may relate to infection control or care issues be conducted off-site through telephone interviews and additional record review;
- Any survey exit discussion with the facility occur by telephone; and
- The drafting of the CMS-2567 occur offsite.

## **KEY TAKEAWAYS**

- Facilities should expect to see fewer surveys and those that occur will be more focused on infection control and abuse and neglect.
- Facilities should also expect to see different onsite survey actions as surveyors move to complete more actions offsite.

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

- **Sean Fahey** at (317) 977-1472 or [sfahey@hallrender.com](mailto:sfahey@hallrender.com);
- **Todd Selby** at (317) 977-1440 or [tselby@hallrender.com](mailto:tselby@hallrender.com);
- **Brian Jent** at (317) 977-1402 or [bjent@hallrender.com](mailto:bjent@hallrender.com); or

- Your regular Hall Render attorney.

More information about Hall Render's Post-Acute and Long-Term Care services can be found [here](#).